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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appeal From Administrative Law Court

The Honorable Robert L. Riebold, Administrative Law Judge

Appellant Case No.: 2026-001360

Joshua A. Vargo,

Appellant,

v.

South Carolina Criminal Justice Academy

Respondent,

APPELLANT'S RECORD OF APPEAL

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua A. Vargo,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 25-ALJ-30-0367-AP

**ORDER DENYING PETITION FOR
REHEARING**

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (“ALC” or “Court”) upon the appeal of Joshua Vargo (“Appellant”) from a final agency decision issued by the Law Enforcement Training Council (“LETC or Council”) of the South Carolina Criminal Justice Academy (“SCCJA” or “Respondent”) to permanently deny Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2025); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2025).

The Court issued an order affirming the decision of the LETC on April 28, 2026. Appellant filed a Petition for Rehearing on May 8, 2026. The SCCJA responded to the Petition on May 15, 2026. After careful consideration of the Petition, the Court denies the Petition for the reasons stated below.

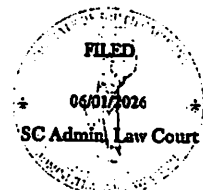
BACKGROUND

The factual background of this case is fully set forth in the Court’s prior order and is incorporated herein by reference.

DISCUSSION

Rule 40(B), SCALCR, permits a party to petition for rehearing of an appeal. It provides that a party filing such a motion must state “with particularity the points supposed to have been overlooked or misapprehended by the Court.” In this case, Appellant contends that the Court overlooked or misapprehended 19 separate points. The Court will address these arguments individually below.

1. **Adderall is not a controlled substance.**



Appellant contends that the Court overlooked the fact that it is not common knowledge that Adderall is a controlled substance. Appellant does not elaborate on this argument to explain why this argument, if correct, compels a different result on appeal. Based upon Appellant's prior submissions, the Court assumes Appellant asserts that because many people do not know Adderall is a controlled substance and Appellant did not know, Appellant's failure to disclose the use of Adderall in response to a question concerning controlled substances cannot be considered to have been a *willfully* incorrect response.

Upon review, the Court does not believe it overlooked the fact that it is not common knowledge that Adderall is a controlled substance. The Court specifically stated that, had it been the trier of fact, it may have reached a different result than did the Respondent. However, a reasonable person could conclude that Appellant's failure to disclose Adderall use in response to a written question about controlled substances is an incorrect statement. Adderall is in fact a controlled substance.

With respect to whether the omission can be viewed as willful, the Court views the evidence as mixed. On one hand, Appellant states he did not know Adderall was a controlled substance. On the other hand, there is circumstantial evidence in the record from which Respondent could infer intent. The Court may very well have accepted Appellant's testimony were it the trier of fact. The Court cannot say, however, that no reasonable person could have relied upon the circumstantial evidence in the record, and, as a result, it cannot disturb the factual finding made by LETC.

2. Online Application Form

Appellant asserts that the Court overlooked the fact that Appellant's failure to disclose his use of Adderall as a controlled substance was not made in response to a question but instead was made as part of an initial online job application generated by the Division of Human Resources, which was followed by in-person interviews designed to elicit greater detail. Again, Appellant does not elaborate on this argument to explain why this argument, if correct, compels a different result on appeal. The Court assumes the intended point is that Appellant's omission did not cause harm or prejudice to his potential employer because there was an additional exploration of substance abuse issues later in the application process.

The Court's prior order addressed this argument generally. It noted that Appellant had failed to supply any authority that harm or prejudice to the employer is a factor to be considered.

Appellant's Petition for Rehearing has not cured this omission, and, accordingly, the Court adheres to its prior ruling.

3. Exhibit 6

Appellant contends that Court misapprehended the underlying facts when it concluded that Appellant responded to a question in Exhibit 6 regarding use of another's prescription medication by saying "maybe childhood from mother." According to Appellant, the notation referring to Appellant's mother is one made by the examiner rather than Appellant and may or may not represent a verbal response from Appellant or, at a minimum, a correct or complete transcription of a response from Appellant. Appellant also asserts that Appellant testified that he did inform his prospective employer he had taken prescription medication belonging to another. Finally, Appellant contends that because neither "yes" nor "no" was checked on Exhibit 6, the interviewer must have known that Appellant used prescription not prescribed to him.

Upon review, the Court does not believe it misapprehended or overlooked these points. The Court's review on this issue was limited to determining whether enough evidence existed such that a reasonable person could reach the same conclusion as the LETC. The Court concludes that the notation on Exhibit 6 could reasonably be viewed as representative of Appellant's response to the verbal question asked by the interviewing officer.

Appellant's argument that he did inform his interviewer that he used prescription drugs belonging to another misses the point. The record indicates that, in addition to whatever Appellant may have obtained from his mother as a child, Appellant purchased 10-20 Adderall tablets from a neighbor in college only months before participating in the interview. There is no indication in the record that Appellant disclosed this fact, and a reasonable person could view this omission as either incomplete or misleading or both.

Appellant's final argument regarding what the interviewer must have known suffers from this same defect. Even if the interviewer knew that Appellant had used another's prescription medication, Appellant's recent use of Adderall remained undisclosed.

4. Polygraph Results

Appellant raises several points regarding the polygraph results. Appellant first stresses that the Respondent failed to preserve a transcript or recording of the polygraph interview and the officer who performed the interview did not testify as a witness. Appellant then contends that the polygraph results do not indicate that Appellant engaged in giving deceitful responses relative to

his prior drug use. Appellant next takes issue with two statements in the Court's prior order: (1) that Appellant's responses during the polygraph examination was additional supporting evidence; and (2) that Appellant appears to have passed the polygraph. The Court has considered these arguments and does not believe that a change to its prior order is warranted. The absence of a transcript or recording of the polygraph interview does mean that there is not absolute certainty as to what was said during that interview. The Court views this criticism as one which affects the weight of the evidence presented below rather than its existence. The record does contain some evidence of what was said during the interview, namely, the 2013 Law Enforcement Polygraph Questionnaire. Once again, the Court's appellate review was confined to the question of whether a reasonable person could reach the same conclusion as did the LETC from the evidence in the record.

Appellant argues that the polygraph results do not indicate that Appellant gave untruthful answers. This argument is flawed for a number of reasons. First, the Court did in fact state that Appellant appears to have passed the polygraph. It is, however, critical to note that the polygraph results themselves are not in the record. The Court's statement is therefore merely an assumption. Second, there is no evidence in the record regarding interpretation of polygraph results. As a result, the true significance of "passing" the polygraph is not known. For example, can an applicant pass a polygraph if only a few incorrect or inaccurate answers are given? Assuming there is a threshold score that indicates honesty or dishonesty, what was Appellant's score on the specific question in issue? Appellant attempts to attach dispositive weight to an uncertain assumption.

Appellant's final argument is to reiterate that no harm or prejudice resulted to Appellant's employer as a result of any inaccuracy or omission. Again, Appellant has not provided the Court with any authority that prejudice is required.

5. Mention of Adderall in Other Forms

Appellant argues that the Court misapprehended Appellant's responses to his prospective employer when it stated that "Appellant did not mention the use of Adderall in any other Department questionnaire or form." Appellant states that he told Officer Rikard about his use of Adderall which led Rikard not to check "no" in response to question 16 of Exhibit 6. The Court perceives no error in its statement. As Appellant successfully argued, the statement to Officer Rikard was not made in a questionnaire or form, but verbally to Officer Rikard. Here, the LETC

elected to decertify Appellant for two reasons: (1) statements to law enforcement officers; and (2) statements in written forms. Appellant's argument blurs this important distinction.

6. Exhibit 6

Appellant asserts that the Court overlooked the fact that it was Rikard who checked the box on Exhibit 6. This argument is to some extent a repeat of Appellant's concerns regarding Exhibit 6, which are discussed above, but, to respond directly to Appellant's contention, the Court notes that it did not overlook the fact that Officer Rikard is the person who prepared Exhibit 6. In its prior order, the Court stated:

The final document is Exhibit 6. The LETC relied upon Appellant's negative answer to the question "Have you ever used and/or experimented with any illegal drug or substance not mentioned above?" in finding that a preponderance of the evidence indicated that Appellant had willfully provided incorrect information on a document. Appellant argues that he did not fill out this form. Instead, it appears that the Exhibit was completed by an officer who recorded Appellant's verbal responses to the set of questions contained in the exhibit.

Appellant argues that because he did not complete the form, it cannot satisfy the requirements of Section 23-23-150(A)(3)(k). The Court agrees with Appellant in this regard; however, as discussed above, Exhibit 6 is evidence of a false or incorrect statement which can authorize decertification pursuant to Section 23-23-150(A)(3)(i).

7. Failure of Proof

Appellant argues that the Court overlooked the Respondent's failure to prove the substance of any conversation between Rikard and Appellant. Appellant asserts that there is no transcript of the interview and contends that Rikard in fact had knowledge of Appellant's Adderall use.¹

The Court's prior order addressed this argument. While the Court concedes there is a lack of certainty with respect to Appellant's statements to Officer Rikard, Rikard's note regarding Appellant having used drugs prescribed to his mother as a child is some evidence that Appellant informed Rikard about childhood use of prescription drugs. The absence of a similar notation regarding Appellant's purchase of another's Adderall pills in college is some evidence that no similar statement was made -- at least at that time and in response to that question. *See, e.g.*, Rule 803(7), SCRE. Again, the Court may have taken a different view of the evidence were it the trier

¹ Appellant also argues that his employer should not be able to second guess its hiring decision more than a decade later. The Court construes this argument as one asserting that it was improper to take action after a ten-year period had elapsed since the incorrect statement. The Court will address this argument *infra*.

of fact. Sitting in appellate capacity, however, the Court's review is confined to the question of whether a reasonable person could have reached the same conclusion as did the LETC, and the Court answers this question affirmatively.

8. Question 16, Exhibit 6

Appellant contends that the Court misapprehended the importance of Question 18 in Exhibit 6. This question asked "'Have you ever used and/or experimented with any illegal drug or substance not mentioned above.'" According to Appellant, the word "illegal" modifies both "drug" and "substance," but because Adderall is not an "illegal" substance, Appellant's failure to disclose the use of Adderall in response to this question cannot be deemed an incorrect, false or misleading response.

Appellant previously made this same argument. As the Court explained in its prior order, Respondent argues that the word "illegal" does not modify the term "substance," with the result that Appellant's failure to disclose Adderall use in response to Question 18 can be considered a false, incorrect or incomplete response.

Upon Appellant's request, the Court has revisited the issue. The Court, however, does not accept Appellant's construction of the question posed by Officer Rikard to Appellant in Exhibit 6. It is possible to read the question so that the word "illegal" modifies both "drug" and "substance," but for Appellant to succeed in the argument he asserts, the term "illegal" must also be read to connote drugs are substances which are illegal to possess. Adderall itself is not illegal for certain individuals to possess, and, therefore, Appellant argues that Adderall does not qualify as an illegal drug or illegal substance.

This construction, which is implicit in Appellant's argument, is, in the Court's view, too narrow. It is inconsistent with the manner in which other questions found in Exhibit 6 appear to operate. For example, Question 10 in Exhibit 6 asks: "[h]ave you ever used and/or experimented with any illegal Inhalants? Yes ___ No ___." A variety of household substances, such as paint thinner, are legal to possess, but still addictive and harmful if inhaled. Were this question to be construed in the manner Appellant suggests Question 18 should be construed, inhaling such products or "huffing" would be excluded from the scope of the question. Such a construction would eliminate the need for Question 10 entirely because an applicant's inhalation of substances which are illegal to possess, such as marijuana, crack cocaine, and heroine, are already covered by other questions found in Exhibit 6.

The Court construes Question 18 in a similar manner. If Question 18 were read as Appellant proposes, it would exclude from disclosure conduct which is material to the law enforcement employment application. In this case, it was illegal for Appellant, who did not have a prescription, to merely possess Adderall, let alone to consume it. A construction excluding this conduct from the scope of Question 18 cuts against the spirit and purpose of this part of the job application process. Additionally, because Question 18 is the last question asked of an applicant and because it asks about drugs or substances "not mentioned above," it is clear that Question 18 is intended to be a broad "catch-all" question.

Accordingly, the Court sees no reason to alter or amend its prior Order in this regard.

9. Disclosure of Adderall Use to Rikard

Appellant contends that the Court conclusion that "there is no indication that Appellant's response to the question regarding use of another's prescription medication included a confession regarding Appellant's Adderall use" is incorrect. He argues that: (1) he testified on this subject before the Hearing Officer;² and (2) the Hearing Officer's report states "he did tell them that he took prescription medication that did not belong to him."³

To address this contention, the Court has once again reviewed the portions of the record cited by Appellant. This review indicates that Appellant's characterization of the evidence below is incorrect. Appellant in fact testified that he did not know whether he had informed Officer Rikard of Appellant's Adderall use. While Appellant did testify that he informed Officer Rikard that he had used prescription drugs which did not belong to him, and the Hearing Officer adopted this testimony in the Hearing Officers' Report and Recommendation, the statement upon which Appellant and the Hearing Officer appear to rely is the statement that Appellant might have taken his mother's prescription drugs as a child. This statement omits Appellant's more recent and therefore material use of another's Adderall in college.

The Court sees no reason to alter or amend its prior order based upon this argument.

10. Hearing Officer's Conclusion that Appellant's Explanation Is Plausible.

Appellant contends that the Court overlooked the Hearing Officer's conclusion that Appellant's explanation was plausible. The Court did not overlook this finding. It also concluded that Appellant's explanation was plausible. This finding, however, is not the controlling factor.

² R. at 162-63.

³ R. at 40.

Under the substantial evidence standard, the Court must address whether a reasonable person could have reached a different conclusion than did the LETC. Stated differently, the Court must also consider whether the LETC's construction of events is plausible. The Court has and continues to conclude that the LETC's finding are plausible, and, therefore, must be affirmed.

11. The Court's Own Finding Regarding Willfulness.

Appellant argues that the Court has misapprehended the import of its own findings that: (1) Appellant's argument against a finding of willfulness is plausible; and (2) there is no direct evidence of willfulness. This argument evidences a misunderstanding of the applicable standard of review. The ultimate question before the Court is not whether Appellant's position is plausible – it is whether the agency's position is plausible. If a reasonable person could reach the same conclusion as did the agency below, the Court is required to affirm. The Court concluded that the LETC's conclusion is plausible and supported by circumstantial evidence. Appellant has not addressed these conclusions in this section of his Petition for Rehearing, and the Court sees no grounds on which it could alter its prior order.

12. Circumstantial Evidence

Appellant argues that the Court misconstrued the circumstantial evidence in this case because said evidence does not lead to the conclusion with reasonable certainty that Appellant acted willfully. Appellant contends that an inference that Appellant had a motive to withhold his Adderall use is improper because Appellant did disclose his Adderall use to Rikard and passed the polygraph examination. According to Appellant “[i]f Appellant was trying to hide his Adderall use in the context of a job application, he would not have truthfully answered the questionnaire when he applied to SLED with full disclosure of his Adderall use.

The Court has largely addressed these arguments above. There is in fact no evidence that Appellant disclosed his Adderall use to Rikard. The record specifically reflects that Appellant did not recall whether he had discussed Adderall with Rikard and could only testify that he informed Rikard he may have used his mother's prescription drugs as a child. Appellant's additional argument that his disclosure of Adderall use to another potential employer ten years later establishes that he had no motive to conceal his Adderall use when applying to the South Carolina

Highway Patrol is a non sequitur. The record is clear that had Appellant disclosed his Adderall use to the South Carolina Highway Patrol, he would not have been hired.⁴

13. Question 14 of Exhibit 6

Appellant argues that the Court misapprehends the import of question 14 of Exhibit 6. Appellant contends that after this question was answered in August, subsequent information regarding Appellant's use of Adderall was developed and clarified by Appellant's polygraph and interview with Rikard. Question 14 of Exhibit 6 asks whether the job applicant has "ever used and/or experimented with DMX, GHB, Rohyphnol (Ruffies)?" Because this question and its answer were not involved in the proceedings below and were not a basis for the LETC determination, the Court assumes that Appellant is referring to Question 18.

Appellant's argument is flawed. It assumes that a willfully false, incorrect or incomplete statement cannot be a basis for decertification if, subsequently, the answer is clarified. As explained above and in its prior Order, the Court can discern no requirement of prejudice or harm to the prospective employer in order for decertification to be permitted. Also as explained above, Appellant's argument rests upon a faulty factual premise. There is no evidence in the record that Appellant discussed Adderall with Officer Rikard. The testimony repeatedly cited by Appellant states that Appellant could not recall whether he discussed Adderall with Rikard.

14. Question 12 of Exhibit 6

Appellant asserts that the Court misapprehended the import of "the answer" in the 2013 Law Enforcement Polygraph Questionnaire.⁵ Question 12 on this form asks "[h]ave you ever used someone else's prescription drugs?" Appellant answered "No." Appellant himself admits that he purchased another's Adderall pills in college, and, in this Petition, asserts that he may have used prescription medication belonging to his mother as a child. These admissions are direct evidence that Appellant's answer to Question 12 was false.

Appellant now argues that the answer "no" was found to be truthful when the polygraph examination was administered, and that the polygraph results themselves are "direct evidence that Appellant did not willfully make a false or incorrect statement." This argument lacks merit. Again, the polygraph results are not in evidence. The parties and the Court have merely speculated

⁴ The fact that Appellant was hired is additional circumstantial evidence that he did not disclose Adderall use to the Highway Patrol.

⁵ Appellant's argument appears to be a reference to Exhibit 4 rather than Exhibit 6.

that Appellant passed the polygraph because he was subsequently hired by the South Carolina Highway Patrol. There is also no evidence in the record demonstrating the manner in which the Highway Patrol utilizes the results. Based upon the record before the Court, there is simply no way to ascertain whether the polygraph examiner found Appellant's response to Question 12 to be truthful, and therefore no evidence to support Appellant's argument. Even if the Court were to accept Appellant's speculation in this regard, it does not negate the existence of the circumstantial evidence of willfulness in the record, and therefore provides no basis on which the Court could reverse the LETC determination.

15. Section 23-23-150

Appellant argues that the Court incorrectly interpreted South Carolina Code Section 23-23-150 when it concluded that there is no requirement that a false statement warranting decertification be material. According to Appellant, such an interpretation would "lead to the absurd result that a scrivener's error or incorrect transposition of numeral could support a conclusion that answers given in response to a questionnaire must be willful and disqualifying." The Court construes this argument as suggesting that the absence of a requirement of materiality would permit decertification for a mere scrivener's error.

This argument misses the mark. A mere scrivener's error would not support decertification because the answer must be both incorrect, false, incomplete *and* willfully made. A scrivener's error, by definition, is not willfully made.

For purposes of clarity, however, the Court will elaborate on its prior conclusion regarding Section 23-23-150. This code section defines "misconduct" to include:

- (a) a conviction, plea of guilty, plea of no contest or admission of guilt to a felony, a crime punishable by a sentence of more than one year, regardless of the sentence actually imposed, or a crime of moral turpitude, any of which were committed in this State or any other jurisdiction;
- (b) the unlawful use of a controlled substance;
- (c) the repeated use of excessive force in dealing with the public or prisoners;
- (d) dangerous or unsafe practices involving firearms, weapons, or vehicles which indicate either a wilful or wanton disregard for the safety of persons or property;
- (e) the physical or psychological abuse of members of the public or prisoners;

(f) the wilful failure to intervene when observing another officer physically abusing a person, whether or not the person is in custody, while in the performance of his official duties, if the officer knew the person's rights were being violated, the officer had an opportunity to intervene, and the officer chose not to do so;

(g) the wilful and knowing failure to promptly report another officer, while in the performance of his official duties, abusing a person whether or not the person is in custody;

(h) the misrepresentation of employment-related information;

(i) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;

(j) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to any court of competent jurisdiction, or their staff members, whether under oath or not;

(k) wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State;

(l) the falsification of any application for certification and training based upon which the officer was admitted for training; or

(m) wilfully providing false information to the Criminal Justice Academy or the Law Enforcement Training Council.

S.C. Code Ann. § 23-23-150(A)(3). Absent from the language quoted above is any express requirement that the alleged misconduct be prejudicial or harmful to a potential employer or that a misrepresentation be relied upon in any way by its recipient. Appellant has cited no case which construes section 23-23-150 to require materiality, and the Court's own research has found none. Moreover, from a policy perspective, it is certainly possible that the Legislature concluded that a person who willfully provides a false statement to a law enforcement agency or in a document, form, or report lacks the character necessary to be a police officer.⁶

16. Section 23-23-150(A)(3)(k)

⁶ In illustrating a possible construction of Section 23-23-150, the Court does not mean to comment in any way upon Appellant's character. As the Court has stated numerous times, were it the finder of fact it may have reached a different conclusion than did the LETC.

Appellant contends that the Court's conclusion in its prior Order that the answers in Exhibit 6 were made by Officer Rikard rather than Appellant undermines the validity of the Court's decision to affirm the LETC. The Court of course did agree with Appellant that Rikard recorded the verbal responses made by Appellant and that Appellant himself did not personally record the answers in the polygraph questionnaire, and, as a result, the answers recorded on the questionnaire could not serve as a basis for decertification under Section 23-23-150(A)(3)(k), which addresses the provision of false or incomplete information on a document, report, or form. Stated differently, Appellant prevailed on this argument.

The Court, however, also concluded that Appellant's verbal statement to Officer Rikard could function as a false, incomplete or misleading statement made to a law enforcement agency or its representative which, if willfully made, constitutes a basis for decertification pursuant to Section 23-23-150(A)(3)(i). Appellant contends that there is no evidence in support of this conclusion because Officer Rikard did not testify and there exists no transcript of the interview conducted by him. The Court has previously addressed and rejected this argument. The recorded response to the question by Rikard on the questionnaire is itself evidence of the statement made by Appellant to Rikard.

17. Ten-Year Delay

Appellant argues that the Court's conclusion that Appellant had failed to preserve issues of laches, estoppel, and unclean hands resulting from the 10-year delay between the conduct at issue and decertification were not preserved for review. Appellant asserts that the issue of the ten-year delay has been a constant issue in this case. Appellant notes that the Hearing Officer noted that it was understandable because a person might not remember a conversation from ten years ago. Appellant contends that the delay not only affects witness recollection but also resulted in loss of evidence such as interview transcripts and polygraph results.

The Court has no doubt that the delay could have impaired the recollection of witnesses and resulted in the loss of relevant evidence. The Court, however, sits in an appellate capacity. It can only reach issues which were both raised to and ruled upon below. Even if the Court credits the statement made to the Hearing Officer as raising issues related to laches, waiver, and/or estoppel, the Court could only conclude that the issues were raised to the Hearing Officer. It could not conclude that the issues were ruled upon below. The Hearing Officer's report and recommendation contains no conclusions regarding laches, waiver, or estoppel. These arguments

were not raised to the LETC, and the LETC's final determination, the decision actually on appeal, contains no such ruling. As a result, these issues are not preserved for review. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.").

18. Laches, Estoppel, Unclean Hands, and Waiver

Appellant's arguments in Section 18 of his Petition for Rehearing duplicate the concerns outlined in Section 17 of the Petition and have been addressed above.

19. Conduct Occurring Prior to Certification

Appellant finally argues that the Court misapprehended the import of the fact that the alleged misconduct occurred prior to Appellant's certification as a law enforcement officer. He contends that if the misconduct had been discovered at the time of the application, he would simply not have been hired and would not have been subject to permanent decertification. The Court considered this argument previously and concluded that it was not properly preserved for appellate review.

Appellant now contends that principles of issue preservation do not apply because the issue is a jurisdictional one which may be raised at any time. It is certainly true that the requirement of error preservation does not apply to issues of *subject matter* jurisdiction, which can be raised at any time. *Town of Hilton Head Island v. Godwin*, 370 S.C. 221, 223, 634 S.E.2d 59, 60–61 (Ct. App. 2006) (providing "[t]he lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can be raised sua sponte by the court"); *cf. Ex parte Cannon*, 385 S.C. 643, 654, 685 S.E.2d 814, 820 (Ct. App. 2009) (providing "[p]ersonal jurisdiction may be waived, but subject matter jurisdiction may not be waived").

Subject matter jurisdiction is defined as the power to hear and determine cases of the general class to which the proceedings in question belong. *In re Nov. 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d 683, 685–86 (2009). The Court does not view Appellant's argument as one that implicates subject matter jurisdiction. There is no question that the LETC is vested with jurisdiction to hear and adjudicate cases involving the denial or withdrawal of a law enforcement officer's certification. *See* S.C. Code Ann. § 23-23-150(E)

("[t]he parties must be sent, via certified mail, or electronically if requested, a copy of the hearing officer's recommendation to the full Law Enforcement Training Council. Either party who opposes the recommendation may file a motion in opposition of the hearing officer's recommendation but must do so within fifteen working days of receipt. Another party may file a response to the motion in opposition but must do so within ten working days of the receipt of the motion in opposition. These motions shall be submitted to the full Law Enforcement Training Council, along with the recommendation, hearing transcript, and exhibits. The council may schedule oral arguments for the next quarterly scheduled meeting. *After reviewing the motions, recommendation, hearing transcript, and exhibits, the council may vote and issue a final agency decision at any time other than at a quarterly or special meeting.*") (emphasis added); S.C. Code Regs. Ann. § 37-026. The LETC had subject matter jurisdiction to entertain Appellant's case.

Appellant's argument is instead more properly characterized as an argument that conduct which occurred before an individual was a law enforcement officer or candidate does not fall within the definition of misconduct set forth in South Carolina Code Section 23-23-150 or South Carolina Regulation 37-026, as these provisions are intended to regulate conduct which occurred when an individual is a law enforcement officer or candidate and not a private individual. There is some support for this argument, but, as it is not one involving subject matter jurisdiction, it is subject to requirements of error preservation, which were not satisfied in this case. The Court therefore cannot address the substance of the argument.

ORDER

IT IS HEREBY ORDERED that the Petition for Rehearing is **DENIED**.⁷
AND IT IS SO ORDERED.

The Honorable Robert L. Reibold
Administrative Law Judge

June 1, 2026
Columbia, South Carolina

⁷ The Court has thoroughly reviewed the record in this case and the arguments of the parties. The factual discrepancies highlighted by Appellant, along with his other arguments, were not overlooked, and had the Court been the finder of fact, it may have reached a different conclusion. However, when serving an appellate role, this Court has limited authority to disturb decisions made below.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua A. Vargo

Appellant,

vs.

South Carolina Criminal Justice Academy,

Respondent,

Docket No. 25-ALJ-30-0367-AP

**APPELLANT'S MOTION FOR
REHEARING**

Appellant pursuant to Rule 40(B), SCALCR, files this Motion for Rehearing based on the following:

1. The ALJ overlooked that it is not necessarily common knowledge that Adderall is a controlled substance. In South Carolina Code of Laws, Title 44, Section 53, Article 3 entitled "Narcotics and Controlled Substance", there is no reference to the term Adderall. The Hearing Officer found it "plausible that Appellant did not know Adderall was a controlled substance". As used in Exhibit 5 Question 14 (RA 239), there is no definition of controlled substance, and no question was asked directly about Adderall. Appellant testified before The Hearing Officer that "At that point in his life, he didn't know what controlled substances were since he was not a drug person." (RA 41).
2. The ALJ overlooked that the answer given in response to the question about controlled substances on August 19th in Exhibit 5 (RA 239) was not a questionnaire but merely an online application form generated by the Division of Human Resources. It is the initial application for employment for a state agency, and the completion of

the application is followed by extensive interview, application, and polygraph processes designed to ask more specific questions.

3. The ALJ misapprehended the response given in Exhibit 6 (RA 242), when it found on page 2 of its Final Order And Decision that "Appellant responded, 'may be childhood f[rom] mother.'" Due to the failures of SCDPS, to properly preserve a transcript or recording of Rickard's interview with Appellant, we have no actual knowledge of Appellant's exact response. Rickard was not called as a witness by Respondent. It is incorrect to find that Appellant's response was limited to medications that he may have gotten from his mother. That is all that Rikard recorded, however, we know that Appellant's answer was such that Rickard chose not to answer the question "yes" or "no". Appellant has contended that he did inform the highway Patrol that he took prescription medicine that did not belong to him, see Hearing Officers Findings and Recommendations (RA 40). In testimony before The Hearing Officer, Appellant testified that "that I took prescription medication that did not belong to me" during his interview with the SCDPS for a job as a highway patrolman (RA 162 In 22- 163 In 3). The only testimony before the Hearing Officer was the testimony of Appellant that SCDPS was "informed that I did take prescription medication that did not belong to me". This is bolstered by the fact that Rickard did not check the "no" box on the questionnaire. The fact that neither "yes" nor "no" is marked demonstrates that SCDPS's officer assigned to interview Appellant knew that Appellant used prescription medication not prescribed to him. SCDPS did not find Appellant's use of another's medications disqualifying or worthy of documenting any further, as SCDPS

offered Appellant a job. Furthermore, the fact that Appellant was truthful with Rickard is demonstrated by the fact that he passed the polygraph examination that delved specifically into Appellant's drug use. Nothing in that polygraph resulted in SCDPS not extending a job offer to Appellant.

4. The ALJ misapprehended the import of Appellant's polygraph results. SCDPS had the chance to ask specifically about usage of Adderall during the polygraph. Because we have no transcript or testimony regarding that polygraph, it is not known whether Appellant was asked directly about usage of Adderall. The polygraph operator was not called as a witness, because the proceedings against were initiated more than ten years after the administration of the polygraph. The failure of SCDPS to preserve the transcript or recording in this case is a flaw recognized by Judge Anderson in his Order of Remand. When confronted about his use of Adderall on the SLED polygraph, Appellant readily acknowledged that he had used Adderall. Even if SCDPS did not question Appellant specifically about Adderall during the polygraph administered in 2013, those polygraph results do not indicate that Appellant engaged in giving deceitful responses relative to his prior drug use. On page 4 of the ALJ Final Order And Decision, the ALJ finds that "Appellant's response during the polygraph examination that he had never used someone else's prescription drug was additional supporting evidence." This is an incorrect finding. While we do not have a transcript or recording of the 2013 polygraph, it is still clear that this is not what Appellant stated during his polygraph examination. If Appellant's response had been as the ALJ asserts, that he had "never used someone else's prescription drug", the polygraph would have

revealed such a response to be a falsehood. Because Appellant passed a polygraph test in 2013, the only inference therefrom is that Appellant did truthfully tell the examiner that he had used someone else's prescription drugs, including Adderall if the polygraph examiner inquired about it. This ALJ's Final Order and Decision recognizes "moreover, Appellant appears to have passed his polygraph examination" (page 9 Final Order and Decision). The only testimony in the Record regarding the use of another's prescription medication comes from Appellant. The Hearing Officer's report states on page 5 that Appellant "did tell them that he took prescription medication that did not belong to him" (RA 40; RA 210-211). The Record reflects that Appellant reported to Rickard his use of Adderall. This is demonstrated in Appellant's testimony that he told Rickard about it, which is bolstered both by the polygraph demonstrating no deceit on Appellant's part and Rickard's failure to check the "no" box on Exhibit 6.

5. The ALJ misapprehended Appellant's responses when it states on page 2 of its Final Order And Decision that "Appellant did not mention the use of Adderall in any other Department questionnaire or form." SCDPS did not ask about Appellant's use of Adderall in any questionnaire or form. However, Appellant told Rickard about his use of Adderall which led Rickard not to check "no" in the response to question 16 of Exhibit 6 (RA 242). If the Department was looking for a further explanation, other than the one given to Rickard, SCDPS had every opportunity to either further question Appellant or refuse to offer to hire him. Rickard's failure to directly answer question 16 was information known to SCDPS that apparently did not give them pause at the

time or cause them not to extend an offer of employment. This is a great import because had SCDPS properly vetted Appellant and determined that his use of another person's prescription medication was disqualifying, they simply would not have hired him. If that had occurred this matter, there would be no issue of misconduct that could lead to the decertification.

6. The ALJ overlooked that it was Rickard who did not check the box on Exhibit 6 (RA 242) not Appellant as stated on page 3-4 of the ALJ Final Order And Decision. As stated earlier, the reason Rickard did not check the box "no" is because Appellant did tell Rickard about his use of Adderall.
7. The ALJ overlooked the failure of Respondent to prove its case when it discusses the substance of any conversation between Rickard and Appellant. No known transcript or recording of that interview exists. Respondent improperly contends that the failure of Rickard to record a "yes" or "no" response on Exhibit 6 is somehow the Appellant's fault. The Appellant had no control of how Rickard completed the form. It is clear that Appellant's response was such that Rickard chose not to record "no". The fact that an explanation is given is suggested that Appellant and Rickard discussed the Adderall and this is how Rickard chose to document that exchange regarding Adderall. Rickard's interview with Appellant was the final step in the hiring process. Rickard had knowledge and evidence of Appellant's Adderall use, armed with this information, he recommended that SCDP hire Appellant. Once the decision was made to employ Appellant, SCDPs should not be able to second guess that decision more than a decade later.

8. The ALJ misapprehended the import of question 18 in Exhibit 6 which ask, "Have you ever used and/or experimented with any illegal drug or substance not mentioned above." The word "illegal" is a modifier of both the word "drug" and the word "substance". Adderall is not an illegal substance. Prescription medications are legal substances.
9. The ALJ overlooked evidence of Appellant's responses to Rickard when the Final Order And Decision states on page 9, "there is no indication that Appellant's response to the question regarding use of another's prescription medication included a confession regarding Appellant's Adderall use." There is indication of this directly from Appellant's testimony (RA 162-163) and the Hearing Officer's report which states "he did tell them that he took prescription medication that did not belong to him." (RA 40).
10. The ALJ overlooked the Hearing Officer's conclusion that Appellant's explanation was "plausible". Not only is it plausible, but it is also confirmed by the fact that Appellant passed the polygraph test which would have cured any inconsistencies in the written document by validating that Appellant was truthful in his responses regarding prior drug use.
11. The ALJ misapprehended the import of its own finding regarding willfulness. In the Final Decision report on page 11 this Court "agrees with appellant and the Hearing Officer that Appellant's argument against a finding of willfulness is 'plausible'" Furthermore, this Court finds that there is no direct evidence of willfulness.

12. The ALJ misapprehended the circumstantial evidence in this case because the circumstances in this case do not lead to the conclusion with reasonable certainty that Appellant acted willfully. This Court improperly concludes that the disclosure of Adderall use would have disqualified Appellant from the job he sought in 2013 and therefore, a motive existed from nondisclosure. This inference is improperly drawn in light of the fact that Appellant did disclose his Adderall use directly to Rickard and passed a polygraph test regarding his drug use. If Appellant was trying to hide his Adderall use in the context of the job application, he would not have truthfully answered the questionnaire when he applied for SLED with full disclosure of his Adderall use. The difference between the application to become a SLED agent and the application to become a highway patrolman is that SLED asked about his Adderall use in a direct fashion where SCDPS did not. However, SCDPS was told about his use of someone else's prescription as documented by Rickard and as shown from testimony of Appellant. The circumstantial evidence here is based on speculation and not reasonable certainty.

13. The ALJ misapprehends the import of question 14 of Exhibit 6. Following that answer being given in August, the matter of Appellant's prior use of Adderall was delved into and clarified by Appellant's subsequent polygraph test and interview with Rickard. This Court even concludes that it may have accepted Appellant's arguments, therefore making Appellants' arguments plausible and more likely than not.

14. The ALJ misapprehended the import of the answer in the 2013 Law Enforcement Polygraph Questionnaire (RA 244). Following the completion of the polygraph

questionnaire, Appellant was actually subjected to a polygraph. He passed the polygraph indicating that his answer to question 12 "Have you ever used someone else's prescription drug?" And the answer "no" was found to be truthful. The polygraph results further indicate that Appellant was giving an answer that he believed to be truthful and showed no deceit in that answer. This is direct evidence that Appellant did not willfully make a false or incorrect statement. Furthermore, Appellant should not be penalized by SCDPS's failure to preserve the evidence in this case. Nor should Appellant be penalized because Respondent failed to call Rickard as a witness to rebut the testimony of Appellant that he told Rickard about his use of Adderall (RA 162-163).

15. The ALJ overlooked the correct interpretation 23-23-150 when it states that there is no requirement that a false statement warranting the decertification be material. This interpretation would lead to the absurd result that a scrivener's error or incorrect transposition of numerals in an address could support a conclusion that answers given in response to a questionnaire must be willful and disqualifying. This is furthermore bolstered by the fact that all the answers given by Appellant were subject to a polygraph required by SCDPS which Appellant passed indicating that there was no deception on his part.

16. The ALJ overlooked the import of Exhibit 6. On page 14 of the Final Order and Decision, this Court agrees that the answers given in Exhibit 6 were made by Rickard. Because Exhibit 6 was not completed by Appellant, the statutory requirements of 23-23-150(A)(3)(K) cannot be satisfied. The Court then goes on to suggest that Exhibit 6

is evidence of false or incorrect statement satisfying section 23-23-150(A)(3)(I). Respondent offered no testimony in support of this. Rickard did not testify and no transcript of his interview with Appellant exists in this Record.

17. The ALJ misapprehended that the issue of the ten-year delay properly raises issues of laches, estoppel, unclean hands and waiver the issue was properly raised on RA 248. As pointed out in the Order of Remand in Vargo v. SCCJA, 2025-ALJ-30-0138-AP, the Hearing Officer recognized the problem inherent in pursuing a case involving matters over a decade ago. In the Final Order, the Hearing Officer stated "It is understandable that someone would not remember all of the details of multiple interviews from ten years ago..." The issue of the ten-year delay has been a constant issue in this case. Not only does the more than a decade delay affect the memory of witnesses, it also apparently affected the ability of SCDPS to produce records, transcripts, or recordings of the 2013 polygraph or the 2013 Rickard interview. The delay also apparently impaired the polygraph examiner or Rickard being available to testify in this case.

18. The ALJ misapprehended the need to raise the issues of laches, estoppel, unclean hands and waiver to the Hearing Officer. The Hearing Officer is the fact finder, and these issues are properly raised in the appeal to this Court.

19. The ALJ misapprehended the import of the fact that the alleged misconduct occurred prior to Appellant's certification as a law enforcement officer. If SCDPS had merely failed to employ Appellant in 2013, Appellant would not have been enrolled at the Criminal Justice Academy at that time. Section 23-23-80 outlines the powers and

duties of Respondent. Respondent has the authority to certify and train qualified candidates and applicants of law enforcement officers. Appellant was deemed qualified and was then certified as a law enforcement officer after he completed training at the Criminal Justice Academy. At that point his status as a candidate to become certified as a law enforcement officer ended and no action was taken in 2013 by SCDPS challenging Appellant's qualifications. To do so now exceeds the powers enumerated to Respondent absent a finding that the misconduct occurred after the certification of Appellant as a law enforcement officer. This matter is jurisdiction only and need not be raised at the contest case hearing to be considered by this Court.

Having raised the forgoing matters in this Motion for Rehearing, Appellant asks the Court to review its Final Order And Decision and reverse the agency determination made by Respondent.



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Joshua A. Vargo,)
)
Appellant,)
vs.)
)
South Carolina Criminal Justice Academy,)
)
Respondent.)
)

Docket No. 25-ALJ-30-0367-AP

CERTIFICATE OF SERVICE

**The Honorable Robert L. Reibold
Administrative Law Judge
Administrative Law Court
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Columbia, South Carolina 29201**

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**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua A. Vargo,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 25-ALJ-30-0367-AP

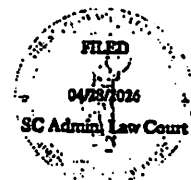
FINAL ORDER AND DECISION

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") upon the appeal of Joshua Vargo ("Appellant") from a final agency decision issued by the Law Enforcement Training Council ("LETC or Council") of the South Carolina Criminal Justice Academy ("SCCJA" or "Respondent") to permanently deny Appellant a law enforcement certification. This Court has jurisdiction pursuant to S.C. Code Ann. Section 1-23-600(D) (Supp. 2025); *see also* S.C. Code Ann. § 1-23-505(2) (Supp. 2025). After careful consideration, the Court affirms the final decision of the LETC.

BACKGROUND

Appellant was employed by the South Carolina Department of Public Safety ("Department") as a police officer for approximately ten years. On February 6, 2024, he was scheduled to pick up his patrol car and work. However, he contacted his supervisor, Corporal Albert, to inform him that Appellant's daughter had become sick. Corporal Albert instructed Appellant that he could claim the time spent picking up his patrol car as work time and the remainder of the day as family sick leave. Appellant was also scheduled for work the next day but did not report to work or call. When Corp. Albert noticed that Appellant had not signed in or called, he texted Appellant. Appellant responded "FSL," or, in other words, family sick leave. However, the Department later discovered that Appellant was actually absent because he was attending a scheduled job interview with the South Carolina Law Enforcement Division (SLED). The job interview lasted five and a half to six hours. Despite the fact that Appellant was at a job interview, he entered sick leave for his absence that day.



As part of the application process for the SLED job, Appellant filled out a questionnaire.

The questionnaire asked Appellant:

Have you ever used/tried any illegal drug(s) other than marijuana or abused any prescription drugs prescribed for yourself or for someone else. Yes ☐ No ☐; if Yes, circle the appropriate drug(s): cocaine, LSD, amphetamine, hashish, k2spice/synthetic marij., crack, heroin, peyote, pain killers, barbiturates, rohyphnol, opium, mushrooms, oxycontin, valium, ketamine, ecstasy, sleeping pills, hydrocodone, Xanax, mescaline, salvia, methadone, codeine, methamphetamine, GHB, PCP, adderall/ritalin, morphine, other (not listed), and inhalants: glue, paint, acetone, nitrous oxide or any similar substance.

(emphasis added). Appellant checked yes and circled Adderall and Oxycontin. In the explanatory section, Appellant stated that the first time he tried these medications was 2012-2013 and he used them a "few" times. He also stated,

[he] took one 'puff' of marijuana prior to [law enforcement]. In college I took Adderall a few times to help with exams/late study nights. Taken Oxy[contin] after surgeries, always prescribed and never abused it. 2012-2013 took Adderall approximately 20 times, purchased from my neighbor at \$10 a pill.

SLED forward this questionnaire to the Department. Appellant's answers on the questionnaire differ from answers he provided on a similar questionnaire on August 19, 2013, when he was applying for his position at the Department. The 2013 questionnaire asked Appellant:

Have you used/and or experimented with any controlled substance within the last 10 years (excluding marijuana)?

(emphasis added). Appellant answered "No" to this question. The questionnaire also asked:

Have you ever used and/or experimented with any prescribed medication not prescribed to you?

(emphasis added). Appellant responded, "maybe childhood [from] mother." Appellant also denied the use of illegal drugs, specifically marijuana. Appellant underwent a polygraph examination on October 2, 2013. One question asked during the polygraph examination was:

Have you ever used any of the following drugs or narcotics listed below?

Appellant answered "No." Adderall was not one of the specifically listed drugs.

Additionally, during his background interview with J.C. Rikard on October 24, 2013, Appellant was asked whether he "ever used someone else's prescription drug?" (emphasis added). J.C. Rikard notated that Appellant indicated "maybe in childhood from his mother." Appellant did not mention the use of Adderall in any other Department questionnaire or form.

The discrepancies between Appellant's responses to SLED and to the Department and the Appellant's use of sick leave on February 7, 2024, prompted the Department to begin an investigation. Captain Boehm from the Office of Professional Responsibility interviewed Appellant and questioned him about the discrepancies in his responses to the questionnaires. Appellant responded that he did not think of the drug use when he was applying to the Department. According to Appellant, it was simply not on his mind at that time.

Appellant also stated that he did not knowingly or willfully lie about his leave and that he had plenty of leave to take. He explained that he originally planned on using holiday leave for the interview but when his daughter got sick, plans changed. He acknowledged he entered sick leave but stated that while he forgot to edit the time in the system his supervisor could have corrected it as he had in the past.

On May 1, 2024, the Department submitted a personal change in status report of separation form (PCS form) to the Criminal Justice Academy's Certification Unit. The separation action was listed as misconduct as defined under section 23-23-150 of the South Carolina Code (2025) and/or regulation 37-025 of the South Carolina Code of Regulations (Supp. 2025). On May 2, 2024, the Academy served Appellant with the misconduct allegation and notified him of his right to a contested case hearing. Appellant timely requested a contested case hearing. The hearing occurred on September 25, 2024.

The Hearing Officer issued findings and recommendations on December 30, 2024. The Hearing Officer's recommendation included sections entitled "Documentary and Testimonial Evidence," "Analysis," and "Recommended Findings of Fact." In the "Analysis" section, the Hearing Officer concluded that a preponderance of the evidence did not support the Department's allegation that Appellant committed misconduct when he reported he was staying home with a sick child on February 7, 2024, because Appellant "gave a consistent and credible explanation for the leave issue."

The Hearing Officer found the Department provided sufficient evidence that misconduct occurred as to the second allegation because Appellant admitted he used Adderall a few times in his college but did not disclose its use in his job application to the Department that he had used or experimented with controlled substance within the last ten years. The Hearing Officer further found support in Appellant's response to questioning during the background interview regarding whether he had ever used or experimented with any prescribed medication. Appellant did not

check the "yes" box but instead stated "maybe in childhood from his mother." Appellant's response during the polygraph examination that he had never used someone else's prescription drug was additional supporting evidence.

The Hearing Officer recommended the LETC issue the following findings of fact:

- The allegation of misconduct against Officer, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Academy by the Department, is supported by the evidence adduced at the contested case hearing held on September 25, 2024;
- The Department has not met its burden of showing by the "preponderance of evidence" that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect, statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
- The Department has met its burden of showing by the "preponderance of the evidence" that Officer engaged in misconduct through willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
- The Department has met its burden of showing by the "preponderance of evidence" that Officer engaged in misconduct by the misrepresentation of employment related information as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy; and
- The allegation of misconduct against Officer as set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed substantiated by the evidence adduced at the hearing.

The Hearing Officer also recommended the LETC issue the following conclusions of law:

- Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council (:Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
- Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct";

- A review of the record in this matter discloses that there does not exist [a] preponderance of the evidence that the 'Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (i), by willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State"
- A review of the record in this matter discloses that there exists [a] preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (k), by having "willfully made false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State" as was alleged and reported to the Academy by the Department;
- A review of the record in this matter discloses that there exists [a] preponderance of the evidence that Officer committed misconduct, pursuant to S.C. Code Ann. § 23-23-150 (A) (3) (h), by the misrepresentation of employment-related information; and
- The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37- 107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct.

On March 17, 2025, the LETC concluded that Appellant engaged in misconduct. In its Final Decision, the LETC adopted word for word the Hearing Officer's "Documentary and Testimonial Evidence" and "Analysis" sections. The LETC also adopted the Hearing Officer's recommended findings of facts with one exception. It disagreed with the Hearing Officer regarding a proposed finding of misconduct based upon allegations of false, misleading, or incomplete statements to law enforcement officers, agencies or representatives. It found instead;

The Department met its burden of showing by a 'preponderance of evidence' that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy.

The LETC then concluded that Appellant had violated subsections 23-23-150(A)(3)(i), (k) of the South Carolina Code (2025) and regulation 37-107 of the South Carolina Code of Regulations (Supp. 2025). Pursuant to its authority under regulation 37-108(A) of the South

Carolina Code of Regulations (Supp. 2025), the LETC permanently denied Appellant law enforcement certification.

Appellant then filed a Notice of Appeal with the Administrative Law Court. On September 29, 2025, the Honorable Ralph King Anderson, III, issued an order remanding the matter to the LETC to review its final agency decision for compliance with requirements that such an order contain specific, express findings of fact and conclusions of law.

The LETC issued a revised order on November 5, 2025. It concluded that a preponderance of the evidence indicated that Appellant had made false, incomplete or inaccurate statements to law enforcement officers and required documents.¹ The LETC permanently denied Appellant a certification as a law enforcement officer in the State of South Carolina.

Appellant once again filed a Notice of Appeal with the Administrative Law Court on November 26, 2025. The matter was assigned to the undersigned on December 5, 2025. The record on appeal has been filed and the matter has been fully briefed. It is now ripe for decision.

ISSUES ON APPEAL

Appellant's brief raises the following issues on appeal:

- I. Whether the Law Enforcement Training Council erred in rendering a Final Agency Decision that was not supported by substantial evidence?
- II. Whether the Law Enforcement Training Council's decision to permanently deny certification was arbitrary, capricious, and characterized by an abuse of discretion?
- III. Whether the forms relied on in this case are so unspecific, imprecise, and confusing as to be insufficient to allow them to serve as the basis of a finding of misconduct?
- IV. Whether the pursuit of this case should be barred by laches, estoppel, or waiver?
- V. Whether responses on a pre-employment application made by a person who is not trained and certified as a law enforcement officer can be used to support the Law Enforcement Training Council's decision?
- VI. Whether the existence of overwhelming mitigating circumstances dwarf any allegation of willfulness in this matter?

STANDARD OF REVIEW

¹ As Appellant correctly notes, the LETC's amended order did not rest upon a finding of misconduct involving the use of sick leave while participating in a job interview, and, accordingly, that issue is not before the Court.

The Respondent is an “agency” under the Administrative Procedures Act (APA). *See* S.C. Code Ann. §§ 1-23-310(2), -505(2), -600(A), (E) (Supp. 2025). Accordingly, the APA’s standard of review governs appeals from decisions of the Respondent. *See id.*; S.C. Code Ann. § 1-23-380 (Supp. 2025). The standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code. That section states:

The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5); *see also* § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub Serv. Comm’n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm’n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, “a reviewing court will not overturn a finding of fact by an administrative agency ‘unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.’” *Sea Pines Ass’n for Prot. of Wildlife, Inc. v. S.C. Dep’t of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When the evidence conflicts on an issue, the court’s substantial evidence standard of review defers to the findings of the fact-finder. *Risher v. S.C. Dep’t of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 435 (2011).

DISCUSSION

While Appellant enumerated six separate issues on appeal, the separate arguments set out in Appellant's brief do not directly correspond to these issues. The arguments as set out in Appellant's brief are as follows:

- I. The finding of misconduct based upon Appellant willfully making an incorrect statement is not supported by substantial evidence. To find so is an error of law and an abuse of discretion.
- II. The finding of misconduct based upon Appellant willfully making an incorrect statement on a form is not supported by substantial evidence. To find so is an error of the law and an abuse of discretion.
- III. The pre-employment forms used by SCDPCS are not specific, imprecise, and confusing and should not give rise to the basis of Respondent's finding of misconduct. Reliance on these forms demonstrates that Respondent has failed to meet its burden of proof and is an abuse of discretion.
- IV. It is an error of law and an abuse of discretion to allow the pursuit of a misconduct proceeding based on an incident that occurred over ten years ago.
- V. The conduct of Appellant at issue in this case occurred prior to his being employed as a law enforcement. It is an error of law or abuse of discretion to use conduct that occurred be a mere job applicant to serve as the basis of a lifetime denial of law enforcement certification.
- VI. The failure of the LETC to make findings of the issue of mitigation in this case allows the issue to evade review for an abuse of process for failure to consider mitigating factors.

The first, second, and third of these arguments relate generally to the question of whether the decision of the LETC is supported by substantial evidence and the Court will therefore address these issues simultaneously below. The remaining arguments will be addressed separately.

I. Was the LETC final decision supported by substantial evidence?

Appellant contends that the record does not contain substantial evidence to support the LETC's conclusion that Appellant committed misconduct by willfully making a false, misleading, incomplete, deceitful, or incorrect statement to a law enforcement officer in violation of S.C. Code Section 23-23-150(A)(3)(i). Appellant argues that only two witnesses could have provided an evidentiary foundation for such a conclusion – the polygrapher and the background interviewer – but neither of these witnesses was called to testify. In fact, no law enforcement officer testified

before the Hearing Officer or the LETC. Moreover, Appellant appears to have passed his polygraph examination.

