

STATE OF NORTH CAROLINA
COUNTY OF BEAUFORT

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
21 DOJ 02455

Bridgett Elizabeth Bonner Petitioner, v. NC Sheriffs Education and Training Standards Commission Respondent.	PROPOSAL FOR DECISION
---	------------------------------

This case came on for a virtual hearing on September 24, 2021, before Administrative Law Judge Stacey Bice Bawtinhimer. 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

Petitioner: Bridgett Elizabeth Bonner, *pro se*
10978 NC Highway 306 South
Aurora, NC 27806

Respondent: Erika N. Jones
Attorney for Respondent
North Carolina Department of Justice
Special Prosecutions and Law Enforcement Section
9001 Mail Service Center
Raleigh, North Carolina 27699-9001

ISSUES

Whether Petitioner's justice officer certification should be revoked for producing a positive result for marijuana?

RULES AT ISSUE

12 NCAC 10B .0301(a)(6)
12 NCAC 10B .0410(a)
12 NCAC 10B .0204(b)(5)
12 NCAC 10B .0205(2)(g)

PROPOSED FINDINGS OF FACT

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

In making the **PROPOSED FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of each witness by taking into account the appropriate facts 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 that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent, the North Carolina Sheriffs' Education and Training Standards Commission (hereinafter "The Commission"), on April 19, 2021.

2. Respondent, North Carolina Sheriffs' Education and Training Standards Commission, 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 law enforcement officers and to revoke, suspend, or deny such certification under appropriate circumstances with valid proof of a rule violation.

3. Bridgett Elizabeth Bonner ("Petitioner") is an applicant for telecommunicator certification through the Pamlico County Sheriff's Office. She was previously certified as a telecommunicator through the Beaufort County Sheriff's Office from December 19, 2012 to August 21, 2020. Respondent's Exhibit 1.

4. On December 22, 2020, in furtherance of her application for certification through Respondent, Petitioner submitted to a drug test. The test was positive for marijuana metabolites. Respondent's Exhibit 3.

5. Petitioner testified on her own behalf and her credible testimony included the following:

- a. Petitioner has been certified as an Emergency Medical Technician ("EMT") for 23 years.
- b. Petitioner denied smoking marijuana prior to the positive drug screen on December 22, 2020.
- c. Petitioner provided a list of her current medications to Major Scott Houston with the Pamlico County Sheriff's Office.

- d. After doing her own research, Petitioner believed there was a possibility that one of her prescription medications caused a false positive for THC.
- e. Petitioner later believed that a hemp lotion containing CBD could be responsible for the positive drug screen.
- f. Petitioner used the hemp lotion on her hand/wrist area to aid in pain relief and swelling due to a cyst in the tendon of her hand.
- g. Prior to this incident, Petitioner had never failed a drug screen.

6. Sergeant Ryan Muse (“Sgt. Muse”) with the Pamlico County Sheriff’s Office spoke with Carson Jowers from Nationwide Testing Association, Inc. on January 4, 2021, and memorialized that telephone conversation in a letter which was admitted into evidence by stipulation.

- a. Sgt. Muse made efforts to get into contact with Medical Review Officer, Dr. Jerome Cooper, to “speak further about the possibility that a medication that Bonner is prescribed (40mg Protonix) possibly causing a false positive for the presence of Marijuana in her system during her drug test.”
- b. Sgt. Muse was transferred to and ultimately spoke with Carson Jowers who was Dr. Jerome Cooper’s assistant.
- c. Carson Jowers stated that Protonix would not cause a false positive on a regular drug screen but it could cause a false positive on a rapid drug screen that has the “strip on the side of the cup.”
- d. Carson Jowers further stated that CBD products could cause a false positive and that Petitioner’s result of 0000027.000 is on the low end of the spectrum and thus could be indicative of the use of CBD products which do contain low levels of THC.
- e. Carson Jowers also stated that actual marijuana usage would generally yield a higher quantitative level unless a person last smoked marijuana three to four weeks prior.
- f. Carson Jowers was not tendered as an expert witness by Respondent and thus his opinion was not considered definitive.

