

STATE OF NORTH CAROLINA
COUNTY OF EDGECOMBE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 03446

Joseph Daniel Pilgreen Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on January 9, 2021, before Administrative Law Judge Stacey Bice Bawtinheimer, in a courtroom equipped to telephonically communicate with multiple parties, physically located in Raleigh, North Carolina. All parties consented to a remote hearing. This case was heard after Respondent requested, pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 17E of the North Carolina General Statutes.

APPEARANCES

For Petitioner: Joseph Daniel Pilgreen, *pro se*
2955 S. Shiloh Farm Road
Princeville, NC 27886

For Respondent: Ameshia A. Cooper
Department of Justice
Special Prosecutions and Law Enforcement Section
9001 Mail Service Center
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ISSUE

Whether Respondent's revocation of Petitioner's justice officer certification for failing to maintain the minimum standards required for justice officer certification based upon his lack of good moral character supported by a preponderance of the evidence?

RULES AT ISSUE

12 NCAC 10B .0204(b)(2)
12 NCAC 10B .0301(a)(8)
12 NCAC 10B .0205(3)(b)

WITNESSES AND EXHIBITS

For Petitioner: Joseph Daniel Pilgreen, Petitioner

For Respondent: Sirena Jones, Deputy Director NC Sheriffs Education and Training Standards Commission

Joseph Daniel Pilgreen

Respondent's Exhibits (Resp't Ex.): 1-9 (hearsay redacted) were admitted into evidence.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, Respondent's Proposed Final Decision, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **FINDINGS OF FACT**.

FINDINGS OF FACT

In making the **FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and Joseph Daniel Pilgreen ("Petitioner") received, by certified mail, the proposed denial letter mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission ("Commission"), on 28 July 2020. Resp's Ex. 1.

2. Respondent has the authority granted under Chapter 17E of the North Carolina General Statutes and Title 12 of the North Carolina Administrative Code, Chapter 10B, to certify justice officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Petitioner was supposed¹ to be certified as deputy sheriff through the Edgecombe County Sheriff's Office from 10 March 2017 through 10 January 2020. Petitioner has not previously been certified by the Commission or the North Carolina Criminal Justice Education and Training Standards Commission.

4. Respondent's proposed revocation of Petitioner's justice officer certification is based on the contention that Petitioner lacks the good moral character required of a justice officer, thereby failing to meet or maintain the minimum standards required of a justice officer in violation of 12 NCAC 10B .0204(b)(2) and 12 NCAC 10B .0301(a)(8). Resp's Ex. 1.

5. Petitioner was scheduled to attend a DWI Case Preparation Course at Coastal Plain Law Enforcement Training Center on 11 and 12 December 2019. According to Petitioner, he made the forty-minute drive to the course location on 11 December 2019 and was informed that the course had been cancelled.

6. Petitioner did not report to work on 11 or 12 December 2019 because he had accrued 80-85 hours of "comp" time and had not been scheduled on the roster for those days because of the course.

7. In the past, if a class was cancelled, Petitioner was allowed to take a "comp" day because the squad was already "covered." Petitioner intended to use 24 hours of his comp time to satisfy the hours he had not worked on 11 and 12 December 2019.

8. Petitioner's schedule is made months in advance. His current timesheet is prescheduled through 2022. Resp's Ex. 8 His timesheets are on his laptop.

9. When Petitioner returned to duty on December 20, 2019, he did tell his new supervisor that the class had been cancelled. No one asked him about the class and Petitioner denies that he told his supervisor that the course was "good" or in any way falsely insinuated that he had attended.

10. From 2 December 2019 through 25 December 2019, Petitioner did not have access to his laptop. Petitioner recorded his actual time on his laptop which was in his patrol vehicle. During that time, Petitioner's patrol vehicle was in the "shop" for repairs.

11. On 30 December 2019, Petitioner was finally able to submit his timesheet to the Edgecombe County Sheriff's Office, the timesheet indicated that he worked 7:00 a.m. – 7:00 p.m. on both 11 and 12 December 2019. Resp's Ex. 4

¹ See explanation in paragraphs numbered 18 and 25.