Appellant also contends that the record does not contain substantial evidence to support the LETC's conclusion that Appellant committed misconduct by willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State in violation of Section 23-23-150(A)(3)(k). Appellant attacks each of the three documents which the Respondent contends contain false or incorrect statements: (1) the 2013 on-line employment application; (2) the 2013 Law Enforcement Polygraph Questionnaire; and (3) Exhibit 6.

Each of these arguments will be discussed below.

A. False Statements

Any evaluation of the record for substantial supporting evidence begins with the proposition that establishing that a determination is supported by substantial evidence is not a herculean task. The substantial evidence standard of review is a very deferential standard. *S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n*, 388 S.C. 486, 490, 697 S.E.2d 587, 589 (2010); see *In re Long Dei Liu*, No. 8:16-AP-01233-TA, 2020 WL 5543041, at *5 (C.D. Cal. Sept. 14, 2020) (the substantial evidence standard of review is generally considered the most difficult standard of review to meet). A finding that substantial evidence exists requires more than a scintilla of evidence, *Oakes v. Kijakazi*, 70 F.4th 207, 212 (4th Cir. 2023); *Charleston Cnty. Assessor v. Univ. Ventures, LLC*, 421 S.C. 194, 203, 805 S.E.2d 216, 221 (Ct. App. 2017), *aff'd as modified*, 427 S.C. 273, 831 S.E.2d 412 (2019). However, substantial evidence is less than a preponderance of the evidence. *Grayson v. Gulf Oil Co.*, 292 S.C. 528, 530, 357 S.E.2d 479, 480 (Ct. App. 1987). Substantial evidence is simply such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Scruggs v. Tuscarora Yarns, Inc.*, 294 S.C. 47, 49, 362 S.E.2d 319, 321 (Ct. App. 1987). Courts may not overturn a finding of fact by an administrative agency unless there is no reasonable probability the facts could be related by a witness upon whose testimony the finding was based. *Id.*

Here, Appellant asserts that there is no substantial evidence which establishes, as LETC was required to do, that Appellant willfully made a false statement. Appellant first questions the quantum of evidence in the record on this issue. Appellant notes that there were only two officers to whom Appellant could have given a false statement, the polygrapher and the background

interviewer, Officer Rikard. Neither of these individuals testified as a witness at the hearing. In fact, no law enforcement officer testified that he or she heard Appellant make a false or incorrect statement.

Respondent argues in response that there is substantial evidence that Appellant made false or incorrect statements were made to law enforcement. It relies specifically on statements made during Appellant's background interview with Officer Rikard.² Rickard verbally asked Appellant a variety of questions and recorded these responses on Exhibit 6 below, the following two of which are at issue here:

1. Have you ever used and/or experimented with any prescription medication not prescribed to you?
2. Have you ever used and/or experimented with any illegal drug or substance not mentioned above?

Rikard recorded Appellant's answers to these questions. Rikard did not record a "Yes" or "No" response to the second question. Instead, a note in the margin states "maybe childhood from mother."³ Respondent contends that this response is false, incorrect, or incomplete because Appellant admitted when applying for a position with SLED that he had purchased approximately twenty Adderall pills from a neighbor at \$10 per pill during his final months of college. Appellant does not challenge these facts, but contends, as discussed in more detail below, that there is no evidence Appellant *willfully* made a false, incorrect, or incomplete statement.

Rikard recorded that Appellant answered "No" to the second question. Notably, Adderall was not an illegal drug or substance specifically mentioned in preceding questions, making the general catch all question potentially applicable. Appellant contends that his verbal response to this question is not substantial evidence which supports the LETC's determination because Adderall is not "an illegal drug." In other words, Appellant contends that this response to the question was truthful. Respondent counters that this argument ignores the fact the question asks about both "illegal drugs" and "substances" "not mentioned above." According to Respondent,

² Respondent, in its brief, also relies upon statements contained in certain documents submitted by Appellant. This argument intermingles references to false, misleading or incomplete statements law enforcement pursuant to section 23-23-150(A)(3)(i) with references to false, misleading or incomplete statements in a document, record, or report pursuant to section 23-23-150(A)(3)(k). The LETC made a finding of misconduct under both of these code sections. Accordingly, Appellant's statements in documents or reports will not be considered in the Court's analysis of whether false or misleading statements were made to law enforcement. They will instead be considered when the Court addresses Appellant's arguments with respect to Section 23-23-150(A)(3)(k).

³ The record of Appellant's responses to Rikard's verbal question was admitted as Exhibit 6 below.

even if Adderall is not considered an illegal drug, it should be considered a “substance,” particularly where, as here, a preceding question addressed prescription drugs in addition to other illegal drugs.

After considering the evidence in the record and the parties’ argument, the Court first concludes that there *is* substantial evidence in the record to support the LETC’s determination that Appellant made false, misleading, incomplete, or incorrect statements to law enforcement. There is no indication that Appellant’s response to the question regarding use of another’s prescription medication included a confession regarding Appellant’s Adderall use. Appellant also denied using a substance “not mentioned above,” when he had in fact used Adderall he had purchased from a neighbor at \$10 per pill. The Court does not discount Appellant’s arguments that these facts could be interpreted in an innocent manner. Appellant’s interpretation of the facts is plausible. The Court, however, also concludes that Respondent’s interpretation of the facts is plausible. In other words, a reasonable person could construe the facts in the same manner as did the LETC.

The Court now proceeds to address Appellant’s arguments that even if false, misleading, incorrect or incomplete statements were made, there is no evidence that such statements were made willfully. According to Appellant, he was not a law enforcement officer at the time of the statements in question and was simply naïve. He did not understand what he contends were vague questions and his Adderall use did not come to mind during the background interview. The Hearing Officer concluded that Appellant’s explanation was “plausible.” Respondent counters that it was proper for the LETC to infer that Appellant’s incorrect statements were made willfully because of the context in which they were made, *i.e.*, a job application in which a correct response may have negatively impacted Appellant’s chances of securing employment.

The Court agrees with Appellant and the Hearing Officer that Appellant’s argument against a finding of willfulness is “plausible.” Additionally, as Appellant notes, there is no direct evidence of willfulness. There does, however, appear to be circumstantial evidence in the record on the issue of intent. As the South Carolina Supreme Court has explained when discussing direct and circumstantial evidence:

Evidence can be divided into two basic categories: direct and circumstantial. Direct evidence is evidence based on actual knowledge and proves a fact without inference or presumption. Direct evidence immediately establishes the main fact to be proved. Circumstantial evidence immediately establishes collateral facts from which the main fact may be inferred and is typically characterized by inference or presumption.

State v. Salisbury, 343 S.C. 520, 524, 541 S.E.2d 247, 249 (2001) (internal citations omitted). “For circumstantial evidence to be sufficient to warrant a finding of a fact, the circumstances must lead to the conclusion with reasonable certainty and must have sufficient probative value to constitute the basis for a legal inference, not for mere speculation. *Gastineau v. Murphy*, 331 S.C. 565, 570 at n. 2, 503 S.E.2d 712, 714 at n. 2 (1998). The facts and circumstances shown should be assessed in the light of ordinary experience, and such conclusions deduced therefrom as common sense dictates. *Id.* Where these criteria are met, circumstantial evidence may be just as competent as is direct evidence.

The Court concludes that there is sufficient circumstantial evidence in the record from which a reasonable person could draw the conclusion that Appellant’s conduct was willful.⁴ Again, something less than a preponderance of the evidence is sufficient for purposes of appellate review. One of Appellant’s answers was made in response to a question about prescription drugs. Appellant does not suggest that he did not know or should not have known that Adderall was a prescription drug. Moreover, because disclosure of the Adderall use would have disqualified him from the job he sought in 2013, a motive for nondisclosure existed. The fact that the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency’s findings from being supported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917. In circumstances like those presented here, the Court does not have the authority to overturn the LETC’s findings and/or conclusions.

B. False or Incorrect Statements in Documents.

Again, Appellant contends that there is no substantial evidence in support the LETC’s conclusion that Appellant committed misconduct by willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State in violation of Section 23-23-150(A)(3)(k). Appellant challenges each of the three documents which the Respondent contends contain false or incorrect statements.

⁴ Intent may be inferred from circumstantial evidence. *See, e.g., Dunlap v. TM Trucking of the Carolinas, LLC*, 288 F. Supp. 3d 654, 668 (D.S.C. 2017) (providing intent may be inferred through circumstantial evidence); *State v. Cherry*, 348 S.C. 281, 288, 559 S.E.2d 297, 300 (Ct. App. 2001) (providing circumstantial evidence alone is often sufficient to show criminal intent because the element of intent, being a state of mind or mental purpose, is usually incapable of direct proof).

Appellant also submitted a reply brief addressing two points. It emphasizes to the Court that the question is not whether Appellant should be reinstated to his prior position, but rather whether he may serve as a law enforcement officer in the State of South Carolina. Appellant argues that his ten-year record of service as a law enforcement officer answers this question in the affirmative. The brief also contends that, contrary to Respondent's assertion, certain matters are not "undisputed." Appellant asserts that there are factual disputes regarding such issues as to the proper interpretation of notes taken by Captain Rikard during his interview of the Appellant.

The Court will address each document attacked by Appellant below.

1. 2013 On-Line Employment Application

Question 14 of this application asks: "Have you ever used and/or experimented with any controlled substance within the last 10 years (excluding marijuana)?" Appellant replied "No." Appellant contends that this response is not evidence that Appellant willfully provided false, incomplete or incorrect information. According to Appellant, the application conflates the terms "illegal drugs," "prescription drugs," and "controlled substances"; the term "controlled substance" is not defined and does not have a commonly understood meaning; and the application does not expressly refer to Adderall.

Had the Court been the finder of fact in this instance, it may have accepted Appellant's arguments. The question before the Court, however, is whether a reasonable person could view this statement as a false, misleading, incorrect or incomplete statement made in a form or document. Viewed from this lens, the Court concludes that a reasonable person could perceive this statement as false or misleading. At all relevant times, Adderall was in fact a controlled substance.

2. 2013 Law Enforcement Polygraph Questionnaire

The second document in issue is the Law Enforcement Polygraph Questionnaire completed as part of Appellant's initial job application in 2013. This document asks "Have you ever used someone else's prescription drugs?" Appellant again answered "No." This statement is clearly incorrect and was made in a document submitted to law enforcement. Accordingly, there is substantial evidence in the record that Appellant made a false, misleading or incorrect statement in a document or form as contemplated by Section 23-23-150(A)(3)(k).

Appellant again argues that even though the statement was false or incorrect, there is no evidence that it was made willfully. The omission was, according to Appellant, merely a mistake

or an oversight. As explained above, however, there is circumstantial evidence in the record from which a reasonable person could infer intent.

Appellant makes a final argument. He asserts that even a willfully false statement to this question does not warrant decertification because the Highway Patrol did not rely on this response in determining whether to hire Appellant. However, Section 23-23-150 contains no statutory requirement that a false statement warranting decertification be material or have been relied upon by the hiring agency.

Appellant finally contends he cured any defect by informing Captain Rikard that he had possibly used his mother's prescription drugs while a child. This argument is unavailing. It relies on the premise that harm or injury must be inflicted as a result of the false or incorrect statement to warrant decertification. As discussed above, Appellant cites no authority for this proposition and the Court's own research has not located any authority in support of this argument.

3. Exhibit 6

The final document is Exhibit 6. The LETC relied upon Appellant's negative answer to the question "Have you ever used and/or experimented with any illegal drug or substance not mentioned above?" in finding that a preponderance of the evidence indicated that Appellant had willfully provided incorrect information on a document. Appellant argues that he did not fill out this form. Instead, it appears that the Exhibit was completed by an officer who recorded Appellant's verbal responses to the set of questions contained in the exhibit.

Appellant argues that because he did not complete the form, it cannot satisfy the requirements of Section 23-23-150(A)(3)(k). The Court agrees with Appellant in this regard; however, as discussed above, Exhibit 6 is evidence of a false or incorrect statement which can authorize decertification pursuant to Section 23-23-150(A)(3)(i).

II. Ten Year Old Incident

Appellant argues that it is an error of law and an abuse of discretion to allow the pursuit of a misconduct proceeding based on an incident that occurred over ten years ago. This argument rests on principles of laches, estoppel, unclean hands, and waiver. Appellant contends that the Department of Public Safety failed to retain the polygraph tapes, failed to produce a transcript of the background interview and failed to require its employee to take comprehensive notes of the background interview. Appellant believes that this failure to preserve evidence has prejudiced his defense in this matter.

Respondent makes a number of arguments in response. It first contends that this argument was not preserved for review. Next, Respondent asserts that the argument should be deemed abandoned pursuant to Rule 37, SCALCR, because it is conclusory and does not include supporting authority. Respondent also argues that the Administrative Law Court lacks the authority to apply laches, estoppel, or waiver in an appeal. It contends that Appellant's own unclean hands bar his invocation of laches and estoppel. It asserts that Appellant cannot establish prejudice, as required to support such arguments. Finally, it contends that the use of such defenses is inconsistent with the purpose of the relevant statutes.

The Court has reviewed the record and agrees with Respondent that this argument is not properly preserved for review and therefore may not be reached by the Court. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (providing if review of the record establishes that an issue is not preserved, then an appellate court should not reach it). To be preserved for review, an issue must have been both raised to and ruled upon by the trial court. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). While it appears that Petitioner raised this argument in a very general fashion to the Hearing Officer, it is clear that the Hearing Officer did not rule on the argument. Moreover, Appellant filed a Motion in Opposition to the Hearing Officer's Recommendation pursuant to S.C. Code Section 23-23-150(E). This motion did not raise any argument relating to estoppel, waiver, laches, or delay. Finally, Appellant did not raise this issue to the LETC, and the LETC did not rule on the issue.⁵

III. Conduct which Occurred Prior to Employment as a Law Enforcement Officer

Appellant asserts that it is an error of law or an abuse of discretion to allow conduct that occurred by a mere job applicant to serve as the basis of a lifetime denial of law enforcement certification. He contends that if the misconduct had been discovered at the time of the application, he would simply not have been hired and would not have been subject to permanent decertification. He compares this situation to one in which a dental student improperly lists grades on a school

⁵ Because the Court concludes that this argument is not preserved for review, it need address the other arguments related to the ten-year period which elapsed between the misconduct and the decertification.

Elkin v. S.C. Crim. Just. Acad., No. 2016-000034, 2017 WL 6508871, at *1 (S.C. Ct. App. Dec. 20, 2017).⁸

ORDER

IT IS HEREBY ORDERED that the decision below is **AFFIRMED**.⁹
AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

April 28, 2026
Columbia, South Carolina

⁸ Because the Court agrees with Respondent's first argument, it need not consider the second argument advanced. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing appellate court need not address remaining issues when disposition of prior issue is dispositive).

⁹ The Court has thoroughly reviewed the record in this case and the arguments of the parties. The factual discrepancies highlighted by Appellant, along with his other arguments, were not overlooked. However, when serving an appellate role, this Court has limited authority to disturb decisions made below as explained above.

Respondent makes a number of arguments in response. It first contends that this argument was not preserved for review. Next, Respondent asserts that the argument should be deemed abandoned pursuant to Rule 37, SCALCR, because it is conclusory and does not include supporting authority. Respondent also argues that the Administrative Law Court lacks the authority to apply laches, estoppel, or waiver in an appeal. It contends that Appellant's own unclean hands bar his invocation of laches and estoppel. It asserts that Appellant cannot establish prejudice, as required to support such arguments. Finally, it contends that the use of such defenses is inconsistent with the purpose of the relevant statutes.

The Court has reviewed the record and agrees with Respondent that this argument is not properly preserved for review and therefore may not be reached by the Court. *See Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012) (providing if review of the record establishes that an issue is not preserved, then an appellate court should not reach it). To be preserved for review, an issue must have been both raised to and ruled upon by the trial court. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). While it appears that Petitioner raised this argument in a very general fashion to the Hearing Officer, it is clear that the Hearing Officer did not rule on the argument. Moreover, Appellant filed a Motion in Opposition to the Hearing Officer's Recommendation pursuant to S.C. Code Section 23-23-150(E). This motion did not raise any argument relating to estoppel, waiver, laches, or delay. Finally, Appellant did not raise this issue to the LETC, and the LETC did not rule on the issue.⁵

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⁵ Because the Court concludes that this argument is not preserved for review, it need address the other arguments related to the ten-year period which elapsed between the misconduct and the decertification.

application and suggests it would be improper for the Board of Dentistry to later revoke the student's dental license even though the student had finished at the top of his or her class and become board certified.⁶

Respondent makes a number of arguments in response, one of which is that this argument is not preserved for review. The Court has reviewed the record below. The Hearing Officer did not rule on the argument. Appellant's Motion in Opposition to the Hearing Officer's Recommendation pursuant to Section 23-23-150(E) did not raise this argument. Appellant also failed to raise this issue to the LETC. Finally, the LETC did not rule on the issue. Accordingly, this argument is not preserved for review. *See Dunbar*, 356 S.C. at 142, 587 S.E.2d at 693 (holding to be preserved for review, an issue must have been both raised to and ruled upon by the trial court).

IV. Findings of Mitigation

Appellant argues that the LETC has authority to consider factors in mitigation of decertification pursuant to S.C. Code Ann. Regs. § 38-004.⁷ He further contends that a number of mitigating factors are present in this case, including but not limited to:

- Appellant did not violate his oath as a law enforcement officer;
- He did not violate the Department's drug policy;
- He did not violate his training;
- The actions in question occurred over 10 years ago;
- Appellant was not a law enforcement officer at that time the actions were taken;

⁶ Appellant makes other arguments in this section of his brief in a cursory fashion. He contends that withdrawing his certification is tantamount to an unconstitutional seizure or cruel and unusual punishment. He also argues that the LETC abused its discretion in selecting decertification, the most severe penalty possible, when it could have selected a lesser sanction. These arguments are made at most in one or two sentences without supporting authority and are therefore deemed to be abandoned. *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172-73 (Ct. App. 2016) ("When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue.").

⁷ This citation appears to be a scrivener's error. Regulation 38-004 was transferred to another section of the Code of Regulations on June 2, 2015. Former section 38-004 addressed the denial of certification for a law enforcement officer. It is currently codified as section 37-025. Moreover, because this case involved the withdrawal of a certification rather than the denial of an initial application for a certification, it is actually governed by section 37-026. In any event, both section 37-025 and 37-026 permit consideration of mitigation factors. Section 37-026 provides that "in considering whether to withdraw certification based on misconduct, the Council may consider the seriousness, frequency and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct."

- Appellant did admit that he had used some prescription drugs to the Department in connection with his initial job application;
- Appellant was honest in dealings with SLED;
- The Department never specifically asked Appellant about Adderall; and
- Appellant was an exemplary, award-winning officer.

According to Appellant, the LETC should have made findings of fact regarding mitigating factors. He believes he is prejudiced by the absence of such findings because, without them, this Court and other appellate courts cannot review the LETC's actions for an abuse of discretion in selection of the appropriate penalty.

Respondent makes two arguments in opposition. It asserts that the LETC is not required to consider mitigating factors. It also contends that even if an abuse of discretion review were to occur, this Court would be required to affirm because the LETC committed no error of law and its conclusions are supported by the facts in the record.

After consideration of these arguments, the Court agrees with Respondent. Respondent is correct that the LETC is not required to consider mitigating factors. *See* S.C. Reg. 37-025(B) ("In considering whether to deny certification based on misconduct, the Council *may* consider the seriousness, the remoteness in time[,] and any mitigating circumstances surrounding the act or omission constituting or alleged to constitute misconduct." (emphasis added)); *see also Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 352-53, 549 S.E.2d 243, 250 (2001) ("The use of the word 'may' [in a statute] signifies permission and generally means that the action spoken of is optional or discretionary unless it appears to require that it be given any other meaning in the present statute."). Because the LETC is permitted to decline to consider mitigating factors in their entirety, the failure to make findings of fact regarding mitigating factors is not reversible error.

Notably, the two cases Appellant cites in support of his argument, *Ragsdale v. S.C. Criminal Justice Academy*, No. 19-ALJ-30-344-AL (Jan. 7, 2020) and *Elkin v S.C. Criminal Justice Academy*, No. 15-ALJ-30.0246, 210 WL 9256631, work against the Appellant. It is certainly true that in *Ragsdale*, Judge Lenski expressed concern about the gravity of the sanction imposed by the Council; however, Judge Lenksi actually *affirmed* the sanction imposed by the Council. Additionally, while Judge Robinson reversed the sanction imposed by the Council in *Elkin*, Judge Robinson was herself reversed by the Court of Appeals, which reinstated the sanction.

Elkin v. S.C. Crim. Just. Acad., No. 2016-000034, 2017 WL 6508871, at *1 (S.C. Ct. App. Dec. 20, 2017).⁸

ORDER

IT IS HEREBY ORDERED that the decision below is **AFFIRMED**.⁹
AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

April 28, 2026
Columbia, South Carolina

⁸ Because the Court agrees with Respondent's first argument, it need not consider the second argument advanced. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing appellate court need not address remaining issues when disposition of prior issue is dispositive).

⁹ The Court has thoroughly reviewed the record in this case and the arguments of the parties. The factual discrepancies highlighted by Appellant, along with his other arguments, were not overlooked. However, when serving an appellate role, this Court has limited authority to disturb decisions made below as explained above.

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink that reads "Jared Thompson". The signature is written in a cursive style with a long horizontal stroke at the end.

Jared Thompson
Judicial Law Clerk

April 28, 2026
Columbia, South Carolina

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement
Certification of Joshua A. Vargo

) Docket Number 2024-CJA-05-01
)
)
)

FINAL AGENCY DECISION

Joshua A. Vargo ("Officer"), in response to an allegation of certification misconduct reported by the South Carolina Department of Public Safety ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) (1), timely requested a contested case hearing to address the allegation of misconduct filed against the Officer. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on September 25, 2024.

On March 17, 2025, the South Carolina Law Enforcement Training Council met to, among other things, discuss this case, listen to oral arguments, and take a vote. Prior to this meeting, the Training Council reviewed the transcript, exhibits, motions, and Hearing Officer's Recommendation. On March 17, 2025, the Training Council voted that Officer did engage in misconduct and voted that Officer is permanently denied a law enforcement certification in South Carolina.¹

STATEMENT OF THE CASE

A. Documentary Evidence

The following documentation was accepted into evidence at the September 25, 2024, hearing and made a part of the record:

Council Exhibit 1- Letter in reference to Allegation of Certification Misconduct and Right to Contested Case Hearing

State's Exhibit 1- Audio/videotape

State's Exhibit 2- Text Message Exchanges

State's Exhibit 3- SCEIS Record

State's Exhibit 4- SLED Applicant Questionnaire

¹Sheriff Foster, Director Stirling, Director Gambrell, Director Mullikin, Sheriff Falle, Chief Cornett, Major Gallam, and Chief Holbrook voted that Officer engaged in misconduct and to permanently deny Officer a law enforcement certification. Attorney General Wilson was not present. Chief Keel and Director Woods were recused.

Vargo

Final Agency Decision Page 1 of 12

ROA0050

State's Exhibit 5- 2013 DPS Employment Application
State's Exhibit 6- 2013 DPS Employee Background Investigation Report
State's Exhibit 7- 2013 DPS Questionnaire

B. Testimonial Evidence

The following testimony was accepted into evidence at the September 25, 2024, hearing and made a part of the record:

1. Testimony of Captain John Joseph Boehm
2. Testimony of Joshua A. Vargo

Testimony of Capt. Boehm:

Capt. Boehm is the Captain for the Office of Professional Responsibility for the Department and was assigned to investigate some allegations against Vargo. (Transcript, pp. 24-25) On February 6, 2024, Vargo was scheduled to pick up a new patrol car and was scheduled to work that day. Vargo told him that his young daughter was sick. He contacted his immediate supervisor, Corp. Albert, and advised him of the situation and his appointment to pick up the patrol vehicle. He told his supervisor that his in-laws could watch his daughter while he picked up the new patrol car. The corporal agreed and told him that when he was traveling to and from Columbia and picking up the patrol car he should report it as work time and the rest of the day should be reported as family sick leave. They confirmed this information in a text message. The text message conversation confirmed Vargo should put in 6-12 for working time and 12-4 as leave time. (Transcript, pp. 27-30) On February 7, 2024, Vargo was assigned to work. Corporal Albert was working when he noticed Vargo did not sign on. Since he had not received a phone call from Vargo he texted him saying "Waiting for that phone call." Vargo responded "FSL again." His daughter was still sick. (Transcript, pp. 31-32) The Department found out later that Vargo had a previously scheduled appointment with SLED at 9am which Corporal Albert did not know about. Per SLED policy, Vargo would have been notified about the appointment the previous Friday and Vargo confirmed that he knew about the appointment the previous Friday. Including travel time, the appointment took five and a half to six hours on February 7, 2024. Vargo's in-laws took care of the sick child during that time. Vargo entered a full ten hours of sick leave for February 7, 2024, into SCEIS. His leave entry was inaccurate and when he texted Corp. Albert he knew he would be going to SLED for the appointment and did not mention it. He never attempted to correct the issue later. (Transcript, pp. 33-40)

Vargo's appointment with SLED was for a potential job position. As part of the appointment, he was required to answer a questionnaire. His answers to that questionnaire were forwarded to the

Department. In the questionnaire, Vargo disclosed that in 2012-2013 he took Adderall approximately 20 times which he purchased from a neighbor at \$10 dollars a pill. (Transcript, pp. 40-42) This type of disclosure when he applied to the Department would have disqualified him from being hired. Capt. Boehm compared the questionnaire from SLED with Vargo's Department questionnaires and employment application from 2013. On his department questionnaire, Vargo stated that he never used or experimented with any controlled substances within the last ten years, excluding marijuana. (Transcript, pp. 43-45) During an at home interview for the position at the Department, Vargo did not admit to the Adderall use when asked if he had ever used or experimented with any prescribed medication not prescribed to him. (Transcript, pp. 45-47) Vargo also filled out a questionnaire with the Department in October of 2013 where he was asked "have you ever used someone else's prescription drug?" Vargo answered "no." These three documents were part of the employment process Vargo went through to be hired by the Department in 2013. Vargo did not mention Adderall in any of those documents. (Transcript, pp. 48-49) When Boehm asked Vargo about the discrepancy between his answers to the Department and to SLED, Vargo figured he did not think of it when he was applying to the Department. It was not weighing on his mind at that time, despite it being a recent occurrence. (Transcript, p. 51)

On cross-examination, Boehm explained that SLED contacted highway patrol and then the highway patrol asked OPR to investigate. Vargo was employed by the Department for a little over ten years at this point. (Transcript, p. 52) When Vargo spoke with Boehm, he admitted he did not remember the Adderall until the SLED interview. Boehm did not know that Vargo was being interviewed at SLED by people he knew from school. (Transcript, p. 58) There was never a question that Vargo's daughter was ill on February 6 and 7th. Employees put in their time in SCEIS at different times. Vargo recorded the February leave the day after. His leave could have been corrected internally by an administrator if he contacted them. (Transcript, pp. 59-65) While at the Department, Vargo was moved to the canine unit which is a prestigious, specialized unit. (Transcript, p. 66) When Boehm spoke with Vargo, he did not go over whether Vargo knew Adderall was a prescription drug. (Transcript, p. 68)

A supervisor can input leave, but changing the type of leave that was already entered would have to be done by the time administrator. (Transcript, p. 73) Boehm spoke with one of Vargo's original interviewers from 2013, but not Officer Rikard because he does not work for the Department any longer. (Transcript, p. 75) Vargo acknowledged he entered his time in the SCEIS program when Boehm asked him. (Transcript, p. 76) Boehm did not believe he showed him any documentation from SCEIS when he spoke with Vargo. (Transcript, p. 88)

Testimony of Joshua A. Vargo:

Vargo is thirty-four, married with two children and lives in Aiken. He was born and raised in the Aiken area. He finished college with a degree in accounting in 2013. During college he was a paid firefighter but switched to volunteer when he joined highway patrol. He was officially hired by highway patrol in January of 2014. He was interviewed in Columbia and at his house. He was interviewed by a board, then at his home and then there was a polygraph. He was hired and assigned to Aiken County. He has received numerous awards in his ten years with the Department. He was Trooper of the year for his assigned post five out of the ten years. He received Canine awards, post awards, and an award from MADD. He was a canine handler and was informed that the Department was disbanding their canine unit. To continue his canine career, he applied with SLED. (Transcript, pp. 91-97)

The weekend before February 6, 2024, Vargo's daughter started getting sick. He was scheduled to work Monday through Wednesday and was scheduled for a holiday Thursday because he had to use the holiday comp time. His wife stayed home Monday because he had court. He was supposed to pick up a new patrol car on Tuesday and had gutted his car completely out. He called his supervisor and explained his daughter was sick. He was able to get his in-laws to watch his daughter and he went and picked up the new patrol car. The previous week he had spoken with his supervisor about switching his holiday from Thursday to Wednesday because he had "something come up" Wednesday. The plan was for him to take the holiday time Wednesday and then he would work Thursday. His supervisor told him to remind him later in the week. With everything going on, he and his supervisor forgot. When his daughter got sick, he knew he was going to be out the rest of the week and would not be able to work Thursday so the family sick leave and the holiday leave were both going to be used. (Transcript, pp. 98-102)

When Boehm told him that he entered the leave, he assumed he was correct. Boehm did not show him the SCEIS entry, but he has had instances where someone else enters his leave when he is not near a computer. He has also had instances where they have gone back and made changes to match the calendar. Based off the SCEIS entry, he does not know if he went in and put in the holiday leave for Wednesday and the family sick leave for Thursday and then someone in administration changed it to match the schedule since the schedule had him taking the holiday leave on Thursday. He did not knowingly or willfully lie about his leave. He had plenty of annual leave he could have taken. (Transcript, pp. 104-106)

When he applied to work for highway patrol in 2013, he first filled out an online application. He filled it out on August 19, 2013. To his knowledge he did not lie or falsify any information on that document. He went and participated in a polygraph examination on October 2, 2013. There was also a

home interview conducted. He did tell them that he took prescription medication that did not belong to him. Because it was so long ago he does not remember if they went into details about when he took Adderall and whether the interviewer told him not to worry about it. He did notify them that he used prescription medication that didn't belong to me before. (Transcript, pp. 111-116)

When he applied to SLED, he called up friends from college who now work for SLED to use as references. During those conversations they reminisced about the dumb things they did in college. When he entered the interview room at SLED, the interviewer was an old roommate of some of his college friends. He simply remembered the information and was trying to be "100 percent" honest about everything. (Transcript, pp. 117-119) Vargo attests he has not tried to deceive anybody.

On cross-examination, he spoke with his supervisor the previous week about using the holiday leave on Wednesday, instead of Thursday. He did tell his supervisor that he would need to use family sick leave and that his daughter was still sick. Because his daughter was sick one day was going to be holiday leave and one was going to be family sick leave. (Transcript, pp. 126-130)

When he initially answered the SLED questionnaire he told them he used Adderall a few times, but the polygrapher told him he had to put in an exact number. He told them he could not give them an exact number because he really didn't remember. He remembered it was not something he commonly did, but in his last two years he started to struggle, and he did use Adderall to help him study for tests. At that point in his life, he didn't know what controlled substances were since he was not a drug person. He did not have a law enforcement background. It was something he did a very few times and did not recall at that moment. Now years later, after talking with college friends who were also employed with SLED, he remembered it and wanted to be 100 percent honest. The number 20 was a generous approximation because they wanted an exact number, and he could not give them one. He put 20 down because he knew he did not have nearly that many. He told them it was a few times. It was not even enough for him to recall. (Transcript, pp. 131-134) All his Adderall usage occurred before he came to work for highway patrol. He filled out three documents with highway patrol. None of those mention he used Adderall in college. He did not mention it because he did not recall it at that time. He graduated and walked from college in May of 2013. He did not deny using it, but he did not recall the Adderall when he applied for highway patrol. "If I don't remember something, I can't tell you about it." (Transcript, pp. 135-140)

State's Exhibit 1:

This exhibit is three segments from a recorded interview between Boehm and Vargo. Vargo 1 is approximately three minutes long and outlines Boehm stating the recording and recitation of Garrity and

putting Vargo under oath. It begins with the conversation about how the administrative investigation started. Vargo 2 is five seconds where Boehm mentions Adderall and cuts off before Vargo responds. Vargo 3 appears to be the rest of that segment and is approximately twenty-three minutes long. Vargo 3 is the only segment with potentially useful information.

Boehm asks Vargo why he did not disclose his use of Adderall in 2013 when he originally applied to join the highway patrol. Vargo states “again” he does not know if he ever once thought about it when he was doing the polygraph. He wasn’t hiding anything. It must not have been on his conscious at that time. The recent SLED interview he was being nit-picky.

They then moved to the issue with his leave. Vargo states exactly what he testified to during the hearing. He was intending to use the holiday leave that was scheduled for Thursday on Wednesday for the polygraph, but then his daughter got sick, and he knew he would be out both days for his daughter’s sickness, so he just said sick leave for Wednesday and then claimed holiday leave Thursday when he was home with his sick child.

V. ANALYSIS

The Department is required to prove, by the preponderance of evidence, the Officer engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, by “the misrepresentation of employment-related information”, “wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State”, and/or the Officer provided “false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State.”

“Preponderance of evidence” is evidence which convinces the fact finder as to its truth. (See, e.g., Pascoe v. Wilson, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) citing Gorecki v. Gorecki, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Ct. App. 2010).) Further, a showing of a preponderance of the evidence means, “(t)he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be.” (See, “preponderance of evidence”, *Black’s Law Dictionary*, (11th ed. 2019).)

To “misrepresent” may be defined as “to give a false or misleading representation of usually with an intent to deceive or be unfair.” (See, “misrepresent”, *Merriam-Webster Dictionary* online at

<https://www.merriam-webster.com/dictionary/misrepresent>) Accordingly, misrepresented information is information, which is provided for a false or misleading purpose, usually allied with an intent to deceive the recipient. A “misleading” statement is one that is “deceptive.” (See, <https://www.dictionary.com/browse/misleading>) Similarly, a “deceitful” statement, is one that is “intended to deceive” or is “misleading.” (See, <https://www.dictionary.com/browse/deceitful>) An incomplete statement is one that is “lacking some part.” (See, <https://www.dictionary.com/browse/incomplete>)

“‘[W]illful’ means action taken knowingly by one subject to the statutory provisions in disregard of the action’s legality. No showing of malicious intent is necessary. A conscious, intentional, deliberate, voluntary decision properly is described as willful, ‘regardless of venial motive.’” *Intercounty Construction Co. v. Occupational Safety and Health Review Commission*, 522 F.2d 777, 779-780, citing *F.X. Messina Construction Corp. v. Occupational Safety and Health Review Commission*, 505 F.2d 701, 702 (1st Cir. 1974). The Court went on to further emphasize, “[W]e agree with the Commission that willfulness is used in the mere cognitive sense in civil statutes, and connotes bad purpose only when an element of a criminal act.” *Id.* at 780, citing *United States v. Murdock*, 290 U.S. 389, 394 (1933) and *Yarborough v. United States*, 230 F.2d 56,61 (4th Cir. 1956). Lastly, Black’s Law Dictionary defines willful as:

willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong... (See, *Black’s Law Dictionary* (10 ed. 2014))

Based on the evidence presented at the contested case hearing in this matter, the Department’s allegation concerns two separate issues. First, the Department alleges the Officer committed misconduct when he reported he was staying home with a sick child Wednesday February 7, 2024, when part of that day he was in Columbia for a job interview. Second, the Department alleges the Officer committed misconduct when he failed to disclose using Adderall in college when he was interviewed and hired in 2013 but later admitted to the use when he applied for a job a SLED ten years later.

Regarding the first allegation, the Department has failed to prove by preponderance of the evidence that the Officer committed misconduct. Officer stated The Officer gave a consistent and credible explanation for the leave issue. He was required to take holiday leave that week which the Department scheduled for that Thursday. As had been done in the past and the Department did not refute, he spoke with his supervisor about switching the holiday leave to Wednesday since it had to be used and would allow him to attend the job interview. He did not tell his supervisor about the job interview because he

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was not required to. He then planned to work Thursday. When his child got sick, he knew he would have to be home with the child both Wednesday and Thursday because the child would not be able to go back to daycare for at least 24 hours after all symptoms stopped. He was home Thursday with the sick child, so a full day of family sick leave was used. One presumably may use holiday time for whatever one wishes. In this case, approximately five hours was used to go to a job interview and the rest was used to care for a sick child. In the state leave record keeping program (SCEIS), it had down that family sick leave was used Wednesday, and holiday leave was used Thursday when in reality they were switched. There was no deception here. Nothing was stolen. This is clerical and substantively does not matter. The Department's own exhibit suggests that the Officer may have recorded it correctly and the Department changed it or that the Department entered the information incorrectly. Only one entry is created by the Officer. The other two entries were created by HR Admin. (See State's Exhibit 3) Testimony supported that leave may be changed after that fact and often was if it did not match the written schedule. There was no misconduct in this instance.

In the second instance, the Department has provided sufficient evidence of misconduct occurred. Officer testified that he used Adderall at least a few times in his last two years of college. He testified he bought them from another person to help him study for big exams. He graduated in May of 2013 and then applied to work for the highway patrol in August 2013. In his application to the highway patrol, he was asked if he ever used or experimented with any controlled substance within the last ten years and he answered no. (State's Ex 5) Later during an at home interview with a JC Rikard, he was asked if he ever used or experimented with any prescribed medication. No box was checked but in the Total Times section under the question it stated, "maybe childhood from mother." He also answered no to the question "Have you ever used and/or experimented with any illegal drug or substance not mentioned above." (State's Ex 6) Finally, in the questionnaire as part of a polygraph exam for the Department he was asked if he ever used someone else's prescription drug. The Officer answered "no." (State Ex. 7) When asked about why he did not disclose purchasing someone else's medication mere months before he applied to the Department, Officer suggested it was not on "his conscious" at that time. (State's Exhibit 1)² In order to find this credible, one would have to believe that it was on the Officer's "conscious" that his mother may have given him medication when he was ill as a child, but not that he purchased a neighbor's medication

² Interestingly, the Officer alleged for the first time at the hearing that he did disclose using someone else's prescription drugs during an in-person interview with Rikard in 2013. He did not bring this up in his interview with Boehm. He could not give any details of that disclosure and could not say whether he mentioned the Adderall in college. The form from that interview does include the note "maybe childhood from mother." It does not mention Adderall usage in college. (State's Ex. 6)

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as an adult to help him perform better in school. The actions the Officer claims to have forgotten or not thought about took intention. He had to decide he needed extra help with preparing for his tests. He had to seek out another person with a prescription for Adderall. He had to convince them to sell some of their medication to him and then take the medication. By the Officer's testimony these actions occurred only months prior and more than one time. Those decisions are not forgettable, especially when you are being asked on an application to become a law enforcement officer specific questions about drug use.

Next the Officer argued in the hearing that because he had no law enforcement background he did not understand what the term controlled substance meant back in 2013. (Transcript, pp. 131-134) However, this question came after several specifically dealing with drugs. (State's Ex. 5). He also answered no to ever using someone else's prescription drugs. (State Ex 7) The Officer would have us believe that as an adult he did not know that purchasing pills from a neighbor to enhance his performance on exams was not unlawful? Any middle-school-aged child who participated in D.A.R.E. or watched an after-school special on television correctly answers that question. He knew the pills he purchased were prescription drugs because otherwise he would have gone to the drug store and bought them instead of paying \$10 dollars a pill to his neighbor. It is not believable that the Officer did not remember what he did such a short time prior or that he did not understand those actions to be problematic.

The record established that the Officer purchased prescription Adderall to use for studying for exams in 2012 and 2013. He was asked about drug use and specifically about using someone else's prescription medications and he denied doing so or claimed he may have used some as a child when his mother gave it to him. Then after ten years of service as a law enforcement officer and knowing his interviewers at SLED might remember his past, he disclosed purchasing the Adderall and using it in violation of the law. There was a clear motive not to disclose his drug use in 2013. We do not find the Officer's explanations credible. The evidence supports the Officer intentionally entered false statements on his application to the Department in 2013. The recency of his conduct to his application and the context in which the questions were asked counter the Officer's assertions that he did not know purchasing someone else's medicine was illegal or that it slipped his mind. His false answers helped secure him employment with the Department. Therefore, we find the Department proved the Officer committed misconduct in this case.

FINDINGS OF FACT

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we find as a fact:

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1. The allegations of misconduct against Officer in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) to the Criminal Justice Academy (Academy) by the Department, is supported by the evidence adduced at the contested case hearing;
2. The Department met its burden of showing by a "preponderance of evidence" that Officer engaged in misconduct through wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
3. Officer testified that he used Adderall at least a few times in his last two years of college. He testified he bought them from another person to help him study for big exams. He graduated in May of 2013 and then applied to work for the highway patrol in August 2013. When asked about why he did not disclose purchasing someone else's medication mere months before he applied to the Department, Officer suggested it was not on "his conscious" at that time. (State's Exhibit 1) This is not credible because in order to find this credible, one would have to believe that it was on the Officer's "conscious" that his mother may have given him medication when he was ill as a child, but not that he purchased a neighbor's medication as an adult to help him perform better in school. The actions the Officer claims to have forgotten or not thought about took intention. He had to decide he needed extra help with preparing for his tests. He had to seek out another person with a prescription for Adderall. He had to convince them to sell some of their medication to him and then take the medication. By the Officer's testimony these actions occurred only months prior and more than one time. Those decisions are not forgettable, especially when you are being asked on an application to become a law enforcement officer specific questions about drug use.
4. Additionally, the record established that the Officer purchased prescription Adderall to use for studying for exams in 2012 and 2013. He was asked about drug use and specifically about using someone else's prescription medications and he denied doing so or claimed he may have used some as a child when his mother gave it to him. Then after ten years of service as a law enforcement officer and knowing his interviewers at SLED might remember his past, he disclosed purchasing the Adderall and using it in violation of the law. There was a clear motive not to disclose his drug use in 2013. We do not find the Officer's explanations credible. The evidence supports the Officer intentionally entered false statements on his application to the Department in 2013. The recency of his conduct to his application and the context in which the questions were asked counter the Officer's assertions that he did not know purchasing someone else's medicine was illegal or that it slipped his mind. His false answers helped secure him employment with the Department.
5. The Department met its burden of showing by a "preponderance of evidence" that Officer engaged in misconduct by wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State as was alleged in the Personnel Change in

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ROA0059

Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;

6. In his application to the highway patrol, he was asked if he ever used or experimented with any controlled substance within the last ten years and he answered no. (State's Ex 5) Later during an at home interview with a JC Rikard, he was asked if he ever used or experimented with any prescribed medication. No box was checked but in the Total Times section under the question it stated, "maybe childhood from mother." He also answered no to the question "Have you ever used and/or experimented with any illegal drug or substance not mentioned above." (State's Ex 6) Finally, in the questionnaire as part of a polygraph exam for the Department he was asked if he ever used someone else's prescription drug. The Officer answered "no." (State Ex. 7) This was established as untrue at the contested case hearing when Officer admitted to purchasing Adderall from an individual in order to study for college exams. Officer's reasoning for this untruthful statement is not credible.
7. The allegations of misconduct against Officer set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed proven by the preponderance of evidence adduced at the contested case hearing.

CONCLUSIONS OF LAW

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we conclude as a matter of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct";
3. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (i) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State as was alleged and reported to the Academy by the Department;
4. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (k) wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document,

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ROA0060

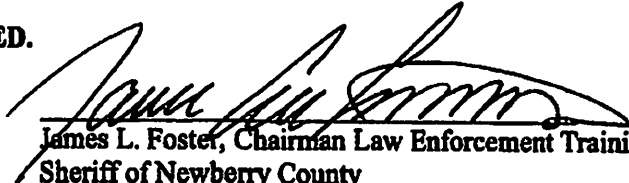
record, report, or form, except when required by departmental policy or by the laws of this State as was alleged and reported to the Academy by the Department;

5. The misconduct allegations reported by the Department have been proven by a preponderance of the evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct; and
6. Pursuant to S.C. Code Ann. Regs. 37-025, satisfactory evidence exists to support the Council's denial of Officer's eligibility for certification as a law enforcement officer in the State of South Carolina.

SANCTION

THEREFORE, IT IS ORDERED: Officer is permanently denied a law enforcement certification in South Carolina.

AND IT IS SO ORDERED.


James L. Foster, Chairman Law Enforcement Training Council
Sheriff of Newberry County
On Behalf of the Law Enforcement Training Council

November 5, 2025

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Joshua Vargo,

Appellant,

v.

South Carolina Criminal Justice Academy,

Respondent.

Docket No. 25-ALJ-30-0138-AP

ORDER OF REMAND

This matter comes before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal by Joshua Vargo (Appellant) from the decision of the Law Enforcement Training Council (LETC), which permanently denied Appellant's law enforcement certification in the State of South Carolina due to a finding of misconduct. The ALC has jurisdiction to hear this matter pursuant to section 23-23-150 of the South Carolina Code (Supp. 2024) and subsection 1-23-600(E) of the South Carolina Code (Supp. 2024).

Upon consideration of the briefs and the Record, I conclude that the matter must be remanded to the LETC.

BACKGROUND

Appellant was formerly employed by the South Carolina Department of Public Safety (Department) as a police officer for approximately ten years. Appellant was scheduled to pick up his patrol car and work on February 6, 2024. However, his young daughter became sick that day so he contacted his supervisor, Corporal Albert, who instructed him he could claim the time he spent picking up his patrol car as work time, and family sick leave for the remainder of the day. Appellant was again scheduled for work the next day. Yet, when Corp. Albert noticed that Appellant had not signed on nor called, he texted him. Appellant responded "FSL," in other words, family sick leave. However, the Department later discovered that Appellant's absence was due to him attending scheduled job interview with South Carolina Law Enforcement Division (SLED) which lasted five and a half to six hours. Notwithstanding this fact, Appellant entered sick leave for his absence that day.



ROA0062

As part of his SLED job interview, Appellant filled out a questionnaire, which was forwarded to the Department. In the questionnaire, Appellant was asked:

Have you ever used/trying any illegal drug(s) other than marijuana or abused any **prescription drugs** prescribed for yourself or for someone else. Yes ☐ No ☐; if Yes, circle the appropriate drug(s): cocaine, LSD, amphetamine, hashish, k2spice/synthetic marij., crack, heroin, peyote, pain killers, barbiturates, rohyphnol, opium, mushrooms, oxycontin, valium, ketamine, ecstasy, sleeping pills, hydrocodone, Xanax, mescaline, salvia, methadone, codeine, methamphetamine, GHB, PCP, adderall/ritalin, morphine, other (not listed), and inhalants: glue, paint, acetone, nitrous oxide or any similar substance.

(Emphasis added). Appellant checked yes and circled Adderall and Oxycontin. In the explanatory section, Appellant stated that the first time he tried it was 2012-2013 and had it a “few” times. In addition, he stated:

took one ‘puff’ of marijuana prior to [law enforcement]. In college I took Adderall a few times to help with exams/late study nights. Taken Oxy[contin] after surgeries, always prescribed and never abused it. 2012-2013 took Adderall approximately 20 times, purchased from my neighbor at \$10 a pill.

Notably, Appellant filled out a similar questionnaire when he applied to the Department in 2013.¹ When asked: “[h]ave you used/and or experimented with any **controlled substance** within the last 10 years (excluding marijuana),” Appellant answered “No” to this question on August 19, 2013. In addition, when asked “Have you ever used and/or experimented with any **prescribed medication not prescribed to you**”, Appellant responded, “maybe childhood f[rom] mother.” (Emphasis added). Lastly, Appellant denied the use of illegal drugs, specifically marijuana.

As part of the interview process with the Department, Appellant also underwent a polygraph examination on October 2, 2013.² The Law Enforcement Polygraph Questionnaire asked: “Have you ever used any of the following drugs or narcotics listed below?” “Adderall” was not specifically listed and Appellant answered “No”. Additionally, during his background interview with J.C. Rikard on October 24, 2013, Appellant was asked whether he “ever used **someone else’s prescription drug**?” (Emphasis added). J.C. Rikard, who completed the background interview form, notated that Appellant indicated “maybe in childhood from his

¹ This questionnaire was generated by the Division of Human Resources of the State of South Carolina. It is a generic, widely used and understood form.

² In his brief, Appellant asserts that he acknowledged the use of someone else’s prescription drugs during the polygraph examination yet, he could not remember details of his attestation. Additionally, the polygraph operator, J.C. Rikard, was not called as a witness by either party and there is no transcript of the examination.

mother.”³ Significantly, Appellant did not mention the use of Adderall in any other Department questionnaire or form.

As a result of the discrepancies in Appellant’s responses to SLED and the Department and the issue surrounding Appellant’s use of sick leave on February 7, 2024, the Department initiated an investigation. When Captain Boehm from the Office of Professional Responsibility interviewed Appellant about the discrepancies on the forms, Appellant responded that he did not think of it when he was applying to the Department as it was not on his mind at that time. As for the leave issue, Appellant attested he did not knowingly or willfully lie about his leave as he had plenty of leave to take. He explained that he originally planned on using holiday leave for the interview but when his daughter got sick, plans changed. He acknowledged he entered sick leave but stated that while he forgot to edit the time in the system his supervisor could have corrected it as he had in the past.

On May 1, 2024, the Department submitted a personal change in status report of separation form (PCS form) to the Criminal Justice Academy’s Certification Unit. The separation action was listed as misconduct as defined under section 23-23-150 of the South Carolina Code (2025) and/or regulation 37-025 of the South Carolina Code of Regulations (Supp. 2024). On May 2, 2024, the Academy served Appellant with the misconduct allegation and notified him of his right to a contested case hearing. Afterwards, Appellant timely requested a contested case hearing, which was held on September 25, 2024.

On December 30, 2024, the Hearing Officer issued findings and recommendations. The Hearing Officer’s recommendation included, in part, sections entitled “Documentary and Testimonial Evidence,” “Analysis,” and “Recommended Findings of Fact.” In the “Analysis” section, the Hearing Officer concluded that a preponderance of the evidence did not support the Department’s allegation that Appellant committed misconduct when he reported he was staying home with a sick child on February 7, 2024, because Appellant “gave a consistent and credible explanation for the leave issue.” As for the second allegation, the Hearing Officer found the Department provided sufficient evidence that misconduct occurred because Appellant admitted he

³ Appellant contends that the “brief notes from J.C. Rikard” do not substantiate the Department’s contention. Indeed, as already mentioned above, Rikard was not called as a witness by either party and there is no indication he filled these questions out or had any “notes” in this exhibit. Likewise, there is no indication that Appellant himself completed this form. Nonetheless, Appellant does not contest that the response given to the Department about the use of someone else’s prescription drugs was false.

used Adderall a few times in his last two years of college yet, in his job application with the Department, he answered that he had not used or experimented with any controlled substance within the last ten years. The Hearing Officer further found that when asked during the background interview if he ever used or experimented with any prescribed medication, he did not check the “yes” box but rather indicated that “maybe in childhood from his mother.” Finally, in the Law Enforcement Polygraph Questionnaire Appellant represented that he never used someone else’s prescription drug.

In evaluating whether the conduct was willful, the Hearing Officer looked to Black’s Law Dictionary, which defined “willful” as “[v]oluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong” *Willful*, BLACK’S LAW DICTIONARY (10th ed. 2014). The Hearing Officer then concluded that the evidence reasonably supported the Department’s allegation that “more likely than not that [Appellant] was misleading about his Adderall use when applying with the Department. As such, the Hearing Officer concluded that the Department had shown by the preponderance of the evidence, that Appellant] engaged in misconduct as defined by section 23-23-150 of the South Carolina Code (2025).