7. Although Petitioner bears the burden of proof, neither party presented scientific evidence dispositive of the effect of CBD products on marijuana screening results.

8. The Probable Cause Committee had probable cause to revoke Petitioner’s certification; however, mitigating factors merit a reduction or suspension of that denial.

PROPOSED 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.

3. To the extent that the Findings of Facts contain Conclusions of Law, or that the Conclusions or Law are Findings of Fact, they should be so considered without regard to the given labels.

4. 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).

5. 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).

6. 12 NCAC 10B .0301 provides that:

(a) Every Justice Officer employed or certified in North Carolina shall:

(6) have produced a negative result on a drug screen administered according to the following specifications...

(C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine (PCP), opiates and amphetamines or their metabolites...

7. 12 NCAC 10B .0410 provides that:

(a) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports telecommunicators to the Commission for certification, shall report in writing to the Division all refusals and all positive results of drug screening obtained from applicants or lateral transfers pursuant to 12 NCAC 10B .0301(6) unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.

8. 12 NCAC 10B .0204 provides that:

(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...

(5) has produced a positive result on any drug screen reported to the Commission as specified in 12 NCAC 10B .0410 or reported to any commission, agency, or board established to certify, pursuant to said commission, agency, or boards' standards, a person as a certified justice officer, corrections officer as defined in 12 NCAC 09G .0102

or a criminal justice officer as defined in 12 NCAC 09A .0103(6) unless the positive result is due to a medically indicated cause...

9. Although Petitioner credibly asserted that she utilized a hemp cream containing CBD on her hand/wrist area, no credible evidence was presented by her to prove that the hemp cream, in fact, caused the positive drug test result. Additionally, marijuana use is not legal in the state of North Carolina, therefore, Petitioner's positive drug screen is not medically indicated.

10. 12 NCAC 10B .0205 provides that:

When the commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be:

(2) not less than five years where the cause of sanction is:

(g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the rules in this Chapter or the rules of the Criminal Justice Education and Training Standards Commission or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the employing agency through which the officer is certified.

The Commission may either reduce or suspend the period of sanction under this item or substitute a period of probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

11. A preponderance of the evidence presented at the administrative hearing establishes that Petitioner violated 12 NCAC 10B .0204(b)(5) when she tested positive for marijuana in December 2020.

12. Mitigating circumstances exist for a reduction or suspension of the sanction in this case such as the possibility that the hemp lotion could have caused a false positive result, and the fact that Petitioner had no previous positive drug screens.

13. Rather than the immediate denial of Petitioner's telecommunicator certification, in light of the mitigating circumstances, Petitioner's certification should be granted for a probationary period of six (6) months subject to conditions imposed by this Commission or the North Carolina Criminal Justice Education and Training Standards Commission, including but not limited to random drug testing.

PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, it is proposed that Petitioner's justice officer certification be **DENIED**, however, in lieu of denial, Petitioner be **GRANTED** certification subject to a **PROBATIONARY PERIOD OF SIX (6) MONTHS** on the condition that during that period of probation, Petitioner not violate any laws (other than infractions) of this state or any other state, any federal laws, or any rules of this Commission or the North Carolina Criminal Justice Education and Training Standards Commission and that Petitioner be subjected to random drug testing.

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 13th day of October, 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:

Bridgett Elizabeth Bonner
10978 NC Highway 306 South
Aurora NC 27806
Petitioner

Ameshia Cooper
North Carolina Department of Justice
acooper@ncdoj.gov
Attorney For Respondent

Erika N Jones
NC Department of Justice
enjones@ncdoj.gov
Attorney For Respondent

This the 13th day of October, 2021.



Anita M Wright
Paralegal
N. C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000