12. Before Petitioner submitted his December timesheet, he forgot to change it to reflect that the training had been cancelled and the time should be “comp” time not “work” time. Petitioner testified creditably that this was an “honest” mistake.

13. In the past for 2 ½ years, mistakes like this would be caught during timesheet review. Petitioner’s prior supervisor would review everyone’s timesheets as a squad so any errors could be fixed before handing them in for “signing off”. Petitioner and his other squad members had been allowed to correct an error on a timesheet and reprint it.

14. It was brought to Petitioner’s attention on December 30th that the timesheet he submitted contained errors. As a result, Petitioner created a revised timesheet which he attempted to submit to his supervisor. However, this time, the revised timesheet was rejected. Resp’s Ex. 8

15. Petitioner was dismissed from the Edgecombe County Sheriff’s Department because of his mistake.

16. No Internal Affairs investigation was conducted to investigate whether Petitioner intentionally reported working on 11 and 12 December 2019, when he did not. However, the Report of Separation submitted to the Sheriffs’ Standards Division in reference to Petitioner’s dismissal indicated that there were substantiated allegations of untruthfulness against him. Resp’s Ex. 2.

17. Attached to the Report of Separation was a letter dated 10 January 2020 from Gene Harrell, Chief Deputy of the Edgecombe County Sheriff’s Office. Resp’s Ex. 2, p 2. This letter contains hearsay which has been redacted. Chief Harrell did not testify at the hearing about the information reported in his letter. Petitioner credibly denied the statements attributed to him by Chief Harrell.

18. Plus, Chief Harrell’s credibility in this matter is impugned due to his own misconduct. In December 2019 prior to writing his letter, it was discovered that Chief Harrell had failed, for over 3 years, to submit Petitioner’s certification paperwork to the Commission. For over 3 years, Petitioner served as a patrol deputy for Edgecombe County Sheriff’s Office but was not certified due to Chief Harrell’s neglect.

19. Petitioner’s supervisors may also have had their own ulterior motives for substantiating his untruthfulness without an Internal Review. Petitioner was assigned new supervisors in the summer of 2019. Their relationship was poor because he was vocal at a meeting where commanding officers were present, about his new supervisors’ lack of support in the field. Petitioner believes that these individuals had a vendetta against him and contributed to his termination

20. Petitioner's good reputation with the Edgecombe County Sheriff is inconsistent with any purported untrustworthiness. The Sheriff often asked him to represent the Sheriff's office by participating in parades, coaching basketball, and baseball, and serving in the county's schools.

21. During his 5-year tenure with Edgecombe County Sheriff's Office, as a jailer (2 years) and patrol deputy (3 years), Petitioner's performance ratings were average or above average. Petitioner had only one "write up" and that was for running out of gas in his patrol vehicle, not for misconduct.

22. Petitioner enjoys working in law enforcement and would like to find other work in the profession. Petitioner indicated that he has an application currently being considered by the Sharpsburg Police Department.

23. That application has been delayed by this action and may be further impacted if Petitioner's certification documents, which Chief Harrell neglected to forward to the Commission, are no longer valid.

24. Petitioner has proved by a preponderance of credible evidence that he is trustworthy and has good moral character. No credible evidence has been proffered to dispute this nor was there any valid evidence that Petitioner violated any rules of the Commission.

25. No adverse action should be taken against Petitioner's certification.

26. In fact, Petitioner's certification cannot be revoked because of Chief Harrell's egregious failure to submit Petitioner's (and another deputy's) certification documentation to the Commission for over 3 years and that Edgecombe County Sheriff's Office had 2 uncertified deputies for that period of time.

27. When the paperwork is finally submitted to the Commission, Petitioner's certification should be granted.

CONCLUSIONS OF LAW

1. The parties are properly before the undersigned Administrative Law Judge and jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

4. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't of Env't & Natural Resources*, 172 N.C. App 697, 635 S.E.2d 442 (2006).

5. 12 NCAC 10B .0301(a)(8) provides:

(a) Every justice officer employed or certified in North Carolina shall

(8) be of good moral character as defined in: *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), *appeal dismissed*, 423 U.S. 976 (1975); *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1940); *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989); *In re Applicants for License*, 143 N.C. 1, 55 S.E. 635 (1906); *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924); *State v. Benbow*, 309 N.C. 538, 308 S.E.2d 647 (1983); and their progeny.