As a result of this analysis, the Hearing Officer recommended the LETC issue the following findings of fact:

1. The allegation of misconduct against Officer, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Academy by the Department, is supported by the evidence adduced at the contested case hearing held on September 25, 2024;
2. The Department has not met its burden of showing by the “preponderance of evidence” that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect, statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
3. The Department has met its burden of showing by the “preponderance of the evidence” that Officer engaged in misconduct through willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;

4. The Department has met its burden of showing by the “preponderance of evidence” that Officer engaged in misconduct by the misrepresentation of employment related information as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy; and
5. The allegation of misconduct against Officer as set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed substantiated by the evidence adduced at the hearing.

The Hearing Officer also recommended the LETC issue the following conclusions of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council (:Council”) is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification “based on evidence satisfactory to the Council that the candidate has engaged in misconduct”;
3. A review of the record in this matter discloses that there does not exist preponderance of the evidence that the ‘Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (i), by wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency. except when required by departmental policy or by the laws of this State”
4. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (k), by having “willfully made false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State” as was alleged and reported to the Academy by the Department;
5. A review of the record in this matter discloses that there exists preponderance of the evidence that Officer committed misconduct, pursuant to S.C. Code Ann. § 23-23-150 (A) (3) (h), by the misrepresentation of employment-related information; and
6. The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct.

On March 17, 2025, the LETC concluded that Appellant engaged in misconduct. In its Final Decision, the LETC appears to have adopted word for word, the Hearing Officer’s “Documentary and Testimonial Evidence” and “Analysis” sections. The LETC also adopted all of the Hearing Officer’s recommended findings of facts with the exception that the LETC found that:

The Department met its burden of showing by a ‘preponderance of evidence’ that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy.

Based on these findings, the LETC concluded that Appellant violated subsections 23-23-150(A)(3)(i), (k) of the South Carolina Code (2025) and regulation 37-107 of the South Carolina Code of Regulations (Supp. 2024). Pursuant to its authority under regulation 37-108(A) of the South Carolina Code of Regulations (2015 & Supp. 2024), the LETC permanently denied Appellant law enforcement certification. Appellant then filed a Notice of Appeal with this Court.

STANDARD OF REVIEW

The LETC had the authority to issue a final agency decision in this matter pursuant to section 23-23-150(D) of the South Carolina Code (Supp. 2024). The appellate review of this matter by the ALC is “in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions” S.C. Code Ann. § 1-23-600(E) (Supp. 2024). Section 1-23-380(5) of the South Carolina Code (Supp. 2024) states:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ 1-23-380(5).

A decision is supported by “substantial evidence” when the record as a whole allows reasonable minds to reach the same conclusion as the agency. *Friends of the Earth v. Pub. Serv. Comm’n of S.C.*, 387 S.C. 360, 366, 692 S.E.2d 910, 913 (2010). The fact that the record, when considered as a whole, presents the possibility of drawing two inconsistent conclusions from the

evidence does not prevent the agency's findings from being supported by substantial evidence. *Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 226, 467 S.E.2d 913, 917 (1996). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981)). When applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant v. S.C. Coastal Council*, 319 S.C. 348, 353, 461 S.E.2d 388, 391 (1995). Finally, the party challenging an agency action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917.

DISCUSSION

Here, the LETC's final decision does not contain sufficient findings of fact to support its conclusory conclusions of law. In fact, the only specific findings are set forth in the Analysis section. However, the analysis does not support the LETC's conclusion that Appellant's conduct was "willful" as required by subsection 23-23-150. Undeniably, the analysis sets forth that the Appellant misrepresented his prior use of Adderall yet the LETC's findings offer supporting explanation for his actions. For instance, the Final Order provides:

It is understandable that someone would not remember all the details of multiple interviews from ten years ago, but the Officer's only answer is either he must have discussed the Adderall use with the interviewer or that he simply forgot he was purchasing someone's prescribed medications as a study aid mere months before applying for the job. It does appear that the SLED interviewers asked much more detailed questions. In State's Exhibit 4, the Officer's admission appears to be added after the initial explanation. The Officer testified that the SLED interviewers required an exact number of pills when he really could not remember. It is plausible that the Officer was so naive that he did not know what a controlled substance was and that he only took the pills a few times, so they simply did not come to his mind when filling out his application and then later when he was being interviewed and polygraphed by highway patrol. It is plausible that being a seasoned officer speaking with an interviewer who knew of him in college that he

remembered the pills ten years later and wished to overstate the issue to be one hundred percent honest. . . Human memory is notoriously unreliable.

(emphasis added). Curiously, the LETC then found that “there is sufficient evidence that it is more likely than not that the Officer was misleading about his Adderall use when applying with the Department.” (Emphasis added). Importantly, the analysis did not consider whether Appellant’s conduct was “willful.” Nonetheless, the LETC concluded that the “Department has met its burden of showing by the ‘preponderance of the evidence’ that Officer engaged in misconduct through **willfully** providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form...” (emphasis added).

“An administrative body must make findings which are **sufficiently detailed** to enable this Court to determine whether the findings are supported by the evidence and whether the law has been applied properly to those findings.” *Porter v. S.C. Pub. Serv. Comm’n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998) (emphasis added); S.C. Code Ann. § 58–9–1160 (1976). Although an administrative agency is not required to present its findings of fact and reasoning in any particular format, it is better practice is to present them in an organized and regimented manner. *Id.* Furthermore, “a recital of conflicting testimony followed by a general conclusion is **patently insufficient** to enable a reviewing court to address the issues.” *Id.* (emphasis added). Moreover, “[w]here material facts are in dispute, the administrative body **must make specific, express findings of fact.**” *Id.* (emphasis added); S.C. Code Ann. § 1–23–350 (2005) (“Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.”).

In this case, the LETC’s decision is based upon findings of fact that are so conclusory, they merely state that substantial evidence supports the allegations of misconduct. The decision does not state which specific facts were relied upon or why the facts relied upon indicated misconduct. As such, the Court is left without any ability to determine what specific testimony or other evidence the LETC relied on when making its findings; in particular, the finding that the misconduct was willful. As *Porter* instructs, the LETC’s recitation of testimony followed by general conclusions is “patently insufficient” to enable this Court to review the LETC’s decision. *Porter*, 333 S.C. at 21, 507 S.E.2d at 332. Because the LETC’s findings of fact are insufficient, the Court cannot determine if substantial evidence supports the decision.

IT IS THEREFORE ORDERED that the matter is **REMANDED** to the Law Enforcement Training Council to review its final agency decision in compliance with this Order and *Porter*.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

September 19, 2025
Columbia, South Carolina

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home interview conducted. He did tell them that he took prescription medication that did not belong to him. Because it was so long ago he does not remember if they went into details about when he took Adderall and whether the interviewer told him not to worry about it. He did notify them that he used prescription medication that didn't belong to me before. (Transcript, pp. 111-116)

When he applied to SLED, he called up friends from college who now work for SLED to use as references. During those conversations they reminisced about the dumb things they did in college. When he entered the interview room at SLED, the interviewer was an old roommate of some of his college friends. He simply remembered the information and was trying to be "100 percent" honest about everything. (Transcript, pp. 117-119) Vargo attests he has not tried to deceive anybody.

On cross-examination, he spoke with his supervisor the previous week about using the holiday leave on Wednesday, instead of Thursday. He did tell his supervisor that he would need to use family sick leave and that his daughter was still sick. Because his daughter was sick one day was going to be holiday leave and one was going to be family sick leave. (Transcript, pp. 126-130)

When he initially answered the SLED questionnaire he told them he used Adderall a few times, but the polygrapher told him he had to put in an exact number. He told them he could not give them an exact number because he really didn't remember. He remembered it was not something he commonly did, but in his last two years he started to struggle, and he did use Adderall to help him study for tests. At that point in his life, he didn't know what controlled substances were since he was not a drug person. He did not have a law enforcement background. It was something he did a very few times and did not recall at that moment. Now years later, after talking with college friends who were also employed with SLED, he remembered it and wanted to be 100 percent honest. The number 20 was a generous approximation because they wanted an exact number, and he could not give them one. He put 20 down because he knew he did not have nearly that many. He told them it was a few times. It was not even enough for him to recall. (Transcript, pp. 131-134) All his Adderall usage occurred before he came to work for highway patrol. He filled out three documents with highway patrol. None of those mention he used Adderall in college. He did not mention it because he did not recall it at that time. He graduated and walked from college in May of 2013. He did not deny using it, but he did not recall the Adderall when he applied for highway patrol. "If I don't remember something, I can't tell you about it." (Transcript, pp. 135-140)

State's Exhibit 1:

This exhibit is three segments from a recorded interview between Boehm and Vargo. Vargo 1 is approximately three minutes long and outlines Boehm stating the recording and recitation of Garrity and

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STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement)
Certification of Joshua A. Vargo)
)
)

Docket Number 2024-CJA-05-01

FINAL AGENCY DECISION

Joshua A. Vargo ("Officer"), in response to an allegation of certification misconduct reported by the South Carolina Department of Public Safety ("Department") to the South Carolina Criminal Justice Academy ("Academy"), pursuant to the requirements of S.C. Code Ann. § 23-23-150 (B) (1), timely requested a contested case hearing to address the allegation of misconduct filed against the Officer. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D), and the matter was properly set for hearing on September 25, 2024.

On March 17, 2025, the South Carolina Law Enforcement Training Council met to, among other things, discuss this case, listen to oral arguments, and take a vote. Prior to this meeting, the Training Council reviewed the transcript, exhibits, motions, and Hearing Officer's Recommendation. On March 17, 2025, the Training Council voted that Officer did engage in misconduct and voted that Officer is permanently denied a law enforcement certification in South Carolina.¹

STATEMENT OF THE CASE

A. Documentary Evidence

The following documentation was accepted into evidence at the September 25, 2024, hearing and made a part of the record:

Council Exhibit 1- Letter in reference to Allegation of Certification Misconduct and Right to Contested Case Hearing

State's Exhibit 1- Audio/videotape

State's Exhibit 2- Text Message Exchanges

State's Exhibit 3- SCEIS Record

State's Exhibit 4- SLED Applicant Questionnaire

¹Sheriff Foster, Director Stirling, Director Gambrell, Director Mullikin, Sheriff Falle, Chief Cornett, Major Gallam, and Chief Holbrook voted that Officer engaged in misconduct and to permanently deny Officer a law enforcement certification. Attorney General Wilson was not present. Chief Keel and Director Woods were recused.

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State's Exhibit 5- 2013 DPS Employment Application
State's Exhibit 6- 2013 DPS Employee Background Investigation Report
State's Exhibit 7- 2013 DPS Questionnaire

B. Testimonial Evidence

The following testimony was accepted into evidence at the September 25, 2024, hearing and made a part of the record:

1. Testimony of Captain John Joseph Boehm
2. Testimony of Joshua A. Vargo

Testimony of Capt. Boehm:

Capt. Boehm is the Captain for the Office of Professional Responsibility for the Department and was assigned to investigate some allegations against Vargo. (Transcript, pp. 24-25) On February 6, 2024, Vargo was scheduled to pick up a new patrol car and was scheduled to work that day. Vargo told him that his young daughter was sick. He contacted his immediate supervisor, Corp. Albert, and advised him of the situation and his appointment to pick up the patrol vehicle. He told his supervisor that his in-laws could watch his daughter while he picked up the new patrol car. The corporal agreed and told him that when he was travelling to and from Columbia and picking up the patrol car he should report it as work time and the rest of the day should be reported as family sick leave. They confirmed this information in a text message. The text message conversation confirmed Vargo should put in 6-12 for working time and 12-4 as leave time. (Transcript, pp. 27-30) On February 7, 2024, Vargo was assigned to work. Corporal Albert was working when he noticed Vargo did not sign on. Since he had not received a phone call from Vargo he texted him saying "Waiting for that phone call." Vargo responded "FSL again." His daughter was still sick. (Transcript, pp. 31-32) The Department found out later that Vargo had a previously scheduled appointment with SLED at 9am which Corporal Albert did not know about. Per SLED policy, Vargo would have been notified about the appointment the previous Friday and Vargo confirmed that he knew about the appointment the previous Friday. Including travel time, the appointment took five and a half to six hours on February 7, 2024. Vargo's in-laws took care of the sick child during that time. Vargo entered a full ten hours of sick leave for February 7, 2024, into SCEIS. His leave entry was inaccurate and when he texted Corp. Albert he knew he would be going to SLED for the appointment and did not mention it. He never attempted to correct the issue later. (Transcript, pp. 33-40)

Vargo's appointment with SLED was for a potential job position. As part of the appointment, he was required to answer a questionnaire. His answers to that questionnaire were forwarded to the

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Department. In the questionnaire, Vargo disclosed that in 2012-2013 he took Adderall approximately 20 times which he purchased from a neighbor at \$10 dollars a pill. (Transcript, pp. 40-42) This type of disclosure when he applied to the Department would have disqualified him from being hired. Capt. Boehm compared the questionnaire from SLED with Vargo's Department questionnaires and employment application from 2013. On his department questionnaire, Vargo stated that he never used or experimented with any controlled substances within the last ten years, excluding marijuana. (Transcript, pp. 43-45) During an at home interview for the position at the Department, Vargo did not admit to the Adderall use when asked if he had ever used or experimented with any prescribed medication not prescribed to him. (Transcript, pp. 45-47) Vargo also filled out a questionnaire with the Department in October of 2013 where he was asked "have you ever used someone else's prescription drug?" Vargo answered "no." These three documents were part of the employment process Vargo went through to be hired by the Department in 2013. Vargo did not mention Adderall in any of those documents. (Transcript, pp. 48-49) When Boehm asked Vargo about the discrepancy between his answers to the Department and to SLED, Vargo figured he did not think of it when he was applying to the Department. It was not weighing on his mind at that time, despite it being a recent occurrence. (Transcript, p. 51)

On cross-examination, Boehm explained that SLED contacted highway patrol and then the highway patrol asked OPR to investigate. Vargo was employed by the Department for a little over ten years at this point. (Transcript, p. 52) When Vargo spoke with Boehm, he admitted he did not remember the Adderall until the SLED interview. Boehm did not know that Vargo was being interviewed at SLED by people he knew from school. (Transcript, p. 58) There was never a question that Vargo's daughter was ill on February 6 and 7th. Employees put in their time in SCEIS at different times. Vargo recorded the February leave the day after. His leave could have been corrected internally by an administrator if he contacted them. (Transcript, pp. 59-65) While at the Department, Vargo was moved to the canine unit which is a prestigious, specialized unit. (Transcript, p. 66) When Boehm spoke with Vargo, he did not go over whether Vargo knew Adderall was a prescription drug. (Transcript, p. 68)

A supervisor can input leave, but changing the type of leave that was already entered would have to be done by the time administrator. (Transcript, p. 73) Boehm spoke with one of Vargo's original interviews from 2013, but not Officer Rikard because he does not work for the Department any longer. (Transcript, p. 75) Vargo acknowledged he entered his time in the SCEIS program when Boehm asked him. (Transcript, p. 76) Boehm did not believe he showed him any documentation from SCEIS when he spoke with Vargo. (Transcript, p. 88)

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Testimony of Joshua A. Vargo:

Vargo is thirty-four, married with two children and lives in Aiken. He was born and raised in the Aiken area. He finished college with a degree in accounting in 2013. During college he was a paid firefighter but switched to volunteer when he joined highway patrol. He was officially hired by highway patrol in January of 2014. He was interviewed in Columbia and at his house. He was interviewed by a board, then at his home and then there was a polygraph. He was hired and assigned to Aiken County. He has received numerous awards in his ten years with the Department. He was Trooper of the year for his assigned post five out of the ten years. He received Canine awards, post awards, and an award from MADD. He was a canine handler and was informed that the Department was disbanding their canine unit. To continue his canine career, he applied with SLED. (Transcript, pp. 91-97)

The weekend before February 6, 2024, Vargo's daughter started getting sick. He was scheduled to work Monday through Wednesday and was scheduled for a holiday Thursday because he had to use the holiday comp time. His wife stayed home Monday because he had court. He was supposed to pick up a new patrol car on Tuesday and had gutted his car completely out. He called his supervisor and explained his daughter was sick. He was able to get his in-laws to watch his daughter and he went and picked up the new patrol car. The previous week he had spoken with his supervisor about switching his holiday from Thursday to Wednesday because he had "something come up" Wednesday. The plan was for him to take the holiday time Wednesday and then he would work Thursday. His supervisor told him to remind him later in the week. With everything going on, he and his supervisor forgot. When his daughter got sick, he knew he was going to be out the rest of the week and would not be able to work Thursday so the family sick leave and the holiday leave were both going to be used. (Transcript, pp. 98-102)

When Boehm told him that he entered the leave, he assumed he was correct. Boehm did not show him the SCEIS entry, but he has had instances where someone else enters his leave when he is not near a computer. He has also had instances where they have gone back and made changes to match the calendar. Based off the SCEIS entry, he does not know if he went in and put in the holiday leave for Wednesday and the family sick leave for Thursday and then someone in administration changed it to match the schedule since the schedule had him taking the holiday leave on Thursday. He did not knowingly or willfully lie about his leave. He had plenty of annual leave he could have taken. (Transcript, pp. 104-106)

When he applied to work for highway patrol in 2013, he first filled out an online application. He filled it out on August 19, 2013. To his knowledge he did not lie or falsify any information on that document. He went and participated in a polygraph examination on October 2, 2013. There was also a

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home interview conducted. He did tell them that he took prescription medication that did not belong to him. Because it was so long ago he does not remember if they went into details about when he took Adderall and whether the interviewer told him not to worry about it. He did notify them that he used prescription medication that didn't belong to me before. (Transcript, pp. 111-116)

When he applied to SLED, he called up friends from college who now work for SLED to use as references. During those conversations they reminisced about the dumb things they did in college. When he entered the interview room at SLED, the interviewer was an old roommate of some of his college friends. He simply remembered the information and was trying to be "100 percent" honest about everything. (Transcript, pp. 117-119) Vargo attests he has not tried to deceive anybody.

On cross-examination, he spoke with his supervisor the previous week about using the holiday leave on Wednesday, instead of Thursday. He did tell his supervisor that he would need to use family sick leave and that his daughter was still sick. Because his daughter was sick one day was going to be holiday leave and one was going to be family sick leave. (Transcript, pp. 126-130)

When he initially answered the SLED questionnaire he told them he used Adderall a few times, but the polygrapher told him he had to put in an exact number. He told them he could not give them an exact number because he really didn't remember. He remembered it was not something he commonly did, but in his last two years he started to struggle, and he did use Adderall to help him study for tests. At that point in his life, he didn't know what controlled substances were since he was not a drug person. He did not have a law enforcement background. It was something he did a very few times and did not recall at that moment. Now years later, after talking with college friends who were also employed with SLED, he remembered it and wanted to be 100 percent honest. The number 20 was a generous approximation because they wanted an exact number, and he could not give them one. He put 20 down because he knew he did not have nearly that many. He told them it was a few times. It was not even enough for him to recall. (Transcript, pp. 131-134) All his Adderall usage occurred before he came to work for highway patrol. He filled out three documents with highway patrol. None of those mention he used Adderall in college. He did not mention it because he did not recall it at that time. He graduated and walked from college in May of 2013. He did not deny using it, but he did not recall the Adderall when he applied for highway patrol. "If I don't remember something, I can't tell you about it." (Transcript, pp. 135-140)

State's Exhibit 1:

This exhibit is three segments from a recorded interview between Boehm and Vargo. Vargo 1 is approximately three minutes long and outlines Boehm stating the recording and recitation of Garrity and

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putting Vargo under oath. It begins with the conversation about how the administrative investigation started. Vargo 2 is five seconds where Boehm mentions Adderall and cuts off before Vargo responds. Vargo 3 appears to be the rest of that segment and is approximately twenty-three minutes long. Vargo 3 is the only segment with potentially useful information.

Boehm asks Vargo why he did not disclose his use of Adderall in 2013 when he originally applied to join the highway patrol. Vargo states "again" he does not know if he ever once thought about it when he was doing the polygraph. He wasn't hiding anything. It must not have been on his conscious at that time. The recent SLED interview he was being nit-picky.

They then moved to the issue with his leave. Vargo states exactly what he testified to during the hearing. He was intending to use the holiday leave that was scheduled for Thursday on Wednesday for the polygraph, but then his daughter got sick, and he knew he would be out both days for his daughter's sickness, so he just said sick leave for Wednesday and then claimed holiday leave Thursday when he was home with his sick child.

V. ANALYSIS

The Department is required to prove, by the preponderance of evidence, the Officer engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, by "the misrepresentation of employment-related information", "willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State", and/or the Officer provided "false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State."

"Preponderance of evidence" is evidence which convinces the fact finder as to its truth. (See, e.g., Pascoe v. Wilson, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) citing Gorecki v. Gorecki, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Cl. App. 2010).) Further, a showing of a preponderance of the evidence means, "(t)he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be." (See, "preponderance of evidence", *Black's Law Dictionary*, (11th ed. 2019).)

To "misrepresent" may be defined as "to give a false or misleading representation of usually with an intent to deceive or be unfair." (See, "misrepresent", *Merriam-Webster Dictionary* online at

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<https://www.merriam-webster.com/dictionary/misrepresent>) Accordingly, misrepresented information is information which is provided for a false or misleading purpose, usually allied with an intent to deceive the recipient. A "misleading" statement is one that is "deceptive." (See, <https://www.dictionary.com/browse/misleading>) Similarly, a "deceitful" statement, is one that is "intended to deceive" or is "misleading." (See, <https://www.dictionary.com/browse/deceitful>) An incomplete statement is one that is "lacking some part." (See, <https://www.dictionary.com/browse/incomplete>) The term "willful" may be defined as follows:

willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong... (See, *Black's Law Dictionary* (10 ed. 2014))

Based on the evidence presented at the contested case hearing in this matter, the Department's allegation concerns two separate issues. First, the Department alleges the Officer committed misconduct when he reported he was staying home with a sick child Wednesday February 7, 2024, when part of that day he was in Columbia for a job interview. Second, the Department alleges the Officer committed misconduct when he failed to specifically admit to using Adderall in college when he was interviewed and hired in 2013, but later admitted to the use when he applied for a job a SLED.

Regarding the first allegation, the Department has failed to prove by preponderance of the evidence that the Officer committed misconduct. The Officer gave a consistent and credible explanation for the leave issue. He was required to take holiday leave that week which the Department scheduled for that Thursday. As had been done in the past and the Department did not refute, he spoke with his supervisor about switching the holiday leave to Wednesday since it had to be used and would allow him to attend the job interview. He did not tell his supervisor about the job interview because he was not required to. He then planned to work Thursday. When his child got sick, he knew he would have to be home with the child both Wednesday and Thursday because the child would not be able to go back to daycare for at least 24 hours after all symptoms stopped. He was home Thursday with the sick child, so a full day of family sick leave was used. One presumably may use holiday time for whatever one wishes. In this case, approximately five hours was used to go to a job interview and the rest was used to care for a sick child. In the state leave record keeping program (SCEIS) it had down that family sick leave was used Wednesday and holiday leave was used Thursday when in reality they were switched. There was no deception here. Nothing was stolen. This is clerical and substantively does not matter. The Department's own exhibit suggests that the Officer may have recorded it correctly and the Department changed it or that the

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Department entered the information incorrectly. (See State's Exhibit 3) Testimony supported that leave may be changed after that fact and often was if it did not match the written schedule. There was no misconduct in this instance.

In the second instance, the Department has provided sufficient evidence that the Law Enforcement Training Council could find misconduct occurred. From the record, the Officer used Adderall at least a few times in his last two years of college. He testified he bought them from another person to help him study for big exams. He graduated in May of 2013 and then applied to work for the highway patrol in August 2013. In that application he was asked if he every used or experimented with any controlled substance within the last ten years and he answered no. Later during an at home interview, he was asked if he ever used or experimented with any prescribed medication, and he did not check the "yes" box but added "maybe in childhood from his mother." Finally, in the questionnaire as part of a polygraph exam for the Department he was asked if he ever used someone else's prescription drug. The Officer answered "no." It is understandable that someone would not remember all the details of multiple interviews from ten years ago, but the Officer's only answer is either he must have discussed the Adderall use with the interviewer or that he simply forgot he was purchasing someone's prescribed medications as a study aid mere months before applying for the job. It does appear that the SLED interviewers asked much more detailed questions. In State's Exhibit 4, the Officer's admission appears to be added after the initial explanation. The Officer testified that the SLED interviewers required an exact number of pills when he really could not remember. It is plausible that the Officer was so naïve that he did not know what a controlled substance was and that he only took the pills a few times, so they simply did not come to his mind when filling out his application and then later when he was being interviewed and polygraphed by highway patrol. It is plausible that being a seasoned officer speaking with an interviewer who knew of him in college that he remembered the pills ten years later and wished to overstate the issue to be one hundred percent honest. State's Exhibit 7 was the pre-polygraph questionnaire the Officer took before he was hired by the Department in 2013. It shows he answered "No" to ever using someone else's prescription drug. It also asked if he intentionally omitted any facts from any questions asked and he again answered "No." Human memory is notoriously unreliable. However reviewing the entire record, there is sufficient evidence that it is more likely than not that the Officer was misleading about his Adderall use when applying with the Department. As such, the Department has proven, by the preponderance of the evidence, that Officer engaged in misconduct as defined by S.C. Code Ann. § 23-23-150.

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FINDINGS OF FACT

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we find as a fact:

1. The allegations of misconduct against Officer in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) to the Criminal Justice Academy (Academy) by the Department, is supported by the evidence adduced at the contested case hearing;
2. The Department met its burden of showing by a "preponderance of evidence" that Officer engaged in misconduct through wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State, as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
3. The Department met its burden of showing by a "preponderance of evidence" that Officer engaged in misconduct by wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State as was alleged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy; and
4. The allegations of misconduct against Officer set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed proven by the preponderance of evidence adduced at the contested case hearing.

CONCLUSIONS OF LAW

Based on the Hearing Officer's Recommendation, Hearing Transcripts, Hearing Exhibits, motions, oral arguments, and all factors offered by the Officer in mitigation we conclude as a matter of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council ("Council") is authorized, *inter alia*, to "provide for suspension, revocation, or restriction" of law enforcement certification in accordance with the regulations promulgated by the Council;
2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification "based on evidence satisfactory to the Council that the candidate has engaged in misconduct";

Vargo

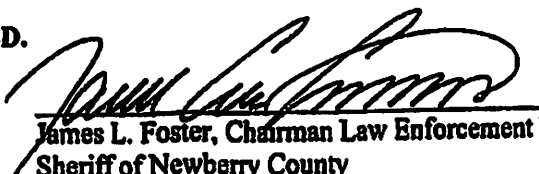
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3. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (i) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State as was alleged and reported to the Academy by the Department;
4. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (k) wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State as was alleged and reported to the Academy by the Department;
5. The misconduct allegations reported by the Department have been proven by a preponderance of the evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct; and
6. Pursuant to S.C. Code Ann. Regs. 37-025, satisfactory evidence exists to support the Council's denial of Officer's eligibility for certification as a law enforcement officer in the State of South Carolina.

SANCTION

THEREFORE, IT IS ORDERED: Officer is permanently denied a law enforcement certification in South Carolina.

AND IT IS SO ORDERED.


James L. Foster, Chairman Law Enforcement Training Council
Sheriff of Newberry County
On Behalf of the Law Enforcement Training Council

April 26 2025

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**LAW ENFORCEMENT TRAINING COUNSEL
CRIMINAL JUSTICE ACADEMY**

In the Matter of the Issuance
of Law Enforcement Officer
Certification to Joshua A. Vargo

South Carolina Department of
Public Safety

Case No. 2024-CJA-05-01

**MOTION IN SUPPORT OF AND IN
OPPOSITION TO THE HEARING
OFFICER'S RECOMMENDATION**

The South Carolina Department of Public Safety ("Department") hereby submits its Motion in Support of and in Opposition to the Recommendation of Hearing Officer Rebecca Williams issued on December 30, 2024 regarding the law enforcement certification of Joshua A. Vargo.

Mr. Vargo was terminated as an officer with the Department effective March 6, 2024 for failure to provide truthful and complete information, falsification of application for employment, and other policy violations. Following Mr. Vargo's termination, the Department submitted a Personnel Change in Status Report ("PCS") to the Criminal Justice Academy ("CJA") on May 1, 2024. The PCS indicated that Mr. Vargo was terminated for misconduct including: (1) misrepresenting employment-related information; (2) willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency; and (3) and willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State.

A hearing concerning Mr. Vargo's law enforcement certification was held on September 25, 2024 with Ms. Williams serving as the hearing officer. Following the presentation of the evidence at the hearing and a thorough review of the arguments presented by the parties, Ms.

Williams concluded that "there exists [a] preponderance of evidence that [Mr. Vargo] committed misconduct . . . by having 'willfully made false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State'" and "by the misrepresentation of employment-related information." (Recommendation at p. 11) Further, she recommended that the Law Enforcement Training Council ("Council") "[i]ssue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against [Mr. Vargo] by the Department has been proven by the preponderance of evidence" (*Id.* at p. 12)

A. The Hearing Officer Correctly Concluded that Mr. Vargo Made Dishonest Statements to the Department During the Employment Process in 2013.

While employed by the Department, Mr. Vargo applied for a position with the State Law Enforcement Division (SLED). As part of the employment process, SLED scheduled Mr. Vargo to undergo a polygraph examination on February 7, 2024. Before the polygraph, he was asked to complete an applicant questionnaire.

During the polygraph examination and on the applicant questionnaire, Mr. Vargo made several admissions that ultimately resulted in him no longer being considered for a position with SLED. The Department was contacted about these admissions because they potentially concerned criminal conduct. Ultimately, no charges were filed, but the information provided by Mr. Vargo was noteworthy because a statement that Mr. Vargo made on the SLED questionnaire was inconsistent with statements he made when he applied for employment with the Department in 2013.

In the section of the SLED questionnaire pertaining to drug use, Mr. Vargo answered as follows:

If you answered YES to any of the questions in this section not already covered, please explain: .

Took one "pill" of marijuana prior to LE. In college I took
Adderall a few times to help with exams/late study nights
Taken only after surgeries, always prescribed and never abused it.
2012-2013 took adderall approximately 20 times
purchased from my neighbor at \$10 a pill

Mr. Vargo's response to SLED was curious to the Department because if Mr. Vargo had in fact purchased and used Adderall in 2012-2013, it would have disqualified him from employment when he applied with the Department in 2013. (Trans. at 42:15-43:2) This prompted the Department to review what Mr. Vargo disclosed when he applied for work as a Trooper. Mr. Vargo's disclosures to the Department in 2013 were ultimately determined to be markedly different.

- On his Department employment application dated August 19, 2013, he denied the use or experimentation with any controlled substance within the last 10 years.

14. Have you used and/or experimented with any controlled substance within the last 10 years (excluding marijuana)?
No

- Before undergoing a polygraph examination for the Department on October 2, 2013, Mr. Vargo was asked about the use of medication not prescribed to him: His response was as follows:

12. Have you ever used someone else's prescription drug? YES () NO (X)
If YES, explain:

- During a meeting with a background investigator on October 24, 2013, Mr. Vargo was again asked about the use or any prescribed medication not prescribed to him. His response was as follows:

16. Have you ever used and/or experimented with any prescribed medication not prescribed to you?

Yes ☐ No ☒

Date 1st Time: _____ Date Last Time: _____ Total Times: maybe childhood form mother

Thus, on three separate occasions during the employment process in 2013, the Department asked Mr. Vargo about the use of controlled substances. Mr. Vargo's only disclosure about the use of controlled substances was that he may have used prescribed medication from his mother as a youth. At no time did he mention purchasing and using Adderall in 2012-2013 as described in his SLED polygraph questionnaire.

Notably, Mr. Vargo made his disclosure about the use of Adderall to SLED in 2024, approximately 10-11 years after he purchased and used the drug "approximately 20 times." Despite making this disclosure to SLED over a decade after his Adderall use, he failed to disclose it to the Department in 2013 when he applied for employment, which was far closer in time to his use.

Mr. Vargo's motivation for concealing his Adderall use in 2013 is apparent when viewed in the context of the Department's hiring standards in place at that time. As discussed earlier, an admission to the use of Adderall in 2013 would have been an automatic disqualifier from employment with the Department. (Trans. at p.42:15-43:2) By concealing his recent use of Adderall in 2013, Mr. Vargo avoided disqualification from potential employment with the Department. He was less concerned about the disclosure of Adderall use in 2024 since over a decade had passed since he used the drug.

Based on Mr. Vargo's multiple dishonest representations about Adderall use to the Department in 2013, the hearing officer correctly concluded that there was "sufficient evidence that it is more likely than not that [Mr. Vargo] was misleading about his Adderall use when applying with the Department." (Recommendation at p. 9)

B. Mr. Vargo was Dishonest in a Text Message to his Supervisor.

The Department made a separate allegation of misconduct unrelated to the disclosure of drug use. The hearing officer determined that the Department did not meet its burden of proof and recommended against a finding of misconduct as to this allegation. The Department therefore submits this motion in opposition to that portion of the recommendation.

The other allegation of misconduct centered on a statement made by Mr. Vargo concerning his use of leave when he went to SLED for his polygraph. As discussed earlier, Mr. Vargo was scheduled to undergo a polygraph on February 7, 2024. (Trans. at p. 33:3-9) The day before the polygraph, Mr. Vargo was scheduled to pick up a new patrol vehicle but discovered that morning that his toddler was sick. (Id. at pp. 27:8-28:1) He contacted his immediate supervisor, Corporal V.A. Albert, to inform him of the situation. (Id. at pp. 28:13-17) Mr. Vargo advised that he could arrange for his in-laws to look after his toddler for a few hours while he drove to Columbia so that he did not have to postpone picking up his new vehicle, which Cpl. Albert authorized. (Id. at pp. 28:13-24)

Cpl. Albert texted Mr. Vargo later that day to inquire about his working time. (State's Ex. No. 2) After Mr. Vargo shared with him how he spent his day, Cpl. Albert instructed him to enter 6 hours of working time and 4 hours of Family Sick Leave. (Id.) This was intended to cover the time spent picking up his vehicle and the hours spent caring for his sick child.

The next day (February 7), Cpl. Albert texted Mr. Vargo when he did not appear for his scheduled shift. (Id.) In response, Mr. Vargo texted: "[Family Sick Leave] again. [My child] was up all night throwing up still." (Id.) The Department's investigation revealed that at the time he sent the text, Mr. Vargo was preparing to travel to SLED for his polygraph. (Trans. at p. 39:10-

20) Mr. Vargo acknowledged that he left his home around 0700 hours to travel to SLED and was home around 1230-1300 hours (the entire trip taking 5½ to 6 hours). (Id. at pp. 34:11-36:3)

The hearing officer determined that the Department failed to prove by a preponderance of the evidence that Mr. Vargo's time entry on February 7 was false. However, this was not the lone instance of misconduct associated with Mr. Vargo's conduct on February 7. The hearing officer failed to consider the allegation that Mr. Vargo's text message to Cpl. Albert was false.

When Cpl. Albert texted Mr. Vargo regarding his whereabouts on the morning of February 7, Mr. Vargo responded "[Family Sick Leave] again. [My child] was up all night throwing up still." His message to Cpl. Albert was clear – my daughter is still sick, and I intend to use family sick leave to care for her today. In fact, at the time he sent the message, Mr. Vargo was preparing to travel to SLED to participate in a polygraph. Thus, his message to Cpl. Albert was false. Mr. Vargo was not obligated to tell anyone with the Department about his efforts to secure employment with SLED, but he was not permitted to use his daughter's illness as a subterfuge to explain his absence from work.

C. The Department's Allegations of Misconduct Do Not Concern Responses Given During a Polygraph Administered in 2013.

In his Motion in Opposition, Mr. Vargo suggests that "[i]t was error for the Hearing Officer to determine the issue of truth and veracity regarding responses given in a polygraph administered in 2013 (over 10 years ago) absent the presence and testimony of the polygrapher who administered the test and full polygraph reports including all questions, including control questions and any charts resulting from the polygraph." (Motion at p. 3)

This argument ignores the source of Mr. Vargo's dishonest statements given to the Department in 2013. The Department did not present any results from a polygraph. Rather, the dishonest statements were made: (1) on Mr. Vargo's employment application, (2) on Mr. Vargo's polygraph

questionnaire, and (3) during a pre-employment background interview. The employment application and polygraph questionnaire were completed and signed by Mr. Vargo himself. (State's Ex. Nos. 5 and 7) Thus, the Department did not rely on the results of a polygraph or the statements of third parties, but rather Mr. Vargo's own written statements and verbal responses from an interview.

D. Mr. Vargo does not possess a right to a jury trial in an administrative proceeding.

In his Motion in Opposition, Mr. Vargo argues that it is error for the Council to consider his certification absent a jury trial. In a proceeding where a professional license is at issue, there is no such right. The manner in which allegations of law enforcement misconduct are adjudicated is set forth in S.C. Code § 23-23-150 and S.C. Code Regs. 37-105. These statutory provisions do not contemplate a jury trial, nor are they required to. The state's constitutional right to a jury trial has been interpreted as guaranteeing "the right to a trial by jury . . . in every case in which the right to a jury was secured at the time of the adoption of the Constitution in 1868." In re Stephen W., 409 S.C. 73, 77, 761 S.E.2d 231, 233 (2014) (citations omitted). Thus, Mr. Vargo would only be entitled to a jury trial if law enforcement certification proceedings were subject to jury trials in 1868 (which they were not).

On the question of the revocation of a professional license, the only procedural requirement is that of procedural due process. Zaman v. South Carolina State Bd. of Medical Examiners, 305 S.C. 281, 284, 408 S.E.2d 213, 215 (1991). "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form of procedure." S.C. Dep't of Lab., Licensing & Regul. v. Girgis, 332 S.C. 162, 166, 503 S.E.2d 490, 492 (Ct. App. 1998) (citations omitted). Procedural due process requires certain minimum elements, including "(1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." Id. Each of these procedural elements were provided to

Mr. Vargo by way of the hearing protocol outlined in S.C. Code § 23-23-150 and S.C. Code Regs. 37-105.

E. The Council has not Adopted a Per Se Rule of Permanent Decertification.

Mr. Vargo appears to argue that the Council has voiced an opinion that "the only option ever for the LETC was permanent denial and/or revocation (withdrawal of certification)." (Motion at p. 9) (emphasis in original) He claims that permanent denial of certification is applied to the exclusion of less severe sanctions described in S.C. Code Regs. 37-108(A)(2) & (5) - this is not the case.

Following findings of misconduct, the Council routinely grants certification with probation or with additional training requirements, both remedies that are less severe than permanent decertification. The Council has, however, consistently imposed permanent decertification as a penalty in cases of dishonesty. Given that dishonesty is one of the most significant offenses that a law enforcement officer can commit, it is reasonable to expect that the Council would impose a significant sanction. The fact that the Council regularly imposes the same sanction for the same offense is not evidence of overreach, but rather of consistency.

Conclusion

The Department concurs in part and disagrees in part with Hearing Officer Williams' recommendation and hereby requests the Law Enforcement Training Council to make a finding of misconduct.



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January 30, 2025

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement Certification of Joshua Vargo) Docket Number 2024-CJA-05-01
)
)
) MOTION IN OPPOSITION
South Carolina Dept. Public Safety) TO THE HEARING OFFICER's
_____) RECOMMENDATION

Hearing Officer: Rebecca Williams
Hearing Date: September 25, 2024
Hearing Reporter: Diane Marie Hendricks, Southern Reporting, Inc.

Appearances

For Officer: John A. O'Leary, Esq.
For Agency: Marcus Gore, Esquire

Joshua Vargo (Vargo), in response to an allegation of certification misconduct reported by the South Carolina Dept. of Public Safety (Department) to the South Carolina Criminal Justice Academy (Academy), pursuant to the requirements of S.C. Code Ann. Regs. 37-023, timely requested a contested case hearing to address the allegation of misconduct filed against him. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D).

II. ALLEGATION OF MISCONDUCT

The Personnel Change in Status Report (Notification of Separation Due to Misconduct) submitted May 1, 2024, provided to the Academy by the Department alleged Officer committed misconduct, as specified in S.C. Code Ann. § 23-23-150, by misrepresenting employment-related information, by having willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency and willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State. The Department alleges Officer was untruthful to his supervisor by using

Family Sick leave for a sick child and also going to Columbia to attend a previously scheduled appointment with SLED. After the appointment, the Department further allege that Vargo fraudulently documented a full workday of Family Sick leave. The Department also alleged that Vargo failed to disclose his illegal drug use prior to his employment and then later voluntarily admitted to the drug use with another law enforcement agency, SLED.

III. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence:

Council Exhibit 1- Letter in reference to Allegation of Certification Misconduct and Right to Contested Case Hearing
State's Exhibit 1- Audio/videotape
State's Exhibit 2- Text Message Exchanges
State's Exhibit 3- SCEIS Record
State's Exhibit 4- SLED Applicant Questionnaire
State's Exhibit 5- 2013 DPS Employment Application
State's Exhibit 6- 2013 DPS Employee Background Investigation Report
State's Exhibit 7- 2013 DPS Questionnaire

B. Testimonial Evidence

The following testimony was accepted into evidence:

1. Testimony of Captain John Joseph Boehm
2. Testimony of Joshua A. Vargo

IV. BACKGROUND

Vargo was employed by the Department for approximately 10 yrs. He is a married family man with 2 small children and volunteer fire fighter of over 10 years. Following graduation from college, he joined the Department in 2013 and for 5 out of 10 years of service he was *Trooper of the Year* for his district and in 2023 progressed to a specialized K9 unit within the Department. In early 2024 he was notified that due to financial cut backs his position in K9 was to be eliminated. As a consequence, Vargo was approached by SLED and asked to apply for their K9 department, which he did.

During the 2024, SLED interview process Vargo's responses appeared to be contrary to those responses given over 10 years prior in his 2023 Departmental interview. On 10/2/2013 a polygraph was administered by, Harry Morral who was not present to testify at the Academy hearing, 9/25/24. In 2024, the SLED interview polygraph was administered by Scott Smith who was also not present at the hearing in this matter.

Vargo was further accused of falsifying documentation on the date of the SLED interview since his daughter was also sick that day and he was home to care for her. The issue was litigated before the Hearing Officer who found that, after reviewing the Family Medical Leave paperwork, it was never in question that Vargo's daughter was sick that day (HOR pg4). The Hearing Officer found that employees entered their leave time in SCEIS at different times. Vargo entered his leave the day after, and could have been corrected by an administrator (HOR pg 50-65). Regarding leave on 2/7/24, part of the day he was at the SLED interview and part he was caring for his sick child. Vargo was found to give a credible explanation to the Hearing Officer and no deception was found or proven by the Department. No work time was stolen from the Department by this officer who had accumulated over 700 hours of leave time. The Hearing Officer decided this allegation was simply a clerical error and did not matter. The Department's own exhibits showed that the officer correctly entered time and the Department then had clerical errors (HOR pg.8). The allegation of misconduct for untruthfulness regarding 2/7/24 was dismissed.

V. ISSUES

The Hearing Officer's Recommendation is in error for the following reasons:

1. It was error for the Hearing Officer to determine the issue of truth and veracity regarding responses given in a polygraph administered in 2013 (over 10 years ago) absent the presence and testimony of the polygrapher who administered the test and full polygraph reports including all questions, including control questions and any charts resulting from the polygraph.

2. It is error to subject a state employee to an administrative proceeding absent a right to a jury trial when an adverse decision against the Officer can permanently remove his certification and employment in a profession requiring certification. This is contrary to the Supreme Court's decision in SEC v. Jarkesy, 603 U.S. 109, Supreme Court Opinion No. 22-859. (2024). Further, a finding of misconduct and permanent removal of certification would violate Vargo's rights under South Carolina's state Constitution.

VI. ARGUMENT

1. It was error for the Hearing Officer to determine the issue of truth and veracity regarding responses given in a polygraph administered in 2013 (over 10 years ago) absent the presence and testimony of the polygrapher who administered the test and full polygraph reports including all questions, including control questions and any charts resulting from the polygraph.

The Recommendation was in error for making conclusions regarding the polygraph taken in 2013 absent testimony or compete documentation by the polygrapher who was not present to testify. Vargo was asked about substance abuse in the last 10 years and responded, "no". During subsequent interview he was asked if he ever used prescribed medicine incorrectly and he failed to check a box "yes" but at age 9 years, had used adderall prescribed for his mother. (HOR pg. 9) The Hearing Officer found it understandable that Vargo did not remember all details of the employment interviews over the 10 year period and that the details did not exactly match the SLED polygraph over a decade later when he was asked different worded questions. Vargo testified that he must have discussed the adderall use at the interview in 2013 and forgot about it in 2024. The Hearing Officer acknowledged that the SLED interview in 2024 was far more in-depth and detailed than that conducted by the Département in 2013. Further that the Departments interview records and video/audio recordings for 2013 were incomplete and the interviewers were not present to testify before the Hearing Officer. The Hearing Officer also found that in

2013 it was possible that Vargo did not understand what a controlled substance was as this was prior his law enforcement training. He was a child when he took the adderall and when questioned by SLED he gave the best answers he could decades later.

The Hearing Officer's decision was made by comparing what was presented on the tapes from 2013, absent the interviewer. The Hearing Officer found that it was more likely than not that the officer was misleading concerning the adderall when applying with the Department. This position is contrary to the fact that Vargo admitted the adderall use and he testified in both employment interviews regarding the use of adderall obtained from his mother. It is Vargo's position that he was not intentionally misleading at any time, in either employment interview and he passed both polygraphs without deception, was truthful and not misleading. Despite his recorded truthfulness in the polygraphs, Vargo was found guilty by the Hearing Officer absent complete video and document records of the 2013 interview and absent the testimony of the interviewers. The Hearing Officer is therefore in error and made a determination that eradicates Vargo's entire career as the Law Enforcement Training Council (LETC) according to Chair Keel, does not consider the alternative remedies available to them, such as retraining or a period of probation provided in SC Code 37-108(A), and always permanently denies certification (LETC meeting 11/18/24 and 12/16/24).

It is Vargo's position that the Hearing Officer was incorrect in her determination because Vargo admitted in both interviews that he had used adderall and passed both polygraphs as truthful. A proper comparison of the interviews is not possible due to the time that has passed, the unavailability of the interviewers and polygraphers and the incomplete tape and document records by the Department in 2013. It is critical to recognize that documentation in allegations of this nature must be complete and interviewees available for cross-examination. It is fundamentally unfair to compare two interviews without full and complete evidence. It was bound to be found that the two polygraphs showed inconsistencies given that different questions were asked by different polygraphers. Vargo's admirable service of over 12 years and his entire career is destroyed by this error of the Hearing Officer.

2. It is error to subject a state employee to an administrative proceeding absent a right to a jury trial when an adverse decision against the Officer permanently removes his certification and employment in a profession requiring certification. This is contrary to the Supreme Court's decision in SEC v. Jarkesy, 603 U.S. 109, Supreme Court Opinion No. 22-859. (2024). Further, a finding of misconduct and permanent removal of certification would violate Vargo's rights under South Carolina's State Constitution.

It is the position of Vargo that the policy of the LETC is in error, and was brought to their attention in LETC meetings, 11/18/24 and 12/16/24, where the LETC Chairman, Chief Mark Keel (Chairman), SLED stated that the only punishment in a case of misconduct has to be permanent loss of certification, which is contrary to SC Code 37-108(A). It is further critical that the LETC recognize that the practice of only applying permanent decertification is contrary also to the reasoning of the Supreme Court in SEC v. Jarkesy, 603 U.S. 109 (2023), Supreme Court Opinion No. 22-859. (Decided 6/27/2024) and Vargo's rights under South Carolina's State Constitution.

The actions taken by the LETC under the provisions of the law of South Carolina for the LETC provides only one option of a hearing before the council and the hearing officer and no jury trial has ever been provided despite that the final decision by the LETC deprives the party of their license and ability to work in law enforcement where they were certified. The issue with the position of the LETC Chairman is that his position ignore the laws of South Carolina giving alternative options to permanent decertification and further that not all cases and facts demand the same ultimate punishment. The State of South Carolina and its legislative determination for the LETC provided different remedies given that cases and situations differ in material fact and severity. Not all cases warrant permanent revocation of certification. To permanently deny certification is a violation of Jarkesy set forth by the Supreme Court and further it totally defeats the purpose of the legislature in SC Code 37-108(A). Jarkesy sets forth that the SEC administrative body had no right to deprive any American person of their constitutional rights to an independent judgement by a jury of their peers or the procedural protections at trial that due process normally demands.

In *Jarksey*, Chief Justice Roberts found that the SEC initiated an enforcement action against respondent Jarksey, seeking penalties for alleged securities fraud. The SEC chose to adjudicate the matter in house before one of its administrative law judges rather than a federal court where respondent's could proceed before a jury. The court said that they considered whether the 7th Amendment permits the SEC to compel respondent's to defend themselves before an agency rather than before a jury in federal court. When comparing *Jarksey* against the LETC's powers to certify officers in law enforcement it is clear that the LETC was established absent any jury rights for the contesting party. The underlying premise of the decision was that there were exceptions for congress to assign certain matters to agencies for adjudication, however after reviewing the SEC's statutory provisions, the requirements of the 7th Amendment and a jury trial was required. The Court references, "*The right to trial by jury is 'of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right' has always been and 'should be scrutinized with the utmost care.'*" Dimick v. Schiedt, 293 U. S. 474, 486, 55 S. Ct. 296, 79 L. Ed.603 (*Jarskey* pg 8) In Vargo, the applicants right to certification in law enforcement is limited per the statute by the state of South Carolina and nowhere in the statute does it reference a right of a jury trial for the applicant to contest decertification, contrary to the State's Constitution.

In Vargo's case the remedies are set forth in S.C. Code 37-108(A) (1)(2)(3)(4)(5) are as follows:

1. *Permanent denial and/or revocation (withdrawal) of certification;*
2. *Denial and/or revocation (withdrawal) of certification for a specified amount of time;*
3. *Certification granted with probation;*
4. *Certification granted with any additional requirements deemed just and proper by the Council; and/or*
5. *Public reprimand.*

However, according to the LETC Chair Keel, at their meeting on 11/18/24, he states that the only option ever for the LETC was permanent denial and/or revocation (withdrawal) of certification. It is therefore clear that permanent loss of certification is the only remedy being applied by the LETC to the exclusion of S.C. Code 37-108(A)(2)(3)(4)(5). Certification in law enforcement resides in the sole hands of the LETC and at no time has a trial by jury ever taken

place. Having only one remedy applied by the LETC, is contrary to basic fairness as well as the concepts set forth in *Jarksey*. The right to a basic fairness is one that Vargo retains. It is improper for the LETC by their actions to engage in a procedure and a policy that is contrary to the basic tenants set forth by the US Supreme Court and South Carolina Constitution. The action taken by the LETC in permanently denying certification, permanently denies the applicant constitutional rights which are provided under the US Constitution and in *Jarksey*.

In reviewing *Jarksey* it appears that the 7th Amendment right to a trial by jury is not binding on state court cases. It is the position of Vargo's counsel that *Jarksey* may not be binding on state court cases however a review of the South Carolina Supreme Court as well as the Constitution of the State of South Carolina it is clear that there is a right to trial by jury historically. State constitutions guarantee the right to a jury trial to the extent that exists under common law at the time of the adoption of the Constitution. Based upon that principal it is the position of Vargo that the actions taken by the LETC are contrary to the Constitution. The basic principal set forth in *Jarksey*, particularly due to the LETC actions of ignoring 4 other available remedies in certification misconduct cases. The Hearing Officer is therefore in error to recommend that misconduct is found when the LETC is acting contrary to the US Supreme Court decision in *Jarksey* and South Carolina's Constitution.

VI. CONCLUSION

Therefore, for the reasons given above we ask that the Law Enforcement Training Council of the SCCJA reject or reverse the Hearing Officer's Recommendation and finding of misconduct. In the alternative impose a period of probation or suspension with retraining as the Council deems fit, allowing Vargo to be eligible to be certified as a Law Enforcement Officer in South Carolina.

[signature on next page]

Respectfully submitted,


JOHN A. O'LEARY
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Columbia, South Carolina

22 January, 2025

STATE OF SOUTH CAROLINA

Before the South Carolina Law Enforcement Training Council

In the Matter of the Law Enforcement)
Certification of Joshua A. Vargo)

Docket Number 2024-CJA-05-01

South Carolina Dept. of Public Safety)

FINDINGS AND RECOMMENDATIONS OF HEARING OFFICER (Contested Case)

Hearing Officer: Rebecca Williams
Hearing Date: September 25, 2024
Hearing Reporter: Diane Marie Hendricks, Southern Reporting, Inc.

Appearances

For Officer: John O'Leary, Esquire
For Agency: Marcus Gore, Esquire

I. JURISDICTION AND AUTHORITY FOR HEARING

The undersigned, a member in good standing of the South Carolina Bar employed as an attorney by the South Carolina Criminal Justice Academy, was duly appointed by the South Carolina Law Enforcement Training Council (Council), pursuant to S.C. Code Ann. § 23-23-80 (10), to sit as hearing officer for the contested case hearing in this matter, pursuant to S.C. Code Ann. § 23-23-150 (D).

Joshua Vargo (Officer), in response to an allegation of certification misconduct reported by the South Carolina Dept. of Public Safety (Department) to the South Carolina Criminal Justice Academy (Academy), pursuant to the requirements of S.C. Code Ann. Regs. 37-023, timely requested a contested case hearing to address the allegation of misconduct filed against him. Notice of the contested case hearing was communicated to the Officer and the Department, in accordance with the requirements of S.C. Code Ann. § 23-23-150 (D).

II. ALLEGATION OF MISCONDUCT

The Personnel Change in Status Report (Notification of Separation Due to Misconduct) submitted May 1, 2024, provided to the Academy by the Department alleged Officer committed misconduct, as specified in S.C. Code Ann. § 23-23-150, by misrepresenting employment-related information, by having willfully made false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement

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officer, a law enforcement agency, or a representative of the agency and willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State.

Factually, the Department alleges Officer was untruthful to his supervisor when he indicated he needed to use Family Sick leave for a sick child and instead traveled to Columbia to attend a previously scheduled appointment. After the appointment, the Officer fraudulently documented a full workday of Family Sick leave. The Department also alleged that Officer failed to disclose his illegal drug use prior to his employment and then later voluntarily admitted to the drug use with another law enforcement agency.

III. DOCUMENTARY AND TESTIMONIAL EVIDENCE

A. Documentary Evidence

The following documentation was accepted into evidence at the September 25, 2024, hearing and made a part of the record:

Council Exhibit 1- Letter in reference to Allegation of Certification Misconduct and Right to Contested Case Hearing
State's Exhibit 1- Audio/videotape
State's Exhibit 2- Text Message Exchanges
State's Exhibit 3- SCEIS Record
State's Exhibit 4- SLED Applicant Questionnaire
State's Exhibit 5- 2013 DPS Employment Application
State's Exhibit 6- 2013 DPS Employee Background Investigation Report
State's Exhibit 7- 2013 DPS Questionnaire

B. Testimonial Evidence

The following testimony was accepted into evidence at the September 25, 2024, hearing and made a part of the record:

1. Testimony of Captain John Joseph Boehm
2. Testimony of Joshua A. Vargo

Testimony of Capt. Boehm:

Capt. Boehm is the Captain for the Office of Professional Responsibility for the Department and was assigned to investigate some allegations against Vargo. (Transcript, pp. 24-25) On February 6, 2024, Vargo was scheduled to pick up a new patrol car and was scheduled to work that day. Vargo told him that his young daughter was sick. He contacted his immediate supervisor, Corp. Albert, and advised him of the situation and his appointment to pick up the patrol vehicle. He told his supervisor that his in-laws could

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watch his daughter while he picked up the new patrol car. The corporal agreed and told him that when he was traveling to and from Columbia and picking up the patrol car he should report it as work time and the rest of the day should be reported as family sick leave. They confirmed this information in a text message. The text message conversation confirmed Vargo should put in 6-12 for working time and 12-4 as leave time. (Transcript, pp. 27-30) On February 7, 2024, Vargo was assigned to work. Corporal Albert was working when he noticed Vargo did not sign on. Since he had not received a phone call from Vargo he texted him saying "Waiting for that phone call." Vargo responded "FSL again." His daughter was still sick. (Transcript, pp. 31-32) The Department found out later that Vargo had a previously scheduled appointment with SLED at 9am which Corporal Albert did not know about. Per SLED policy, Vargo would have been notified about the appointment the previous Friday and Vargo confirmed that he knew about the appointment the previous Friday. Including travel time, the appointment took five and a half to six hours on February 7, 2024. Vargo's in-laws took care of the sick child during that time. Vargo entered a full ten hours of sick leave for February 7, 2024, into SCEIS. His leave entry was inaccurate and when he texted Corp. Albert he knew he would be going to SLED for the appointment and did not mention it. He never attempted to correct the issue later. (Transcript, pp. 33-40)

Vargo's appointment with SLED was for a potential job position. As part of the appointment, he was required to answer a questionnaire. His answers to that questionnaire were forwarded to the Department. In the questionnaire, Vargo disclosed that in 2012-2013 he took Adderall approximately 20 times which he purchased from a neighbor at \$10 dollars a pill. (Transcript, pp. 40-42) This type of disclosure when he applied to the Department would have disqualified him from being hired. Capt. Boehm compared the questionnaire from SLED with Vargo's Department questionnaires and employment application from 2013. On his department questionnaire, Vargo stated that he never used or experimented with any controlled substances within the last ten years, excluding marijuana. (Transcript, pp. 43-45) During an at home interview for the position at the Department, Vargo did not admit to the Adderall use when asked if he had ever used or experimented with any prescribed medication not prescribed to him. (Transcript, pp. 45-47) Vargo also filled out a questionnaire with the Department in October of 2013 where he was asked "have you ever used someone else's prescription drug?" Vargo answered "no." These three documents were part of the employment process Vargo went through to be hired by the Department in 2013. Vargo did not mention Adderall in any of those documents. (Transcript, pp. 48-49) When Boehm asked Vargo about the discrepancy between his answers to the Department and to SLED, Vargo figured

he did not think of it when he was applying to the Department. It was not weighing on his mind at that time, despite it being a recent occurrence. (Transcript, p. 51)

On cross-examination, Boehm explained that SLED contacted highway patrol and then the highway patrol asked OPR to investigate. Vargo was employed by the Department for a little over ten years at this point. (Transcript, p. 52) When Vargo spoke with Boehm, he admitted he did not remember the Adderall until the SLED interview. Boehm did not know that Vargo was being interviewed at SLED by people he knew from school. (Transcript, p. 58) There was never a question that Vargo's daughter was ill on February 6 and 7th. Employees put in their time in SCEIS at different times. Vargo recorded the February leave the day after. His leave could have been corrected internally by an administrator if he contacted them. (Transcript, pp. 59-65) While at the Department, Vargo was moved to the canine unit which is a prestigious, specialized unit. (Transcript, p. 66) When Boehm spoke with Vargo, he did not go over whether Vargo knew Adderall was a prescription drug. (Transcript, p. 68)

A supervisor can input leave, but changing the type of leave that was already entered would have to be done by the time administrator. (Transcript, p. 73) Boehm spoke with one of Vargo's original interviews from 2013, but not Officer Rikard because he does not work for the Department any longer. (Transcript, p. 75) Vargo acknowledged he entered his time in the SCEIS program when Boehm asked him. (Transcript, p. 76) Boehm did not believe he showed him any documentation from SCEIS when he spoke with Vargo. (Transcript, p. 88)

Testimony of Joshua A. Vargo:

Vargo is thirty-four, married with two children and lives in Aiken. He was born and raised in the Aiken area. He finished college with a degree in accounting in 2013. During college he was a paid firefighter but switched to volunteer when he joined highway patrol. He was officially hired by highway patrol in January of 2014. He was interviewed in Columbia and at his house. He was interviewed by a board, then at his home and then there was a polygraph. He was hired and assigned to Aiken County. He has received numerous awards in his ten years with the Department. He was Trooper of the year for his assigned post five out of the ten years. He received Canine awards, post awards, and an award from MADD. He was a canine handler and was informed that the Department was disbanding their canine unit. To continue his canine career, he applied with SLED. (Transcript, pp. 91-97)

The weekend before February 6, 2024, Vargo's daughter started getting sick. He was scheduled to work Monday through Wednesday and was scheduled for a holiday Thursday because he had to use the

holiday comp time. His wife stayed home Monday because he had court. He was supposed to pick up a new patrol car on Tuesday and had gutted his car completely out. He called his supervisor and explained his daughter was sick. He was able to get his in-laws to watch his daughter and he went and picked up the new patrol car. The previous week he had spoken with his supervisor about switching his holiday from Thursday to Wednesday because he had "something come up" Wednesday. The plan was for him to take the holiday time Wednesday and then he would work Thursday. His supervisor told him to remind him later in the week. With everything going on, he and his supervisor forgot. When his daughter got sick, he knew he was going to be out the rest of the week and would not be able to work Thursday so the family sick leave and the holiday leave were both going to be used. (Transcript, pp. 98-102)

When Boehm told him that he entered the leave, he assumed he was correct. Boehm did not show him the SCEIS entry, but he has had instances where someone else enters his leave when he is not near a computer. He has also had instances where they have gone back and made changes to match the calendar. Based off the SCEIS entry, he does not know if he went in and put in the holiday leave for Wednesday and the family sick leave for Thursday and then someone in administration changed it to match the schedule since the schedule had him taking the holiday leave on Thursday. He did not knowingly or willfully lie about his leave. He had plenty of annual leave he could have taken. (Transcript, pp. 104-106)

When he applied to work for highway patrol in 2013, he first filled out an online application. He filled it out on August 19, 2013. To his knowledge he did not lie or falsify any information on that document. He went and participated in a polygraph examination on October 2, 2013. There was also a home interview conducted. He did tell them that he took prescription medication that did not belong to him. Because it was so long ago he does not remember if they went into details about when he took Adderall and whether the interviewer told him not to worry about it. He did notify them that he used prescription medication that didn't belong to me before. (Transcript, pp. 111-116)

When he applied to SLED, he called up friends from college who now work for SLED to use as references. During those conversations they reminisced about the dumb things they did in college. When he entered the interview room at SLED, the interviewer was an old roommate of some of his college friends. He simply remembered the information and was trying to be "100 percent" honest about everything. (Transcript, pp. 117-119) Vargo attests he has not tried to deceive anybody.

On cross-examination, he spoke with his supervisor the previous week about using the holiday leave on Wednesday, instead of Thursday. He did tell his supervisor that he would need to use family

sick leave and that his daughter was still sick. Because his daughter was sick one day was going to be holiday leave and one was going to be family sick leave. (Transcript, pp. 126-130)

When he initially answered the SLED questionnaire he told them he used Adderall a few times, but the polygrapher told him he had to put in an exact number. He told them he could not give them an exact number because he really didn't remember. He remembered it was not something he commonly did, but in his last two years he started to struggle, and he did use Adderall to help him study for tests. At that point in his life, he didn't know what controlled substances were since he was not a drug person. He did not have a law enforcement background. It was something he did a very few times and did not recall at that moment. Now years later, after talking with college friends who were also employed with SLED, he remembered it and wanted to be 100 percent honest. The number 20 was a generous approximation because they wanted an exact number, and he could not give them one. He put 20 down because he knew he did not have nearly that many. He told them it was a few times. It was not even enough for him to recall. (Transcript, pp. 131-134) All his Adderall usage occurred before he came to work for highway patrol. He filled out three documents with highway patrol. None of those mention he used Adderall in college. He did not mention it because he did not recall it at that time. He graduated and walked from college in May of 2013. He did not deny using it, but he did not recall the Adderall when he applied for highway patrol. "If I don't remember something, I can't tell you about it." (Transcript, pp. 135-140)

State's Exhibit 1:

This exhibit is three segments from a recorded interview between Boehm and Vargo. Vargo 1 is approximately three minutes long and outlines Boehm stating the recording and recitation of Garrity and putting Vargo under oath. It begins with the conversation about how the administrative investigation started. Vargo 2 is five seconds where Boehm mentions Adderall and cuts off before Vargo responds. Vargo 3 appears to be the rest of that segment and is approximately twenty-three minutes long. Vargo 3 is the only segment with potentially useful information.

Boehm asks Vargo why he did not disclose his use of Adderall in 2013 when he originally applied to join the highway patrol. Vargo states "again" he does not know if he ever once thought about it when he was doing the polygraph. He wasn't hiding anything. It must not have been on his conscious at that time. The recent SLED interview he was being nit-picky.

They then moved to the issue with his leave. Vargo states exactly what he testified to during the hearing. He was intending to use the holiday leave that was scheduled for Thursday on Wednesday for the

polygraph, but then his daughter got sick, and he knew he would be out both days for his daughter's sickness, so he just said sick leave for Wednesday and then claimed holiday leave Thursday when he was home with his sick child.

IV. ANALYSIS

The Department is required to prove, by the preponderance of evidence, the Officer engaged in misconduct, as defined in S.C. Code Ann. § 23-23-150, by "the misrepresentation of employment-related information", "wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State", and/or the Officer provided "false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State."

"Preponderance of evidence" is evidence which convinces the fact finder as to its truth. (See, e.g., Pascoe v. Wilson, 416 S.C. 628, 640, 788 S.E.2d 686, 693 (2016) citing Gorecki v. Gorecki, 387 S.C. 626, 633, 693, S.E.2d 419, 422 (Ct. App. 2010).) Further, a showing of a preponderance of the evidence means, "(t)he greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. . . stronger evidence, however slight the edge may be." (See, "preponderance of evidence", *Black's Law Dictionary*, (11th ed. 2019).)

To "misrepresent" may be defined as "to give a false or misleading representation of usually with an intent to deceive or be unfair." (See, "misrepresent", *Merriam-Webster Dictionary* online at <https://www.merriam-webster.com/dictionary/misrepresent>) Accordingly, misrepresented information is information which is provided for a false or misleading purpose, usually allied with an intent to deceive the recipient. A "misleading" statement is one that is "deceptive." (See, <https://www.dictionary.com/browse/misleading>) Similarly, a "deceitful" statement, is one that is "intended to deceive" or is "misleading." (See, <https://www.dictionary.com/browse/deceitful>) An incomplete statement is one that is "lacking some part." (See, <https://www.dictionary.com/browse/incomplete>) The term "willful" may be defined as follows:

willful adj. (13c) Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the

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actor, or at least inexcusable carelessness, whether the act is right or wrong... (See, *Black's Law Dictionary* (10 ed. 2014))

Based on the evidence presented at the contested case hearing in this matter, the Department's allegation concerns two separate issues. First, the Department alleges the Officer committed misconduct when he reported he was staying home with a sick child Wednesday February 7, 2024, when part of that day he was in Columbia for a job interview. Second, the Department alleges the Officer committed misconduct when he failed to specifically admit to using Adderall in college when he was interviewed and hired in 2013, but later admitted to the use when he applied for a job a SLED.

Regarding the first allegation, the Department has failed to prove by preponderance of the evidence that the Officer committed misconduct. The Officer gave a consistent and credible explanation for the leave issue. He was required to take holiday leave that week which the Department scheduled for that Thursday. As had been done in the past and the Department did not refute, he spoke with his supervisor about switching the holiday leave to Wednesday since it had to be used and would allow him to attend the job interview. He did not tell his supervisor about the job interview because he was not required to. He then planned to work Thursday. When his child got sick, he knew he would have to be home with the child both Wednesday and Thursday because the child would not be able to go back to daycare for at least 24 hours after all symptoms stopped. He was home Thursday with the sick child, so a full day of family sick leave was used. One presumably may use holiday time for whatever one wishes. In this case, approximately five hours was used to go to a job interview and the rest was used to care for a sick child. In the state leave record keeping program (SCEIS) it had down that family sick leave was used Wednesday and holiday leave was used Thursday when in reality they were switched. There was no deception here. Nothing was stolen. This is clerical and substantively does not matter. The Department's own exhibit suggests that the Officer may have recorded it correctly and the Department changed it or that the Department entered the information incorrectly. (See State's Exhibit 3) Testimony supported that leave may be changed after that fact and often was if it did not match the written schedule. There was no misconduct in this instance.

In the second instance, the Department has provided sufficient evidence that the Law Enforcement Training Council could find misconduct occurred. From the record, the Officer used Adderall at least a few times in his last two years of college. He testified he bought them from another person to help him study for big exams. He graduated in May of 2013 and then applied to work for the highway patrol in August 2013. In that application he was asked if he every used or experimented with any controlled

substance within the last ten years and he answered no. Later during an at home interview, he was asked if he ever used or experimented with any prescribed medication, and he did not check the "yes" box but added "maybe in childhood from his mother." Finally, in the questionnaire as part of a polygraph exam for the Department he was asked if he ever used someone else's prescription drug. The Officer answered "no." It is understandable that someone would not remember all the details of multiple interviews from ten years ago, but the Officer's only answer is either he must have discussed the Adderall use with the interviewer or that he simply forgot he was purchasing someone's prescribed medications as a study aid mere months before applying for the job. It does appear that the SLED interviewers asked much more detailed questions. In State's Exhibit 4, the Officer's admission appears to be added after the initial explanation. The Officer testified that the SLED interviewers required an exact number of pills when he really could not remember. It is plausible that the Officer was so naïve that he did not know what a controlled substance was and that he only took the pills a few times, so they simply did not come to his mind when filling out his application and then later when he was being interviewed and polygraphed by highway patrol. It is plausible that being a seasoned officer speaking with an interviewer who knew of him in college that he remembered the pills ten years later and wished to overstate the issue to be one hundred percent honest. State's Exhibit 7 was the pre-polygraph questionnaire the Officer took before he was hired by the Department in 2013. It shows he answered "No" to ever using someone else's prescription drug. It also asked if he intentionally omitted any facts from any questions asked and he again answered "No." Human memory is notoriously unreliable. However reviewing the entire record, there is sufficient evidence that it is more likely than not that the Officer was misleading about his Adderall use when applying with the Department. As such, the Department has proven, by the preponderance of the evidence, that Officer engaged in misconduct as defined by S.C. Code Ann. § 23-23-150.

RECOMMENDED FINDINGS OF FACT

I recommend the following findings of fact:

1. The allegation of misconduct against Officer, as reported in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided to the Academy by the Department, is supported by the evidence adduced at the contested case hearing held on September 25, 2024;

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2. The Department has not met its burden of showing by the “preponderance of evidence” that Officer engaged in misconduct through willfully making false, misleading, incomplete, deceitful, or incorrect, statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
3. The Department has met its burden of showing by the “preponderance of the evidence” that Officer engaged in misconduct through willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy;
4. The Department has met its burden of showing by the “preponderance of evidence” that Officer engaged in misconduct by the misrepresentation of employment related information as was charged in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) provided by the Department to the Academy; and
5. The allegation of misconduct against Officer as set forth in the Personnel Change in Status Report (Notification of Separation Due to Misconduct) by the Department should be deemed substantiated by the evidence adduced at the hearing.

I recommend the following conclusions of law:

1. Pursuant to S.C. Code Ann. § 23-23-80 (6), the South Carolina Law Enforcement Training Council (“Council”) is authorized, *inter alia*, to “provide for suspension, revocation, or restriction” of law enforcement certification in accordance with the regulations promulgated by the Council;

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2. Pursuant to S.C. Code Ann. Regs. 37-025, Council may deny law enforcement certification “based on evidence satisfactory to the Council that the candidate has engaged in misconduct”;
3. A review of the record in this matter discloses that there does not exist preponderance of the evidence that the Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (i), by “wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State”
4. A review of the record in this matter discloses that there exists preponderance of evidence that Officer committed misconduct, as defined in S.C. Code Ann. § 23-23-150 (A) (3) (k), by having “willfully made false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State” as was alleged and reported to the Academy by the Department;
5. A review of the record in this matter discloses that there exists preponderance of the evidence that Officer committed misconduct, pursuant to S.C. Code Ann. § 23-23-150 (A) (3) (h), by the misrepresentation of employment-related information; and
6. The misconduct allegation reported by the Department has been proven by the preponderance of evidence and, pursuant to the provisions of S.C. Code Ann. Regs. 37-107, Council may conclude that, based on the evidence adduced at the contested case hearing and applicable statutes and regulations, Officer has committed misconduct.

RECOMMENDED DISPOSITION

Based on the evidence adduced at the contested case hearing, it is recommended that the South Carolina Law Enforcement Training Council:

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- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against Officer by the Department has been proven by the preponderance of evidence; and
- B. Impose a below sanction as the Council in its discretion deems appropriate pursuant to its authority set forth at S.C. Code Ann. Regs. 37-108 A(1-5)
1. Permanent denial and/or revocation (withdrawal) of certification
 2. Denial and/or revocation (withdrawal) of certification for a specified amount of time;
 3. Certification granted with probation;
 4. Certification granted with any additional requirements deemed just and proper by the Council; and/or
 5. Public Reprimand

I SO FIND AND RECOMMEND:



Rebecca Williams
Contested Case Hearing Officer
Date: December 30, 2024

South Carolina Criminal Justice Academy
LETC Case Number: 2024-CJA-05-01

	)	
	)	Transcript
In the Matter of the Law	)	
Enforcement Certification	)	of
of Joshua A. Vargo	)	
		Hearing

Date: September 25, 2024

Time: 9:57 a.m.

Location: South Carolina Criminal Justice Academy, 5400
Broad River Road, Building 10, Columbia, South Carolina

Reported by
Diane Marie Hendricks

COPY

APPEARANCES

Presiding:

Hearing Officer Rebecca S. Williams, Esq.
South Carolina Criminal Justice Academy
Columbia, South Carolina

For the State:

Marcus K. Gore, Esq.
South Carolina Department of Public Safety
Blythewood, South Carolina

For the Respondent:

John A. O'Leary, Esq.
O'Leary & Associates, PA
Columbia, South Carolina

James B. Huff, Esq.
Huff Law Firm, PA
North Augusta, South Carolina

Also present: Captain John Joseph Boehm, Respondent
Joshua A. Vargo

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EXHIBITS

(Council's Exhibit Number 1 was pre-marked and entered
in evidence.)

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PROCEEDING

1
2 HEARING OFFICER: Officially, good morning. My
3 name is Rebecca Williams. I'm an attorney
4 employed by the South Carolina Criminal
5 Justice Academy, and was designated by the
6 South Carolina Law Enforcement Training
7 Council, in accordance with South Carolina
8 Code Section 23-23-80, to sit as the hearing
9 officer for today's contested case hearing.
10 The hearing today is a certification
11 contested case hearing for Joshua Vargo.
12 Mr. Vargo timely requested today's hearing
13 after being notified by the Criminal Justice
14 Academy that an allegation of misconduct was
15 brought, had been filed against him by the
16 Department of Public Safety. This
17 allegation could affect Mr. Vargo's ability
18 to be certified as a law enforcement officer
19 in the state of South Carolina.
20 The purpose of today's hearing is to receive
21 evidence that will allow the Law Enforcement
22 Training Council to render its final Agency
23 decision as to whether Mr. Vargo is eligible
24 for certification as a law enforcement
25 officer in the state of South Carolina.



1 The case number for today's hearing is
2 2024-CJA-05-01.
3 Mr. Vargo is represented by John O'Leary.
4 And all I got was the last name, "Huff."
5 but --
6 MR. HUFF: Jim Huff.
7 HEARING OFFICER: Jim Huff. It's nice -- thank
8 you.
9 MR. HUFF: Thank you.
10 HEARING OFFICER: And the Department is
11 represented by Marc Gore.
12 Today's hearing is being recorded by a court
13 reporter. Anything said during the hearing
14 will be recorded so that a transcript of the
15 proceeding may be provided to the Law
16 Enforcement Training Council for its review.
17 My role in today's proceeding is as a
18 neutral hearing officer. I have been
19 provided, prior to the hearing today, a copy
20 of the personnel change in status report,
21 which include the allegation of misconduct
22 made by the Department, as well as
23 documentation previously provided to Mr.
24 Vargo by the Criminal Justice Academy
25 advising him of the misconduct allegation



1 and of the availability of a contested case
2 hearing regarding the allegation. These
3 documents provide the jurisdictional basis
4 for today's hearing in accordance with
5 Article 1 and 5 of the Criminal Justice
6 Academy regulations. According to Rule 201
7 of the South Carolina Rules of Evidence, I
8 will take judicial notice of those documents
9 purely as the basis for today's hearing or
10 authority to hear the hearing. Not as
11 evidence of any misconduct.

12 In my role today, I will preside over all
13 procedural aspects of the hearing, ruling as
14 may be necessary on the admissibility of
15 evidence offered by either party and on any
16 objections raised thereto. Because today's
17 hearing has been convened solely to address
18 the specific misconduct allegations made
19 against Mr. Vargo by the Department of
20 Public Safety, any offer of evidence must be
21 relevant to the specific allegations
22 contained in the PCS of misconduct submitted
23 by the Department. Because this is a
24 contested case within the meaning of the
25 South Carolina Administrative Procedures

1 Act, the South Carolina Rules of Evidence,
2 as they apply to the Court of Common Pleas,
3 will apply to today's hearing as will
4 provisions of South Carolina Code 1-23-330
5 regarding evidentiary aspects of contested
6 case hearings.
7 In accordance with the requirements of
8 Regulation 37-105 (H) of the Criminal
9 Justice Academy Regulations, evidence
10 offered by the Department and accepted into
11 evidence will be labeled State's exhibit and
12 numbered sequentially.
13 And evidence offered by Mr. Vargo and
14 accepted into evidence will be labeled as
15 Respondent's exhibit and also numbered
16 sequentially.
17 Evidence entered pursuant to judicial notice
18 will be labeled as Council exhibit.
19 The burden of this contested case rests
20 entirely upon the Department to prove the
21 allegation of misconduct it has made against
22 Mr. Vargo.
23 There is no requirement that Mr. Vargo prove
24 he did not commit the acts set forth in the
25 allegations of misconduct. He is presumed



1 at the outset of the hearing not to have
2 committed the alleged misconduct, and that
3 presumption remains until such time as the
4 Department has met its burden of proof.
5 Each party will have an opportunity to call
6 witnesses and present evidence. any person
7 who is called to testify will be required to
8 take an oath to tell the truth. The oath
9 requirement will also apply to Mr. Vargo
10 should he testify today. First they
11 will -- a party may directly examine its
12 witness, then the opposing party is afforded
13 the opportunity to cross-examine the witness
14 should they choose to do so. Limited
15 redirect examination and recross-examination
16 may also be allowed. As hearing officer, I
17 may also elect to ask questions of any
18 witness, to include Mr. Vargo, should he
19 provide testimony during the proceeding.
20 After the conclusion of today's hearing, I
21 will draft and provide to the Law
22 Enforcement Training Council my
23 recommendations based on the findings of
24 fact and conclusions of law I deem to be
25 supported by the evidence received at

1 today's hearing. I may also include a
2 recommendation to the Training Council as to
3 appropriate sanctions, if applicable,
4 pursuant to Regulation 37-108. My
5 recommendations are not binding on the
6 Training Council, and, in making its final
7 Agency decision regarding this case, the
8 Council is not obligated to accept the
9 recommendations and may elect to disregard
10 them.

11 A copy of my findings and recommendations
12 will be provided to both parties by
13 certified mail, return receipt requested, as
14 well as email. Either party will then have
15 the opportunity, in accordance with South
16 Carolina Code 23-23-150 (E), to file a
17 motion in opposition to the findings and
18 recommendations within 15 working days of
19 their receipt. And the opposing party will
20 have the opportunity, under the same
21 statutory provision, to file a response to
22 the motion in opposition within ten working
23 days of the receipt of the motion in
24 opposition. We will go off of whichever is
25 later. Either the receiving of the



1 certified mail is generally the one that
2 happens later than the email. The Training
3 Council may elect to schedule oral arguments
4 on any motion in opposition and any response
5 to the motion in opposition if it deems such
6 argument necessary and will separately
7 notify the parties of the time and location
8 for presentation of any such oral argument.
9 After receiving that documentation and
10 becoming familiar with the facts of this
11 case, the Training Council will vote and
12 issue its final Agency decision in writing
13 as to whether Mr. Vargo is eligible to be
14 certified as a law enforcement officer in
15 the state of South Carolina.
16 The final Agency decision will be provided
17 in writing to both parties by the Training
18 Council as required by South Carolina Code
19 23-23-150 (E).
20 Should the final Agency decision be adverse
21 to Mr. Vargo, and should he wish to appeal
22 that decision, he may do so in accordance
23 with the procedures set forth in the South
24 Carolina Administrative Procedures Act at
25 South Carolina Code 1-23-380 and 1-23-600

1 (D) .

2 Should Council's final Agency decision be
3 that the allegation of misconduct has not
4 been proven, all records related to the
5 misconduct allegation will be expunged by
6 the Council within 30 days of the issuance
7 of the final Agency decision, as is required
8 by Code Section 23-23-150 (M) .

9 The South Carolina Department of Public
10 Safety, and Mr. Vargo, by respectfully
11 reporting the allegations of misconduct and
12 by requesting today's contested case
13 hearing, as well as their presence today,
14 are deemed to have stipulated that today's
15 hearing will be conducted in accordance with
16 the requirements of the South Carolina
17 Administrative Procedures Act as it relates
18 to contested case hearings.

19 All right. Just to make sure that I have
20 the correct emails for y'all, I believe Mr.
21 Gore, you handed me an email -- or a -- and
22 now I've misplaced it. I believe you just
23 gave me a business card. Does that have
24 your --

25 MR. GORE: I didn't give you one. I gave her one



1 (referring to court reporter).

2 HEARING OFFICER: Okay. Sorry. I thought I had

3 it. That's all right. You -- you don't

4 have to. If you'd like --

5 MR. GORE: Y'all got my address. I know you've

6 got mine.

7 HEARING OFFICER: I believe I have both you and

8 Mr. O'Leary's emails there as well. All

9 right. I guess just so I can have it on the

10 record, if your -- your email has not --

11 MR. O'LEARY: It has not --

12 HEARING OFFICER: -- changed in any way?

13 MR. O'LEARY: -- changed, no.

14 HEARING OFFICER: All right. Would you like Mr.

15 Huff added to the email as well?

16 MR. O'LEARY: Not necessarily. I can send him in

17 my office.

18 HEARING OFFICER: Okay.

19 MR. O'LEARY: Thank you.

20 HEARING OFFICER: All right.

21 Finally, as I stated previously, the personnel

22 change in status report for misconduct form,

23 which includes the allegations of misconduct

24 reported to the Criminal Justice Academy by

25 the Department against Mr. Vargo, and the

1 documentation provided to Mr. Fargo
2 [sic] -- Vargo, excuse me, by the Criminal
3 Justice Academy advising him of the
4 allegations of misconduct and the
5 availability of a contested case hearing
6 will be judicially noticed pursuant to my
7 discretion under Rule 201 (C) of the South
8 Carolina Rules of Evidence. Again, as for
9 records supporting convening of today's
10 hearing, and they will be marked as Council
11 Exhibit Number 1 and made part of today's
12 record. A copy of that was provided to both
13 parties.

14 All right before we commence, does either
15 party object to proceeding with the hearing
16 today?

17 Mr. Gore?

18 MR. GORE: No.

19 HEARING OFFICER: Mr. O'Leary?

20 MR. O'LEARY: No.

21 HEARING OFFICER: Okay. Are there any prehearing
22 motions or other matters that should be
23 addressed before we commence hearing?

24 Mr. Gore?

25 MR. GORE: None from me.

1 information. So all three of those were
2 reported.
3 Q Mr. Varno [sic]-- Mr. Vargo's conduct arises
4 from two separate but related incidents.
5 And we'll -- obviously, we'll get down to
6 that today. But, just to give you a little
7 overview, in February of 2024, Mr. Vargo
8 applied -- or was scheduled to take a
9 polygraph exam at SLED for a new position
10 that he was looking to take, to leave the
11 Department. During his polygraph pre-
12 interview, he made certain disclosures on a
13 questionnaire that were -- that caused some
14 concern from SLED, and SLED ultimately
15 contacted the Department to voice its
16 concerns about some of these disclosures
17 that he made. So this prompted the
18 Department to initiate an investigation into
19 those statements that he had made. In
20 investigating those statements, some
21 additional information came to light. It
22 kind of spiraled in some other places.
23 So the -- the first that we'll talk about
24 today was the manner in which Mr. Vargo
25 utilized sick leave on the date of that

1 polygraph examination at SLED. The
2 Department was unaware that Mr. Vargo was
3 interviewing with SLED, and -- and that was
4 fine. He's -- he's welcome to interview for
5 another job. That wasn't a concern. But,
6 to do that, he would have to utilize
7 appropriate leave to do that. He was going
8 to be away from work at the time he was
9 doing it. And, in the course of the
10 investigation, the Department learned that
11 Mr. Vargo made a statement about the type of
12 leave he was going to use to his supervisor
13 that was false. And then, in fact, he
14 documented leave in the SCEIS system. The
15 recordkeeping system, how -- the leave he
16 used that day. That documentation was also
17 false. So that's sort of the sick leave
18 piece of it that we'll talk about today.
19 And then, during the -- when he was at SLED,
20 before he took the polygraph, he did a
21 written questionnaire that is standard in a
22 polygraph examination. And Mr. Vargo made a
23 number of admissions during that, that
24 were -- were -- prompted SLED to ask some
25 questions, but we're really only focused on



1 one of those as part of the -- the
2 misconduct allegation. And it's
3 specifically that Mr. Vargo made an
4 admission to SLED about his prior use of
5 prescription medication. And, when the
6 Department received this information, it was
7 surprise, because these types of admissions
8 would have been types of things that would
9 have disqualified him from employment with
10 the highway patrol. And so, the Department
11 certainly had to go back and look and "Well,
12 what did he tell us when he came to work for
13 us?" Because these were admissions that
14 predated his employment with the patrol.
15 And so, we went back and looked at what Mr.
16 Vargo reported to us when he came -- when he
17 was onboarding with the Department, when he
18 was applying for his position. And what we
19 found is that he did not disclose this drug
20 use to the Department at the time back in
21 2013, that the information he gave to SLED
22 was inconsistent with what he told the
23 Department. So the Department determined
24 that he had falsely made representations
25 about that drug use when he applied to us 11

1 years ago.

2 So ultimately, the Department believes that
3 it will establish misconduct based on these
4 two incidents: The sick leave as well as
5 the admissions that were made in the SLED
6 polygraph questionnaire.

7 Thank you.

8 OPENING STATEMENT

9 BY MR. O'LEARY: Okay. Josh -- Josh Vargo
10 is -- he is 34 years old, and he's got a
11 family with two children, two girls. In
12 fact, her birthday was yesterday, the
13 five-year-old. He joined the patrol in 2013
14 and he -- he's been assigned as a patrolman
15 for several years, and then he became a
16 canine officer, and he worked throughout the
17 state. Now, the thing about -- about this
18 client is he's -- he was raised in Barnwell.
19 He's worked in the Aiken area primarily in
20 that district. But he has been all over the
21 state. Now, what happened in this case,
22 when he -- when he went in January 24th of
23 2014, he was technically hired. And, when
24 he was hired, he had to undergo a polygraph
25 for -- for employment. At the time of

1 his -- the polygraph, he admitted all of the
2 questions that they asked. He said he had
3 used prescription medicine, which I believe
4 was an Adderall issue. And he readily
5 admitted that. He passed that polygraph
6 test with flying colors. Was put on the
7 patrol, been on for ten years. In the ten
8 years he's been on, for five of those years,
9 he was outstanding patrolman in the district
10 each year. Five years out of ten. He's a
11 very hard worker. He was specially trained
12 in the canine unit, which I believe now
13 they -- they don't have anymore. But, in
14 any event, he is a man who will tell you
15 today that he's -- no. He did not lie on
16 any application.

17 Now, in 2024, when he went to SLED, he had
18 applied to SLED, and -- and he was really
19 worried to some extent about ramifications
20 if he's trying to go to a different job. I
21 mean, that -- that happens in some agencies.
22 So anyway, he went and was scheduled for a
23 polygraph at SLED on a particular date. I
24 believe it was in February. February 7th of
25 '24. Now, to -- to -- let's get over to

1 February. I'll just jump ahead. On
2 February 6th of -- of '24, his daughter
3 became sick. She couldn't go to nursery
4 school or whatever. And he had to stay home
5 with the child. He took Family Leave Act.
6 And he was on Family Leave Act on February
7 6th. And he received a call from his
8 supervisor that that would be the day that
9 he was going to get a new vehicle. So he
10 had to report to work, even though he's on
11 Family Leave Act. He got a relative to come
12 stay with the child while he went down
13 to -- to pick up the vehicle. He was gone
14 five or six hours. He came back, then he
15 took over with the child. Now, on the 7th,
16 is -- the day that was scheduled for his
17 polygraph at SLED. And, to get to SLED from
18 where he lived, he was -- he would be gone
19 about five, five and a half hours. And
20 that's all readily admitted. The other
21 thing that's admitted in this, on
22 February 6th, the Department
23 doesn't -- doesn't dispute the fact that his
24 daughter was ill, and he was on legitimate
25 family leave. On the 7th, when on leave, he



1 goes in the morning. A relative watches the
2 child. He goes down and takes the SLED
3 test, and he put in for that day as family
4 leave. Now, the irony of this thing is that
5 he has -- because of his employment with the
6 Department for some ten years, he had some
7 three hundred -- 700 hours of sick leave,
8 and he had annual leave of 360 hours. So
9 he's got like 1,000 hours he can take. But
10 he's been terminated because they say he
11 lied on the Family Leave Act, because he
12 left the child with a -- with a parent, and
13 he went down to the SLED test. Now, the day
14 before he had gone and -- because his
15 supervisor told him to go pick up the new
16 car and come back. So it was okay on that
17 day. He never thought a thing about the
18 Family Leave Act, and ultimately, they're
19 saying he lied about the -- or falsified the
20 fact that he was on family leave, because he
21 left it with -- with the -- the relative.
22 Now, the other issue that has come up is the
23 issue of drugs. And, when he was asked
24 about drugs at SLED, he admitted it, period.
25 And he passed the SLED test. He had passed

1 12 to four.

2 Q So he did a split of hours consistent with

3 what the text message said?

4 A Correct. Yeah.

5 Q Okay.

6 A To reflect the -- the working hours and then

7 the time he lost for family sick.

8 Q Okay. And what time did Mr. Vargo enter for

9 February the 7th?

10 A Ten full hours of family sick.

11 Q Okay. Based on your investigation, was Mr.

12 Vargo caring for his child for ten hours on

13 February the 7th?

14 A No, sir.

15 Q Okay. Based on your investigation, how much

16 of his day -- was Mr. Vargo's day spent

17 actually physically away from his daughter?

18 A Between five and six hours.

19 Q Okay. And so, what was your conclusion

20 regarding his time entry for February the

21 7th?

22 A It was inaccurate.

23 Q Okay. And what was your conclusion about

24 Mr. Vargo's text to Corporal Albert about

25 the time entry?

1 goes in the morning. A relative watches the
2 child. He goes down and takes the SLED
3 test, and he put in for that day as family
4 leave. Now, the irony of this thing is that
5 he has -- because of his employment with the
6 Department for some ten years, he had some
7 three hundred -- 700 hours of sick leave,
8 and he had annual leave of 360 hours. So
9 he's got like 1,000 hours he can take. But
10 he's been terminated because they say he
11 lied on the Family Leave Act, because he
12 left the child with a -- with a parent, and
13 he went down to the SLED test. Now, the day
14 before he had gone and -- because his
15 supervisor told him to go pick up the new
16 car and come back. So it was okay on that
17 day. He never thought a thing about the
18 Family Leave Act, and ultimately, they're
19 saying he lied about the -- or falsified the
20 fact that he was on family leave, because he
21 left it with -- with the -- the relative.
22 Now, the other issue that has come up is the
23 issue of drugs. And, when he was asked '
24 about drugs at SLED, he admitted it, period.
25 And he passed the SLED test. He had passed

1 the same test when he was asked about drugs
2 ten years earlier. Now, what makes this a
3 little unusual is, it's my understanding is
4 with the polygraph -- or with -- with
5 interviews, they don't go back beyond ten
6 years in most of the stuff of polygraphers,
7 according to Johnnie Hartley. But, in any
8 event, they're saying that he lied from his
9 initial interview with the Department,
10 because he didn't really get into detail
11 about the Adderall. But he admitted he had
12 Adderall and did Adderall. I believe he
13 said he even got some Adderall from his
14 mother. She had put him on it for
15 concentration as a student, I guess. I
16 didn't know it worked that way. And that's
17 really what we're here for. It's -- it's a
18 sad situation, because this is a really
19 good -- a good officer. And I've gotten to
20 know him over the last few months. He was
21 raised in Barnwell, and really kind of a
22 country boy, really a good officer, a very
23 dedicated officer. And he's extremely -- if
24 you look at -- and they'll probably
25 introduce some of the questions he was



1 asked. He went in more detail than he
2 probably needed to. And he's never lied
3 about anything. They knew at the beginning
4 he had a problem. He did Adderall. He
5 admitted back in -- ten years ago. And now
6 they're saying he lied because he didn't go
7 into more specifics about it ten years ago.
8 And I -- I disagree with that. It's -- it's
9 a tragedy to take an officer that's worked
10 ten years, 50 percent of the time he's
11 outstanding officer, and take him and
12 basically try to take his certification away
13 and he couldn't be a police officer anywhere
14 in the state. And I think it's a loss for
15 the state, and I know it's a personal loss
16 for this officer. He has two children to
17 support, he loves law enforcement. And he's
18 really astounded that the steps they took to
19 get rid of him based upon that. So he feels
20 to some extent that it was -- it became
21 maybe an issue because of his leaving or
22 wanting to leave the Department for a canine
23 position over at -- at SLED.
24 So, at this time, we will let them present
25 their evidence. He will testify, and he

1 will tell you that he never lied about
2 anything. I think he's -- he's almost too
3 honest. He's -- when I ask him a question,
4 he went into detail on something. I mean, I
5 had no idea why he went into it, but he did.
6 And that's just the type of guy he is.
7 So I -- I rest at this point and let my
8 buddy here take over.

9 HEARING OFFICER: Thank you.

10 All right. Mr. Gore, you can call your
11 first witness.

12 MR. GORE: The Department calls Captain John
13 Boehm.

14 CAPTAIN JOHN JOSEPH BOEHM, after first being duly
15 sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. GORE:

18 Q Captain, can you state your full name for
19 the record.

20 A John Joseph Boehm.

21 Q Okay. And by whom are you employed?

22 A The South Carolina Department of Public
23 Safety.

24 Q Okay. And what is your position?

25 A Captain of the OPR. Office of Professional



1 Responsibility.

2 Q Okay. And what does the Office of

3 Professional Responsibility do?

4 A We investigate allegations of misconduct and

5 wrongdoing.

6 Q Okay. And did you -- were you asked to

7 investigate some allegations against Mr.

8 Vargo?

9 A I was assigned to it. Yes, sir.

10 Q Okay. And how did these issues with Mr.

11 Vargo come to the Department's attention?

12 A Like you had said earlier, Mr. Vargo took a

13 polygraph over at SLED, and then the highway

14 patrol was contacted by SLED. I

15 subsequently forwarded the information to

16 the OPR and to Chief Phelps at which point I

17 was assigned to conduct an investigation.

18 Q Okay. All right. And, as part of your

19 investigation, did you interview Mr. Vargo?

20 A Yes, sir. I did.

21 Q Okay. Do you record those interviews?

22 A I do.

23 Q Okay. Is this a copy of the interview you

24 had with Mr. Vargo?

25 A I believe so.

1 MR. GORE: And, for the record, I will say I had
2 provided --

3 THE WITNESS: Yes, sir.

4 MR. GORE: -- Mr. O'Leary copies of these
5 interviews, but I will tell you I edited
6 these down, because there's a lot of stuff
7 they talk about on these interviews that
8 we're not going to talk about today. And I
9 don't think it was fair to have all that in
10 there. So these are shortened versions that
11 do not include that. So for the record.

12 HEARING OFFICER: All right. Is there --

13 MR. O'LEARY: I agree.

14 HEARING OFFICER: -- any objections?

15 MR. O'LEARY: I was provided originally the whole
16 thing, so...

17 HEARING OFFICER: Okay.

18 MR. GORE: Yeah. And so - yeah. And I'll move
19 to admit this as State's Exhibit 1.

20 HEARING OFFICER: All right. Is there any
21 objections to the -

22 MR. O'LEARY: No objection.

23 HEARING OFFICER: All right. State's Exhibit 1
24 is in evidence.

25 (State's Exhibit Number 1 was marked and entered

1 into evidence.)

2 MR. GORE: That's a copy. If you want to go

3 ahead and -

4 HEARING OFFICER: Thank you.

5 MR. GORE: Before they -

6 HEARING OFFICER: Okay.

7 MR. GORE: -- give it to you.

8 EXAMINATION OF CAPTAIN BOEHM CONTINUES

9 Q All right. Captain, let's start by talking
10 about the -- the -- the leave issue that I
11 discussed earlier. So what was Mr. Vargo
12 scheduled to do on February the 6th of 2024?

13 A He was scheduled to pick up a new patrol
14 car.

15 Q All right. Was he scheduled to work that
16 day?

17 A Yes, sir. He was.

18 Q Okay. And did he have a family issue that
19 day?

20 A I believe so. Yes, sir.

21 Q Okay. All right. And what -- what was the
22 issue, was your understanding from talking
23 to him?

24 A My understanding is that his daughter was
25 sick. A toddler. Child. And one that



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into evidence.)

25 Q All right, Captain. And if you could tell



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1 couldn't stay home by himself.

1 hour -- total hours was Mr. Vargo either
2 traveling to SLED, or at SLED, or coming
3 back home from SLED that day on the 7th?

4 A Five and a half to six hours was what it
5 would add up to.

6 Q Okay. And who cared for Mr. Vargo's
7 daughter while he was engaged in an
8 activity?

9 A He told me that his in-laws cared for her.

10 Q Okay. All right. And after Mr.
11 Vargo -- well, is -- is Mr. Vargo -- was Mr.
12 Vargo at the time required to enter his time
13 in the SCEIS?

14 A Yes, sir.

15 Q Okay. Can you tell us what SCEIS is?

16 A It stands for the South Carolina
17 Employee-something System. I -- I can't
18 remember. But anyway, it's the -- it's
19 leave status. We used to do paper
20 timesheets.

21 Q Okay.

22 A We no longer do those things. I think since
23 2010 the state went over to SCEIS, and all
24 of your leave working hours is logged in in
25 SCEIS.

1 into evidence.)

2 MR. GORE: That's a copy. If you want to go

3 ahead and -

4 HEARING OFFICER: Thank you.

5 MR. GORE: Before they -

6 HEARING OFFICER: Okay.

7 MR. GORE: -- give it to you.

8 EXAMINATION OF CAPTAIN BOEHM CONTINUES

9 Q All right. Captain, let's start by talking

10 about the -- the -- the leave issue that I

11 discussed earlier. So what was Mr. Vargo

12 scheduled to do on February the 6th of 2024?

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14 car.

15 Q All right. Was he scheduled to work that

16 day?

17 A Yes, sir. He was.

18 Q Okay. And did he have a family issue that

19 day?

20 A I believe so. Yes, sir.

21 Q Okay. All right. And what -- what was the

22 issue, was your understanding from talking

23 to him?

24 A My understanding is that his daughter was

25 sick. A toddler. Child. And one that

1 couldn't stay home by themselves.

2 Q Okay. And what did he do to address that on
3 the 6th?

4 A I'm under the impression that he contacted
5 his immediate supervisor, who is
6 corporal -- or was Corporal Albert at the
7 time, to advise of that, being that the
8 child was sick. And there also an
9 appointment to come to Columbia to pick up
10 the patrol vehicle. There was a conflict
11 there.

12 Q Okay.

13 A Mr. Vargo told me that he contacted
14 his -- his corporal and advised that his
15 in-laws could watch the child while he came
16 to Columbia, because he wanted to pick up
17 the new patrol vehicle. The corporal agreed
18 that that would be okay. And then, for that
19 portion of time that he was traveling to and
20 from Columbia and picking up the patrol
21 vehicle, that would be utilized as work
22 time. The remainder of the work day that he
23 wasn't able to come to work would have been
24 family sick leave.

25 Q Okay. All right. And did Mr. Vargo and his



1 supervisor confirm this conversation in a
2 text message?
3 A Yes, sir.
4 Q Okay. And can you identify what I've just
5 handed you?
6 A This is a -- a screenshot of Corporal
7 Albert's side of the text message
8 correspondence between himself and Mr.
9 Vargo.
10 Q Okay. All right. And did you ask Mr. Vargo
11 about these text messages in your interview?
12 A Yes, sir. I did.
13 Q And did he confirm they were accurate --
14 A Yes, sir.
15 Q -- conversations?
16 A Yes, sir. He did.
17 MR. GORE: I would move to admit this as State's
18 Exhibit 2.
19 HEARING OFFICER: All right. Any objection?
20 MR. O'LEARY: No objection.
21 HEARING OFFICER: All right. State's Exhibit 2
22 is now in evidence.
23 (State's Exhibit Number 2 was marked and entered
24 into evidence.)
25 Q All right, Captain. And if you could tell

1 us -- we just talked about February the 6th?

2 A Yes, sir.

3 Q Which text on this exhibit here related to

4 that conversation?

5 A So February 6, the timestamp here is 1417

6 hours or 2:17 in the afternoon. When

7 Corporal Albert had not heard from Mr.

8 Vargo, he texted him, "What are we doing for

9 time? How many hours should we put in for

10 working hours and how many for family sick

11 leave?"

12 Mr. Vargo responded "six to 11 or six to 12.

13 I ain't get home till one, but I got caught

14 up talking to ATF at the gas station."

15 At which point Corporal Vargo [sic]

16 responded that Mr. Vargo should put in six

17 to 12 since it was a six a.m. to four p.m.

18 shift. A ten-hour shift. So that from six

19 to 12 he should put that in the SCEIS as

20 working hours since he was legitimately

21 doing a work-related task, and then 12 to

22 four for family sick leave. So he said

23 enter the family sick leave first because

24 SCEIS probably won't allow you to enter the

25 leave once the working time is added. So he

1 indicated that he should break up the day
2 six to 12 working hours and 12 to four
3 family sick leave.
4 Q Okay. And I think it's common knowledge,
5 but let's just make sure. Can -- can you
6 tell us what family sick leave is?
7 A It's utilized to care for a sick family
8 member or to transport a family member to
9 the doctor or something of that nature.
10 Being that the child was a toddler,
11 obviously they can't transport themselves to
12 the doctor or stay home by themselves, so
13 family sick leave would be appropriate in
14 that situation.
15 Q Okay. All right. And then -- so that's
16 February the 6th we just talked about?
17 A Yes, sir.
18 Q Okay. So Mr. Vargo was scheduled to work on
19 February the 7th?
20 A He was.
21 Q Okay. And what time was he scheduled to
22 report to work that day?
23 A The same hours: Six a.m. to four p.m.
24 Q Okay. And did -- did -- well, what did Mr.
25 Vargo tell you what happened that morning?