6. Good moral character is defined as “honesty, fairness, and respect for the rights of others and for the laws of the state and nation.” *In Re Willis*, 288 N.C. 1, 10, 215 S.E.2d 771, 776-77 (1975).

7. In *Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989), the court addresses an appeal of the North Carolina Board of Law Examiner’s (the Board) denial of the applicant’s admission to the North Carolina State Bar. Of particular relevance is the Court’s discussion of the duty of the Board as it relates to the public. The Court states,

[T]he prime obligation and responsibility of both the Board and this Court [are] to protect the public from incompetent and dishonest lawyers, and to assure that those admitted to the Bar possess the requisite attributes of good moral character, learning and ability. The Purpose of withholding certifications is not to punish the candidate but to protect the public and preserve the integrity of the Courts. *In re Jenkins*, 94 N.J. 458, 470, 467 A.2d 1084, 1090 (1983). We would add that fundamental attributes of good moral character include the maturity and professional discipline necessary to accept responsibility and perfect actions required to represent a client properly.

Id. at 672.

8. Given its distinct purpose, the Commission has a particular interest in protecting the public from dishonest law enforcement and preserving the integrity of the criminal justice system which largely rests upon the actions of law enforcement. It is imperative that those certified by the Commission possess the ability to accept responsibly for their actions and perform basic law enforcement functions competently as this is a fundamental attribute of good moral character. *See, e.g., In re Legg*, 358 N.C. 673, 386 S.E.2d 174, 182 (1989) (recognizing that “fundamental attributes of good moral character include the maturity and professional discipline necessary to accept responsibility and perfect the actions required” to carry out professional responsibility properly). Indeed, as recognized in *Legg*, the “purpose of withholding certifications is not to punish the candidate but to protect the public and preserve the integrity” of the profession subject to licensure. *Id.*

9. “Generally, isolated instances of conduct are insufficient to properly conclude that someone lacks good moral character. However, if especially egregious, even a single incident could suffice to find that an individual lacks good moral character in places [sic] of clear and especially severe misconduct.” *In re Rogers*, 297 N.C. 48, 59 (1979).

10. 12 NCAC 10B .0204(b)(2) states:

(b) The Commission shall revoke, deny, or suspend the certification of a justice officer when the Commission finds that the applicant for certification or certified officer . . .

(2) fails to meet or maintain any of the employment or certification standards required by 12 NCAC 10B .0030.

11. 12 NCAC 10B .0205(3)(b) states that when the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is . . .

(b) failure to meet or maintain the minimum standards of employment or certification.

12. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner possess the requisite good moral character required of a justice officer. Petitioner credibly testified that he made a mistake on his timesheet and attempted to correct it once the error was brought to his attention. Petitioner also credibly testified that he had ample compensation time to cover the hours he did not work on 11 and 12 December 2019.

13. There was sufficient evidence before the Probable Cause Committee to proceed. However, the much of the evidence before the Probable Cause Commission was hearsay and inaccurate. The findings of the Probable Cause Committee were not arbitrary or capricious.

14. Because the Undersigned is prohibited from considering hearsay as credible evidence pursuant to the North Carolina Rules of Evidence, the Undersigned reaches a different conclusion in this matter.

15. Moreover, the Probable Cause Committee was unaware that Petitioner's current supervisors had changed the previous supervisor's method of timesheet review and correction as well as their other nefarious motivations for disparaging Petitioner's truthfulness.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that the Commission take no adverse action against Petitioner's certification. Instead, it is proposed that the Commission accept Petitioner's certification paperwork which should have been forwarded to it over 3 years ago, and grant Petitioner's certification.

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this Proposal for Decision, to submit proposed Findings of Fact, and to present oral and written arguments to the agency. N.C.G.S. § 150B-40(e).

The agency that will make the final decision in this contested case is the North Carolina Sheriffs' Education and Training Standards Commission.

IT IS SO PROPOSED.

This the 10th day of March, 2021.



Stacey Bice Bawtinheimer
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

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Petitioner

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This the 10th day of March, 2021.



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