1 A Well, I got it from Mr. Vargo and from
2 Corporal Albert as well.
3 Q Okay.
4 A But they both concurred what took place.
5 Essentially, at 6:00 the corporal is out
6 working. He doesn't hear Mr. Vargo sign on
7 on the radio in the mobile CAT on the
8 laptop. He doesn't see him already working.
9 And he hadn't received a call from him. So,
10 eight minutes after the shift started, 6:08,
11 the corporal sends a text saying, "Waiting
12 for that phone call." I.e., my
13 understanding is that the corporal has small
14 children too. He understands that daycares
15 won't allow a -- a child to come 24
16 hours -- within 24 hours after being sick.
17 So he was expecting that Vargo would either
18 come to work or he have another family
19 member watch the child for that day. But
20 probably know that the child could not go to
21 daycare. So he was waiting for that phone
22 call, and at which time Mr. Vargo responded
23 "F-S-L," which is an abbreviation for family
24 sick leave. So "F-S-L again. [REDACTED] was up
25 all night throwing up still."



1 Q And did you confirm who [REDACTED] was?

2 A The toddler daughter. Yes, sir.

3 Q All right. And, in fact, did Mr. Vargo have

4 another obligation on February the 7th?

5 A Come to find out later, that he did. Yes,

6 sir.

7 Q And what was that?

8 A That was to report for a polygraph at the

9 SLED annex over on Bush River Road at 9:00.

10 Q Okay. And did Corporal Albert know about

11 that?

12 A Corporal Albert at the time he did not know

13 about that. No, sir.

14 Q Okay. And when was Mr. Vargo made aware

15 that he was going to have to go to SLED on

16 February the 7th or if he had been asked to

17 come?

18 A So SLED has a policy that an applicant must

19 be notified a minimum of three days prior to

20 a polygraph examination. Being that the

21 examination was for Wednesday, and nobody's

22 working on Sunday, so he would have been

23 notified absolutely no later than the

24 previous Friday.

25 Q Okay. Did Mr. Vargo confirm that he was

1 aware of the polygraph that previous Friday?

2 A Yeah. He didn't dispute it. Yes, sir.

3 Q All right. And that would have been

4 February the 2nd?

5 A Without having a calendar in front of me,

6 yes, sir. I believe so.

7 Q All right. And did Mr. Vargo in fact take

8 the polygraph examination at SLED that

9 morning?

10 A I -- I understand that he did.

11 Q Okay. And where did Mr. Vargo live in

12 February of 2024?

13 A In Aiken.

14 Q Okay. And where was the polygraph

15 conducted?

16 A Bush River Road here in Columbia of Richland

17 County.

18 Q Okay.

19 A Or the -- the line. Richland or Lexington,

20 but here -- here in the Midlands.

21 Q Okay. And what time did Mr. Vargo leave his

22 home?

23 A He told me that he wanted to get there

24 early. Typically, you know, you don't show

25 up at the exact time that something starts.

1 He told me he got there an hour early and
2 that he was the first in the parking lot.
3 So that would have been 8:00.
4 Q Okay. And so, did he tell you what time he
5 left home that morning?
6 A He told me from his residence it takes
7 approximately one hour to travel, which is
8 about right, I believe, without
9 Google-mapping his residence. But
10 approximately an hour to Aiken.
11 Q Okay. And how long was Mr. Vargo at SLED
12 that day?
13 A The polygrapher told me they went to
14 11:00 --
15 Q Okay.
16 A -- which -- which sounds about right based
17 on the polygraph questionnaire and things.
18 Q All right. And did Mr. Vargo confirm that?
19 A He did.
20 Q Okay. When did Mr. Vargo tell you that he
21 returned home that day?
22 A He told me sometime between 12:30 and 1:00
23 is when he picked up his child from his
24 in-laws who kept them for the day.
25 Q Okay. So, just to sum up, how many

1 hour -- total hours was Mr. Vargo either
2 traveling to SLED, or at SLED, or coming
3 back home from SLED that day on the 7th?
4 A Five and a half to six hours was what it
5 would add up to.
6 Q Okay. And who cared for Mr. Vargo's
7 daughter while he was engaged in an
8 activity?
9 A He told me that his in-laws cared for her.
10 Q Okay. All right. And after Mr.
11 Vargo -- well, is -- is Mr. Vargo -- was Mr.
12 Vargo at the time required to enter his time
13 in the SCEIS?
14 A Yes, sir.
15 Q Okay. Can you tell us what SCEIS is?
16 A It stands for the South Carolina
17 Employee-something System. I -- I can't
18 remember. But anyway, it's the -- it's
19 leave status. We used to do paper
20 timesheets.
21 Q Okay.
22 A We no longer do those things. I think since
23 2010 the state went over to SCEIS, and all
24 of your leave working hours is logged in in
25 SCEIS.

1 Q Okay. And can you confirm that document
2 that I just handed to you?
3 A Yeah. I obtained this from OHR. And this
4 shows his leave input, what he -- he put in
5 for those two days, February 6th, 2024 and
6 February 7th, 2024.
7 Q Okay.
8 MR. GORE: I'd move to admit this as State's
9 Exhibit 3.
10 HEARING OFFICER: Is there any objection?
11 MR. O'LEARY: No objection.
12 HEARING OFFICER: All right. State's Exhibit 3
13 is in evidence.
14 (State's Exhibit Number 3 was marked and entered
15 into evidence.)
16 Q All right, Captain. Did you confirm that
17 Mr. Vargo himself entered his time?
18 A Yes, sir.
19 Q Okay. And can you tell us what -- what time
20 he entered for February the 6th?
21 A He entered -- let me see here. This -- you
22 printed it out a little bit small. But I
23 believe he -- he followed the corporal's
24 direction to enter working hours from six
25 a.m. to 12, and then family sick leave from



1 12 to four.

2 Q So he did a split of hours consistent with

3 what the text message said?

4 A Correct. Yeah.

5 Q Okay.

6 A To reflect the -- the working hours and then

7 the time he lost for family sick.

8 Q Okay. And what time did Mr. Vargo enter for

9 February the 7th?

10 A Ten full hours of family sick.

11 Q Okay. Based on your investigation, was Mr.

12 Vargo caring for his child for ten hours on

13 February the 7th?

14 A No, sir.

15 Q Okay. Based on your investigation, how much

16 of his day -- was Mr. Vargo's day spent

17 actually physically away from his daughter?

18 A Between five and six hours.

19 Q Okay. And so, what was your conclusion

20 regarding his time entry for February the

21 7th?

22 A It was inaccurate.

23 Q Okay. And what was your conclusion about

24 Mr. Vargo's text to Corporal Albert about

25 the time entry?



1 A Also inaccurate.

2 Q Okay. What time did Mr. Vargo send the text

3 message to Corporal Albert on February the

4 7th?

5 A Just a few moments after Corporal Albert

6 sent his text. So 6:08, so within two to

7 three minutes.

8 Q Okay.

9 A Is what I'm -- I'm under the impression of.

10 Q And Mr. Vargo was scheduled to leave -- or

11 left from SLED at 7:00?

12 A To make it there by eight. Yes. Roughly

13 7:00.

14 Q So it's been an hour from sending his text

15 he left for SLED?

16 A Yes, sir.

17 Q Okay. And, at that time he sent the text

18 was he aware that he would be traveling to

19 SLED that day?

20 A Yes, sir. He would have had to have been.

21 Q Did Mr. Vargo ever attempt to correct the

22 time entries?

23 A No, sir.

24 Q Okay. Did Mr. Vargo ever attempt to go back

25 and tell Corporal Albert, "Hey, I wasn't on

1 family sick leave that day"?

2 A No, sir.

3 Q Okay. All right. Let's shift gears and

4 talk about the questionnaire answers. Was

5 Mr. Vargo required to answer a questionnaire

6 while he was at SLED?

7 A Yes, sir.

8 Q And were those the answers that were

9 ultimately forwarded to the Department?

10 A They were. Yes, sir.

11 Q Okay. Can you identify what I've handed you

12 there?

13 A This is the -- the SLED or South Carolina

14 Law Enforcement Division applicant

15 questionnaire of the pre-polygraph.

16 Q Okay.

17 MR. GORE: And I will tell you that I have only

18 printed two pages here.

19 MR. O'LEARY: That's fine.

20 MR. GORE: This document's longer, but these are

21 the pages that are the subject, so...

22 I would move to admit this as State's

23 Exhibit 4.

24 HEARING OFFICER: Any objection?

25 MR. O'LEARY: No objection.



1 HEARING OFFICER: All right. State's Exhibit 4
2 is in evidence.
3 (State's Exhibit Number 4 was marked and entered
4 into evidence.)
5 Q All right, Captain Boehm. Did you ask Mr.
6 Vargo about this questionnaire?
7 A Yes, sir. I did.
8 Q And is this his handwriting on it?
9 A I believe it to be, yes, sir.
10 Q All right. And he completed this
11 questionnaire that morning of the 7th when
12 he was at SLED?
13 A Yes, sir.
14 Q Okay.
15 A That's the impression I'm under.
16 Q All right. And I want to turn to the second
17 page there under -- at the bottom. And, if
18 you could, did Mr. Vargo disclose some
19 information on this questionnaire about his
20 use of Adderall?
21 A He did.
22 Q Okay. Can you tell us specifically what he
23 said? You can read it.
24 A He wrote "Adderall." Basically, it says,
25 if -- "If you've answered yes to any of the

1 above questions in the section not already
2 covered, please explain." So he had -- the
3 applicant can explain it at that point. And
4 it says "Adderall a few times to help with
5 exams, slash, late study nights. Taken Oxy
6 after surgeries. Always prescribed, and
7 never abused it." 2020 -- I'm sorry. "2012
8 to 2013 took Adderall approximately 20 times
9 purchased from my neighbor at \$10 a pill."
10 Q And did the disclosure about the Adderall
11 prompt the -- the Department to conduct an
12 investigation?
13 A There were numerous disclosures. But yes.
14 That was one of them, sir.
15 Q Okay. All right. And would the admission
16 of Adderall use have been a disqualifying
17 event for Mr. -- for Mr. Vargo's service on
18 the highway patrol?
19 A Yes, sir. At the time that he was required
20 to take a polygraph examination for his
21 employment with the highway patrol, an
22 admission of Adderall within that timeframe
23 that we've got, 2012 to 2013, he actually
24 took his polygraph in October. I think it
25 was October 2nd, 2013 with our agency. An

1 admission of that nature would have
2 disqualified him. So, when that was
3 observed, we went back and we compared it to
4 the polygraph examination that was conducted
5 at that time.

6 Q Okay. All right. Did you review Mr.
7 Vargo's employment application with the
8 highway patrol?

9 A Yes, sir.

10 Q Okay. Can you identify what I've just
11 handed you?

12 A It's just what you just called it. His
13 employment application with the highway
14 patrol.

15 Q Okay.

16 MR. GORE: I would move to admit this as State's
17 Exhibit 5.

18 HEARING OFFICER: Any objection?

19 MR. O'LEARY: No objection.

20 HEARING OFFICER: All right. State's Exhibit 5
21 is in evidence.

22 (State's Exhibit Number 5 was marked and entered
23 into evidence.)

24 Q All right, Captain. Is this an online
25 application that Mr. Vargo would have

1 completed for service with the highway
2 patrol?
3 A Yes, sir.
4 Q Okay. And is it -- if you'll turn to the
5 last page with me.
6 A Yes, sir.
7 Q Is this a -- a digital signature from Mr.
8 Vargo on the last page there?
9 A It is. It says, "This application was
10 submitted by Joshua A. Vargo on 8.19.13."
11 So 2013 at 1:24 p.m. So it's signed
12 digitally when -- when an applicant submits
13 it through the state's job website.
14 Q Okay. And was Mr. Vargo asked on -- on this
15 questionnaire about the use of -- well, I
16 guess I'll point your attention to -- it's
17 the fourth page.
18 A Yes, sir. If you'll just give me one second
19 here.
20 Okay.
21 Q Okay. Was Mr. Vargo asked about the use of
22 controlled substances? I believe it's
23 Question Number 14.
24 A Yes, sir. It says, "Have you used and/or
25 experimented with any controlled substance

1 within the last ten years, excluding
2 marijuana?"
3 Q And is Adderall a controlled substance?
4 A Yes, sir.
5 Q Okay. And what was Mr. Vargo's response?
6 A "No."
7 Q Okay. All right. Did Mr. Vargo undergo a
8 background investigation before he came to
9 work for the highway patrol?
10 A Yes, sir.
11 Q Okay. Can you identify what I've just
12 handed you?
13 A Yes, sir. This is the DPS background
14 investigation packet or -- or a portion of
15 it.
16 Q Okay.
17 MR. GORE: And I would move to admit this as
18 State's Exhibit 6.
19 HEARING OFFICER: Is there any objection?
20 MR. O'LEARY: No objection.
21 HEARING OFFICER: All right. State's Exhibit 6
22 is in evidence.
23 (State's Exhibit Number 6 was marked and entered
24 into evidence.)
25 Q All right, Captain Boehm. Is this the -- is

1 this the background investigation that was
2 done by Mr. Vargo by Trooper Rikard?

3 A Yes, sir. I believe. I'm not sure if they
4 were calling them troopers at the time,
5 but --

6 Q Oh, okay.

7 A But yes. It was done by the
8 background -- or the -- the employment unit,
9 which is part of the polygraph, background
10 investigations, et cetera. So yes.

11 Q And does Mr. Vargo actually fill out this
12 form or is this done by the investigator?

13 A I'm under the impression that this is done
14 by the investigator. At -- during this
15 time, we were doing home interviews, so the
16 investigator would have come to -- to a
17 home, conducted an interview at that time,
18 ask all sorts of different questions, and
19 then fill this out based out the applicant's
20 answers.

21 Q Okay. And was Mr. Vargo -- on the second
22 page, it's Page 19. But was he asked about
23 using prescription medication? Number 16?

24 A Yes, sir.

25 Q What was the question?

1 A It was, "Have you ever used and/or
2 experimented with any prescribed medication
3 not prescribed to you?"
4 Q Okay. And what is the answer that was
5 documented there?
6 A "Maybe childhood from mother."
7 Q Okay. All right. And we've discussed that
8 Mr. Vargo underwent a polygraph
9 questionnaire before he was --
10 MR. O'LEARY: What number is this one?
11 MR. GORE: This will be 7?
12 HEARING OFFICER: Yes. This will be 7.
13 MR. GORE: Thanks for letting me know, Judge.
14 Q Mr. Vargo underwent a polygraph
15 questionnaire when he went to SLED on the
16 7th. Did he also go -- undergo a polygraph
17 questionnaire when he applied for the
18 highway patrol?
19 A Yes, sir. He did.
20 Q Okay. And can you identify what I've just
21 handed you?
22 A This is the law enforcement polygraph
23 questionnaire that DPS was using at the
24 time.
25 Q Okay.

1 MR. GORE: I would move to admit this as State's
2 Exhibit 7.
3 MR. O'LEARY: I have no objection.
4 HEARING OFFICER: No objection. Okay. State's
5 Exhibit 7 is in evidence.
6 (State's Exhibit Number 7 was marked and entered
7 into evidence.)
8 Q All right. And, Captain Boehm, what is the
9 date that this form was completed?
10 A Let me see here.
11 Q It's on the top left.
12 A Okay. I don't see it on my copy, sir.
13 Q It's on the top left.
14 A Oh, okay. It's October 2nd, 2013.
15 Q Okay. And who completed this one?
16 A This would have been Mr. Vargo.
17 Q Okay. So this is done the same way the SLED
18 one is done?
19 A Yes, sir.
20 Q And if you'll turn with me to -- and I guess
21 let's look at the last page. Did Mr. Vargo,
22 in fact, sign this one?
23 A Yeah. Because this one isn't done online,
24 he would have signed it by hand.
25 Q Okay. And I notice the dates don't match,

1 but they're close.

2 A Yes, sir.

3 Q And, on the second page, Question 12, was

4 Mr. Vargo asked about the use of

5 prescription drugs?

6 A Yes, sir.

7 Q What was the question?

8 A It was Number 12, and it said, "Have you

9 ever used someone else's prescription drug?"

10 And there's a "yes" and a "no" box. He

11 checked the "no" box.

12 Q Okay. All right. And so, on -- we looked

13 at three documents that Mr. Vargo made

14 representations to the Department. An

15 employment application, answers that he gave

16 to a background investigator, as well as

17 answers that he gave on a polygraph

18 questionnaire. Those are the three exhibits

19 I've just given you, right?

20 A Yes, sir. Yeah. And then, what they're

21 used is part of the employment process.

22 Q Okay. And, on any of those three documents,

23 did Mr. Vargo mention using Adderall in

24 2012-2013?

25 A No, sir.



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22 A The second of October of 2013.

23 Q Okay. All right. And, in comparison, when

24 did Mr. Vargo complete the SLED

25 questionnaire?



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1 but they're close.

2 A Yes, sir.

3 Q And, on the second page, Question 12, was

4 Mr. Vargo asked about the use of

5 prescription drugs?

6 A Yes, sir.

7 Q What was the question?

8 A It was Number 12, and it said, "Have you

9 ever used someone else's prescription drug?"

10 And there's a "yes" and a "no" box. He

11 checked the "no" box.

12 Q Okay. All right. And so, on -- we looked

13 at three documents that Mr. Vargo made

14 representations to the Department. An

15 employment application, answers that he gave

16 to a background investigator, as well as

17 answers that he gave on a polygraph

18 questionnaire. Those are the three exhibits

19 I've just given you, right?

20 A Yes, sir. Yeah. And then, what they're

21 used is part of the employment process.

22 Q Okay. And, on any of those three documents,

23 did Mr. Vargo mention using Adderall in

24 2012-2013?

25 A No, sir.

1 Q Okay. On any of those documents did Mr.
2 Vargo mention purchasing Adderall?
3 A No, sir.
4 Q Okay. And I -- I should have done this
5 earlier, but when was the application
6 completed? Do you have a date on that?
7 A Are you talking about the online
8 application, yes?
9 Q The online application.
10 A I read it out there a moment ago. It's
11 timestamped on the back. It's August 19th,
12 2013 at 1:24 p.m.
13 Q Okay. And then, on the background
14 investigation, when was that done?
15 A It was signed off by the -- the
16 investigator, the background investigator on
17 October 24th, 2013.
18 Q Okay. And when -- and I think you said
19 earlier, but just to keep them in order,
20 when was the highway patrol polygraph
21 questionnaire?
22 A The second of October of 2013.
23 Q Okay. All right. And, in comparison, when
24 did Mr. Vargo complete the SLED
25 questionnaire?

1 A It would have been February 7th I believe
2 2024.

3 Q Okay. All right. And did you ask Mr. Vargo
4 about the discrepancy between his answers
5 regarding Adderall use on the highway
6 documents as compared to the SLED
7 questionnaire?

8 A Yes, sir.

9 Q Okay. And what was his response to that?

10 A He told me that he didn't think he thought
11 about it when he was taking a polygraph with
12 the Department of Public Safety or the
13 highway patrol. He said it likely wasn't
14 weighing on his conscious at the time. I
15 pointed out that, you know, at the time it
16 was -- it was a recent and frequent
17 occurrence. It happened ten times just
18 prior to his -- you know, his application
19 process with the highway patrol. And
20 he -- he said nonetheless, it must not have
21 been weighing on his conscious.

22 Q Okay.

23 A Or mind.

24 Q Okay. And ultimately, what was your
25 conclusion regarding Mr. Vargo's responses

1 on the application, the background
2 investigation, the polygraph questionnaire?
3 His representations to the highway patrol
4 about Adderall usage?

5 A It didn't add up with what he had told SLED.

6 Q Okay. Was it inconsistent with that?

7 A It was most certainly inconsistent.

8 MR. GORE: I don't have anything further.

9 CROSS-EXAMINATION OF CAPTAIN BOEHM

10 BY MR. O'LEARY:

11 Q Okay. Officer, how did you originally get
12 the information on this case? SLED
13 contacted you about -- about the polygraph?

14 A Yeah. They -- they didn't contact OPR
15 directly. They contacted the highway
16 patrol. Who in the highway patrol, I really
17 couldn't say. But ultimately, the highway
18 patrol requested that the OPR conduct an
19 investigation and they forwarded the
20 documents that they had to us.

21 Q Now, what -- you checked his record. He had
22 been on the Department at that point when
23 you got to him, about ten years, correct?

24 A Yes. It was just a little bit over. Yes,
25 sir.



1 Q Did he have any problems in his -- his
2 performance as an officer?

3 A I don't know.

4 Q Okay. So, when he came in, he -- he -- did
5 you show him the SLED report?

6 A Yes, sir.

7 Q And then SLED basically had a -- a -- he
8 passed the polygraph?

9 MR. GORE: Objection. We -- we have not entered
10 any evidence about whether he passed the
11 polygraph or not or -- and the -- and the
12 results of a polygraph are not admissible.

13 HEARING OFFICER: Yeah.

14 MR. O'LEARY: Okay. I'll -- I'll back off of
15 that.

16 MR. GORE: You can talk about the questionnaire,
17 but that's different than the polygraph
18 itself.

19 Q But you got information from SLED?

20 A I did get some information from SLED. I got
21 the packet that we just discussed that's
22 called the South Carolina Law Enforcement
23 Division applicant questionnaire is what I
24 received.

25 Q Is -- did SLED investigate this case?

1 A SLED conducted an investigation on Mr.
2 Vargo, but it was not directly related to
3 use of Adderall.
4 Q Okay.
5 A If -- if that's what you're referring to.
6 Q Did -- did you -- did you listen to the tape
7 recording from the first -- the first
8 polygraph -- or excuse me. The first
9 testing he had with your agency? Did you
10 listen to his interviews?
11 A I -- I don't believe that that was recorded.
12 Q Are you sure?
13 A Are you talking about an audio recording?
14 Q Yeah.
15 A Okay. No. I -- I don't have a copy of that
16 and I've never heard it.
17 Q Would you be surprised that he talked about
18 Adderall in the recording?
19 MR. GORE: Objection. Do you have his
20 information? Because I've never heard it.
21 MR. O'LEARY: Well, the recording -- it's on the
22 recording.
23 MR. GORE: But I don't have the recording.
24 You're talking about something I've never
25 seen.

1 HEARING OFFICER: Okay.

2 MR. GORE: Or heard.

3 MR. O'LEARY: Okay.

4 MR. GORE: All right. I'll back off of that.

5 I'm sorry.

6 HEARING OFFICER: Okay.

7 Q You've got these three tests -- three

8 reports there, right? Number -- what is the

9 first one you have? What number is that?

10 Fifteen?

11 A I've got -- I've got four here in front of

12 me. If you tell me which --

13 Q I know they're all over the place.

14 A Yeah. Number 4 is the -- the SLED applicant

15 questionnaire.

16 Q Okay. And, in the questionnaire, did he

17 indicate anything in there about using

18 drugs?

19 A In the SLED applicant questionnaire, yes,

20 sir. I read it for the record a moment ago.

21 Q Okay.

22 A He wrote "Adderall a few times to help with

23 exams, late night study nights. Taking Oxy

24 after surgeries, always prescribed and never

25 abused. 2012 to 2013 took Adderall

1 approximately 20 times purchased from my
2 neighbor at \$10 a pill."

3 Q Did he also say that he had used
4 Adderall -- it was given to him by his
5 mother, in your interview? Or do you
6 recall?

7 A During my interview with him, we discussed
8 the background check where it says, "Have
9 you ever" -- Question Number 16: "Have you
10 ever used and/or experimented with
11 prescribed medication or prescribed to you?"
12 And he had told the background investigator,
13 "Maybe childhood from mother." So sometime
14 in his childhood.

15 Q Okay. And you went over that -- that
16 statement, that report with him, correct?

17 A Yes, sir.

18 Q And he was -- he was readily open and told
19 you the truth?

20 A Well, I don't know what you mean.

21 Q He didn't -- he wrote that down that he used
22 that with a neighbor, correct?

23 A He did not -- I'm not understanding you, Mr.
24 O'Leary. During our meeting, when we
25 discussed the background check for the

1 Department of Public Safety --

2 Q Okay.

3 A -- he did not dispute that he had advised

4 the background investigator "maybe childhood

5 from mother."

6 Q Okay. Okay. And that was from '13,

7 correct?

8 A Yes, sir.

9 Q Okay. And then the one that was in '24 with

10 the -- concurrent with the SLED interview?

11 A Yes, sir. Correct.

12 Q Okay. And has he -- let -- let me back up a

13 second off of the -- off the -- the

14 Adderall. Did Adderall come in your

15 discussion at all with him?

16 A Yes, sir. I asked him about it.

17 Q And -- and how did he specifically -- what

18 did he say to you, if you remember?

19 A Yeah. He basically acknowledged that he

20 had, in fact, purchased it back then from

21 his neighbor. \$10 a pill or so 10 to 20

22 times. And when I asked him --

23 Q Okay.

24 A -- how come he didn't disclose it to us,

25 he -- he told me the -- the same thing I

1 told you a minute ago. "I don't know if I
2 ever once thought about it when I was taking
3 the polygraph," and it likely wasn't
4 weighing on his conscious at the time.
5 Q Did he indicate to you that he didn't recall
6 Adderall until the SLED interview?
7 A Yes, sir.
8 Q Okay. And did he say to you because he was
9 being interviewed at SLED by people he knew?
10 A No, sir. He didn't tell me that.
11 Q He didn't tell you that he went to school
12 with the -- the man that was interviewing
13 him?
14 A No, sir.
15 Q Okay.
16 A I don't recall him telling me that ever.
17 Q And did you see any reference --in the 2013,
18 did you see anything in there with reference
19 to any kind of drugs? Adderall or anything
20 else?
21 A In -- in the background check or in the --
22 Q Yeah.
23 A -- polygraph questionnaire?
24 Q In the original interview for the
25 Department, did he mention anything? Did he

1 say -- and say to you that "In the original
2 interview I mentioned to the interviewer
3 that I had used Adderall?"
4 A Not that I recall. No, sir.
5 Q You don't recall? Okay.
6 A No, sir.
7 Q And you then asked him about the filling out
8 for the sick child when he was off on that
9 what? Sixth or 7th, correct?
10 A We talked about both dates. Yes, sir.
11 Q Okay. And -- and, when he filled that out,
12 he -- there's no dispute the child was sick.
13 It was ill?
14 A There was never a question about it, sir.
15 Q That he was off on the 6th and 7th of
16 February because of -- of illness or
17 his -- his daughter?
18 A No. We never disputed whether his daughter
19 was sick or not.
20 Q Okay. So your dispute came up over how he
21 filled out the timesheet?
22 A The issue was the -- the notification of the
23 corporal, advising the corporal on February
24 7th that he would need to utilize the entire
25 day for family sick leave when, in fact, he

1 knew he was going to travel to SLED to take
2 a polygraph examination. And then, the
3 second issue was documenting after the fact
4 in SCEIS that he had indeed been on family
5 sick leave.

6 Q When do they put SCEIS in? At the end of a
7 shift? How does that work?

8 A Everybody's different. He did it the next
9 day, I believe.

10 Q Okay. And -- and did you -- did you ever
11 check his employment record to see how much
12 time he had coming to him in sick leave?

13 A What his sick leave balance --

14 Q Yeah.

15 A -- was?

16 Q Yeah.

17 A No, sir.

18 Q And your -- your position is that he filled
19 out the Family Leave Act improperly?

20 A Not the Family Leave Act. That's a little
21 bit different than family sick.

22 Q Family sick.

23 A Yeah. Instead of utilizing annual leave or
24 holiday leave or some sort of comp time,
25 whatever the case was to handle these

1 personal matters, instead of utilizing
2 family sick leave, to advise the
3 corporal -- advising the corporal and then
4 documenting it. The SCEIS says having been
5 on family sick leave to care for his child
6 when he wasn't caring for his child for
7 approximately five and a half to six hours.

8 Q Couldn't that have been changed and
9 transferred over to his sick -- over into
10 his regular sick leave column? Could the
11 Department change internally that? Could --

12 A You mean could someone do it for him?

13 Q Yeah. Yeah. Could he -- yeah. Could he
14 reflect it -- could it be corrected?

15 A Certainly. Yeah.

16 Q And --

17 A The time administrator or somebody would
18 have to correct it, yeah.

19 Q Okay. So meaning his supervisor would have
20 to correct it?

21 A No. His supervisor doesn't have time
22 administrator duties. Whoever the time
23 administrator at the time for his particular
24 troop would have been. And I'm not sure who
25 it was. And that was a period of

1 transition. But some time administrator

2 within the agency could have made those

3 changes had he notified them. Yes, sir.

4 Q Now, are you aware that the day before he

5 was on -- he -- he had put in for Family

6 Leave Act or whatever you want to call it.

7 A Yeah. Family sick leave.

8 Q And then the -- his corporal or his

9 supervisor said he had to go pick up a

10 vehicle.

11 A He didn't put the leave in that day. He

12 had -- he was scheduled to work.

13 Q Yeah.

14 A He advised the corporal that he couldn't

15 come to work because his daughter was sick,

16 but he still wanted to pick up his vehicle.

17 Q Okay.

18 A So, in an effort to accommodate him, the

19 corporal advised him, "Yes. You can do

20 that. We'll utilize working hours for the

21 period that you're traveling to and from

22 Columbia to get your vehicle, and then we'll

23 utilize family sick after you pick up your

24 vehicle. You can't come back to work since

25 your child's sick. So we'll utilize it that

1 way," which he knows how to do. He's been
2 on ten years of that.

3 Q So it was entered properly on the 6th?

4 A Yes, sir. Correct.

5 Q And, on the 7th, he was talking to him early
6 in the morning, correct? Or do you know?

7 A Yeah. It was -- it was 6:08 when the
8 corporal sent the -- the text message.

9 Q And when -- and in that -- in that message
10 to his corporal, was there any indication of
11 anything other than illness in the family?

12 A No. He just said "Family sick leave" again
13 indicating for the day, "[REDACTED] was up all
14 night throwing up."

15 Q And what would your time be put for the 7th?
16 If you talked to him early in the morning,
17 what would you put it in? At the end of the
18 shift?

19 A So everybody's a little bit different. The
20 policy basically says that you need to do it
21 in a timely manner. You can't let two,
22 three, or four weeks go by before I put my
23 leave in. Typically supervisors, from my
24 experience, and determined is a
25 supervisor --

1 Q Uh-huh.

2 A -- you want to see it put in within a few
3 days, right? So if -- if -- if we get to
4 Friday and the time for Monday isn't in,
5 that's typically an issue. It needs to --

6 Q Well --

7 A -- be regularly kept up with. But it
8 doesn't need to exactly be by the end of the
9 shift on Monday.

10 Q What time was the 7th's put in? Do you
11 know?

12 A I'd have to look here, sir.

13 Q That seems small to read. I couldn't hardly
14 read it.

15 A It is. I'm kind of struggling here to read
16 it a little bit. But it's my impression it
17 was put just a few days later.

18 Q A few days later.

19 A Yes, sir.

20 Q Okay.

21 A It -- it wasn't put in before the fact. It
22 was put in after the fact.

23 Q Are they -- are the officers taught
24 specifically how to use -- what do you say?

25 SCEIS?



1 A Yes, sir.

2 Q And could an officer put his time for a

3 shift in at the beginning of the shift?

4 A Certainly he could. Yeah.

5 Q But that -- that wouldn't be right, though,

6 if he hadn't done it yet, would it?

7 A No. If you're asking me --

8 Q Okay.

9 A -- if it's possible if SCEIS would allow him

10 to, it -- it would. Yes, sir.

11 Q Okay.

12 A Yeah.

13 Q And there's nothing in writing that tells

14 the officer specifically they have to do it?

15 At what time they have to do it?

16 A It might vary from troop to troop, but I'm

17 not aware of any DPS policy or highway

18 patrol-specific written policy that tells

19 him that he -- that he's not to put it in in

20 the beginning of the shift.

21 Q Well, it could vary between posts?

22 A It could. Yes, sir.

23 Q Okay. Let me just back up a second here

24 now. Now, if you -- on the initial

25 interview for the Department, he was



1 A Yes, sir.

2 Q And could an officer put his time for a

3 shift in at the beginning of the shift?

4 A Certainly he could. Yeah.

5 Q But that -- that wouldn't be right, though,

6 if he hadn't done it yet, would it?

7 A No. If you're asking me --

8 Q Okay.

9 A -- if it's possible if SCEIS would allow him

10 to, it -- it would. Yes, sir.

11 Q Okay.

12 A Yeah.

13 Q And there's nothing in writing that tells

14 the officer specifically they have to do it?

15 At what time they have to do it?

16 A It might vary from troop to troop, but I'm

17 not aware of any DPS policy or highway

18 patrol-specific written policy that tells

19 him that he -- that he's not to put it in in

20 the beginning of the shift.

21 Q Well, it could vary between posts?

22 A It could. Yes, sir.

23 Q Okay. Let me just back up a second here

24 now. Now, if you -- on the initial

25 interview for the Department, he was

1 interviewed and he was hired, correct?

2 A Yes, sir.

3 Q And he's performed well for ten years?

4 A I have no idea about his record, sir.

5 Q Okay.

6 A That wasn't part of my investigation at the
7 time.

8 Q All right. You're -- you're aware that he
9 was assigned. At some point he went from
10 patrol into a canine officer?

11 A Yes, sir.

12 Q Okay. Is that like a promotion? Or how
13 does that work?

14 A I don't know that it's a promotion, but it's
15 certainly a prestigious, specialized unit.

16 Q And who do those units report to? The
17 same -- the same chain of command they had
18 or is it -- how does it work?

19 A It's varied over the years. Yes, sir. At
20 times they reported to the troop captain,
21 and then at times they reported to the Troop
22 8 captain, which I couldn't tell what they
23 were doing at the time that he transferred
24 over to that -- that troop. It's known at
25 Troop 8. It's the -- the -- the specialized

1 team.

2 Q Okay. Let me just ask a couple of more

3 questions about -- about the -- the test on

4 the -- about the SLED interview, okay?

5 A Okay.

6 Q You interviewed him about his SLED

7 interview, and he readily admitted that he

8 had used Adderall?

9 A I -- I -- we -- we discussed the answers

10 that he filled out in his applicant

11 questionnaire to SLED. And then I -- I

12 mean, I showed it to him.

13 Q Uh-huh.

14 A "This is what you wrote." And he didn't

15 dispute it.

16 Q Okay. How about the interview from his

17 initial hire? That interview of his

18 answers? Did you go over those with him?

19 A We discussed what he had disclosed back

20 then. Yes, sir.

21 Q Did you ask him why he -- why he didn't

22 disclose more?

23 A Not -- not necessarily more, but why he

24 didn't disclose the Adderall use. Yes, sir.

25 Q Did you discuss with him the fact that he

1 wasn't even aware that Adderall might be a
2 prescription drug?

3 A No, sir.

4 Q Okay. And what -- what -- it is a
5 prescription drug, correct?

6 A It is. Yes, sir.

7 Q Okay.

8 A If you're asking if I asked him, "Do you
9 know that it's a prescription drug?" No. I
10 never asked him that, no.

11 Q Okay.

12 A It's my impression that everybody's aware
13 that Adderall is indeed a prescription drug.

14 Q Okay.

15 (Sotto voce discussion between Mr. O'Leary and
16 Respondent.)

17 Q He had -- he readily admitted that he had
18 used some prescription medicines to you,
19 correct?

20 A I think Adderall -- not some
21 prescriptions --

22 Q No. Not --

23 A -- specifically Adderall. Yes, sir.

24 Q Or prescriptions?

25 (Sotto voce discussion between Mr. O'Leary and



1 Respondent.)

2 Q In the initial application?

3 A That he utilized prescriptions?

4 Q Yeah. He readily admitted it in his first

5 interview with the patrol back in '13 in

6 whenever.

7 A I'd have to go back and look at that one,

8 sir. Again, using prescriptions that were

9 prescribed to him, weren't -- wasn't the

10 crux of our -- our discussion. We -- we

11 discussed numerous issues, but whether or

12 not he had ever used any type of

13 prescription medication was not an issue.

14 Specifically the use of somebody else's

15 prescription medication, Adderall, which he

16 didn't have a prescription for was the

17 issue.

18 Q Was he -- were you talking to him about

19 where he got the source of that

20 prescription? Do you recall he said he had

21 got it from his mother?

22 A We talked about how he had maybe used some

23 prescription drugs during his childhood

24 maybe from his mother.

25 Q Okay. He did say that?

1 A Yeah. He acknowledged -- he acknowledged
2 what was written in the background.

3 Q Okay.

4 A The questionnaire. Yes, sir. I'm trying to
5 follow you.

6 (Sotto voce discussion between Mr. O'Leary and
7 Respondent.)

8 Q How long did that interview take with my
9 client?

10 A With Mr. Vargo?

11 Q Yes.

12 A Somewhere around an hour if I had to guess.
13 Off the top of my head, I don't know.

14 Q Just one? One interview?

15 A There was one interview, and I believe
16 midway the tape recorder ran out of
17 batteries, so we paused, we replaced the
18 battery, and then we continued on.

19 Q Okay.

20 MR. O'LEARY: I have no further questions.

21 HEARING OFFICER: All right. Are there any
22 follow-up questions?

23 REDIRECT EXAMINATION OF CAPTAIN BOEHM

24 BY MR. GORE:

25 Q Captain Boehm, just looking at this SCEIS

1 entry --

2 A Yes, sir.

3 Q -- I just wanted to clarify something. Do
4 you see a column on there, which is about a
5 third of the way from the left that says
6 "created on"?

7 A Yes, sir.

8 Q Okay. So -- can -- can you -- there was a
9 question about when were these entries
10 created.

11 A Yes, sir.

12 Q Can you specify that?

13 A Yeah. So again, it's -- it's a little bit
14 small. When -- when I went down to the HR
15 time and leave manager, I believe is her
16 official title, I'm not 100 percent sure.
17 Ms. Brianne Perry, she confirmed to me that
18 they were created after the fact and it's
19 created on 2.08 of 2024 at 12:59.

20 Q Okay.

21 A And so they were -- she confirmed that they
22 were created after the fact, because what
23 Mr. O'Leary brought up was one of my
24 concerns as well. Was this put in
25 beforehand? And -- and being that I'm not a

1 time administrator or a SCEIS expert, she
2 said that that was, in fact, accurate.

3 MR. GORE: I don't have anything further.

4 RE CROSS-EXAMINATION OF CAPTAIN BOEHM

5 BY MR. O'LEARY:

6 Q So you said it was put in the day after on
7 the 8th?

8 A To the best of my knowledge, yes, sir.

9 Again, without being a time administrator or
10 an expert in SCEIS, I know how to approve my
11 guys' leave and put my stuff in as I need
12 to. But -- but I have to get help from
13 somebody who's the expert, the time and
14 leave manager.

15 Q And does that show any indicator of
16 who -- who entered that on the 8th? I can't
17 read the thing. It's too small.

18 A I'm really not sure, sir. Yeah. I'm not
19 100 percent sure.

20 Q So it -- again, you can't say absolutely
21 that he put that in on the 8th?

22 A That he -- he advised me that he did -- he
23 put it in. Can I say absolutely what day?
24 I mean, no.

25 Q On the 7th, who put the entries in? Was

1 it -- was it his supervisor with him or
2 he -- was he alone?
3 A That put it in with him?
4 Q Yeah. Could the supervisor put it in on the
5 7th?
6 A He could. Yes, sir.
7 Q Okay.
8 A A supervisor could put in -- could input
9 leave. You asked me earlier about changing
10 leave --
11 Q Yeah.
12 A -- to something else. So, for example, if
13 somebody put in family sick and later wanted
14 to change it to annual leave, no, the
15 supervisor couldn't change that for him.
16 The time administrator would have to do
17 that. But if -- if he was on an extended
18 period of absence or something and
19 couldn't -- didn't have access to the
20 computer and couldn't, could the supervisor
21 put his leave in for him? The answer would
22 be yes.
23 Q Now, any member of the Department that you
24 know never questioned the sickness of his
25 daughter, correct?

1 A I have no reason -- I had no reason --

2 Q Okay.

3 A -- to question the sickness of his daughter.

4 No, sir.

5 Q And could that entry have been changed or

6 could it be changed within the internal

7 books of the Department to reflect sick

8 leave instead of family?

9 A Like I said, yeah. The time administrator

10 would certainly be able to go back in and

11 make adjustments to -- to working hours, to

12 leave, to --

13 Q Okay.

14 A To whatever if it needed to be corrected.

15 Q Did you -- did you have an opportunity to

16 discuss the initial intake into the

17 Department that -- the officers that

18 interviewed him for his initial hire?

19 A How do you mean?

20 Q Did you interview them about -- about my

21 client?

22 A Are you talking about like the investigating

23 officer?

24 Q Yeah.

25 A Trooper -- or Officer Rikard at the time and

1 the polygrapher?

2 Q Yeah.

3 A I did speak with the polygrapher about it,

4 yeah. Our polygrapher. Yes, sir. I used

5 to be his supervisor.

6 Q Okay. But you didn't talk to the guy that

7 did the original -- his test?

8 A No. He doesn't work for the agency anymore.

9 Q Okay. Is he alive?

10 A I have no idea, sir. I don't -- I don't

11 know much about it.

12 Q But you know the name. That's about all?

13 A I knew a Tom Rikard, but I don't believe

14 it's the same person.

15 Q Okay.

16 MR. O'LEARY: I have no further questions.

17 Thanks.

18 THE WITNESS: Yes, sir.

19 HEARING OFFICER: Anything further?

20 FURTHER REDIRECT EXAMINATION OF CAPTAIN BOEHM

21 BY MR. GORE:

22 Q Did you ask Mr. Vargo about who entered his

23 time in the SCEIS?

24 A Yeah. We touched on it. Yes, sir.

25 Q Did he say he entered the time?

1 A He acknowledged that he did. Yes, sir.

2 Q Okay.

3 MR. GORE: That's all.

4 A He -- he didn't dispute that -- that he was
5 the one that, in fact, put it in after the
6 fact.

7 Q Okay.

8 MR. GORE: I don't have anything further.

9 HEARING OFFICER: Okay.

10 EXAMINATION OF CAPTAIN BOEHM

11 BY THE HEARING OFFICER:

12 Q I -- just because there's been a lot of this
13 and I want to make sure I understand, with
14 this display of working times, it seems we
15 have one -- three entries here. One that
16 doesn't have a date, and then it says,
17 "February 6, 2024, February 7, 2024."

18 You're going from the bottom up.

19 A Yes. So my understanding is that 2.06, if
20 you look at that one across, it says "four"
21 and then 2002 is the code for --

22 Q Yeah.

23 A -- family sick. Directly below that is the
24 six hours, which also corresponds to the
25 6th, and that would be the working hours

1 or -- or vice-versa.

2 Q Okay. So --

3 A Yeah.

4 Q Okay. Now, this thing says it was -- so, if

5 we go from the bottom up, just so that

6 you're with me here, it says, "Created on

7 2.06.2024 at 14:26" and it says, "Created

8 by" Josh -- or "JOS 79937." And then, that

9 one -- that one is the working hours from

10 what I understand, correct?

11 A I -- I would imagine. Yes, ma'am.

12 Q Okay. Based off of the Exhibit 2 comparing

13 to this?

14 A Yes, ma'am. I'm not 100 percent sure on the

15 codes. The 2002, the 1000, et cetera.

16 Q Okay. So then we -- so I guess my one

17 question there is then the next one up that

18 has a different absence type. So the

19 first -- the bottom one with six hours says

20 "1,000" there for absence type.

21 A Yes.

22 Q And then the next one says "four" and it

23 says "2002." And it says it was created by

24 HR admin.

25 A Yeah.

1 Q And it doesn't say the JOS 79937. And then
2 again, the two -- the one created on
3 February 8th for the 7th, again says "HR
4 Admin."

5 A Yeah. I see that.

6 Q So do we know -- were -- were these things
7 that you were able to confirm with him that
8 he put in or was this his supervisor putting
9 this in?

10 A So he -- he confirmed to me that he did put
11 it in. The supervisor didn't put it in,
12 from my understanding.

13 Q Okay.

14 A Yeah.

15 Q I just don't -- okay.

16 A I understand they -- they went in after the
17 fact, because the -- the investigation took
18 place afterwards. Mr. Vargo was suspended
19 at the time, so they went in after the fact
20 to look at it to examine it, because when
21 they got the -- the SLED report or
22 the -- the SLED application back, I think he
23 went back to look at his leave. So Troop 8
24 had an issue with it, and then it was
25 forwarded to OPR. So, how it all came

25 A Is a screenshot from -- which makes it even

1 smaller, from Ms. Perry's email.

2 MR. O'LEARY: Well, if she's not here to
3 cross-examine, I don't know if that's really
4 fair at this point. If he says he doesn't
5 understand and I don't understand it, and I
6 know that my client's name is not on the
7 side of the -- only on one line.

8 FURTHER RECROSS-EXAMINATION OF CAPTAIN BOEHM

9 BY MR. O'LEARY:

10 Q Who runs SCEIS? That -- or whatever you
11 call it? Who runs that in the agency?

12 A The state runs it. My understanding is that
13 each individual troop/post has their
14 administrators --

15 Q Okay.

16 A -- as well.

17 Q I mean, I have no idea.

18 HEARING OFFICER: Okay.

19 A So Ms. Perry -- to answer your question, Mr.
20 O'Leary, Ms. Perry is kind of the -- the HR
21 overseer I guess --

22 Q Uh-huh.

23 A -- for a lack of a better term. But
24 her -- she's the human resources manager to
25 employee relations and leave. So she

1 manages a good deal of it. I don't know
2 that I could use the word to say -- to say
3 that she runs it, if that makes sense.
4 Q Okay.
5 HEARING OFFICER: Okay.
6 MR. O'LEARY: I appreciate it. Thank you.
7 HEARING OFFICER: All right. Well, so I -- I
8 understand that there is an email that may
9 clarify that information while I -- I mean,
10 I believe there is an objection that email
11 is based off of hearsay or --
12 MR. O'LEARY: It's hearsay, ma'am.
13 HEARING OFFICER: Okay.
14 MR. O'LEARY: It -- it's impossible to
15 cross-examine somebody about an email if
16 they aren't here.
17 HEARING OFFICER: I understand. Well, okay.
18 MR. GORE: I'm not trying to admit the email.
19 HEARING OFFICER: Yeah. Okay.
20 MR. GORE: I'm asking him if --
21 HEARING OFFICER: Oh.
22 MR. GORE: -- he can now answer your question --
23 HEARING OFFICER: Oh, okay.
24 MR. GORE: -- based on the information. I'm not
25 trying to admit the email.



1 So do not answer that question.

2 THE WITNESS: Yes, ma'am.

3 HEARING OFFICER: All right.

4 MR. GORE: Can I -- well then, can I --

5 HEARING OFFICER: Yeah.

6 MR. GORE: Can I ask I guess just to button this
7 up.

8 CONTINUED FURTHER REDIRECT EXAMINATION OF CAPTAIN

9 BOEHM

10 BY MR. GORE:

11 Q Mr. Vargo admitted to you that he entered
12 the time?

13 A He did.

14 Q Okay. And Mr. Vargo admitted to you that he
15 entered -- on February the 6th, he entered
16 six hours of working time and four hours of
17 family sick leave?

18 A For February the 6th, yes, sir.

19 Q And what did Mr. Vargo tell you that he
20 entered for February 7th?

21 A He acknowledged that he entered ten hours of
22 family sick leave.

23 Q Okay.

24 A For the 7th.

25 Q And that's what Mr. Vargo told you? Is

1 that --

2 HEARING OFFICER: That he -- okay.

3 CONTINUED FURTHER RECROSS-EXAMINATION OF CAPTAIN

4 BOEHM

5 BY MR. O'LEARY:

6 Q And again, I -- I don't know how to read
7 this. But you entered -- he admitted he did
8 it on the 6th, correct?

9 A For the 6th.

10 Q For the entry for the 6th?

11 A He -- he admitted to me that for the 6th he
12 entered that combination of working hours
13 and family sick.

14 Q Okay.

15 A And he acknowledge to me that he -- on
16 the -- for the 7th, he had put in ten hours
17 of family sick leave.

18 Q And, if he entered it, why doesn't it show
19 on this document as an entry by him?

20 A Again, sir, I'm not a SCEIS expert. I can't
21 answer that.

22 Q Okay.

23 A I -- I can barely see it.

24 Q Did he -- did he mention an entry or did he
25 mention talking to his supervisor?

1 A No, sir. He -- he acknowledged that he
2 entered ten hours of sick leave.
3 Q He --
4 A Or family sick leave. I apologize.
5 Q But he also admitted that he had talked to
6 his supervisor about the 6th, correct?
7 A He -- yes. He --
8 Q Okay.
9 A -- acknowledged to me that on the morning of
10 the 6th, he had a verbal conversation
11 with --
12 Q All right.
13 A -- his supervisor, Corporal Albert, advising
14 that while his daughter was sick, he still
15 wanted to come to Columbia to be able to get
16 his new patrol car. Yes, sir.
17 Q Okay. Thanks.
18 HEARING OFFICER: Okay.
19 MR. O'LEARY: Thank you.
20 FURTHER RE-EXAMINATION OF CAPTAIN BOEHM
21 BY THE HEARING OFFICER:
22 Q And this is -- when you're saying you were
23 speaking with Mr. Vargo, this was the
24 recorded conversation?
25 A Yes, ma'am. That's the only time I've spoke



1 to him prior to -- you know?

2 Q Thank you. All right. And you -- and I

3 think this was already asked. But you

4 didn't -- the person you spoke to about the

5 different applications and the different

6 questionnaires that are the different

7 exhibits, the only one you spoke to about

8 that was Mr. Vargo? Or did you speak with

9 anyone else about them?

10 A No. I -- I did, in fact, contact SLED in

11 reference to the law enforcement

12 questionnaire.

13 Q Okay.

14 A I spoke to Mr. -- I believe it's Scott

15 Smith, who is the polygrapher for SLED. And

16 then, our polygrapher, Harry Morral, I spoke

17 with him about it, and that's what I

18 obtained, the -- the documents from him.

19 Q Okay.

20 MR. O'LEARY: Could I ask him one question?

21 A In an effort to compare, I obtained

22 documents and spoke with Harry Morral.

23 Q Okay. So you spoke with SLED, the one

24 about --

25 A Yeah.

1 Q -- the -- the -- the applicant
2 questionnaire. That's Exhibit 4.
3 A Yes, ma'am. Yes, ma'am.
4 Q And then, you spoke with your polygrapher
5 about State's Exhibit --
6 A There was six.
7 Q Six.
8 A And then there was -- he provided me some
9 additional documentation. I'm not sure if
10 it ended up making it in the report or what
11 the case was. But I didn't speak to him
12 officially. We didn't have any -- a
13 recorded interview or anything. I called
14 him, I told him what I was doing, and that I
15 needed some assistance with some
16 documentation from 2013.
17 Q Okay. So he only just was like the keeper
18 of those records? He wasn't --
19 A Correct.
20 Q -- the one that actually did that in 2013?
21 A No. He did the -- he conducted the
22 polygraph.
23 Q Oh, okay.
24 A Yes, ma'am.
25 Q Okay. So you spoke with him about it?



1 A I did.

2 Q Okay.

3 HEARING OFFICER: All right. I think that was
4 all of my questions. I will now open it
5 back up.

6 Mr. O'Leary, do you have any follow-up based
7 off of me?

8 CONTINUED FURTHER RECROSS-EXAMINATION OF CAPTAIN
9 BOEHM

10 BY MR. O'LEARY:

11 Q Now, this display of working times here, did
12 you show that to my client and go over it
13 with him?

14 A This -- this particular form here
15 (indicating)?

16 Q Yeah.

17 A I'm not sure if I did, sir.

18 Q But you just -- when did you see that for
19 the first time? Today?

20 A No. I received the email from Ms. Brianne
21 Perry on March 27th, 2024.

22 Q That wasn't the day you interviewed my
23 client, was it?

24 A I don't believe so. Let me go back and
25 look, sir.

1 about it. And that Monday, I was like,
2 "Hey, my" -- she ended up having the flu. I.
3 told him about it. And he was like, "Well,
4 we'll -- we'll reschedule your -- your
5 pickup for the car." And I said, "No." I
6 said, "Give me a minute. I'll call you
7 back. I might be able to work something out
8 where I can at least go -- because I think
9 my original appointment was that afternoon
10 or something. So I'm thinking, "Get me in
11 first thing in the morning." I had an
12 in-law that could watch her for that
13 morning, and -- because she's got
14 obligations for the rest of the day. But
15 she could cover her for me to run up there
16 and pick up my new vehicle. Because again,
17 I just -- you know, everybody looks forward
18 to a new vehicle. I had just gutted out, so
19 if I -- no telling when my next appointment
20 would have been. It would have had been. I
21 wouldn't have had nothing in my car. I
22 didn't want to put everything back in, stuff
23 like that. I was like, "Let me see." So I
24 was able to make it work out. So I did go
25 to work that Tuesday for half a day to run



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22 original -- the original plan I discussed
23 with my supervisor the week before. And, as
24 I told the investigator, the original plan
25 was to use -- swap that holiday leave,



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1 A I did.

2 Q Okay.

3 HEARING OFFICER: All right. I think that was
4 all of my questions. I will now open it
5 back up.

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7 off of me?

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9 BOEHM

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12 you show that to my client and go over it
13 with him?

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15 (indicating)?

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19 the first time? Today?

20 A No. I received the email from Ms. Brianne
21 Perry on March 27th, 2024.

22 Q That wasn't the day you interviewed my
23 client, was it?

24 A I don't believe so. Let me go back and
25 look, sir.



1 Q I mean, did you go over that document with
2 him? That's all I'm asking you.

3 A The document and the -- the times that he
4 had entered, yes.

5 Q But not -- you didn't show him on the
6 document what was there?

7 A I believe I advised him that he had put "X"
8 hours in on the 6th, the next hours in on
9 the 7th. He acknowledged that he did and we
10 discussed why he had put those hours in.

11 MR. O'LEARY: I don't have any further questions,
12 Your Honor.

13 HEARING OFFICER: Anything from you, Mr. Gore?

14 MR. GORE: No. This is just a matter of
15 housekeeping. I noticed when the -- the
16 SLED questionnaire, the one that I
17 admitted -- that we admitted, has a
18 highlight on it.

19 HEARING OFFICER: Oh.

20 MR. GORE: It's my copy. Yeah. I just want to
21 substitute in this clean copy that doesn't
22 have my writing on it.

23 HEARING OFFICER: All right. Thank you.

24 MR. GORE: I just don't want to -- I don't think
25 that's fair to put that in.



1 HEARING OFFICER: All right.

2 MR. GORE: That's all.

3 HEARING OFFICER: Thank you.

4 MR. GORE: That's all. No -- no further

5 questions from me.

6 HEARING OFFICER: All right.

7 You may be excused. Thank you.

8 MR. O'LEARY: I would just call my client to the

9 stand.

10 HEARING OFFICER: All right.

11 CAPTAIN BOEHM: I get to rest?

12 MR. O'LEARY: I'd like to take -- take a short

13 break.

14 MR. GORE: I don't have any further questions.

15 HEARING OFFICER: All right.

16 MR. O'LEARY: Let's take a break.

17 HEARING OFFICER: The Department rests.

18 It is -- or how is everyone doing? Would

19 you like to keep going or --

20 MR. O'LEARY: Let's take a short break, if you

21 don't mind.

22 HEARING OFFICER: Okay. Yeah. Why -- let's go

23 ahead. I have got -- it's 11:07. Why don't

24 we come back at 11:20, okay?

25 (A recess took place from 11:07 a.m. until 11:17

1 a.m.)

2 JOSHUA A. VARGO, after having been duly sworn,

3 testified as follows:

4 MR. O'LEARY: Does he need to produce his license

5 to -- for --

6 COURT REPORTER: I'm -- I'm good with it.

7 MR. O'LEARY: Okay. Okay. Thanks. Most of them

8 don't bring their license. That's the

9 problem.

10 JOSHUA A. VARGO, after first being duly sworn,

11 testified as follows:

12 DIRECT EXAMINATION OF MR. VARGO

13 BY MR. O'LEARY:

14 Q Okay. State your name.

15 A Joshua Vargo.

16 Q And Josh, how old are you?

17 A Thirty-four.

18 Q And where do you live?

19 A In Aiken.

20 Q Are you married?

21 A Yes, sir.

22 Q How many children?

23 A Two years. Two. I'm sorry. Two children.

24 Q Two and five? Children?

25 A One just turned five today and another -- my



1 youngest one that's in question in all of
2 this, [REDACTED], is three.
3 Q And the five-year-old's birthday is today?
4 A Yes. Her birthday's today.
5 Q Okay. And tell me. Where did you
6 go -- where were you raised?
7 A I was -- grew up, born and raised in
8 Williston, been around the Aiken area all my
9 life.
10 Q Okay. And where did you go to high school?
11 A Williston-Elko High School.
12 Q And did you go to college?
13 A USC-Aiken.
14 Q And did you graduate?
15 A I did.
16 Q What did you graduate in?
17 A A bachelor's in business administration with
18 a concentration in accounting.
19 Q What year was that?
20 A 2013.
21 Q Concentration in accounting?
22 A Yes, sir.
23 Q Okay. Now, at this point -- are you a
24 volunteer fireman or anything?
25 A I'm a volunteer. Yes, sir. Was paid staff

1 before the highway patrol but -- I mean,
2 paid fire department before highway patrol,
3 but volunteer now.
4 Q Out of what county?
5 A I was -- I was paid -- I was working with
6 Aiken Department of Public Safety, and then
7 now I volunteer with New Ellington, the town
8 I live in. A small town.
9 Q Now, at some point -- how old were you when
10 you wanted to apply for the patrol?
11 A 2013. So I would have been 23.
12 Q Okay. And you had graduated at that point
13 from college?
14 A Yes.
15 Q Okay. And you applied for the patrol where?
16 Here in Columbia?
17 A Well, I applied for -- I think I
18 put -- initially put a couple counties on my
19 application. But it was through the state
20 highway patrol, if that's what you mean,
21 based out of Columbia. But the area to work
22 for would have been around the
23 Aiken/Barnwell.
24 Q Okay.
25 A I think -- I think I put several counties.



1 Just anywhere they would give me a job.

2 Where they needed me, I guess.

3 Q Now, you got hired on -- when did you
4 actually get hired by the patrol?

5 A I got hired at the end of January of
6 2024 -- I mean, 2014. I'm sorry.

7 Q And you were interviewed by the patrol. You
8 were hired, correct?

9 A Yes.

10 Q Where were your interviews? Up here in
11 Columbia?

12 A There was some in Columbia, there was some
13 at my house.

14 Q Were you given a pre-employment test? A
15 polygraph?

16 A Yes.

17 Q Okay. And did you pass that?

18 A I did.

19 MR. GORE: Objection.

20 MR. O'LEARY: Can I just --

21 MR. GORE: You cannot discuss the results of a
22 polygraph.

23 HEARING OFFICER: Yeah.

24 MR. GORE: Wholly inadmissible.

25 HEARING OFFICER: So you can speak and ask him



1 about the conversations of the questions

2 asked --

3 MR. GORE: Okay.

4 HEARING OFFICER: -- before or after. But the

5 actual results of the polygraph are --

6 MR. O'LEARY: Well, I'll do it in a little

7 different way.

8 HEARING OFFICER: Okay.

9 Q You were interviewed by the patrol and you
10 got hired by the patrol, correct?

11 A I did.

12 Q And how many interviews did you have to go
13 through?

14 A There would have been a board interview that
15 I recall, the home interview, and then the
16 polygraph. I would have had to pass the
17 polygraph to come be employed.

18 Q Did you at -- when you got assigned, where
19 were you assigned to? Your first
20 assignment?

21 A First assignment was Aiken County.

22 Q What troop?

23 A Troop 7, Post C.

24 Q Troop 7. And were you also at the same time
25 being a volunteer fireman too?

1 A Yes. I've been a volunteer firefighter
2 since 2009.

3 Q Okay. Now, in the patrol, you've been on it
4 like ten years, correct?

5 A Yes.

6 Q And, in those ten years, have you received
7 any awards?

8 A I've -- numerous. For ten years I was
9 trooper of the year. Five years out of the
10 ten I've been trooper of the year for my
11 assigned post. I produce. I've got awards
12 through Mark Coates, canine awards, post
13 awards, MADD's given me an award. Various
14 awards throughout their agency. Stuff like
15 that.

16 Q At some point in your -- in your career with
17 the patrol you -- did you apply to be a
18 canine officer?

19 A I did. I was approached end of 2023,
20 beginning of 2024 about coming over to SLED
21 and -- with their arson unit and being a
22 canine handler.

23 Q Okay. And you were a canine handler with
24 the Department, correct?

25 A I was a canine handler with the Department

1 here. And I was told it was about to
2 be -- which it did come to an end. But they
3 were going to disband it in the beginning of
4 the year, so that's why I went ahead and
5 applied with -- with SLED. To continue my
6 canine career.

7 Q And you were sent for special training on
8 canine, correct?

9 A Yes.

10 Q Where were you sent?

11 A We go to Alabama Canine in Tuscaloosa.
12 Outside of Tuscaloosa, Alabama.

13 Q And, when you go there, do you get a dog
14 there too?

15 A Yeah. We get issued a dog and go through
16 extensive training. I think it was like
17 six, seven weeks of total training.

18 Q Okay. Now, since that time, the patrol did
19 get rid of the unit, correct?

20 A Yeah. Well, they got rid of the -- a
21 majority of the dogs.

22 Q Okay.

23 A I think they keep it on paper as a canine
24 unit, but --

25 Q Did you get to keep your dog?



1 A My dog was retired.

2 Q Retired? I didn't know they retired. Okay.

3 Okay. Let me ask you now. On the incidents

4 here, tell me about February the 6th and 7th

5 of '24. Do you remember those two days?

6 A I do.

7 Q And tell me. On the February 6th -- well,

8 tell me what happened. Was a member of your

9 family sick?

10 A My -- yeah. So it actually occurred that

11 weekend. I think it was maybe around Sunday

12 we started seeing the -- the obvious signs

13 that she was getting sick. I was scheduled

14 to work Monday through -- I was scheduled to

15 work Monday through Wednesday. And Thursday

16 was a holiday leave that they just put on

17 the schedule, because I had to burn it. So,

18 as my child got sick, my wife ended up

19 taking off Monday for work, because I

20 had -- I had Orangeburg court, which was a

21 massive court. I couldn't afford to miss

22 Monday. I also had just -- I was supposed

23 to be issued a new car Tuesday, and I had

24 just gutted my car completely out. When my

25 little one got sick, I called the supervisor

1 about it. And that Monday, I was like,
2 "Hey, my" -- she ended up having the flu. I.
3 told him about it. And he was like, "Well,
4 we'll -- we'll reschedule your -- your
5 pickup for the car." And I said, "No." I
6 said, "Give me a minute. I'll call you
7 back. I might be able to work something out
8 where I can at least go -- because I think
9 my original appointment was that afternoon
10 or something. So I'm thinking, "Get me in
11 first thing in the morning." I had an
12 in-law that could watch her for that
13 morning, and -- because she's got
14 obligations for the rest of the day. But
15 she could cover her for me to run up there
16 and pick up my new vehicle. Because again,
17 I just -- you know, everybody looks forward
18 to a new vehicle. I had just gutted out, so
19 if I -- no telling when my next appointment
20 would have been. It would have had been. I
21 wouldn't have had nothing in my car. I
22 didn't want to put everything back in, stuff
23 like that. I was like, "Let me see." So I
24 was able to make it work out. So I did go
25 to work that Tuesday for half a day to run



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2 "Hey, my" -- she ended up having the flu. I
3 told him about it. And he was like, "Well,
4 we'll -- we'll reschedule your -- your
5 pickup for the car." And I said, "No." I
6 said, "Give me a minute. I'll call you
7 back. I might be able to work something out
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11 first thing in the morning." I had an
12 in-law that could watch her for that
13 morning, and -- because she's got
14 obligations for the rest of the day. But
15 she could cover her for me to run up there
16 and pick up my new vehicle. Because again,
17 I just -- you know, everybody looks forward
18 to a new vehicle. I had just gutted out, so
19 if I -- no telling when my next appointment
20 would have been. It would have had been. I
21 wouldn't have had nothing in my car. I
22 didn't want to put everything back in, stuff
23 like that. I was like, "Let me see." So I
24 was able to make it work out. So I did go
25 to work that Tuesday for half a day to run

1 up to Columbia to pick up my new vehicle,
2 come home. At which point, as I said
3 before, we -- you know, I worked half a day,
4 so I entered half a day. The other half of
5 the day was the family sick leave.
6 Q Now, before the -- before the 6th and the
7 7th, had you a couple of days earlier talked
8 about going on vacation, or taking a
9 holiday, or anything?
10 A No.
11 Q You did not. Okay.
12 A No.
13 Q So you talked --
14 A That holiday leave was just a random holiday
15 they put on the -- on the schedule to -- to
16 allow me not to -- I mean, just to burn it
17 so they didn't have to pay me for it.
18 Q That would have been that Thursday, right?
19 A That Thursday. Yes.
20 Q Okay.
21 A The polygraph was Wednesday. And the
22 original -- the original plan I discussed
23 with my supervisor the week before. And, as
24 I told the investigator, the original plan
25 was to use -- swap that holiday leave,



1 because it's never been an issue before,
2 just -- I explained it. "Hey, maybe
3 something's going to have -- you know,
4 something come up." I was going to
5 initially plan to switch that holiday leave
6 for Wednesday and just work Thursday. That
7 way, during my polygraph, I would be out on
8 holiday leave.

9 Q Okay.

10 A Because I -- obviously, I can't go to work
11 applying for another agency, so I was going
12 to have to take the day off. So that was my
13 initial plan. I was, to -- "Hey, just
14 remind me as time comes," because I didn't
15 tell him I was going to a polygraph. I
16 mean, I don't -- I don't see what person
17 would have openly admitted, "Hey, I'm -- I'm
18 going to put in for another agency." But I
19 told him, "Hey, something -- something come
20 up." I was told to remind him as the week
21 progressed. As I explained to him in the
22 interview, between the supervisor working,
23 covering multiple -- because we cover
24 multiple counties. Life happens outside of
25 patrol. We both forgot about it. Or -- or

1 that initial conversation. As the time
2 progressed, I mean, my child got sick. And
3 I knew -- I knew that no matter what, I was
4 going to be off the rest of the week between
5 the holiday leave and the family sick leave.
6 Because the flu, the school would not allow
7 her to come back.

8 Q Okay.

9 A So that's when, as said before, I took
10 my -- I -- I was able to make arrangements.
11 Because, in the event my child wasn't sick
12 and I couldn't use -- swap the holiday
13 leave, as I explained to him, as I explained
14 to -- I was -- I was allowed to reschedule
15 my -- my polygraph. And even the day of my
16 polygraph, when I explained the -- the
17 polygrapher asked me if I got much sleep and
18 had I eaten breakfast, I told him, "No. I
19 didn't eat breakfast. That's normal." I
20 said, "But I didn't get any sleep. I only
21 got like two hours of sleep that day because
22 my child was sick." He asked if I wanted to
23 continue or reschedule. I said, "No. I'm
24 just ready to get this over with. Let's go
25 ahead. I'm here already." So we went



1 forward. But I even -- up till that
2 morning, I still had the opportunity to
3 reschedule had I known I was doing anything
4 wrong.

5 Q But you'd been up pretty much all night with
6 the baby?

7 A Yes. Which -- which was one of the --

8 Q Okay.

9 A -- reasons I -- obviously, I guess was eight
10 minutes to reply back to -- slow when
11 answering my supervisor or whatnot. But
12 anyway, so explained that to them. I went
13 ahead and -- and, as I explained during my
14 interview with the -- with the investigator
15 here, I honestly -- and again, what y'all
16 are -- I had to knowingly and willfully lie.
17 I did not knowingly and willfully lie. As I
18 explained to him, I knew I needed the day
19 off to go to the polygraph. The original
20 plan was to use the holiday leave. When my
21 child got sick, I was like, "Well, I'll be
22 on a family sick leave. That gives me the
23 day off." I can -- I -- I took off that
24 morning to take care -- I was home with my
25 child for the initial part of the shift.

1 Dropped her off at my in-laws on the way to
2 the polygraph, took the polygraph, come
3 back, and remain -- the remainder of the
4 shift was taking care of my child. And, as
5 I explained to him, I didn't know I couldn't
6 do that. Because I have used sick leave
7 before, and I explained to him, and even he
8 acknowledged it. It's no different to me
9 than if I went to a -- I called out sick to
10 go to a doctor's appointment that only lasts
11 two hours, and then I come back and enter a
12 whole day of sick leave for that day, which
13 is the common practice. And, in my eyes,
14 even though it was with my child, it was the
15 same thing. And I didn't know -- if -- if I
16 knew I couldn't do that, then I just would
17 have used the holiday leave. And then,
18 going back to the discrepancies in this
19 scheduling, though, I can't say for certain.
20 He told me I entered leave. And, I mean,
21 he's a captain with OPR. I had no reason to
22 question him at the time. I didn't see the
23 SCEIS entry. I do commonly enter my leave,
24 but it's also known -- I've had instances
25 where they're entered my leave for me if I'm



1 not around the computer. And I've also been
2 to where I found out a month later they went
3 and have changed my leave without my
4 knowledge. And at which point HR had -- was
5 directed and -- and put into investigation
6 for that reason. So I don't know
7 if -- going back, I honestly don't know if I
8 entered the holiday leave for that Wednesday
9 and -- and changed the sick leave for
10 Thursday. And it -- it would have reflected
11 on the schedule that supervisors are seeing.
12 So they probably -- if -- if someone else
13 entered it and not me, they could have
14 easily went back and changed it to match the
15 schedule, which showed the holiday leave on
16 Thursday. So again --

17 Q Well, let -- let -- let me --

18 A -- I didn't knowingly or willfully enter
19 anything wrong or lie about leave.

20 Q Up -- up to this point in your career, it
21 would be about ten years, how
22 much -- how -- just estimate how much sick
23 leave had you accumulated.

24 A Honestly, I have never used sick leave up
25 until I had kids.

1 Q Is it true that you thought you had around
2 700 hours?

3 A Yeah, yeah. I know at that point in time I
4 had 700 hours. I mean, roughly. Because
5 like I very rarely use sick leave.

6 Q And you also told us -- about your annual
7 leave, you indicated you may have what?
8 Three hundred hours?

9 A I know -- I know -- I know my annual would
10 have been -- you're only allowed to
11 accumulate 360 a year. I know at the end of
12 the year I always have to -- have to burn
13 leave or lose it. So I know I had an annual
14 leave there in my bank, and I also had the
15 holiday leave. I don't know how many hours
16 of holiday leave exactly, but I do know --
17 obviously, I had the one for Thursday. I
18 had plenty of leave to utilize in the event
19 I needed solely that day off.

20 Q Well, let me ask you this: You're -- you
21 never falsified or made up anything about
22 your daughter or about family leave?

23 A No.

24 Q And --

25 A No.



1 Q Did you -- you weren't shown this particular
2 document by the investigator, were you?
3 A I don't recall that document at all.
4 Q And you'll notice it's -- it's
5 entered -- the entry is by "HL -- HA"?
6 A Again, I'm -- again, I'm -- I'm seeing
7 where -- where my name is on there for
8 entering leave on the one, and the other two
9 don't have my leave. So again, I can't say
10 for certain. I don't recall.
11 Q Okay.
12 A Because it's -- it's common practice for me
13 to enter my leave, but there have been
14 instances where someone has went back and
15 changed my leave to match -- to reflect the
16 current schedule and/or -- like I said,
17 there was an issue before where a captain
18 come in and changed all my sick leave for
19 holiday leave to burn holiday leave, without
20 my knowledge. So I don't know if -- there's
21 no -- no one notifies me if they go and
22 change my leave. I will say that.
23 Q Well, let me -- do -- do you guys, each
24 officer get a printout of this every month,
25 or...



1 A It -- it would be theoretically accessible
2 if I went through SCEIS. But again, I
3 don't --
4 Q Now, you'll notice on this document it was
5 created by -- what's that say?
6 A The HR-Admin and HR-Admin.
7 Q Okay. Thank you.
8 A So again, it's quite possible I did enter
9 that holiday day per the discussion with my
10 supervisor the week prior. And the schedule
11 hadn't been changed yet. So the person that
12 approved the leave looks at the current
13 schedule and they probably went to go and
14 reflect it as the current --
15 MR. GORE: I'm going to object to that testimony
16 to be speculative. He --
17 HEARING OFFICER: It is. It is speculative.
18 So what he's saying is you don't got -- your
19 memory and things there. You can't
20 speculate on what other people do.
21 THE WITNESS: Yeah. Okay.
22 Q I'll go again.
23 A So again, like I said, the original
24 conversation was to use the holiday leave
25 for Wednesday.



1 Q Okay.

2 A But, between -- between that whole week, I
3 know there was holiday leave and family sick
4 leave that was utilized.

5 Q When -- when did you go back to work that
6 week?

7 A It would have been the following week.

8 Q The following week. The following Monday?

9 A Yeah. Because I would have been -- I work
10 four tens, so that Monday through Thursday.
11 So I don't -- again, I don't -- I don't
12 recall.

13 Q Okay.

14 A I know, according to them, I should recall,
15 because it's been a couple of months.

16 Q You'd been in communication with your
17 supervisor, correct?

18 A Yes.

19 Q Okay. And you talked to him on the morning
20 of the 6th, correct?

21 A Yes.

22 Q When you -- when you went to pick up your
23 car?

24 A Yes.

25 Q And you came back and you took over caring

1 for the baby?

2 A Yes.

3 Q And then, on the 7th, when did you get a
4 hold of your -- your supervisor the next day
5 on the 7th?

6 A It would have been -- first thing, I guess.

7 Q Early in the morning?

8 A 6:08 was the -- was the text message.

9 Q Okay. Now, let's -- let's back up a second
10 and go over talking about when you applied
11 with the Department, you were shown some
12 documents. Are those

13 the -- they're -- which ones --

14 Marc had put so many in and they
15 were -- they weren't stapled together. I've
16 got a little worried about it. Okay. Let
17 me show you -- we'll take them one at a
18 time, I guess. These are -- there are
19 three. These three here. You want to pick
20 them up and take them in any order you want.

21 A Okay.

22 Q Which -- which this one here is -- what's
23 the first one?

24 A So this would have -- this would have been
25 the time order, I guess, so to speak.

1 Q Okay. Take the one the earliest in time
2 from your original application.

3 A That -- that -- this one would have been my
4 original application that I would have
5 submitted online prior to even being
6 approached by highway patrol.

7 Q What year was that?

8 A This was -- I mean, it would have been
9 received 8.19.2013.

10 Q 2013?

11 A (Nods head.)

12 Q And tell me. Did you -- you submitted that
13 online?

14 A I did.

15 Q And did you lie or falsify anything in
16 there?

17 A I did not lie or falsify. To my knowledge,
18 I did not lie or falsify any information on
19 this document from -- from my time of
20 recollecting events, stuff like that.

21 Q While that submitted was online, were you
22 then interviewed about that by somebody from
23 the Department as the initial hire?

24 A Yeah. So -- so for the -- theoretically,
25 this whole document is just the initial

1 application. They then send you another
2 document that's basically all the same
3 questions that you answer again. They do it
4 like two or three or four times --

5 Q Okay.

6 A -- throughout the --

7 Q Now, what's the second one here? This
8 exhibit is numbered what? I can't see it.
9 Four?

10 A This one would have been the questionnaire
11 application for the polygraph.

12 Q And that is on your first, initial
13 employment?

14 A I'm sorry. No. This one looks like it
15 might be for the -- this is the SLED, so
16 that one's out for this.

17 Q Okay. What's that?

18 A This one is -- I don't have the one --

19 Q What number is that?

20 A Here we go. So Number 4 -- no. Number -- I
21 think that's a 7. Seven is the highway
22 patrol application polygraph, which would
23 have been conducted on October 2nd, 2013.

24 Q And you went and did that, correct?

25 A I did that, yes. And I guess I can't



1 testify to the results, but in order to be
2 accepted with highway patrol, you would have
3 had to pass the polygraph. So --

4 Q And you were hired?

5 A No willing signs of lying were done.

6 MR. GORE: Objection. He's basically testifying
7 what the results of the polygraph are.

8 HEARING OFFICER: Oh, okay. I'm sorry. I was
9 paying attention to this. Yeah.

10 Just focus on what your answers to questions
11 were, right? What your conversations and
12 your memory of conversations were.

13 But -- because, realistically, the reason
14 the courts don't accept the results of
15 polygraphs is because they -- they question
16 the reliability of them. So results in and
17 of themselves can't be used for or against
18 somebody, okay?

19 THE WITNESS: What about in general --

20 HEARING OFFICER: But yes. What your memories
21 about the questioning, about the
22 conversation with them, any of that, that
23 you can testify to.

24 THE WITNESS: What about just the general fact to
25 be employed you have to pass the polygraph?



1 HEARING OFFICER: That is going to the results of
2 it, okay?
3 Q Okay. Let me ask you. You were
4 interviewed, correct?
5 A Yes.
6 Q And you were hired?
7 A I was hired. Yes.
8 Q And do you remember anything about the
9 actual interview? Were you physically
10 there? Was it on the phone or online?
11 A The polygraph would have been in -- would
12 have been in person.
13 Q Okay. Yeah. Stay off of that.
14 But the guy that interviewed you --
15 A The interview -- the interview -- well, yes.
16 The guy that interviewed -- it was a home
17 interview, yes.
18 Q Was -- were you asked about use of drugs?
19 A Yes. So, at this point in time, and looking
20 back at the results, because over ten years
21 ago, I don't recall exact specifics. But,
22 looking at the documents in front of me, I
23 did state to them that I took prescription
24 medication that did not belong to me.
25 Q And that's with the initial interview with



1 the -- with the highway patrol?

2 A That's with the initial interview with
3 highway patrol, and again, I'm seeing this
4 as typed up. I don't -- I -- I can't recall
5 if there was a conversation further about
6 it, because I have been in the application
7 process with patrol and SLED where
8 I've -- we've talked about things and
9 they've -- they've said it's not -- you
10 know, "Don't worry about that. It's minor."
11 So I don't know in this instance if
12 that -- if we went into discussion about
13 taking a couple of Adderall during my
14 college career, and he said don't worry
15 about it. That's why it was -- I don't
16 know.

17 Q Well --

18 A I can't recall that.

19 Q Do you recall --

20 A And ultimately, it was -- they were informed
21 that I did take prescription medication that
22 didn't belong to me.

23 Q Did you mention in the interview that you
24 may have used some prescription medicine
25 from your mother too?

1 A Again, just looking at this, it just
2 says -- and it -- "Maybe -- maybe from
3 childhood or from mother." So again, I
4 don't know the discussion that led to that.
5 Obviously, it's a very short line, so
6 there -- it was, you know, summarized for
7 the entry. But again, I don't know what
8 discussions followed with that beforehand.
9 I couldn't tell you.

10 Q Okay. Now, following that interview, you
11 were hired and then assigned to Aiken,
12 correct?

13 A Yes.

14 Q Okay. And you've been there for the ten
15 years?

16 A Yes.

17 Q And you had -- have you had any discipline
18 issues at all?

19 A I've never had any disciplinary actions
20 other than a couple of minor. I've had -- I
21 know for a fact two minor policy violations
22 that were unfounded.

23 Q Okay.

24 A But no. As to my knowledge, I've had no
25 disciplinary action.



1 Q Now --

2 A I've never been reprimanded. Nothing like

3 that.

4 Q Let me bring you up to date. Now you're up

5 into '24.

6 A Uh-huh.

7 Q And you have scheduled an interview at SLED,

8 correct?

9 A Yes.

10 Q And you went to the interview?

11 A I did.

12 Q And, in that interview, did you indicate to

13 who was interviewing you that you had been

14 involved or used some drugs?

15 A I did. And -- and, as I explained to the

16 investigator, because he -- his question was

17 did -- it was a ten-year time lapse, how did

18 I recall it then? Well, as everyone knows,

19 when you apply for a job, you have to have

20 references. And again, when I was in

21 college at the time of the highway patrol

22 polygraph, you know, my references were

23 college people. They're not very reliable

24 resources. Well, during my SLED -- ten

25 years down the road, all of my college

1 buddies are now either working for SLED,
2 some are lawyers, a magistrate. So I called
3 them up, "Hey, I'm about to put in for SLED.
4 Can I use you for a reference?"

5 Q Okay.

6 A Obviously conversation is truth. We talked
7 about some of the stuff we've done --

8 Q You know the man who was interviewing --

9 A -- he comes in --

10 Q -- you, correct?

11 A Even -- even -- well, going back,
12 even -- even my SLED buddies, and that's why
13 we went over it. Hey, the biggest
14 thing -- and again, I'll go back to
15 willingly and knowingly [sic]. I did not
16 willingly and knowingly [sic] lie. "Answer
17 honestly." Which is exactly what I did.
18 Because, at the end of the day, you know, as
19 long as you're honest, you'll be good. And
20 that's --

21 Q Okay.

22 A -- exactly what I was: One hundred percent
23 honest. And, going back to your question,
24 yes. The polygrapher was, in fact,
25 roommates with my college buddies during our



1 college career down at Copper Beach just
2 down from the stadium. And, during our
3 questionnaire, we talked about some of the
4 stupid things we did during college with the
5 same friends --

6 Q Let me ask you --

7 A -- and that again brought up those memories
8 of --

9 Q You were only applying to SLED
10 because -- because the Department was going
11 to get rid of the canine unit?

12 A Yeah. Again, they -- so I -- again, my good
13 work ethic, and -- and I'm -- you ask any
14 supervisor that's worked -- I've worked
15 with, anybody on the road with. They all
16 know me; they all know who I am. I've
17 turned down several promotions to be a
18 canine handler. And again, when -- I've
19 turned down -- I think we counted 15. I
20 would -- I would easily be -- if I was
21 promoted when -- when I was asked to,
22 approached by initially, I'd at least be
23 looking at a sergeant spot right now, if not
24 a first sergeant spot. But going back, so
25 yes. I've -- I've turned down a lot of

1 promotions to be a canine handler, because
2 I've always -- that's what I've always
3 wanted to do. Stay a canine handler. When
4 I caught word that they were about to get
5 rid of my dog, I was then approached and
6 asked to go to SLED and to be a canine
7 handler with them. I knew I'd given
8 up -- by giving up those promotions, I know
9 my career with highway patrol was kind of at
10 a stalemate and I wanted to continue being a
11 canine handler. So I did apply for SLED to
12 be the -- to be a arson --

13 Q Okay.

14 A -- investigator and get a canine.

15 Q So you went through that interview that day.
16 And is it your understanding you did well in
17 the interview?

18 A Oh, yes. I -- I can tell you for a fact the
19 captain approached me after the initial
20 interview, and then even after found out I
21 was under investigation, that, yes.

22 Q So you were under --

23 A So he really wanted me and he told me to
24 fight through it.

25 Q You were under investigation from your

1 responses given in the --

2 A For -- for polygraph responses, yes.

3 Q And the solicitor's office --

4 A I was cleared. Yeah. I was --

5 MR. GORE: Objection. It's not even relevant at

6 all today. No. The criminal charges are

7 not what we discussed here.

8 MR. O'LEARY: Because there were no criminal

9 charges.

10 THE WITNESS: Yeah. There were none.

11 MR. GORE: Well, they're not the basis of the

12 misconduct, though.

13 HEARING OFFICER: Yeah. Yes. I -- I

14 think we're --

15 MR. O'LEARY: Oh, that's -- that's fine. I'll

16 just withdraw it.

17 HEARING OFFICER: Okay.

18 Q So you got through the interview. And that

19 was in what month? Was it February or

20 March?

21 A It would have been -- the polygraph was

22 February 7th. I don't -- I don't recall

23 when the actual interview was with SLED. It

24 would have been --

25 Q Okay.

1 A It would have been either January or
2 December. I honestly don't remember.

3 Q Have you ever tried to deceive any person
4 that interviewed you about --

5 A No.

6 Q -- the drugs?

7 A I've never once deceived anybody. And
8 obviously, based on what the original extent
9 of this investigation was, I've been honest
10 about everything.

11 Q Okay. And you're not currently employed,
12 correct?

13 A I'm not currently employed. No, sir. Other
14 than I work part time with the fire
15 department.

16 Q Okay.

17 A It's -- it's a part-time job, so...

18 Q Looking back, you probably wish you'd never
19 applied to SLED, correct?

20 A Looking back, I would have -- wished I would
21 have just did the proper thing with the
22 initial investigation. Like I said, that
23 that is irrelevant here. But -- but yes.
24 And -- and ultimately, like I said,
25 I've -- since that point, once I was told I



1 wasn't -- didn't make SLED, before I knew I
2 was under investigation, I was approached
3 again, because of a couple openings opened
4 up to be a supervisor with highway patrol.
5 So again, I had -- all right. I didn't give
6 SLED no big deal, because I was already iffy
7 about going to SLED. Because, believe it or
8 not, I did enjoy working for highway patrol.
9 And I was approached about being a
10 supervisor with highway patrol again after
11 that interview.

12 Q Tell me now. When you were
13 interviewed -- interviewed by the internal
14 affairs, did you feel pressured in that
15 interview?

16 A Absolutely.

17 Q And how -- how were you feeling pressured?

18 A Again -- in fact, even -- I had to address
19 the investigator at one point in time
20 that -- again, he kept badgering me with the
21 same questions, point -- a couple of times
22 raising his voice. And I told him, "Hey,
23 this interview -- you know, you keep wanting
24 me to change my answer to satisfy you. And
25 it's not going to happen." And that -- that

1 was all on -- on a recording. Because he
2 kept -- he kept pressuring me to -- I gave
3 him the answer multiple times to the same
4 question. Obviously, he didn't like what he
5 was hearing. So he was I guess trying to
6 scare me or intimidate me so I would change
7 my answer and my opinion.

8 Q Now, back up to the first interviews you had
9 when you went to the patrol. How -- how did
10 that go? Pretty good?

11 A For --

12 Q Were you -- did you feel pressured in the
13 first interview?

14 A No. No. I didn't -- I didn't feel pressure
15 at all in any interview with SLED or highway
16 patrol up until the investigation with OPR.
17 And, like I said too, all because -- and,
18 even in my opinion still, I did not lie
19 about anything. In fact, this whole thing
20 stemmed from me being honest. And he was
21 trying to pressure me into saying something
22 that would accommodate his story.

23 Q Okay.

24 A And it -- it -- it -- like I told him then,
25 "That's not how it happened. That's not why



1 I did it," so...

2 Q Well, I'll tell you what. Answer any
3 questions that they may have, okay? Just
4 tell them the truth.

5 MR. O'LEARY: Marc, you --

6 MR. GORE: I was waiting for her.

7 HEARING OFFICER: Okay.

8 MR. O'LEARY: Oh, okay. Sorry.

9 MR. GORE: Yeah. No problem.

10 CROSS-EXAMINATION OF RESPONDENT

11 BY MR. GORE:

12 Q All right, Mr. Vargo. You were scheduled to
13 take the polygraph with SLED on February the
14 7th, right?

15 A Yes.

16 Q Okay. And you -- and you were aware you
17 were taking that polygraph by as early as
18 February the 2nd; is that right?

19 A Yes. The week -- the week before.

20 Q So you have a good bit of notice that you
21 were --

22 A Yes.

23 Q -- going to be at SLED that day?

24 A And that -- that was when the conversation
25 originally come up with my supervisor about

1 potentially swapping my holiday leave.

2 Q All right. And you were scheduled to work a
3 normal shift on February the 7th?

4 A February 7th was a normal shift. Yes.
5 February 8th was a holiday leave.

6 Q All right. And so, when you woke up in the
7 morning on February 7th, your intention was
8 to go to SLED that day?

9 A Yeah. Well, yes.

10 Q Regardless of --

11 A I knew -- yeah. I knew I had a SLED
12 interview. Yes.

13 Q Regardless of what happened to your
14 daughter, when you woke up that morning, you
15 were going to SLED?

16 A Well, again, up until that Monday -- Sunday
17 night, Monday, my intentions were to use a
18 holiday leave for Wednesday. In the event I
19 was not able to, then I was going to
20 reschedule my polygraph. So, to answer your
21 question, my intentions were, if everything
22 worked out, to go to that interview, yes.
23 In the event I couldn't and I had to work
24 due to manpower or whatever, I was going to
25 reschedule my interview.



1 Q Okay. But when -- when you woke up in the
2 morning of February the 7th, your intention
3 was to go to SLED that day?

4 A Yes. After -- after the leave and all that
5 was done, yes.

6 Q Okay.

7 A I knew I wasn't -- I knew I would not be
8 able to work Wednesday. So, yes.

9 Q Okay. And it turned out your daughter was
10 sick that day?

11 A Yes.

12 Q Okay. All right. And, when the corporal
13 asked you that morning where you were,
14 you -- you responded that your daughter was
15 sick?

16 A He -- he didn't ask where I was, no. He
17 just asked what are we doing.

18 Q Okay. Well, he said, "Wait on that call," I
19 think.

20 A Because again, we discussed that, "Hey, that
21 my kid's been sick."

22 Q Okay.

23 A "And more than likely we're going to have
24 to -- have to -- I'll be out."

25 Q Okay. And so, you told him, "Yes. She is

1 still sick"?

2 A Yes.

3 Q Okay. And you, in fact --

4 A Which she was still sick.

5 Q Okay. And I'm not disputing that, okay?

6 A Okay.

7 Q And then you also indicated FSL again, which

8 would be family sick leave?

9 A Yes.

10 Q Okay. So you indicated to him, "I took

11 family sick leave yesterday. I need to take

12 family sick leave again today"?

13 A Yes.

14 Q Okay. All right. And then, in fact, you

15 left for SLED and -- and traveled to SLED

16 that morning, left about 7:00?

17 A Yes. Seven -- 7:30 or so, yes.

18 Q All right. And you got home around 12:30?

19 A Yes. Around lunchtime. Yes.

20 Q So between 7:00 and 12:30, you were not even

21 in the presence of your daughter?

22 A I was not.

23 Q Okay. And you, in fact -- ten hours of sick

24 leave got entered that day?

25 A Yes.

1 Q Okay. Now, I know there's been some -- you
2 have some question today you seem to be
3 raising about did you input the time or
4 whatever. But, regardless of how that time
5 got entered, they entered it because you
6 told the corporal that you were going to
7 take sick leave that day, right?

8 A They --

9 Q Nobody else would have put family sick leave
10 down unless you told them --

11 A Well, yeah. But --

12 Q Unless you told them you were going to take
13 family sick leave?

14 A But again -- again, going back to that,
15 which we don't know what happened,
16 apparently, I do normally enter my leave.

17 Q Okay.

18 A So I very may well have entered that holiday
19 day for the Wednesday. And the schedule
20 wasn't reflected, because no matter what,
21 whether the holiday leave was used Thursday
22 or Wednesday, the opposing day would have
23 been the family sick leave.

24 Q So -- so --

25 A So I very well may have entered holiday

1 leave Wednesday and family sick leave
2 Thursday. Someone looked at the schedule
3 that hadn't been changed yet, and just
4 put -- mixed them to match the schedule. I
5 don't know. Again, I'm not going to say yes
6 that's what happened, because I don't know.
7 Q But, if they changed it to family sick
8 leave, they did it because you told them you
9 were going to be out on family sick leave?
10 There would be no other reason for them
11 to --
12 A I -- I have --
13 Q -- write things in the --
14 A I don't know. I -- I couldn't tell you.
15 Q Okay. Let's -- all right. Let's shift and
16 talk about the polygraph questionnaire. So
17 on the SLED questionnaire, and you've got it
18 there, but, I mean, you can --
19 A Uh-huh.
20 Q -- look at it. But you told SLED that you
21 used Adderall approximately 20 times between
22 2012 and 2013; is that right?
23 A Well, again, going back to that, and another
24 reason I -- I explained to the investigator
25 I did not recall it during the initial

1 application, is my initial input was "A few
2 times I used Adderall."
3 Q Okay.
4 A During the polygrapher -- there in the
5 polygraph thing, the investigator said
6 again, which I might have brought it up.
7 But he said that I had to put an exact
8 number. And I said, "Well, I can't give you
9 an exact number, because I really do not
10 recall at all. I know it was very few.
11 It's something I commonly did. But, my last
12 two years of accounting, I started to
13 struggle, and I did take Adderall to help me
14 study for them tests. I'm not denying that
15 at all." And again, at that point in my
16 life, I didn't even know what controlled
17 substances were, to be completely honest. I
18 was not a drug person. I was not a law
19 enforcement person. I didn't have a law
20 enforcement background. I'm the first
21 person in my family to be in law
22 enforcement. I didn't know what the
23 controlled substances were, so I don't know
24 if I didn't constitute that as doing wrong
25 or -- or what. But it was very few,



1 something that didn't occur all the time.
2 And, with everything going on in my life,
3 the -- the interviews, putting in for the
4 jobs, I didn't recall it at that moment.
5 And that was the only reason. Obviously,
6 going back and looking at every other
7 question I've answered on this highway
8 patrol polygraph and SLED, that it would
9 have been admitted. It ain't in fear of not
10 being employed. Nothing like that. It was
11 simply for the fact at that point in time in
12 my life, I did not recall it. And it wasn't
13 up until the SLED interview, talking to my
14 buddies, talking to college friends, some
15 who were employed with SLED, hey, again,
16 they knew I really wanted it. And the
17 biggest thing they said, which I've done
18 throughout the -- my whole life is, "Just
19 make sure you're 100 percent honest about
20 everything, because it ain't a big deal at
21 the end of the day."

22 Q Okay.

23 A And so, that's what -- again, talking, those
24 conversations of, "Oh, crap. You know what?
25 I do remember doing that back in the day.



1 Let me put that down on the paper."

2 Q All right. So let me ask the question
3 again. I don't think you answered it. On
4 the SLED questionnaire, you told SLED that
5 you used Adderall approximately 20 times
6 between 2012 and 2013. That's what you
7 wrote down.

8 A Yes.

9 Q Okay. All right. And you --

10 A And that's what I explained to them. It was
11 nowhere near that amount. If you're harping
12 on the 20? The 20, where --

13 Q Well, did you -- is that false what you told
14 SLED?

15 A No. Again, "approximately" is a generous
16 number. If you go back and listen to
17 the -- I don't know if they record it or
18 not. There was cameras in there. But that
19 the conversation in hand was -- was nowhere
20 near that amount. Again, he wanted me to
21 put an exact number. And I'd explained to
22 him, "I can't give you an exact number. I
23 do not know."

24 Q Well --

25 A But, as I explained to him in the interview,

1 I don't want to put "20" and someone come up
2 and say, "Oh, he took 23" and then you get
3 me for lying. So I knew 20 was -- it was
4 nowhere near 20, and 20 was a safe number.
5 That way, they know at the most, "Hey, he
6 did a lot." And whether -- you know, that
7 is the only reason why. It was no lying or
8 anything like that.

9 Q Well, let me use your phrase. Do you agree
10 that you used a lot of Adderall in college?

11 A No.

12 Q Well, you just said, "They would know he
13 used it a lot." That's what you said.

14 A No. I'm just saying -- no. What I said
15 was, "If I put 20, and someone find out I
16 did more, and they -- they determine that is
17 a lot.", So I put a number on there that I
18 felt was safe. I knew it was nowhere near
19 that amount. So, if they say, "Hey, 20 is
20 okay, but 21, we can't hire him,"
21 you -- that -- that is the only reason
22 I -- I put a generous number, and I told
23 them it was a few. A few times. Very
24 little. It wasn't even enough to recall.

25 Q Okay.

1 A Two years -- up to two years before y'all's
2 polygraph. And the only reason I recalled
3 it then is because sitting in the same room
4 and having interview -- discussions with my
5 friends.

6 Q And so, you did use the phrase
7 "approximately 20"?

8 A I -- I did -- I did write "approximately
9 20," yes.

10 Q And you didn't write "approximately 10"?

11 A I didn't -- I wrote "approximately 20."

12 Q Okay.

13 A And the reason I came to that number is
14 because again, it was my last two years of
15 college, as I explained to the investigator.
16 He said he needed an exact number. I said I
17 couldn't give it. There's two semesters a
18 year, that's four semesters total. Roughly
19 six to eight weeks of -- of -- of schooling
20 a semester. There was a test at the end of
21 week -- at the end of each week. I didn't
22 use it on every test. It was only -- only
23 big -- big tests that I needed help studying
24 for. So, I said, four times five,
25 that's -- that would be -- that would be 20.

1 And I think that's -- that's a very generous
2 number.
3 Q Okay. And you said you graduated college in
4 2013?
5 A Graduated -- it would have been May of
6 2013 --
7 Q Okay.
8 A -- when I walked, yeah.
9 Q All right. And you also indicated to SLED
10 that -- however many times you used it,
11 we'll --
12 A Yeah. Well, that's --
13 Q Okay.
14 A I'm not denying the fact that I used it.
15 Q You paid for it.
16 A Yes.
17 Q Okay. It was \$10 a pop?
18 A Yeah.
19 Q Okay. All right. So if -- if the 20 number
20 is right, then you spent \$200 on Adderall in
21 college?
22 A Well, it -- it's not that. Like I said,
23 it's approximately. But -- and that's why I
24 said -- it was not that much.
25 Q Well, let me -- let me ask. What does

1 "approximately" mean to you, Mr. Vargo?

2 A Approximately means no more than. It means
3 that it ain't the exact amount. But again,
4 that's irrelevant to what we're doing here,
5 I don't think, you know?

6 Q Okay.

7 A But what -- what "approximately" means
8 is -- I'm not denying that I took Adderall.

9 Q Okay. All right.

10 A And, at the end of the day, I put on y'all's
11 application status that yes, I did take
12 prescription medication that didn't belong
13 to me.

14 Q All right. And --

15 A Because I can't remember exact specifics,
16 because -- I can't help that.

17 Q All of the --

18 A I can't help that.

19 Q I'm sorry. Are you done? I didn't want to
20 interrupt you.

21 A Well, go ahead.

22 Q All right. All of the Adderall usage you
23 had occurred before you came to work for the
24 highway patrol?

25 A Yeah. Before I came to work for highway

1 patrol.

2 Q All right. When you came to work for the

3 highway -- when -- we've got three documents

4 that we looked at: Your application, your

5 background questionnaire, and your polygraph

6 questionnaire. Those were all done with the

7 highway patrol, right?

8 A Uh-huh.

9 Q All right. Is that a yes?

10 A Yes.

11 Q Okay. I'm sorry. It's just for the record.

12 And on none of those did you mention using

13 Adderall in college.

14 A And again, because I did not recall it at

15 that time at all.

16 Q Okay. That's fair.

17 A I did not recall it at all.

18 Q Okay. That's fair. Okay. And you

19 applied -- when did you graduate? When did

20 you walk from college you said?

21 A It would have been in May 2013. I don't

22 know the exact date. Don't let me --

23 Q Okay. No. No. I'm not --

24 A Sometime in May of 2013.

25 Q Okay. And I wanted to mention one other



1 thing you said earlier. You said that when
2 you were putting down your references at the
3 highway patrol, you didn't list your college
4 buddies, right?

5 A Yes. They would have had no merit as far as
6 law enforcement.

7 Q Because they knew about --

8 A But I don't know -- I don't know who I put
9 down or not. But --

10 Q All right. Because they knew --

11 A -- more than likely it would have been
12 someone -- go ahead.

13 Q They knew about your Adderall usage, didn't
14 they?

15 A I -- I have no clue if they did or didn't.

16 Q Well, didn't you use Adderall in college?

17 A I did use Adderall in college, but it wasn't
18 something I went and advertised.

19 Q Okay. You didn't advertise using Adderall,
20 right?

21 A I -- I didn't -- other than -- other than
22 the people I roomed with and -- and stuff
23 like that. It's not -- you know?

24 Q Because you knew that --

25 A I don't know --

1 Q You knew -- you knew that using Adderall was
2 wrong?

3 A I -- I didn't -- at that point in
4 time -- see, again, see, you're doing the
5 same thing he did. Now, ten years down the
6 road, being in law enforcement, criminal and
7 addiction, yes. I know it's wrong now. I
8 can't attest to what I knew back ten years
9 ago.

10 Q Mr. Vargo, you paid \$10 for medication from
11 someone. Is it your testimony that you were
12 not aware that that was wrong at the age of
13 20?

14 A Again -- so, it -- okay. So then, it was
15 wrong. But again, I did not recall it ten
16 years ago. That's what
17 we're -- we're -- you're coming after me
18 for. Not that -- I'm not denying that I did
19 it at all.

20 Q I don't -- I don't disagree --

21 A Yeah.

22 Q -- that you didn't deny it.

23 That's -- that's probably --

24 A I did not willfully lie to you about it.

25 Q You denied using it when you were applying



1 for the highway patrol, didn't you?

2 A I did not recall it.

3 Q But you didn't tell us.

4 A I -- if I -- if I don't remember something,

5 I can't tell you about it.

6 Q But you remembered it when you went to SLED?

7 A Again, yes. Because of conversations, even

8 in that polygraph room.

9 Q All right.

10 MR. GORE: I don't have anything further.

11 HEARING OFFICER: Okay. Are there any follow-up

12 questions for the witness?

13 MR. O'LEARY: Just one second.

14 HEARING OFFICER: Okay.

15 REDIRECT EXAMINATION OF MR. VARGO

16 BY MR. O'LEARY:

17 A Can you look at the -- the original

18 application with the patrol on Question 14.

19 I don't know what number it is.

20 MR. O'LEARY: Which -- which one is it, Marc?

21 MR. GORE: Oh, I don't -- I don't remember.

22 HEARING OFFICER: It's -- State's Exhibit 5 is

23 the --

24 MR. O'LEARY: State's Exhibit 5.

25 HEARING OFFICER: -- original online application.

1 Q Okay. Look at Number 5. Look at Question
2 14.
3 A Fourteen?
4 Q Yeah. Can you read it? Is it "Have you
5 used any or experimented with any controlled
6 substance?" Do you see that?
7 A Yes.
8 Q The word they used was "controlled
9 substance," correct?
10 A Yes.
11 Q And did you even know what that meant?
12 A I didn't -- again, I was not a drug person.
13 I did not know there was schedules broke
14 down by the DEA as far as -- as all that
15 with -- with even prescription. In my
16 opinion, controlled substances are narcotics
17 and drugs were cocaine, LSD, heroin. I
18 didn't even consider prescription medication
19 any of that up until I started a law
20 enforcement career.
21 Q Now, would you look also at the -- at the
22 application on Page -- the employment
23 background investigation from the Department
24 of Public Safety. Question 16.
25 A Yes. When I -- when I admitted to them that

1 I'd taken prescribed medication not

2 prescribed to me, yes.

3 Q That's referring to prescribed medicine
4 versus controlled substance on the other
5 form, correct?

6 A Yes.

7 Q Okay. So it's not the same terminology?

8 A No.

9 Q Okay. Have you -- you haven't had any
10 problems at all with prescribed medicine or
11 anything?

12 A No.

13 Q And you've worked successfully for ten
14 years?

15 A I've been very successful in my career.

16 Q Okay. Do you have anything else you'd like
17 to say to the Court?

18 A No.

19 Q Okay. I appreciate you answering any
20 questions. If Marc's got anymore...

21 RE CROSS-EXAMINATION OF MR. VARGO

22 BY MR. GORE:

23 Q Mr. Vargo, did you understand at the time of
24 your application to the highway patrol, did
25 you believe that Adderall -- well, let me

1 back up a second. I believe it's your
2 testimony today that you did not understand
3 in 2013 that Adderall was a controlled
4 substance. Is that what you're saying
5 today?

6 A Yes.

7 Q Did you know that Adderall was a
8 prescription medication?

9 A Obviously, if -- if I had to pay it to get
10 from my -- my buddy, then yes.

11 Q So you -- you did know it was a prescription
12 medicine?

13 A Yes.

14 Q Okay.

15 MR. GORE: I don't have anything further.

16 HEARING OFFICER: Okay.

17 EXAMINATION OF MR. VARGO

18 BY THE HEARING OFFICER:

19 Q If you'd look at State's Exhibit 6,
20 do -- were you the one that filed this out?

21 A Again, I -- I cannot -- it's typed, so I'm
22 assuming no.

23 Q Okay.

24 A But I -- I honestly cannot recall that.

25 Q Okay.



1 A If -- if this was -- this was
2 everything -- and again, going back, this
3 was a at-home interview.
4 Q Okay.
5 A So, if I had to assume, I don't know if I'm
6 allowed to do, there was discussion. I do
7 recall several discussions about answers to
8 this, that, polygraph, everything at home,
9 where he was writing stuff down.
10 Q Okay.
11 A So, if I had to assume, these are just
12 the -- the condensed notes from his
13 interview with me.
14 Q Okay.
15 A And again, I cannot recall to how much
16 degree we went and talked into it. If it
17 was mentioned and I said, you know, "two or
18 three times" and -- "oh, that's not a big
19 deal," I cannot say that.
20 Q Okay. Do you remember anything about what
21 y'all talked about in those interviews?
22 A Oh, I -- I --
23 Q In regards, I guess --
24 A Other than what's on this paper, I really
25 couldn't tell you.

1 Q Okay. Just that you spoke with them?

2 A Just that I spoke with -- with J.C. Rikard

3 in -- in my house.

4 Q Okay.

5 HEARING OFFICER: All right. I don't have any

6 other questions. I think -- I think they've

7 asked everything that I may have a question

8 on.

9 MR. O'LEARY: Could I just ask one, Judge?

10 HEARING OFFICER: You -- you may.

11 FURTHER REDIRECT EXAMINATION OF MR. VARGO

12 BY MR. O'LEARY:

13 Q On the two forms we just looked at, the one

14 about controlled substance and about

15 prescription, you didn't sign the bottom of

16 any of those pages, did you?

17 A I --

18 Q Those two pages?

19 A I don't have the whole documents here, so

20 I --

21 Q Would that -- the documents you looked at,

22 those two pages, you didn't sign those --

23 A No. These two pages, no.

24 Q Yeah.

25 A There's no -- there's no initials or



1 signatures. Nothing like that.

2 Q All right.

3 MR. O'LEARY: No further questions. Thank you.

4 RE-EXAMINATION OF MR. VARGO

5 BY THE HEARING OFFICER:

6 Q One final one. When you were directly being
7 examined, you mentioned knowing your
8 polygrapher?

9 A Yes.

10 Q Were you talking about the one at SLED?

11 A The SLED -- the SLED polygrapher was
12 roommates at the time during college,
13 because we were all in college. He
14 was -- he was roommates with my -- the same
15 college friends that the other questions
16 I've admitted to during my polygraph being,
17 you know, that -- that rose some questions,
18 he was roommates with the same people I did
19 some of those activities with.

20 Q Okay. So you didn't know your polygrapher
21 in 2013?

22 A I did not. No, ma'am.

23 Q Okay. All right. Thank you.

24 HEARING OFFICER: Any final questions based off
25 of what I've asked?

1 MR. GORE: None from me.

2 MR. O'LEARY: No, Your Honor.

3 HEARING OFFICER: All right.

4 You may be excused. Thank you.

5 THE WITNESS: Should I just leave those here?

6 HEARING OFFICER: Yes. You just leave those
7 there.

8 MR. O'LEARY: We have no further evidence.

9 HEARING OFFICER: All right. Respondent rests.

10 At this time I'll hear any closing arguments
11 by the Department.

12 MR. GORE: Thank you very much. I appreciate
13 your time today.

14 CLOSING ARGUMENT

15 BY MR. GORE: Mr. Vargo was scheduled to work on
16 the -- on February the 6th, but his daughter
17 was sick. And again, the Department has
18 never contested that one bit. He was also
19 scheduled to pick up a vehicle that day, and
20 he's talked about that today. And the
21 supervisor that day working with Mr. Vargo
22 said that he could get the vehicle, that Mr.
23 Vargo wanted to do. Mr. Vargo said, "I
24 wanted to make sure I got that vehicle
25 because I'd already unpacked my vehicle and



1 I wanted to make sure I took care of that,"
2 and also be out with his child. The
3 supervisor worked with him to make that day
4 work. And then Mr. Vargo then correctly
5 documented the time in SCBIS as they talked
6 about it in the text message. "Hey, put six
7 hours of working time, four hours of family
8 sick leave. We'll split this day up because
9 you did a little bit of work today and you
10 were out with your kid today. In that type
11 of situation, you know, we'll share the
12 leave. We'll -- we'll show it." And that
13 was a very fair response. And the
14 Department has no issues with what happened
15 on February 6th.
16 Obviously, February 7th is where the problem
17 begins. Mr. Vargo had applied for a
18 position at SLED and he knew he was going to
19 be polygraphed on the 7th. And, a matter of
20 fact, he knew since February the 2nd. And
21 he had some theory about that. Well, he had
22 this holiday time he was going to work out
23 in his head and -- and he's going to try to
24 adjust it back and schedule it out, and so,
25 that is what is it. And I understand what



25

happening, that's improper too. Because



1 his intention may be or what he thought to

1 in 2013 that, the use of unprescribed
2 Adderall would have disqualified him from
3 employment. That's what Investigator
4 Boehm -- Captain Boehm testified to. So the
5 Department had to look at that and say,
6 "Wait a second. If he had told us that when
7 he applied, he shouldn't be working here.
8 So something's not adding up." So that
9 prompted us to look back at what did he tell
10 us when he applied? And, on three separate
11 occasions, the employment application in
12 August of 2013, "Have you used or
13 experimented with any controlled substance
14 within the last ten years?" His answer was
15 "No." During the background investigation
16 October 24th of 2023 [sic], "Have you ever
17 used or experimented with any prescribed
18 medication not prescribed to you?" His
19 response was, maybe childhood from his
20 mother. Again, no mention of college. On
21 his polygraph questionnaire, again in his
22 own handwriting, he was asked, "Have you
23 ever used someone else's prescription drug?"
24 His response was "No." So, on three
25 occasions in 2013, Mr. Vargo had an

1 I wanted to make sure I took care of that,"
2 and also be out with his child. The
3 supervisor worked with him to make that day
4 work. And then Mr. Vargo then correctly
5 documented the time in SCEIS as they talked
6 about it in the text message. "Hey, put six
7 hours of working time, four hours of family
8 sick leave. We'll split this day up because
9 you did a little bit of work today and you
10 were out with your kid today. In that type
11 of situation, you know, we'll share the
12 leave. We'll -- we'll show it." And that
13 was a very fair response. And the
14 Department has no issues with what happened
15 on February 6th.
16 Obviously, February 7th is where the problem
17 begins. Mr. Vargo had applied for a
18 position at SLED and he knew he was going to
19 be polygraphed on the 7th. And, a matter of
20 fact, he knew since February the 2nd. And
21 he had some theory about that. Well, he had
22 this holiday time he was going to work out
23 in his head and -- and he's going to try to
24 adjust it back and schedule it out, and so,
25 that is what is it. And I understand what



1 his intention may be or what he thought he
2 was going to do, but we have to look at what
3 actually happened. And so, on the morning
4 of the 7th, when he -- when he doesn't show
5 up for work, his supervisor texts him, just
6 checking on him. And he said,
7 where's -- where's -- "waiting on my call."
8 He wants to hear from Mr. Vargo. Mr. Vargo
9 replies, "FSL again. [REDACTED] was up all night
10 throwing up still." So Mr. Vargo's message
11 was clear in that text message. "My
12 daughter is still sick just like she was
13 yesterday. And I'll be out with her today,
14 because we discussed yesterday, I got to be
15 out with my daughter, but I also got to do
16 some work, so we'll split the day. Today
17 she's sick. FSL again. That means I'm
18 taking family sick leave today. I'm going
19 to be with my daughter today." Now,
20 instead, Mr. Vargo -- instead of being with
21 his daughter the entire day as we've
22 verified the day, as he told the
23 investigator, he leaves to go to his -- he
24 leaves to go to SLED at 7:00 that morning.
25 So, when he sent that test message -- text



1 message to his supervisor at around 6:00
2 that morning, he was already planning to
3 leave for SLED. Probably -- probably
4 getting dressed. Probably preparing
5 himself, decides where he's going to -- he's
6 going to take his daughter somewhere. But
7 he knows at the moment he sends that text
8 that he is going to SLED. He -- he had an
9 opportunity to reschedule with SLED. He
10 didn't take advantage of that by his own
11 choice, and that's fine. But he knew that
12 when he -- that that morning, as soon as he
13 sent that text, he wasn't going to be with
14 his daughter the entire day. And he spent
15 that time at SLED. He comes home, he
16 verifies it. It's about five and a half
17 hours on February 7th that he's not with his
18 daughter. He is not physically in her
19 presence. That is not family sick leave.
20 And that's -- Mr. Vargo can say, "Well, it
21 was common practice. We go to the doctor,
22 and you go for a couple of hours, and then
23 you -- you know, you take off the rest of
24 the day." Well, that's -- if that's what's
25 happening, that's improper too. Because

1 sick leave is "I'm out sick." Family sick
2 leave is "I'm caring for a family member."
3 And you can't care for a family member if
4 you were not even physically in their
5 presence. So Mr. Vargo -- the message to
6 his supervisor was false,
7 that -- that -- that he was going to be out
8 on family sick leave. And then, the time
9 entry, and I know there's some dispute about
10 how it got entered and -- and I'll concede
11 to that. But I will say that however the
12 time got entered, whoever entered it, it
13 happened because of his text message.
14 He's -- there's no reason anybody would have
15 input sick -- sick -- family sick leave or
16 no -- even if -- if he didn't do it. Again,
17 he told the investigator he did it. But
18 today he's changed his story a little bit.
19 But, if someone else did it, they only did
20 it because he told them to do it, because,
21 based on that text, he was going to be out.
22 So we believe that the text that he sent to
23 his supervisor was false as well as the time
24 entry was false.
25 So now shifting gears to the polygraph



1 admissions. During the SLED polygraph, Mr.
2 Vargo made some admissions that caused them
3 to reach out to us, and the Department
4 started looking into some of that stuff. It
5 turned out that the -- the -- the thing that
6 came out of that turned out to be important
7 to the Department were these admissions
8 about Adderall. There's some other stuff,
9 but we didn't talk about that today. So Mr.
10 Vargo's admission on the questionnaire in
11 his own handwriting, and he can dispute that
12 maybe that's not what he meant, but between
13 2012 and 2013 he took Adderall approximately
14 20 times, and he purchased these from his
15 neighbors at \$10 a pill. I struggle with
16 Mr. Vargo's statement that "approximately 20
17 doesn't mean 20. It could mean less than
18 20". "Approximately" is generally
19 understood to be somewhere around 20, and
20 that he was just overestimating just to be
21 careful. But regardless, he disclosed that
22 he had used Adderall in 2012 and 2013 and
23 that he paid for it. And the Department
24 knew, when we got that answer back, that if
25 he had disclosed that to us when he applied

1 in 2013 that, the use of unprescribed
2 Adderall would have disqualified him from
3 employment. That's what Investigator
4 Boehm -- Captain Boehm testified to. So the
5 Department had to look at that and say,
6 "Wait a second. If he had told us that when
7 he applied, he shouldn't be working here.
8 So something's not adding up." So that
9 prompted us to look back at what did he tell
10 us when he applied? And, on three separate
11 occasions, the employment application in
12 August of 2013, "Have you used or
13 experimented with any controlled substance
14 within the last ten years?" His answer was
15 "No." During the background investigation
16 October 24th of 2023 [sic], "Have you ever
17 used or experimented with any prescribed
18 medication not prescribed to you?" His
19 response was, maybe childhood from his
20 mother. Again, no mention of college. On
21 his polygraph questionnaire, again in his
22 own handwriting, he was asked, "Have you
23 ever used someone else's prescription drug?"
24 His response was "No." So, on three
25 occasions in 2013, Mr. Vargo had an



1 opportunity to tell the highway patrol that
2 he had used Adderall in college. And he did
3 not do it on any of those occasions. And
4 his motive is clear. By not telling the
5 Department that he -- that he used Adderall,
6 he gets a job. And I think it was clear
7 when -- when he said it, that he made sure
8 he not list his college buddies on his
9 references, because they would probably tell
10 on him. They were going to say, "Yeah. We
11 used Adderall in college." Now, the -- the
12 distinction, it's important to understand
13 is, well, why tell SLED? Because time has
14 passed. Law enforcement agencies look at
15 the time -- the passage of time that has
16 passed, and, if you look at the
17 questionnaire from the highway patrol, you
18 will see some of those drugs were within the
19 last two years, the last five years, those
20 sort of things. It matters how long ago it
21 happened. Because if you've just recently
22 been using drugs in a fashion that's
23 illegal, that's more important than, "It
24 happened as a childhood mistake," that sort
25 of thing. There's some forgiveness there.

1 So that's why he can tell SLED about it, but
2 not -- he doesn't want to tell the highway
3 patrol about it. Notice that when he comes
4 to SLED, he's willing to list references
5 from his college days. Now he's wanting,
6 "Ask those guys. They -- I've got nothing
7 to hide anymore, because that doesn't matter
8 anymore. And it's not going to hurt me the
9 way it would have hurt me back in 2013."
10 Because Mr. Vargo has ten years in between
11 those two dates. So notability, and I
12 struggle to understand. Mr. Vargo has
13 maintained it, but, you know,
14 he -- he -- when he applies to the highway
15 patrol in 2013, he does not disclose the
16 Adderall usage, even though it happened when
17 he was in college. The last four years.
18 So, this event that has happened repeatedly,
19 whatever "approximately 20 times" means, but
20 more than once where he paid for it. Again,
21 not something that college kids think
22 lightly about, spending money for something,
23 then this just wasn't weighing on his mind;
24 he didn't think about it. It wasn't
25 something he had to -- that he needed to



1 mention.

2 Fast forward 11 years later, in 2024, and
3 Mr. Vargo is confessing, "Oh, yeah. I used
4 Adderall in college approximately 20 times
5 and I paid for it." That this comes back to
6 his memory, and his only -- his excuse for
7 that is, "Well, I'm with my college buddies
8 and, you know, we're -- we're digging
9 up -- digging up bones and, you know,
10 telling all kinds of stories on each other,
11 so that's why I mentioned it." Well,
12 unfortunately, the highway patrol trusted
13 that Mr. Vargo would tell us the truth when
14 he was hired in 2013, that he didn't need a
15 college buddy in the room to remind him
16 about Adderall usage, that it would -- we
17 would take him on his word what he told us
18 was accurate.

19 So the Department ultimately submitted three
20 separate allegations of misconduct here.

21 One of them was willfully making false
22 statements to an officer, and that would be
23 the text to his supervisor; as well as the
24 failure to disclose Adderall use in the
25 multiple instances of the application

1 process. There's at least three there that
2 we've produced today. The second would be
3 providing misleading information on a
4 document. That would be his leave entry,
5 the way he entered the time for February
6 7th. As well as his failure to disclose the
7 Adderall usage. That would also be a
8 document that Mr. -- Mr. Vargo completed
9 during the employment process. And then,
10 finally, the misrepresentation of
11 employment-related information. That would
12 be the multiple failures to disclose the
13 Adderall usage during the employment
14 process. Again, three opportunities to
15 disclose that, and he didn't. So we believe
16 that misconduct would fall under any of
17 those three allegations, would -- would fall
18 into the definition of misconduct, and we
19 believe that we have established misconduct
20 and we'd ask that you find misconduct and
21 then recommend an appropriate sanction.
22 Thank you.

23 HEARING OFFICER: Thank you.

24 Mr. O'Leary.

25 MR. O'LEARY: I appreciate it. The -- let me

1 stand up here a second.

2 CLOSING ARGUMENT

3 BY MR. O'LEARY: One of the things that's

4 interesting, this man's been on ten years

5 with the Department, and five out of the ten

6 he was the outstanding employee. And

7 they're saying basically that -- that

8 he's -- he's a liar and a cheat. Did you

9 notice that the internal affair's officer

10 never used the word "willfully, fraudulent,

11 false" or "deceitful" or "willfully false"?

12 There was nothing false. Let's talk just a

13 little bit about the initial -- the initial

14 time he put in for -- for the leave with the

15 child, okay? No question the kid was -- was

16 sick. There's no question the first day,

17 that week he was given an additional day he

18 had to take off because he had got too many.

19 And that was supposed to be like on

20 Wednesday or Thursday. So what you got here

21 is on the first day that he's off with the

22 child, he was asked to go back on duty and

23 go pick up his vehicle. He does. And then

24 he comes back, and then he starts that

25 night, Tuesday night. He starts the time

1 under the Family Leave Act, okay? That is
2 continuing on through Wednesday. No
3 question. The child's still sick. I didn't
4 know you couldn't bring a child back to the
5 nursery or something. If they'd been sick,
6 you have to -- that was a different rule
7 when my kids were there. I mean, that's why
8 everybody was sick all the time. But -- but
9 anyway, he -- he -- he complied with
10 everything and he puts in the leave
11 accurately. As accurate as he could
12 possibly be.

13 You know, I -- I made this chart. Didn't
14 have a place to put it. But, you know, I
15 mentioned to you that he was hired in -- in
16 2014. And this is 2024 you're talking
17 about. He had over 700 hours built up of
18 sick -- of sick leave. Sixty hours of -- of
19 annual leave, and he had also the family
20 leave. There was no intent to deceive
21 anybody by -- by going to that -- to that
22 interview with the -- with SLED. He was
23 going to SLED for a reason. And -- and I
24 think that that's the basis of why we're
25 here. He was going, because he wanted to be

1 the canine officer, which he was, but
2 they're getting rid of it, and SLED needed
3 somebody. That's what it was all about.
4 And that's an important thing. Why?
5 Because he's got to support two daughters.
6 The one five-year-old had a birthday
7 yesterday. And, right now, her father's
8 sitting out and doesn't have a job, but yet
9 he performed admirably for over the ten
10 years. You don't get to be the outstanding
11 officer of a particular troop or district
12 five times in a row. And that's how good he
13 was. You know, I -- I think it's important.
14 You never heard the word that he was
15 willfully fraudulent, false, or deceitful,
16 period. It never happened. Now you
17 say -- well, let's -- let's go back to
18 the -- to the issue of the going for the
19 initial employment. He went for the initial
20 employment with the highway patrol in that
21 year, 2013. He passed it and he was hired.
22 And he was a great employee. And, for that,
23 they're going back over ten years -- 11
24 years, which is well beyond what most
25 polygraphers even look at. And they're



1 trying to say that he's -- he deceived the
2 Department back then, and so therefore, we
3 want to come back on him and fire him for
4 that, and take his certification, because he
5 lied about not mentioning prescription drugs
6 specifically in the initial interview in
7 2013. What you got here is, I think,
8 it's -- it's almost a travesty. I hate like
9 heck to see an officer who is a hell of a
10 good officer, and he works hard, he's
11 dedicated, and he's well known in that area.
12 He was well known in the district, and his
13 supervisors loved him. And he's -- he's in
14 communication with him on the day of the
15 Family Leave Act, and they're trying to say
16 for that four and a half or five hours, even
17 though he's got like 700 and 360, he's got
18 1,060, no, that's fine. That's a count. He
19 loses that. But man, he defrauded them for
20 four or five hours. I mean, come on. You
21 know, it's a wonder we've got a shortage in
22 this state, because we lose people on
23 technical things. If you want to get
24 somebody, you can go back 10, 20, 50 years.
25 Yeah. Let's get rid of them. And that's



1 what this is all about. This man was honest
2 to a "T," period, from the very beginning.
3 He said he had taken prescription drugs. He
4 didn't mention the ones in -- in college,
5 period. He didn't. He admits that. And
6 they made a big deal, "Oh, he said 20 times
7 and he bought it for \$10. This guy's really
8 a drug abuser, period." That's nuts. That
9 really is. He estimated -- he made an
10 estimate up because why? The investigator
11 was pushing him. So he's in two years in
12 college and so many semesters, that's how he
13 came up with the 20, because he wanted it to
14 be at least that, period. He didn't want to
15 lie about anything. If you read those
16 forms, there's not one thing in there that's
17 a lie, period. You know, I -- I guess -- I
18 guess maybe I'm getting old and I hate to
19 see guys with a life ahead of them and a
20 good officer -- I'm telling you, I'd hire a
21 guy like this in a minute, period. But no.
22 They want to take his certification. It's
23 one thing to fire him. That's fine. That's
24 fine. If they don't want you, you don't
25 want to work there. But, God, don't take

1 his certification to allow him a career that
2 he wanted all his life. And he had -- and
3 he was doing well. It was bad because of
4 that information ten years ago. Yeah.
5 That's why he got five -- five out of ten
6 years the best officer in the patrol
7 district. It doesn't make sense. This
8 is -- this man, and I got to know him over
9 these last couple of months, actually. And
10 he almost talks too much. You know, he goes
11 into a detail on everything, and then, that
12 may be a -- a fault of his, but he's an
13 honest guy. And I ask that you hold them to
14 that standard. The standard being it has to
15 be willful, fraudulent, and false,
16 deceitful, and willfully false. There's
17 nothing willfully false here at all.
18 They're trying to say ten years ago, because
19 he didn't mention that, the -- the
20 prescription Adderall? He did tell them he
21 used probably from his mother. He said
22 that. So it was -- it was referenced in
23 that first interview back at the initial
24 hire. He went through the whole process, he
25 was hired, he performed, and he was a good,



1 outstanding trooper, an honor. He
2 was -- got -- got the ability to use the
3 dog, and that dog career is why he made the
4 application to SLED. I mean, it was
5 a -- kind of a coincidence of a fate that
6 just went wrong at the same time.
7 I would ask that you -- you listen to the
8 testimony. And he's admitted everything
9 here on the stand. And, if you want to
10 think that you should just fire a man and
11 take his career, take his family ability to
12 support them from a fake application because
13 he was on the Family Leave Act for five
14 hours, when he's got 700, 360 hours that he
15 could have got at any time? We don't even
16 know who put these entries in the SCEIS. I
17 don't know. I'll never understand that
18 system. I've looked at it now for a couple
19 of years, and I can't figure it out. But
20 it's clear on that document alone that he
21 didn't enter it. It doesn't show him. It
22 shows somebody else doing it.
23 I -- I think that to say that this guy
24 willfully deceived anybody is -- is wrong.
25 It's wrong. I think -- I think this man



1 alone is a model for which you want a
2 highway patrolman to be. He cares about
3 people, he deals with people, he's local in
4 his community, he's got family in the
5 community, he looks at -- he's great with
6 his kids, and you think, geez, that's a
7 negative? He was going to help his kid and
8 he falsified those records? Oh, give me a
9 break; give me a break.

10 Well, I ask you to think it over and -- and
11 this is important, because it is his life,
12 really. I didn't know he was a fireman. He
13 did that before. And he still serves, I
14 think, as a volunteer in his community. His
15 family needs him, and the family needs
16 support. He needs -- he needs to do what
17 he's best at. He sure as hell is best at
18 being a police officer based upon the fact
19 that ten years, five of them, he's the
20 outstanding officer. I don't think I've
21 ever seen that, to be honest with you. I've
22 seen one or two. I've never seen five.

23 Well, I thank you very much. On behalf of
24 my client, I would just ask you to -- common
25 sense in this thing and say, "Look you're



1 going back 13 years and saying you deceived
2 somebody?" Oh, come on. Well, I thank you
3 very much, and I ask that you have mercy on
4 him, actually, because without it,
5 his -- his life is really -- his whole
6 family's in jeopardy. All he wants to be is
7 a police officer. He doesn't want to be
8 with the patrol, because the patrol didn't
9 want him. They -- they're the loser. I
10 appreciate it. Thank you.

11 HEARING OFFICER: Thank you.

12 All right. If there are no other matters --

13 MR. GORE: (Shakes head.)

14 HEARING OFFICER: -- to be taken up before me

15 today -- and I see a shake of the head from

16 the Department and --

17 MR. GORE: Nothing from me.

18 HEARING OFFICER: Anything for you, Mr. O'Leary?

19 MR. O'LEARY: No. Thank you.

20 HEARING OFFICER: All right. Well, I appreciate

21 everyone being here today. This will

22 conclude the hearing. Thank you.

23 THERE BEING NOTHING FURTHER

24 (Whereupon, the hearing concluded

25 at 12:22 p.m.)

1 (Transcript may contain quoted
2 material.

3 Such material is reproduced as read or quoted by the
4 speaker.)

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

CERTIFICATE

Be it known that Diane Marie Hendricks took the foregoing proceeding and hereby attests:

that I was then and there a notary public in and for the State of South Carolina-at-large and that by virtue thereof I was duly authorized to administer an oath;

that the foregoing transcript represents a true, accurate, and complete transcription of the statement of nonappearance so given at the time aforesaid to the best of my skill and ability;

that I am neither a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action;

that, if a recording of an event was supplied by another party for purposes of transcription and I was not present during that event, the foregoing pages were transcribed to the best of my skill and ability; additionally, any identifications of speakers were provided to me by the party supplying the recording;

that, in the event of a nonappearance by the witness, the foregoing details for the nonappearance are accurate.

In witness thereof, I have hereunto affixed my signature and title.

Diane Marie Hendricks

Date: 10/14/2024
Notary public for South Carolina
My commission expires May 14, 2031



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
NOTICE OF CONTESTED CASE HEARING**
VIA EMAIL / CERTIFIED MAIL / RETURN RECEIPT REQUESTED

oleary_email@yahoo.com
marcusgore@scdps.gov

TO: John O'Leary, Esq.
As Attorney for Joshua A. Vargo
714 Calhoun Street
Columbia, South Carolina 29201

Certified Mail Number: 9589 0710 5270 0285 1755 20

Marcus K. Gore, Esq.
SC Department of Public Safety
P.O. Box 1993
Blythewood, South Carolina 29016

Certified Mail Number: 9589 0710 5270 0285 1755 13

FROM: South Carolina Law Enforcement Training Council

RE: In the Matter of the Law Enforcement Certification of Joshua A. Vargo
LETC Case Number: 2024-CJA-05-01

Please be advised that a contested case hearing, in accordance with the requirements of South Carolina Code Ann. § 23-23-150 (D) and S.C. Code Ann. Regs. 37-101 A, has been scheduled before the attorney hearing officer designated below at the time and place indicated.

HEARING OFFICER: Rebecca Williams
TIME AND DATE: 10:00 a.m. September 25, 2024
LOCATION: 5400 Broad River Road, Building 10, Columbia, SC 29212

Upon arrival for the hearing, parties and witnesses should report to the Criminal Justice Academy ("Academy") receptionist desk and advise of their presence for a contested case hearing. If a party is unable to be present for the scheduled contested case hearing due to reasons of disability, hospitalization, or other condition affecting the party's physical ability to travel, the party, the party's attorney, or the party's personal designee must immediately notify the hearing officer in writing, either by postal correspondence to the address on this letterhead, or via electronic mail to the address listed for the hearing officer below, to request continuation of the scheduled hearing.

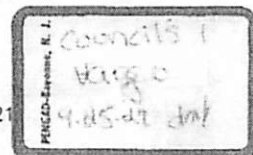
PURPOSE OF CONTESTED CASE HEARING

The purpose of the contested case hearing is to afford an opportunity, in accordance with the above referenced statutory and regulatory provisions, for the officer to contest the proposed withdrawal or denial of the officer's law enforcement certification by the Law Enforcement Training Council ("Council") based upon alleged certification misconduct on the part of the officer that has been reported to Council by the officer's previous employing law enforcement agency and which certification misconduct has been more particularly described in the Allegation of Certification Misconduct previously served upon the officer by the Academy.

South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, South Carolina 29212

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ROA0282



The law enforcement agency making the allegation of certification misconduct ("Agency") is required by S.C. Code Ann. Regs. 37-103 to prosecute the allegation and, in accordance with S.C. Code Ann. Regs. 37-105 K, will have the burden of proving by "preponderance of the evidence" that the officer has committed the misconduct alleged by the Agency. The hearing will be conducted in accordance with the provisions of S.C. Code Ann. § 1-23-320 and S.C. Code Ann. Regs. 37-105.

Both the officer and the Agency may subpoena witnesses to testify, or to produce evidence, at the contested case hearing. The subpoena form approved by the Council for use in contested case hearings is attached hereto. Both the officer and the Agency may seek enforcement of, or relief from, a subpoena by filing with the South Carolina Administrative Law Court, pursuant to S.C. Code Ann. § 1-23-600 (G). Use of the subpoena by either the officer or the Agency must comply with Rule 45 of the South Carolina Rules of Civil Procedure.

Both the officer and the agency may be represented at the contested hearing by an attorney retained at the agency's or officer's expense. If either party is represented by an attorney, and the contested hearing was not requested on the officer's behalf by the attorney, the attorney must provide a written notice of appearance to the hearing officer by no later than five (5) days in advance of the scheduled hearing. The notice of appearance may be provided by email to rwilliams@sccja.sc.gov or via postal mail as follows:

Rebecca Williams
Contested Case Hearing Officer
South Carolina Criminal Justice Academy
5400 Broad River Road
Columbia, SC 29212

RESCHEDULING OF THE CONTESTED CASE HEARING

A request for rescheduling of a contested case hearing can only be approved by the assigned hearing officer. The hearing officer may be reached by telephone at (803) 896-7128 during regular business hours or via email at rwilliams@sccja.sc.gov.

FAILURE TO APPEAR FOR THE CONTESTED CASE HEARING

If a representative of the Agency does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the Agency and it will be deemed to have waived its right to present evidence of misconduct against the officer at a contested case hearing. Further, S.C. Code Ann. Regs. 37-103(A) states that "the Agency making the allegation of misconduct shall handle the prosecution of the claim during the contested case hearing as provided below." South Carolina Code Ann. § 23-23-150(B)(2) states: "reported incidences of misconduct shall be prosecuted by the reporting agency before the contested case hearing. The reporting agency shall maintain prosecutorial discretion up to the time of the contested case hearing. If the agency declines to prosecute the allegation or allegations of misconduct, the agency shall provide a written report to the council stating that the case is not being prosecuted." S.C. Code Ann. § 23-23-100(A) states: "all public law enforcement agencies are required to comply with the provisions of this chapter and the regulations promulgated pursuant to this chapter." Failure to comply with the provisions of this chapter and regulations promulgated pursuant to this chapter may result in a civil penalty not to exceed one thousand dollars per day or other legal remedies as provided pursuant to S.C. Code Ann. § 23-23-100.

If the officer does not appear at the scheduled contested case hearing and has not requested a continuance of the hearing, a judgment by default will be rendered against the officer; the officer will be deemed to have waived the right to present evidence at the contested case hearing, and Council may immediately proceed to a determination as to the appropriate final agency action. If Council determines that the officer has committed certification misconduct, it may impose sanctions, pursuant to S.C. Code Ann. Regs. 37-108.

Evidence presented by the hearing officer to Council incident to an officer's failure to appear for the contested case hearing is not required to conform to the South Carolina Rules of Evidence.

FOR THE LAW ENFORCEMENT TRAINING COUNCIL:

James M. Pennell
General Counsel
South Carolina Criminal Justice Academy
jlpennell@sccja.sc.gov

Date: August 15, 2024

STATE OF SOUTH CAROLINA
South Carolina Law Enforcement Training Council ,

**IN THE MATTER OF THE LAW ENFORCEMENT
CERTIFICATION OF**

) **ADMINISTRATIVE SUBPOENA**
) **LETC Case Number:**
)

TO:

☐ **YOU ARE COMMANDED to appear at the place and time specified below to testify in the above case.**

PLACE OF TESTIMONY: South Carolina Criminal Justice Academy 5400 Broad River Road Columbia, SC 29212	DATE AND TIME:
--	-----------------------

☐ **YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below:**

DOCUMENTS OR OBJECTS TO BE PRODUCED:	
PLACE OF PRODUCTION:	DATE AND TIME:

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS PROCEEDING IS DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE HEARING OFFICER SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF. THE ORGANIZATION SHALL SET FORTH, FOR EACH PERSON SO DESIGNATED, THE MATTERS ON WHICH THE PERSON WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN, OR REASONABLY AVAILABLE, TO THE ORGANIZATION.

BY MY SIGNATURE BELOW, I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), SCRCP, AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Signature of Person Issuing Subpoena

Date

Printed Name

Address

Telephone

Email

☐ **I am an attorney in good standing with the South Carolina Bar representing a party to this proceeding.**

Attorney for Law Enforcement Agency

Attorney for Law Enforcement Officer

SC Bar Number: _____

☐ **I am an unrepresented party to this proceeding.**

PROOF OF SERVICE

SERVED: Date of Service: Location of Service:	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL: ☐ YES ☐ NO AMOUNT \$
SERVED ON:	MANNER OF SERVICE:
SERVED BY:	TITLE OF SERVER:

DECLARATION OF SERVER

By my signature hereto, I certify that the foregoing information contained in this Proof of Service is true and correct.

Executed this ____ day of _____, 20____

Signature of Server

Address of Server

Rule 45, South Carolina Rules of Civil Procedures, Parts (b), (c), and (d):

(b) Service.

(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made in the same manner prescribed for service of a summons and complaint in Rule 4(d) or (j). If the person's attendance is commanded, then that person shall, upon his arrival in accordance with the subpoena, be tendered fees for each day's attendance of \$25.00 and the mileage allowed by law for official travel of State officers and employees from his residence to the location commanded in the subpoena. When the subpoena is issued on behalf of the State of South Carolina or an officer or agency thereof, fees and mileage need not be tendered. Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

(2) Subject to the provisions of clause (i) of subparagraph (c)(3)(A) of this rule, a subpoena may be served at any place within the State. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person and be served in that county.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service.

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving

the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued.

If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 60 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (e)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 28(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

SCCJA Form 81- Revised (2018)



PCS: Separation Due to Misconduct

Date Submitted:
5/1/2024 2:22 PM

Employing Agency Information (Contact for more information)

This form **MUST** be completed within 30 days of the discovery of any event of misconduct which is determined to be "FOUNDED" by the agency or department. The Misconduct Report Form, Separation Supplement, and all documentation related to the misconduct must be forwarded to the Criminal Justice Academy's Certification Unit.

For any separation involving misconduct as defined in S.C. Code Section 23-23-150, completion of this form is **REQUIRED**.

Agency Information

Today's Date
5/1/2024

Reporting Agency
SC Department of Public Safety

Name
Brianne Marie Perry

Agency Email
brianneperry@scdps.gov

Agency Phone Number
(803) 896-8734

Officer Information

Name
Joshua A Vargo

Academy ID
0557-0294

Certification Type
Class 1 LE

Phone Number
(803) 571-9785

Officer's Current Home Address
[REDACTED] New Ellenton, South Carolina 29809

Separation Information

Date of Separation 3/6/2024	CONFIRM Date of Separation 3/6/2024	Separation Action Termination INVOLVING MISCONDUCT as defined in S.C. Code Section 23-23-150 and/or S.C. Code of Regulations 37-025
---------------------------------------	---	---

Please indicate the nature of the misconduct below:

The misrepresentation of employment-related information;

Willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;

Willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State;

Reason for Separation

Do not use generic terminology such as conduct unbecoming, failed to meet agency standards, violation of agency operating procedures, etc. Be specific. Detailed information describing act(s) of misconduct is necessary for efficient processing.

The below information is **REQUIRED** for all separations due to misconduct:

Date(s) of alleged misconduct

February 7, 2024; and October 2, 2013.

Please give date(s) of allegation with specific details of the subject matter:

Master Trooper Vargo was untruthful with his supervisor when he indicated that he would need to utilize Family Sick Leave for his child instead of coming to work. He then left the child in someone else's care and traveled to Columbia to attend a previously scheduled appointment; After attending a previously scheduled appointment in Columbia for several hours on February 7, 2024, Master Trooper Vargo fraudulently documented a full workday of Family Sick Leave;

Master Trooper Vargo failed to fully disclose his illegal use of drugs to the SCHP prior to his employment [REDACTED] The SCHP employment application specifically warns that if information is later found to be untrue, it may be grounds for discipline. He later voluntarily admitted to this drug use during [REDACTED] examination with another law enforcement agency.

Criminal Charges Filed?

No

Pending Criminal Investigation?

No

Pending Criminal Charges?

No

ACCESS MRN FORM: Fillable MRN Form

Upload MRN

Final MRN Vargo, Joshua A. (03.06.2024).pdf

Pursuant to S.C. Code 23-23-150(F), does the submission of this allegation exceed the time allowed by statute?

No

Electronic Signature (Agency Head or Authorized Designee)

Agency Head or Authorized Designee Signature Agency Head or Authorized Designee Academy
ID
1333-7844

Brianne Perry



**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY
NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION**

May 2, 2024

Joshua Vargo

[REDACTED]
New Ellenton, South Carolina 29809

2024-CJA-05-01

Via Hand Delivery Only

RE: Allegation of certification misconduct and right to contested case hearing

Mr. Vargo:

On May 1, 2024, the South Carolina Department of Public Safety filed an allegation of certification misconduct against you. Specifically, the misrepresentation of employment-related information; willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State; willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report or form, except when required by departmental policy or by the laws of this State. You cannot be employed as a law enforcement officer or as a telecommunications operator; have the authority of a law enforcement officer; perform any duties of a law enforcement officer, including those duties involving the control and direction of member of the public, detainees, or prisoners; or exercise the power of arrest, while this allegation of misconduct is pending.

A person against whom an allegation of misconduct has been received by the academy may request a contested case hearing. The request must be made within three years after receipt of the allegation of misconduct and the service of the allegation on the officer, whichever is later. A person who fails to request a contested case hearing within the time allowed shall be deemed to have waived his right to a contested case hearing. The Law Enforcement Training Council shall proceed to enter a final agency decision to deny the person his law enforcement certification or telecommunications certification for a specified time period, up to a permanent denial. Hearings must be scheduled and conducted expeditiously and efficiently, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record. The academy shall schedule

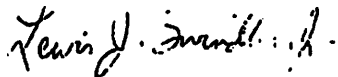
a contested hearing within sixty days of receiving a request for a hearing, however, a continuance may be granted for cause. S.C. Code Section 23-23-150 (D) (emphasis added).

If you wish to dispute the allegations of certification misconduct, you must submit a Contested Case Hearing Request form online which may be located at <https://scjia.sc.gov/general-information/forms>. Please note, if you have pending criminal charges, you are not entitled to a hearing until such time the charges have been adjudicated. Further, if you were subject to a criminal investigation at the time of separation from the above-mentioned law enforcement agency, a declination letter from the prosecutorial authority must be provided prior to being entitled to a hearing.

Once said charges have been adjudicated and/or you are no longer the subject of a criminal investigation, a certified copy of the disposition sheet from the court of jurisdiction, or a copy of the declination letter from the prosecutorial authority must be provided to the Office of General Counsel of the South Carolina Criminal Justice Academy for review. Upon receipt, review, and verification of the provided documentation, you may submit the above-mentioned form.

Please be advised that you are entitled to have an attorney represent you at this hearing. Should you hire an attorney to represent you, please have the attorney send a notice of appearance to the Office of General Counsel for the South Carolina Criminal Justice Academy, 5400 Broad River Road, Columbia, South Carolina 29212.

Sincerely,



Lewis J. Swindler, Jr.
Director



STATE OF SOUTH CAROLINA
AIKEN COUNTY SHERIFF'S OFFICE
AFFIDAVIT OF SERVICE / NON-SERVICE



CASE# 2 4 0 2 8 6 3 8 COURT CASE# 2024-CJA-05-01

Vs.

PLAINTIFF	DEFENDANT
South Carolina Criminal Justice Academy	Joshua Vargo

THIS IS TO CERTIFY THAT I, LT. T. HAHN, DEPUTY SHERIFF OF AIKEN COUNTY, STATE OF SOUTH CAROLINA SERVED / ATTEMPTED TO SERVE THE

- | | |
|---|---|
| ☐ RULE TO SHOW CAUSE
☐ DETERMINATION OF PATERNITY
☐ COMPLAINT
☐ EXPLANATION TO THE RIGHT TO AN ATTORNEY
☐ 5 DAYS TO VACATE
☐ CLERK'S AFFIDAVIT | ☒ NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION
☐ DATING VIOLENCE EX PARTE PROTECTIVE ORDER
☐ SUMMONS
☐ DECLARATION OF TAKING
☐ CITATION
☐ MOTION & ORDER TO DISMISS/MODIFY SUPPORT |
|---|---|

IN THE ABOVE TITLED ACTION ON THE SUBJECT: Joshua Vargo

☒ (SERVED)

BY DELIVERING TO THE SAME TO,

☒ THE SUBJECT PERSONALLY

☐ A PERSON OF DISCRETION RESIDING AT THE DEFENDANT'S RESIDENCE

(RELATIONSHIP) ☐ FATHER ☐ MOTHER ☐ BROTHER ☐ SISTER ☐ SPOUSE ☐ CHILD OVER 18 ☐ CHILD UNDER 18 / OVER 14

NOTES:

AT

ADDRESS	CITY	STATE	ZIP CODE	LOCATION #
	New Ellenton	SC	29809	

ON THE

DATE	TIME
05/03/24	14:30

SWORN TO AND BEFORE ME THIS

DATE 5-10-24

DEPUTY SHERIFF (4991)
AIKEN COUNTY, SC

COURT:

DATE	TIME

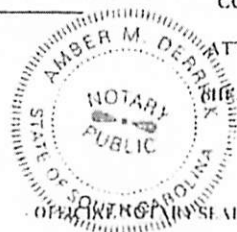
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES ON: 7/12/2030

DATE ENTERED:

ATTEMPTS: 2 (1-05/03/24 @ 12:28)

SHERIFF'S #: IVD-



ACSO Form LP 001 (02/02/11)



Contested Case Hearing Request

Date Submitted:
8/12/2024 11:20 AM

Name
Joshua Vargo

Address
[REDACTED] New Ellen, South Carolina 29809

Email
javargo09@yahoo.com

Phone
(803) 571-9785

Academy ID (If known)

Former Agency Name
SC Department of Public Safety

Have you retained an attorney?
Yes

Attorney Information

Name
JOHN A O'Leary

Phone
(803) 779-5556

Email
oleary_email@yahoo.com

Mailing Address
714 Calhoun Street, Columbia, South Carolina 29201

Please list any dates within the next 45 days that will create a scheduling conflict. The SCCJA will attempt to accommodate.

For John O'Leary the following dates are currently not available and on a court calendar:

Aug 12 - 28, 30

Sept 4, 6, 9, 11- 13, 17- 20, 24, 26, 27

Oct: 2, 4

South Carolina Law Enforcement Division

Applicant Questionnaire

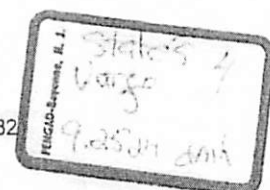
SECTION I

Applicant Name: Vargo Joshua Anthony
Last First Middle
Residence: [REDACTED]
Street City State Zip
Current Employer: South Carolina Highway Patrol
Contact Phone #'s: 414 803-662-2767
Home Work Cell
Place of Birth: Aiken, SC - USA Date of Birth: [REDACTED]
Education: Bachelor's Degree Social Security #: [REDACTED]
Position to which you are applying: Arson - Unit 2

1. Have you ever taken a polygraph examination? YES (☒) NO ()
2. Have you ever used another name? YES () NO (☒)

If you answered YES to any questions in this section, please explain:

South Carolina Highway Patrol Employment



SECTION V

1 Have you ever used/tried marijuana in any form? YES (✓) NO ()

If YES, First time? 2013 Last time? 2013

2. How many times have you used tried marijuana? once

3. Did you ever illegally possess ☐, purchase ☐, sell ☐, cultivate ☐, manufacture ☐, or

distribute ☐ any illegal drugs? YES () NO (✓)

If YES, please mark the appropriate checkbox above and explain:

(First time) (Last time) (How many times) (Largest amount)

4. When were you last with someone else while s/he was using illegal drugs? 2013, Edisto

5. Have you ever used illegal drugs while serving in a position of public trust?

(e.g., law enforcement, public safety, medical practitioner, etc.) YES () NO (✓)

6. Did you ever use any illegal drugs prior to reporting for work? YES () NO (✓)

7. Did you ever use any illegal drugs while at work? YES () NO (✓)

8. Have you ever illegally used any steroids? YES () NO (✓)

9. Did you ever forge or alter a drug prescription? YES () NO (✓)

10. Have you ever used/tried any illegal drug(s) other than marijuana or abused any prescription drugs prescribed for yourself or for someone else? YES (✓) NO ()

If YES, circle the appropriate drug(s):

Cocaine	LSD	Amphetamine	Hashish	K2/Spice/Synthetic Marij.
Crack	Heroin	Peyote	Pain Killers	Barbiturates
Rohypnol	Opium	Mushrooms	<u>Oxycontin</u>	Valium
Ketamine	Ecstasy	Sleeping Pills	Hydrocodone	Xanax
Mescaline	Salvia	Methadone	Codeine	Methamphetamine
GHB	PCP	<u>Adderall/Ritalin</u>	Morphine	Other (not listed)
Inhalants: Glue, Paint, Acetone, Nitrous Oxide, or any similar substance				

2012 - 2013 (First time) (Last time) A few (How many times)

If you answered YES to any of the questions in this section not already covered, please explain: .

Took one "pill" of marijuana prior to LE. In college I took
Adderall a few times to help with exams/late study nights
Taken oxy after surgeries, always prescribed and never abused it.
2012-2013 took adderall approximately 20 times
purchased from my neighbor at \$10 a pill

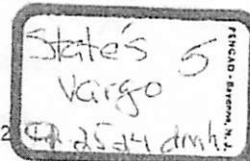
EMPLOYMENT APPLICATION		
	STATE OF SOUTH CAROLINA Division of Human Resources 8301 Parklane Road, Suite A220 Columbia, South Carolina 29223 (803) 896-5300 http://www.ighs.sc.gov Vargo, Joshua A 12-054-HP STATE TROOPER	Received: 8/19/13 1:24 PM For Official Use Only: QUAL: _____ DNQ: _____ ☐ Experience ☐ Training ☐ Other: _____

PERSONAL INFORMATION		
POSITION TITLE: STATE TROOPER	EXAM ID#: 12-054-HP	
NAME: (Last, First, Middle) Vargo, Joshua A	SOCIAL SECURITY NUMBER: [REDACTED]	
ADDRESS: (Street, City, State, Zip Code) [REDACTED]		
HOME PHONE: [REDACTED]	ALTERNATE PHONE: [REDACTED]	EMAIL ADDRESS: [REDACTED]
DRIVER'S LICENSE: ☐ Yes ☐ No	DRIVER'S LICENSE: State: SC Number: [REDACTED]	LEGAL RIGHT TO WORK IN THE UNITED STATES? ☐ Yes ☐ No

PREFERENCES	
PREFERRED SALARY: Regular	ARE YOU WILLING TO RELOCATE? ☐ Yes ☐ No ☐ Maybe
WHAT TYPE OF JOB ARE YOU LOOKING FOR? Regular	
TYPES OF WORK YOU WILL ACCEPT: Full Time, Part Time	
SHIFTS YOU WILL ACCEPT: Day, Evening, Night, Rotating, Weekends, On Call (as needed)	
OBJECTIVE: To obtain a career in law enforcement.	

EDUCATION		
DATES: From: 8/2009 To: 5/2013	SCHOOL NAME: University of South Carolina-Aiken	DEGREE RECEIVED: Bachelor's
LOCATION: (City, State) Aiken, South Carolina	DID YOU GRADUATE? ☐ Yes ☐ No	UNITS COMPLETED: 8 - Semester
MAJOR: Accounting Major - Criminal Justice Minor		
DATES: From: 8/2006 To: 5/2009	SCHOOL NAME: Williston-Elko High School	DEGREE RECEIVED: High School Diploma
LOCATION: (City, State) Williston, South Carolina	DID YOU GRADUATE? ☐ Yes ☐ No	

WORK EXPERIENCE		
DATES: From: 7/2012 To: Present	EMPLOYER: Aiken Department of Public Safety	POSITION TITLE: Firefighter
ADDRESS: (Street, City, State, Zip Code) 251 Laurens St., Aiken, South Carolina 29801	SUPERVISOR: Brian Brozier - Captain	COMPANY URL: [REDACTED]
PHONE NUMBER: (803) 642-7620	SALARY: \$0.00/month	MAY WE CONTACT THIS EMPLOYER? ☒ Yes ☐ No
HOURS PER WEEK: 50		# OF EMPLOYEES SUPERVISED: [REDACTED]
DUTIES: Protect lives and property in the city of Aiken. Performing equipment maintenance and inspections. Testing fire hydrants and doing business inspections and surveys.		
REASON FOR LEAVING: n/a		
DATES: From: 10/2009 To: 8/2012	EMPLOYER: Rite Aid	POSITION TITLE: Shift Supervisor
ADDRESS: (Street, City, State, Zip Code) 605 North Main Street, New Ellenton, South Carolina 29809	SUPERVISOR: [REDACTED]	COMPANY URL: [REDACTED]
PHONE NUMBER: (803) 571-9785	SALARY: \$0.00/month	MAY WE CONTACT THIS EMPLOYER? ☐ Yes ☐ No
HOURS PER WEEK: 25		# OF EMPLOYEES SUPERVISED: [REDACTED]
DUTIES: Manage a small group of employees, cashier, stock/inventory, administrative duties, customer service.		



REASON FOR LEAVING:
Obtained a job with Aiken Department of Public Safety

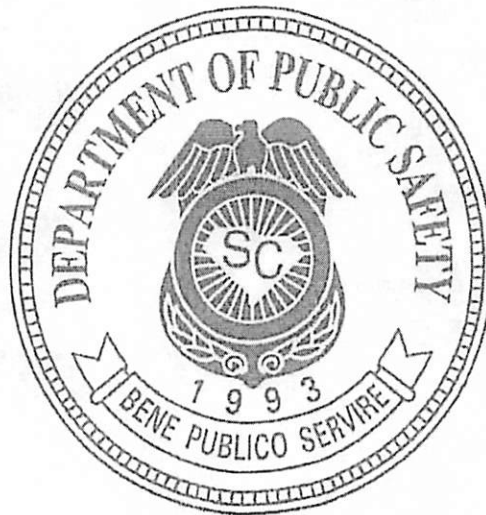
CERTIFICATES AND LICENSES

TYPE: Fire Fighter II	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Fire Fighter I	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: OSHA Fire Fighter	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Pump Operations I	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Defensive Driving Course	ISSUING AGENCY: City of Aiken
LICENSE NUMBER:	
TYPE: Emergency Vehicle Driver Training	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Rope Rescue Operations	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: NCIC Inquiry Certification Test	ISSUING AGENCY: South Carolina Law Enforcement Division
LICENSE NUMBER:	
TYPE: Positive Pressure Ventilation	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Basic Auto Extrication	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: IS-00800.b	ISSUING AGENCY: Emergency Management Institute (FEMA)
LICENSE NUMBER:	
TYPE: ICS-100	ISSUING AGENCY: Emergency Management Institute (FEMA)
LICENSE NUMBER:	
TYPE: ICS 200	ISSUING AGENCY: Emergency Management Institute (FEMA)
LICENSE NUMBER:	
TYPE: National Incident Management Systems	ISSUING AGENCY: Emergency Management Institute (FEMA)
LICENSE NUMBER:	
TYPE: Hazardous Materials Awareness Level	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Hazardous Materials Operations	ISSUING AGENCY: South Carolina Fire Academy
LICENSE NUMBER:	
TYPE: Emergency Medical Response	

LICENSE NUMBER:		ISSUING AGENCY: American Red Cross	
SKILLS			
OFFICE SKILLS: Typing: 75 Data Entry: 0			
OTHER SKILLS:			
LANGUAGE(S):			
ADDITIONAL INFORMATION Nothing Entered For This Section			
REFERENCES			
REFERENCE TYPE: Personal	NAME: James Hall	POSITION: Jr.	
ADDRESS: (Street, City, State, Zip Code)		PHONE NUMBER:	
EMAIL ADDRESS:			
REFERENCE TYPE: Personal	NAME: Jeep Gainey	POSITION:	
ADDRESS: (Street, City, State, Zip Code)		PHONE NUMBER:	
EMAIL ADDRESS:			
REFERENCE TYPE: Professional	NAME: Chris Williams	POSITION:	
ADDRESS: (Street, City, State, Zip Code)		PHONE NUMBER:	
EMAIL ADDRESS:			

South Carolina Department of Public Safety

Office of the Director

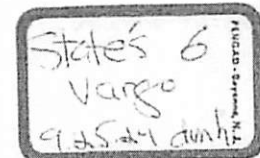


Employment Background Investigation

Applicant: Joshua Anthony Vargo

Investigating Officer: J. C. Rikard

Date Submitted: 10/24/2013



Selfless Service Integrity Responsibility

SECTION F: DRUGS AND ALCOHOL BEHAVIORAL QUESTIONS TO APPLICANT

1. Have you ever used and/or experimented with Marijuana? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
2. Have you ever used and/or experimented with Hash/Hash Oil? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
3. Have you ever used and/or experimented with Cocaine? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
4. Have you ever used and/or experimented with Crack? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
5. Have you ever used and/or experimented with Heroin? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
6. Have you ever used and/or experimented with any illegal Anabolic Steroids? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
7. Have you ever used and/or experimented with Speed? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
8. Have you ever used and/or experimented with Mushrooms? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
9. Have you ever used and/or experimented with Acid/LSD? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
10. Have you ever used and/or experimented with any illegal Inhalants? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
11. Have you ever used and/or experimented with any type of PCP or Meth? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
12. Have you ever used and/or experimented with any Party Designer Drugs? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
13. Have you ever used and/or experimented with "Date Rape" drugs? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
14. Have you ever used and/or experimented with DMX, GHB, Rohyphnol (Ruffies)? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
15. Have you ever used and/or experimented with Ecstasy? Yes ☐ No ☒
Date 1st Time: _____ Date Last Time: _____ Total Times: _____
16. Have you ever used and/or experimented with any prescribed medication not prescribed to you?
Yes ☐ No ☐
Date 1st Time: _____ Date Last Time: _____ Total Times: maybe childhood form mother
17. Have you ever used a needle to inject yourself with any illegal substances? Yes ☐ No ☒
If yes, explain:
18. Have you ever used and/or experimented with any illegal drug or substance not mentioned above?
Yes ☐ No ☒ If yes, list:



SOUTH CAROLINA
DEPARTMENT OF PUBLIC SAFETY

LAW ENFORCEMENT POLYGRAPH
QUESTIONNAIRE

Case # 113-377 Examiner: HMM
Date: 10-2-17 Time In: 8:30 Time Out: 10:45

DO NOT WRITE ABOVE THIS LINE

Applicant Name: Vargo Joshua Anthony
Last First M

Home: [REDACTED]
Street City State Zip

Work: 251 Laurens St. Aiken SC 29801
Street City State Zip

Home Phone: [REDACTED] Work Phone: 803-642-7620

Place of Birth: Aiken, SC DOB: [REDACTED] Age: 23

DL#: [REDACTED] State: SC SSN #: [REDACTED]

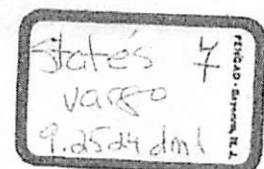
Division for which you are applying: (Circle One) SCHP STP BPS IEU
Position for which you are applying: SCHP Trooper

INSTRUCTIONS

Complete the following pre-employment questionnaire by answering each of the questions listed on the preceding pages. Be sure to read each question thoroughly before entering your answer. If a particular question does not apply to you, please enter "N/A" indicating that it is not applicable. The polygraph examiner will review this booklet with you prior to your polygraph examination and any questions that you may have concerning this booklet should be addressed with the examiner at the time.

!!!!!!!!!!!!!!!!!!!!!! WARNING !!!!!!!!!!!!!!!!!!!!!!!

THIS BOOKLET IS THE PROPERTY OF
SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
ANY UNAUTHORIZED DUPLICATION OF THIS BOOKLET IS
STRICTLY PROHIBITED



5. Have you ever used any illegal drugs or narcotics prior to reporting for work? YES () NO (X)

If YES, explain:

6. Have you ever used any illegal drugs or narcotics while at work? YES () NO (X)

If YES, explain:

7. Have you ever used any of the following drugs and/or narcotics listed below? YES () NO (X)

If YES, indicate by circling all that apply to you:

Cocaine	Crank	Crack	Hashish	Hash Oil
Thal stick	Heroin	Opium	Codeine	Morphine
Percodan	Speed	Amphetamine	Valium	PCP
Dilaudid	Barbiturate	Preludin	Methadone	Methaqualone
Quaaludes	Angel Dust	Mescaline	Peyote	LSD
MDA	Ecstasy	Mushrooms	Marijuana	

Sniff: Glue, Paint, Acetone, Greek Joint, Ice, and others.

8. When were you last with someone while they were using illegal drugs other than marijuana? n/a

9. Approximately how many of your friends or associates use illegal drugs and/or narcotics? 2 old highschool friends

10. Have you ever possessed or used any paraphernalia associated with illegal drugs and/or narcotics? YES () NO (X)

11. Have you ever unlawfully used steroids? YES () NO (X)
If YES, explain:

12. Have you ever used someone else's prescription drug? YES () NO (X)
If YES, explain:

13. Have you ever forged or altered a drug prescription? YES () NO (X)

V. GAMBLING

1. Do you ever gamble? YES (X) NO ()

2. What is the extent of your gambling habit?

None () Light (X) Moderate () Heavy ()

3. What is the largest amount of money lost at one time? \$ 20

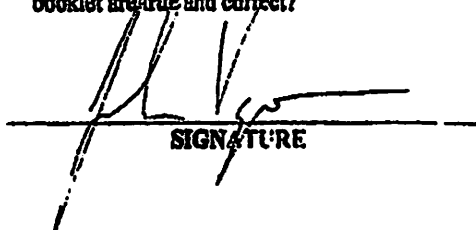
4. Do you owe any gambling debts? YES () NO (X)

3. Have you intentionally falsified any answers in this booklet? YES () NO (X)
If YES, explain: _____

4. Did you intentionally omit any facts from any questions in this Booklet that you feel might disqualify you from this position? YES () NO (X)
If YES, explain: _____

5. Did you deliberately fail to answer a question in this booklet, in lieu of discussing the matter with examiner? YES () NO (X)
If YES, explain: _____

6. Do you affirm or attest that all the questions answered in this booklet are true and correct? YES (X) NO ()


SIGNATURE


DATE

**Transcript of Recorded
Law Enforcement Training Council Meeting
Excerpt in re: Joshua Vargo
Case Number 2024-CJA-05-01**

- - - - -

Date Recorded: March 17, 2025

Time Stamp 1:05:02-1:38:38

- - - - -

**Transcribed by: Audrey S. Beebe,
Southern Reporting, Inc.**

ORIGINAL

APPEARANCES

Law Enforcement Training Council Members:

Present in Person: Chief Mark Keel, SLED, Chair

Bryan Stirling, Director South Carolina
Department of Corrections

Jake Gadsden, Director South Carolina Department
of Probation, Parole, and Pardon Services

Tom Mullikin, Director South Carolina
Department of Natural Resources

Robert Woods, Director South Carolina
Department of Public Safety

Nick Gallam, Major Aiken County Detention Center

William Holbrook, Chief Columbia Police Department

Present via Videoconference: Lee Foster, Sheriff of
Newberry County, Co-Chair
Barry Faile, Sheriff of Lancaster County

Kevin Cornett, Chief Isle of Palms Police Department

Chief Deputy Attorney General Jeffrey Young,
Proxy for Attorney General Wilson

SCCJA Staff: Director Jackie Swindler
Opel Bunn, Executive Assistant to the Director
James M. Fennell, Esq., General Counsel

Others Present: Marcus Gore, Esq.,
South Carolina Department of Public Safety
John O'Leary, Esq., for Mr. Vargo
Joshua Vargo

**Hearing 2024-CJA-05-01 Joshua Vargo, South Carolina
Department of Public Safety**

Mr. Fennell:	4
Mr. O'Leary, for Mr. Vargo:	4
Mr. Vargo:	10
Mr. O'Leary, for Mr. Vargo:	13
Question(s)/Discussion:	14
Mr. Gore, for SCDPS:	15
Mr. O'Leary, for Mr. Vargo:	26
Mr. Vargo:	28
Mr. O'Leary, for Mr. Vargo:	32
Motion:	33
Vote:	33

24 At that point in time, after the ten-year
25 period, he's working with the dogs, trained with

1 the dogs, and he was -- he was approached by SLED
2 to apply at SLED and possibly become a dog handler
3 at SLED. That's what he did. Now, that's one of
4 the allegations.

5 Now, what -- what he's accused of, he was
6 accused of supposedly falsifying his time with
7 reference to his daughter, his child, who was sick.
8 He took sick days. That was -- that was litigated,
9 and the hearing officer determined that he never
10 lied about any time periods; he put in proper time
11 periods. If there was an administrative problem,
12 it probably came from the Department. So that
13 portion, he was cleared of.

14 So we're left with just the issue as to the
15 dog. Now, what happened was when he went to apply
16 for SLED, they sent him to a polygraph. In the
17 polygraph, he was submitted -- he submitted a
18 written questionnaire, and he also was questioned
19 by the polygrapher. And it turns out that what he
20 told the polygrapher at SLED wasn't exactly what he
21 told the polygrapher earlier -- ten years earlier
22 at the Patrol.

23 Now, in the -- in the hearings itself, none of
24 the polygraphers, the first one or the second one
25 at SLED, none of them were present, nor did they

1 testify. What the conclusion of the hearing
2 officer was that he told that he used Adderall to
3 the hearing officer at SLED, but he did not tell
4 him completely that story initially with the
5 Patrol. However, he did tell the Patrol he used
6 Adderall, but he indicated he thought he used it
7 from his mother's prescription, and that basically
8 is where the conflict comes up.

9 Now, he's here today to tell you why he
10 answered that way. Now, it's ironic because the
11 conclusion was that he -- he lied at the SLED -- at
12 the SLED interview because he didn't include the
13 details that he got some Adderall from a neighbor,
14 which he admitted at the SLED interview. Now, from
15 that, they concluded that he -- that he lied and
16 therefore he should be disqualified as an officer.

17 Now, his record over the years was
18 outstanding. He was an extremely competent officer
19 as well as a competent dog officer, and SLED wanted
20 to hire him. But he didn't get hired, obviously,
21 because of -- because of this problem. He's here
22 to answer any questions as to how he answered.

23 Now, it's interesting, when you get my age, I
24 can remember things 25 years ago where I may not
25 remember them from yesterday. And that basically

15 But from that result, from the hearing itself,
16 they concluded that he didn't tell the same story
17 in the first one versus the second one; therefore,
18 it was -- it was a lie. Our understanding of the
19 way this occurred was he just didn't remember it
20 the first time and he did not at any time really
21 lie. He's answered truthfully from the very
22 beginning. He thought it was -- he got that from
23 his mother, the Adderall, as he said in the first
24 interview, versus the second one.

Record on Appeal - 25-AIS-80-886R-4-Brittina Vargo - Page 271 of 321
depos@southernreporting.net | 803.749.8100 | www.southernreporting.net

1 wasn't going to make it on time, but he's here and
2 he'll answer any questions he has. So if it boils
3 down to the issue of the hearing -- hearing
4 officer's report, which concluded that the
5 misunderstanding came up from the second -- from
6 the two interviews, the discrepancy in those two
7 interviews, they concluded that was a lie. I -- I
8 don't believe it was a lie. I think it was a
9 misunderstanding. And there's no way I could
10 really cross-examine anybody. There was nobody
11 there to question.

12 So he will answer any questions y'all may have
13 with reference to why he responded the first way
14 and why he responded the second way. At all times,
15 he admitted using Adderall. The first -- the first
16 interview he said he got it from his mother. He
17 remembers she had a prescription. He got it from
18 there. That's what he said. Second interview, he
19 said he bought some for exams in college from a
20 neighbor, I believe is what was said. And he will
21 answer and respond to any questions.

22 If you look at his record, it was an
23 outstanding record. And he was a tremendous
24 handler of the dogs, and he wanted to pursue that.
25 That's what brought us to this today. So the irony

24 MR. O'LEARY: Hey, listen, you are the judge, okay? And
25 that's the way it's going to be from my standpoint.

1 I appreciate your -- your recusing yourself from --
2 from this, though. I really do. Thank you. (To
3 Mr. Vargo) Go ahead.

4 CHIEF KEEL: Mr. Vargas (verbatim), we'll be happy to
5 hear from you.

6 MR. VARGO: I just want to clarify up a couple points
7 real quick. First off, I am Joshua Vargo. I have
8 been ten years with Highway Patrol. Five of those
9 ten years, I was trooper of the year in my assigned
10 post or region. I've not had the first
11 disciplinary action up until this point. Till this
12 day, people still know me. People still -- getting
13 several job offers, you know, because they know my
14 work ethic, they know me, they know my character.
15 Depending on how this hearing goes, I've got
16 several agencies waiting for a phone call after
17 this hearing.

18 At no point in time have I ever lied during
19 any of this process. To clarify a couple things,
20 going back, the original Highway Patrol polygraph,
21 I did not mention anything about Adderall because I
22 simply did not recall. It had nothing to do with
23 lying, trying to falsify any application for
24 employment, nothing in regards to that. As I told
25 the SLED investigator during that SLED polygraph,

22 I did not recall it at the time of the Highway
23 Patrol polygraph because, again, it was very
24 minuscule. And honestly, at that point in time, I
25 didn't know what a controlled substance was. I had

1 no law enforcement background, family was never in
2 law enforcement, was never into drugs or anything
3 like that growing up. So I didn't know nothing
4 about controlled substances or nothing like that.
5 I did not know that that was illegal. And then,
6 like I said, it just simply slipped my mind because
7 it was very few. It wasn't a repeat thing. It's
8 not that I lied about it, because, obviously, I
9 passed a polygraph. That -- I mean I did not
10 intentionally lie about anything.

11 And then like I said, just going up through
12 the years, I learned more. Talking, referencing
13 stuff, bringing up old, old memories and stuff, it
14 came to recollection then, and that's why I put it
15 on there. I did not try to hide it from anybody.
16 At no point in time have I ever lied or tried to
17 cover up anything throughout this whole
18 investigation process with SLED and with DPS. And
19 we're here today for that reason.

20 And I'm ready to get this behind me because,
21 like I said, I -- I have had an excellent career in
22 law enforcement, and I'm trying to continue that
23 career in law enforcement. And if Highway Patrol
24 doesn't -- doesn't want me anymore, that's fine.
25 There are other agencies that know me. They know

1 my work value, my ethic, my integrity, and they are
2 wanting me. And we got to get across this hurdle
3 right here before I can do that. So that's why I'm
4 here today.

5 MR. O'LEARY: You know, it's an interesting case because
6 the majority of the hearing centered around the
7 dates about his -- that he took off to serve --
8 medical service with his daughter because she was
9 seriously ill. So he took some time off there, and
10 he reported it correctly and he recorded also the
11 fact that he left work one day and went to do the
12 interview with the polygraph that's the subject of
13 this on another. It was all properly recorded.
14 Never been an attempt to conceal anything.

15 Hard worker, detailed, five out of ten years,
16 I think, is something I ask you to take into
17 account. He never lied. He never lied. Did he
18 fail to -- was it asked properly? I honestly don't
19 know. I wasn't even there. But we never even had
20 the hearing -- the operators, the polygraphers of
21 either the first time or second time to put under a
22 cross-examination.

23 I would ask that you -- that you allow my
24 client to continue to be certified as an officer if
25 -- if he's hired by another agency. He's obviously

1 left the Patrol, and the Patrol's here on behalf of
2 the State for their position on this matter.

3 We appreciate your time. Any questions more
4 of my client, he's more than willing to answer.
5 The man's so honest he scares me. I mean, he went
6 into everything, and -- and he's done that all the
7 time I've dealt with him. And I think he's done
8 that his entire police career and his entire
9 career, period. So, anyway, we thank you for your
10 time and any questions we will try to answer.

11 CHIEF KEEL: Any Council member have question? Anyone
12 on Council have a question? Yes, sir, Chief
13 Cornett.

14 CHIEF CORNETT: Mr. Vargo, in reading the notes, I'm
15 seeing that you were stating that you used Adderall
16 the last two years of college, and you graduated in
17 May of 2013 and applied to Highway Patrol in August
18 of 2013. Is that accurate?

19 MR. VARGO: Yes, sir. I -- well, again, I don't recall
20 exactly what time. I know the last two years of my
21 college career is when I started struggling. So
22 whether it was within the first year, the second
23 year, I -- again, I don't know. But I do know
24 within the last two years of my college career, I
25 did use a handful of Adderall to help study for

1 tests. I can't tell you the exact timeframe
2 between that and hiring on with SLED. Again, I --
3 I -- I can't recall because it was very miniscule,
4 and I didn't think nothing about it at that time
5 because, again, I didn't even know Adderall pills
6 were broken into controlled substance that such.
7 So I can't -- I can't tell you exactly what
8 timeframe. I just know the last two years in
9 college is when I started struggling. So, yes, I
10 would have graduated in May 2013 of college, and
11 then I guess I applied that fall and started my
12 career with Highway Patrol in January of 2014.

13 CHIEF CORNETT: Okay. Thank you.

14 CHIEF KEEL: Any other questions? Any other questions
15 for Mr. O' Leary or Mr. Vargo?

16 Okay. Mr. Gore, we'd be happy to hear from
17 you.

18 MR. GORE: Good morning, members of the Council.

19 CHIEF KEEL: Morning.

20 MR. GORE: The recommendation from the hearing officer
21 is actually -- I'll call it a split decision
22 because there's actually three allegations of
23 misconduct. And I want to make sure we address
24 each one of them because we have differences of
25 opinions on some of them. And, ultimately, I think

1 the Council is going to have to -- when it makes
2 its decision is going to have to rule on each one
3 of them individually. So I want to make sure
4 that's clear. The three incidents are related, but
5 they are slightly different. So I'll start with
6 the first one. There's two incidents that arise
7 out of the sick leave question.

8 As Mr. O' Leary stated, Mr. Vargo last year
9 was employed as a trooper with the Highway Patrol,
10 and he was seeking a position with SLED. And
11 during that process, as is usual with most law
12 enforcement agencies, Mr. Vargo was -- was informed
13 that SLED wanted to do a polygraph with him.
14 Mr. Vargo, importantly, was told on February the
15 2nd, that was a Friday, that he was going to have
16 the polygraph. So he knew on Friday, February 2nd,
17 he was going to have a polygraph on February 7th.
18 So he's got -- and that's on a Wednesday. So on
19 Friday, he knows he's got a polygraph coming up
20 Wednesday.

21 Well, so we go to the next week when Mr. Vargo
22 is scheduled to work some, and on February the 6th,
23 which is Tuesday, Mr. Vargo's daughter was sick.
24 And on that day he was actually scheduled to pick
25 up a car and didn't want to miss that appointment.

1 So he let his supervisor know, and they worked out
2 a plan where he could take off part of the day to
3 be with his daughter, and he could take off part of
4 the day to get his car so that he could still get
5 some work done, but also, you know, take care of
6 his daughter. And for that day, February the 6th,
7 there were no issues. He put in his time. I can't
8 remember. I think it was six hours of working
9 time, four hours of family sick leave, and there
10 were no questions about that.

11 So that's what happens on the 6th. And that's
12 important because, on the morning of the 7th,
13 that's the day of the polygraph -- that's that
14 Wednesday. Mr. Vargo is scheduled to go to SLED
15 that morning, and he's scheduled to begin -- he's
16 scheduled to work that day at six o'clock. And so
17 when he doesn't show up for his shift, his corporal
18 texts him and says, "Hey, where you at? What's
19 going on? I haven't seen you yet." And Mr. Vargo
20 texts him back. And this is in the record, but
21 I'll quote it to you -- exactly what it says. The
22 quote -- the text that he sent back was "FSL
23 again," and "FSL" is family sick leave. Everybody
24 agreed that's what it means. "FSL again. My child
25 was up all night throwing -- my child was up all

1 night throwing up still." He included his child's
2 name. So that morning when Mr. Vargo sent that
3 text, which was sent about 6:15, he was preparing
4 to go to SLED to take his polygraph. He knew that
5 he was -- he told us he was probably getting
6 dressed at that time because he got to SLED at
7 eight o' clock that morning for his polygraph. So
8 when he sends that text, he's telling his
9 supervisor clearly -- his message is clear. "My
10 daughter is still sick," because she was sick
11 yesterday, "and I'm going to use family sick leave
12 to be off today to take care of her." That's what
13 that text meant, and there was no other
14 interpretation of it.

15 And instead of that, what Mr. Vargo did was he
16 left his daughter with his in-laws that day. They
17 took care of him (verbatim) while he went to SLED.
18 And he was at SLED from approximately, he said from
19 -- he got there about eight o' clock and he was
20 there till about noon. By the time he got back to
21 Aiken, I think it was around one o'clock. So a
22 significant chunk of his day -- his scheduled shift
23 that day, was spent at SLED or driving to SLED for
24 this polygraph, not taking care of his daughter.

25 So the first allegation the Department made

1 was related to this text message that he was FSL
2 again today because his daughter was sick. We
3 don't deny that his daughter was sick. I'm certain
4 that it was true, and we have no reason to question
5 that. But the fact that he told his supervisor
6 that he wanted to use family sick leave was false
7 because he was not going to use family sick leave
8 that day. He was going to SLED. Matter of fact,
9 when he sent this text, he knew he was going to
10 SLED.

11 Now, the second allegation rolls out of that,
12 and it's related to the time that Mr. Vargo put in.
13 He actually put in a full day's worth of sick leave
14 that day. And that's the allegation of misconduct
15 that the hearing officer actually said there was
16 not evidence -- sufficient evidence of. And I will
17 concede that there were some questions about how
18 his time got entered and whether or not he had some
19 time to swap out or comp time and that sort of
20 thing. And so I will tell you that I'm not sure
21 that that really got resolved one way or the other.
22 But for purposes of today, the Department still
23 believes Mr. Vargo was dishonest, but the hearing
24 officer's recommendation on the time entry was that
25 there was no finding of misconduct. So I'm not

1 going to spend a lot of time on that one unless
2 y'all want -- have other questions.

3 But that text message, absolutely, the
4 Department believes was -- was false. And the
5 hearing officer didn't address that at all in the
6 -- in the recommendation. She talks about the
7 facts of it, but there's no specific finding of
8 that. So I think that's a void that the Council
9 will have to fill today.

10 So two separate allegations related to the
11 time. One is the text message and the second is
12 the time entry.

13 Right now I'll shift over to the Adderall use
14 allegations. Now, as a preliminary point,
15 Mr. O'Leary has said several times that the
16 polygraphers weren't there and he couldn't cross-
17 examine them. And I want to make it clear that
18 none of the statements about Adderall use were made
19 during the polygraph exam. They were actually all
20 made in writing by Mr. Vargo in pre-polygraph exams
21 or in interview process. So the polygraphers
22 wouldn't have been able to tell us anything because
23 that's not where he made the admissions or failed
24 to make the admissions. They were actually made in
25 Mr. Vargo's own handwriting on paper. So we didn't

1 need the polygraphers.

2 So during this -- during the SLED polygraph
3 that occurred on February the 7th, Mr. Vargo made a
4 number of admissions that were flagged by SLED and
5 -- and reported back to the Department. And the
6 one I want to talk about -- the one that led to the
7 ultimate allegation of misconduct is the one about
8 Adderall usage. And on the polygraph -- on the --
9 excuse me, on the pre-polygraph exam, in
10 Mr. Vargo's own writing -- and I included this in
11 my memorandum that I sent to you, and I'll hold it
12 up right here. This is in his own writing that he
13 wrote this. It says -- the question is, "If you
14 answered yes to any of the questions in this
15 section, please explain," and it's -- the
16 question's before that about drug use. And in his
17 own writing, it says "2012-2013, took Adderall
18 approximately 20 times, purchased from my neighbor
19 at \$10 a pill." That's what Mr. Vargo wrote. He
20 did not deny that. So we have him in February of
21 2024 telling SLED that in -- that in the period of
22 time 2012-2013, he took Adderall approximately 20
23 times, and he paid \$10 a pill for these.

24 Now, when the Department got this information
25 back, it was very surprised because the Department

1 knew that, if Mr. Vargo had, in fact, used Adderall
2 in that time period and had disclosed it to us in
3 his hiring process, it would have disqualified him
4 from hire. The Department had a procedure in place
5 at that time that said that a use of a controlled
6 substance like that in that fashion would have been
7 an automatic disqualifier and he would not have
8 been eligible for hire. So the Department went
9 back and said, "All right. We need to look back
10 and see what happened in his hiring process,
11 because if he told us that, we shouldn't have hired
12 him."

13 So we went back at the time, pulled back the
14 -- the various things that occurred, and there were
15 three specific instances in Mr. Vargo's hiring
16 process with the Highway Patrol from 2013 that
17 addressed this question. On August the 19th of
18 2013, in Mr. Vargo's application, he was asked
19 about the experimentation with any controlled
20 substance within the last ten years, and he
21 answered no, that he had not done that. On his
22 polygraph questionnaire -- and again, this is not
23 the polygraph itself, but a written questionnaire
24 -- he was asked about the use of medication not
25 prescribed to him, and his answer there was no,

19 However, use of a controlled substance in 2012
20 and 2013 absolutely would have disqualified him
21 from employment, and the Department -- and his
22 answers to the Department were that, no, he had not
23 done that. Now, Mr. Vargo says this morning that
24 he didn't know what controlled substances were.
25 Well, some of the questions actually dealt with

1 medication not prescribed to you. They didn't use
2 the word "controlled substance." But I'll say
3 this: Whatever he understood about Adderall, he
4 knew he had to pay somebody for it, and you don't
5 buy drugs from someone -- from your neighbor that
6 don't have something special about them. He knew
7 that they were -- it was improper for him to take
8 those because he wouldn't have had to pay for them
9 otherwise. So over a period of -- between August
10 of 2013 and October 2013, the Department asked
11 Mr. Vargo on three separate occasions about use of
12 prescribed medication/controlled -- controlled
13 substances. And his -- the only information he
14 ever gave us was, "maybe when I was a child, I took
15 something from my mother," which, again, would not
16 have been a disqualifier.

17 Now, I think in this situation what you have
18 to look at is: What's the motive here? And I
19 think Chief Cornett sort of dialed in on this.
20 When Mr. Vargo comes to work for the Department, he
21 knows that, if he tells us that he's used Adderall
22 in the last year and he's paid for it, he's not
23 going to -- he's not going to get to work for us.
24 That would have been an automatic disqualifier. We
25 would not have hired him. He knows that when he

1 to his corporal about using family sick leave. The
2 second one is how his time got entered for that
3 day. And then, thirdly, there's the entry about
4 his failure to disclose the Adderall on three
5 separate occasions during the employment process.
6 Thank you very much.

7 CHIEF KEEL: Any questions for Mr. Gore? Any member of
8 Council have a question for Mr. Gore?

9 Okay. Mr. O'Leary?

10 MR. GORE: Thank you.

11 MR. O'LEARY: Just -- just a --

12 CHIEF KEEL: Mr. Vargo?

13 MR. O'LEARY: Just a couple of points to make. In the
14 actual opinion of the hearing officer on Page 8,
15 and then the first real paragraph there goes on and
16 explains the issue as to the -- excuse me -- as to
17 the time that he -- that he took off and how he
18 recorded it. Ironically, at that period of time,
19 he actually had to switch the days around. His
20 daughter got sick, which wasn't -- wasn't
21 anticipated and, second, he went to pick up a new
22 vehicle during some of that period. And the -- and
23 the hearing officer basically said the testimony
24 supported that leave may be changed after the fact.
25 It often was. And if it did not match the written

7 Now, as to the issue of the polygraph, when he
8 took that particular polygraph, again, it's
9 important to note that the hearing -- the
10 polygraphers themselves were not even present at
11 the particular hearing. He has never lied. He
12 told them he used Adderall. He said he used
13 Adderall. In polygraph number one, he thought he'd
14 used something he got from his mother. Then the
15 second polygraph ten years later, it's ironic that
16 he was so bad they hired him and he got officer of
17 the year 50 percent of the time. Now, that tells
18 you something.

19 He obviously was a good officer. He worked
20 hard. He did his -- he performed his job to the
21 community, and the Department was lucky for his
22 service for that period of time. And yet now they
23 want to permanently disqualify him based upon an
24 answer from a sheet that nobody's here to testify
25 to as to how it was asked and how it was presented

1 to him or how they arrived at the number 10 or 20
2 pills involved. He only answered any more
3 questions he has. He's told you he used some.
4 There's no question about it. And I just think in
5 the interest of basic fairness, at some point --
6 this is ten years ago. Since then, he's married
7 and he's got a child, and he's supporting that
8 family. He was doing an outstanding job with the
9 Patrol, 50 percent outstanding officer. And now
10 they cut him and throw him out of law enforcement.
11 To me, I would not do that. It's -- I think it's
12 wrong. But the decision has got to be up to the
13 Council, and he will answer any questions he has --
14 that you have concerning what his character really
15 is. His character is he's outstanding and he's a
16 hard-working officer and a hard-working person.
17 (To Mr. Vargo) Go ahead.

18 MR. VARGO: I'd like to go ahead and just clarify that,
19 no, I do not know what the Highway Patrol process
20 is for hiring. I did not intentionally omit
21 Adderall from my record ten years ago to gain
22 employment by Highway Patrol. No question about
23 that. In fact, everything else I admitted to on
24 that polygraph, using a handful of Adderall in a
25 college career would have been the least of my

1 concerns, to be specifically honest, even with
2 SLED. Because, obviously, this whole -- stemmed
3 from some other questions I answered with SLED that
4 put me under investigation I was cleared for. So
5 again, Adderall would have been the least of my
6 concerns. And I passed the polygraph. Just going
7 to show you I -- you can't lie about it if you
8 didn't recall it. And I didn't recall it. That's
9 all this was. They're blowing this way out of
10 proportion, and the simple fact of it is I didn't
11 recall it at the time. And then, like I said,
12 further discussion with other people, I did realize
13 now that, "Oh, I did do that before," and that's
14 why I admitted to it.

15 Going back to the whole leave issue, again, I
16 didn't lie about family sick leave, and I didn't
17 lie to my supervisor. In fact, like in the
18 reports, there was a discussion a week prior. I
19 had holiday leave on Thursday. My interview was
20 that Wednesday. There was discussion with my
21 supervisor. "Hey, I'm going to have to swap -- I
22 got something come up. I'm going to swap my
23 holiday leave for -- for Wednesday instead of
24 Thursday. "Okay, no problem. Let me know when you
25 get to it." Well, he said -- the discussion was,

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3 Again, this -- none of this was intentionally.
4 None of this was trying to lie to get around
5 anything. This was just a simple misunderstanding,
6 not recalling certain events at specific times, as
7 I'm sure anybody in this room has ever done. You
8 forget about something. Someone mentioned -- "oh,
9 wait a minute. I -- I recall doing it." And
10 that's all this is. And this is getting way blown
11 out of proportion. And -- and again, I think --
12 and again, I guess I'm biased, but ruining an
13 excellent career in law enforcement is -- is not
14 the way to go about this. I can take whatever
15 other punishment they want to give at me,
16 termination, whatever, but trying to ruin a career
17 over a misunderstanding and not -- not recalling
18 anything is absolutely crazy.

19 MR. O'LEARY: One other point, when he left the child,
20 he left it with the relatives. Okay? He didn't
21 just leave the child. And the other -- the other
22 point is that that school -- the child, when it was
23 put in to start daycare, there was a 24-hour rule.
24 They had to be healthy for 24 hours before you
25 could bring them back. Just wanted to bring that

4 He was a good officer. We ask that you take
5 all these facts into consideration and allow him a
6 punishment other than a permanent decertification.
7 Thank you very, very much.

12 CHIEF CORNETT: Make a motion we accept the hearing
13 officer's recommendation, permanently deny
14 certification.

18 MAJOR GALLAM: Second.

22 MS. BUNN: Chief Keel, you recused?

24 MS. BUNN: Sheriff Foster?

25 SHERIFF FOSTER: Aye.

1 MS. BUNN: Director Stirling?

2 DIRECTOR STIRLING: Aye.

3 MS. BUNN: Director Gadsden?

4 DIRECTOR GADSDEN: Aye.

5 MS. BUNN: Director Mullikin?

6 DIRECTOR MULLIKIN: Aye.

7 MS. BUNN: Director Woods?

8 DIRECTOR WOODS: Recuse.

9 MS. BUNN: Sheriff Faile?

10 SHERIFF FAILE: . Aye.

11 MS. BUNN: Chief Cornett?

12 CHIEF CORNETT: Aye.

13 MS. BUNN: Major Gallam?

14 MAJOR GALLAM: Aye.

15 MS. BUNN: Chief Holbrook?

16 CHIEF HOLBROOK: Aye.

17 CHIEF KEEL: Next case.

18 (End of recorded excerpt.)

19 (*This transcript may contain quoted material.

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21 by the speaker.)

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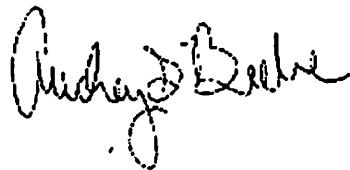
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I further certify that I am not a relative nor an employee of any of the parties hereto, nor of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

In witness thereof, I have hereunto affixed my signature.



Audrey S. Beebe

Date: 6/10/2025

Notary Public of South Carolina
My commission expires September 27, 2026



South Carolina Criminal Justice Academy

**SOUTH CAROLINA
LAW ENFORCEMENT TRAINING COUNCIL
MEETING MINUTES
Monday, March 17, 2025
10:00 a.m.**

A meeting of the South Carolina Law Enforcement Training Council (LETC) was held at the South Carolina Criminal Justice Academy on Monday, March 17, 2025. This meeting was advertised in accordance with the South Carolina Freedom of Information Act.

CALL TO ORDER

Agenda Item 1

Chief Mark Keel, Chair of the Law Enforcement Training Council, called the meeting to order at 10:02 a.m. Chief Keel called for a roll call of the Council members. The roll was called by Opel Bunn.

Members present for this meeting in-person were; Chief Mark Keel, (Chairman), State Law Enforcement Division (SLED); Director Bryan Stirling, S.C. Department of Corrections; Director Jake Gadsden, S.C. Department of Probation, Parole, and Pardon Services; Director Tom Mullikin, S.C. Department of Natural Resources; Director Robert Woods, S.C. Department of Public Safety; Major Nick Gallam, Aiken County Detention Center; and Chief William Holbrook, Columbia Police Department.

Members present via video/conference call were; Sheriff Lee Foster (Co-Chair), Newberry County Sheriff's Office; Sheriff Barry Faile, Lancaster County Sheriff's Office; and Chief Kevin Cornett, Isle of Palms Police Department.

Attorney General Alan Wilson, S.C. Attorney General's Office was absent from this meeting, attending an oversight committee for budget meeting, but was represented by proxy, Deputy Attorney General Jeff Young.

Guest attendees present in-person or via video/conference call were Sally Foster, S.C. Sheriffs Association; JJ Jones, S.C. Law Enforcement Officers Association/S.C. Police Chiefs Association; Deputy Attorney General Jeff Young; Joanna McDuffie, Esquire, Richland County Sheriff's Department; James L. Evans, Jr., Richland County Sheriff's Department; Chief Kenneth D. Phelps, S.C. Department of Public Safety; Chad Gambrell, S.C. Department of Probation, Parole, and Pardon Services; Mark Gosnell, S.C. Troopers Association; Ryan Terrell; Chelsea Cisco; Casey Cisco; John O'Leary, Esquire; Carlton Bourne, Esquire, North Charleston Police Department; William Bowering; Mike Brown, North Charleston Police Department; Kriston Neely, North Charleston Police Department; Jeremy Ledford, North Charleston Police Department; Taylor Smith, Horry County Police Department; Nathan Parry; Aimee Parry; Johnny Evans, Esquire;



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Daniel Gourley, II, Esquire, Beaufort County Sheriff's Office; Joshua Vargo; Marcus Gore, Esquire, S.C. Department of Public Safety; Jake Modla, Esquire; and Erin Barlow Sheheen, Esquire, Fort Mill Police Department.

SC Criminal Justice Academy attendees were Director Jackie Swindler; Opel Bunn, Executive Assistant; James Fennell, General Counsel; Lauren Fennell, Accreditation and Standards Manager; Madison Reynolds, Legal Unit; Justin Miller, IT Manager; and Jared Lee, IT

APPROVAL OF AGENDA

Agenda Item 2

A motion to adopt the agenda was made by Director Mullikin. Director Woods seconded the motion. Council voted unanimously to adopt the agenda as presented.

APPROVAL FOR MEETING MINUTES

Agenda Item 3

A motion to approve the minutes of the February 24, 2025, meeting was made by Director Woods and seconded by Director Stirling. Council voted unanimously to accept the meeting minutes as recorded.

DIRECTOR'S REPORT

Agenda Item 4

A. General Counsel Report

- Misconduct Cases

Chelsea Cisco (2024-CJA-05-07) (North Charleston Police Department)

Summary: Allegation of willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State. Request for Final Agency Decision.

The Hearing Officer Recommended that Council:



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- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D, finding that the allegation of misconduct filed against Chelsea Cisco by the North Charleston Police Department has been proven by the preponderance of evidence; and
- B. Impose the sanction of withdrawal of certification for the definite period of time Chelsea Cisco has already had her certification suspended for and reinstate her certification with the issuance of the Law Enforcement Training Council's Final Agency Decision.

Chelsea Cisco was present and spoke on her behalf and to answer questions from Council, if applicable.

Attorney John O'Leary was present and spoke on behalf of Ms. Cisco and to answer questions from Council, if applicable.

Attorney Carlton Bourne was present and spoke on behalf of the North Charleston Police Department and answer questions from Council, if applicable.

After hearing statements from all parties, Sheriff Faile made a motion to accept the recommendation of the Hearing Officer, finding misconduct and to permanently deny Chelsea Cisco's eligibility for law enforcement certification. Director Woods seconded the motion.

Council voted unanimously to accept the recommendation of the Hearing Officer, finding misconduct and permanently denied Chelsea Cisco's eligibility for law enforcement certification.

William Bowering (2024-CJA-07-07) (Horry County Police Department)

Summary: Allegation of engaging in the physical or psychological abuses of members of the public or prisoners as well as the willful use of excessive force in an objectively unreasonable manner. Request for Final Agency Decision.

The Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D., finding that the allegation of misconduct reported against William Bowering by the Horry County Police Department has not been proven by preponderance of the evidence; and
- B. Approve, pursuant to the authority of Council set for at S.C. Code Ann. § 23-23-150 (G) (1), William Bowering's eligibility for certification as a law enforcement officer in the State of South Carolina; and



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- C. Expunge within thirty (30) days of the final agency decision in this matter, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), all evidence related to the allegations of misconduct filed against William Bowering by the Horry County Police Department.

William Bowering was present and spoke on his behalf and to answer questions from Council, if applicable.

Attorney Taylor Smith was present and spoke on behalf of the Horry County Police Department and to answer questions from Council, if applicable.

After hearing statements from both parties, Director Woods made a motion to accept the recommendation of the Hearing Officer, finding no misconduct and to expunge the records within thirty (30) days. Director Mullikin seconded the motion.

Council voted unanimously to accept the recommendation of the Hearing Officer, finding no misconduct and expunge the records with thirty (30) days.

Nathan Parry (2024-CJA-02-01) (Beaufort County Sheriff's Office)

Summary: Allegation of willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against Nathan Parry by the Beaufort County Sheriff's Office has been proven by the preponderance of evidence; and
- B. Impose a sanction as the Law Enforcement Training Council in its discretion deems appropriate pursuant to its authority set forth at S.C. Code Ann. Regs. 37-108 A (1-5)

Nathan Parry was present and spoke on his behalf and to answer questions from Council, if applicable.

Attorney Johnny Evans was present and spoke on behalf of Nathan Parry and to answer questions from Council, if applicable.

Attorney Daniel Gourley II was present and spoke on behalf of the Beaufort County Sheriff's Office and to answer questions from Council, if applicable.



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After hearing statements from all parties, Sheriff Faile made a motion to adopt the recommendation of the Hearing Officer and to permanently deny Nathan Parry's eligibility for law enforcement certification. Sheriff Foster seconded the motion.

Council voted unanimously to adopt the recommendation of the Hearing Officer and permanently denied Nathan Parry's eligibility for law enforcement certification.

At the conclusion of voting, Chief Keel called for a short break at 11:03 am. Chief Keel called the meeting back to order at 11:07 am.

Joshua Vargo (2024-CJA-05-01) (South Carolina Dept. of Public Safety)

Summary: Allegation of willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State.

Allegation of willfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State. Request for Final Agency Decision.

The Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegation of misconduct filed against Joshua Vargo by the South Carolina Department of Public Safety has been proven by the preponderance of evidence; and**
- B. Impose a sanction as the Law Enforcement Training Council in its discretion deems appropriate pursuant to its authority set forth at S.C. Code Ann. Regs. 37-108 A(1-5)**

Joshua Vargo was present and spoke on his behalf and to answer questions from Council, if applicable.

Attorney John O'Leary was present and spoke on behalf of Joshua Vargo and to answer questions from Council, if applicable.

Chief Keel stated to Mr. O'Leary and Mr. Vargo that he will not take any part in any discussion and will be recusing himself since SLED is involved in this case.

Attorney Marcus Gore was present and spoke on behalf of the South Carolina Department of Public Safety and to answer questions from Council, if applicable.



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After hearing statements from all parties, Chief Cornett made a motion to accept the recommendation of the Hearing Officer and to permanently deny Joshua Vargo's eligibility for law enforcement certification. Major Gallam seconded the motion.

Council voted unanimously to accept the recommendation of the Hearing Officer and permanently denied Joshua Vargo's eligibility for law enforcement certification. *Please note that Chief Keel and Director Woods recused themselves from the voting process in this case.*

Tarsha Smith (2024-CJA-01-07) (Saluda County Detention Center)

Summary: Allegation of the unlawful use of a controlled substance. Request for Final Agency Decision.

The Hearing Officer Recommended that Council:

- A. Issue its final agency decision, pursuant to S.C. Code Ann. Regs. 37-107 D. finding that the allegations of misconduct filed against Tarsha Smith by the Saluda County Detention Center have not been proven by the preponderance of evidence; and
- B. Expunge within thirty days of the final agency decision in this matter, pursuant to S.C. Code Ann. § 23-23-150 (M), all evidence related to the allegations of misconduct filed against Tarsha Smith by the Saluda County Detention Center.

Tarsha Smith was not present and there was no representation for the Saluda County Detention Center at this meeting.

Attorney James Fennell stated that the Jail Administrator from Saluda County Detention Center sent an email stating that they would not be in attendance at this meeting.

Director Woods made a motion to accept the recommendation of the Hearing Officer and to expunge the records within thirty (30) days. Major Gallam seconded the motion.

Council had a brief discussion about the Hearing Officer's definition of a control substance and alcohol is not considered to be a control substance. Chief Keel expressed that Council may need to go back and look at it. He stated that he thinks obviously termination was certainly appropriate.

Two (2) Council members voted no and eight (8) Council members voted to accept the recommendation of the Hearing Officer and expunge the record within thirty (30) days. The motion passed.



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Elizabeth Gibson (2024-CJA-04-23) (Fort Mill Police Department) (Prosecutorial Discretion)

Summary: Allegation of willfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State. **Request for Final Agency Decision.**

The Hearing Officer Recommended that Council:

- A. Order that the contested case file in this matter be closed; and
- B. Order, pursuant to the requirements of S.C. Code Ann. § 23-23-150 (M), that the "Personnel Change in Status Report: Notification of Separation Due to Misconduct" filed by the Fort Mill Police Department in this matter be expunged, and that the certification file of the Officer be updated in the records of the Criminal Justice Academy to reflect no outstanding allegations of misconduct based on the allegations reported by the Fort Mill Police Department in this matter.

Elizabeth Gibson was not present at this meeting.

Attorney Jake Modla was present and spoke on behalf of Elizabeth Gibson and to answer questions from Council, if applicable.

Attorney Erin Barlow Sheheen was present and spoke on behalf of the Fort Mill Police Department and to answer questions from Council, if applicable.

After hearing statements from all parties, Chief Keel asked Ms. Barlow for the reason why the Fort Mill Police Department decided to use prosecutorial discretion, especially when the officers making willfully false, misleading, incomplete, deceitful, incorrect statements. He stated that the department would make a decision such as this and asked if she understood the ramifications in this case of having an officer maybe done the same thing. He further stated that other officers have had permanent denial of eligibility of certification.

Attorney Barlow replied that the department understands the ramifications of a decision of this nature and requested prosecutorial discretion, declining to prosecute the allegations, due to the town of Fort Mill has entered into a settlement agreement with Ms. Gibson regarding a matter that was pending before the US Equal Employment Opportunity Commission. She reported that the agreement has been resolved.

Director Stirling asked Ms. Barlow if the was settlement contingent on the Fort Mill Police Department dismissing and not prosecuting this case. Ms. Barlow replied it was.



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Director Woods made a motion to accept the recommendation of the Hearing Officer with the understanding that Council have no other option but to accept recommendation of the Hearing Officer.

A motion to enter into Executive Session was made by Sheriff Foster for legal advice. Director Stirling seconded the motion. Council entered Executive Session at 11:49 a.m.

A motion to come out of Executive Session was made by Chief Holbrook. Director Woods seconded the motion. The public meeting reconvened at 11:59 a.m. *Please note that there was No voting took place during Executive Session.*

Chief Keel stated that a motion pending from Director Woods to accept the Hearing Officer's recommendation, although Council do not agree with the outcome of the fact that the agency has chosen prosecutorial discretion in this matter.

Director Woods restated his motion to accept the recommendation of the Hearing Officer with the understanding that the Council is left with no other option in accordance with the law but to accept that recommendation. Director Woods added with the understanding that Council do not believe that is in the best interest in law enforcement. Major Gallam seconded the motion.

Council voted unanimously to accept the recommendation of the Hearing Officer with the understanding that the Council is left with no other option in accordance with the law.

B. Director's Comments

Director Swindler

Director Swindler reported that he attended the Sheriffs' Winter Conference recently and those who attended heard him speak about presently having in statute that agencies can exercise prosecutorial discretion. He stated that he talked about the importance of the integrity of the profession in reporting allegations or misconduct and to actively pursue and prosecute. He explained that it is imperative for the agencies to do so to maintain the integrity and reputation of their agencies as well as the law enforcement profession. He further stated that it's not the agency's place as to what the outcome would be as far as the final agency decision it is that of the Training Council. He expressed that explicitly quite often, but again recently.

Director Swindler stated at the quarterly meeting he will tell more about the employee changes, but wanted to share that General Counsel hired three (3) new attorneys, all very seasoned, so that unit is now full.



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Director Swindler gave an update on the last bathroom project and reported the third phase has been delayed due to some issues. He also gave an update on class sizes.

OLD BUSINESS

Agenda Item 5

Director Swindler addressed the matter of the amendments to the January 24, 2025, meeting minutes that were already approved. He noted that there were statutes, not accurately reflected in those minutes by the Hearing Officer. He noted that it has been changed and thought it's best to put it on the agenda as old business and for Council to again approve the January 24, 2025, meeting minutes.

Director Stirling made a motion to accept the amended January 24, 2025, meeting minutes. Director Mullikin seconded.

NEW BUSINESS

Agenda Item 6

There was no new business to discuss.

CLOSING REMARKS/AJOURNMENT

Agenda Item 7

Chief Keel inquired whether there were any more questions or comments from Council.

Sheriff Faile stated that Council need to try to change the verbiage for people coming in drunk, showing up to work drunk.

Chief Keel replied that he thinks that's something Council needs to be addressed.

When there were no more remarks or comments, Director Stirling made a motion to adjourn the meeting. Director Woods seconded the motion.

The meeting was adjourned at 12:08 p.m.

Respectfully submitted by:

Opel C. Bunn

Opel C. Bunn



STATE OF SOUTH CAROLINA
AIKEN COUNTY SHERIFF'S OFFICE
AFFIDAVIT OF SERVICE / NON-SERVICE



CASE# 2 4 - 0 2 8 6 3 8

COURT CASE# 2024-CJA-05-01

Vs.

PLAINTIFF
South Carolina Criminal Justice Academy

DEFENDANT
Joshua Vargo

THIS IS TO CERTIFY THAT I, LT. T. HAHN, DEPUTY SHERIFF OF AIKEN COUNTY, STATE OF SOUTH CAROLINA SERVED / ATTEMPTED TO SERVE THE

- | | |
|--|---|
| ☐ RULE TO SHOW CAUSE | ☒ NOTICE OF CERTIFICATION MISCONDUCT ALLEGATION |
| ☐ DETERMINATION OF PATERNITY | ☐ DATING VIOLENCE EX PARTE PROTECTIVE ORDER |
| ☐ COMPLAINT | ☐ SUMMONS |
| ☐ EXPLANATION TO THE RIGHT TO AN ATTORNEY | ☐ DECLARATION OF TAKING |
| ☐ 5 DAYS TO VACATE | ☐ CITATION |
| ☐ CLERK'S AFFIDAVIT | ☐ MOTION & ORDER TO DISMISS/MODIFY SUPPORT |

IN THE ABOVE TITLED ACTION ON THE SUBJECT: Joshua Vargo

☒ (SERVED)

BY DELIVERING TO THE SAME TO,

☒ THE SUBJECT PERSONALLY

☐ A PERSON OF DISCRETION RESIDING AT THE DEFENDANT'S RESIDENCE

(RELATIONSHIP) ☐ FATHER ☐ MOTHER ☐ BROTHER ☐ SISTER ☐ SPOUSE ☐ CHILD OVER 18 ☐ CHILD UNDER 18 / OVER 14

NOTES:

AT

ADDRESS	CITY	STATE	ZIP CODE	LOCATION #
402 Carolina Ave	New Ellenton	SC	29809	.

ON THE

DATE	TIME
05.03.24	14:30

SWORN TO AND BEFORE ME THIS

DATE 5-16-24

DEPUTY SHERIFF (4991)
AIKEN COUNTY, SC

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON: 2-12-2036
DATE ENTERED:

COURT:	DATE	TIME
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ATTEMPTS: 2 (1-05.03.24 @ 12:28)

SHERIFF'S #: IVD-



ACSO Form CP-001 (02/02/11)