

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
11 DOJ 10367

THOMAS ELIZA ANDERSON,)
)
 Petitioner,)
)
 v.)
)
 N.C. PRIVATE PROTECTIVE)
 SERVICES BOARD,)
)
 Respondent.)

**PROPOSAL
FOR DECISION**

On May 27, 2014, Administrative Law Judge Melissa Owens Lassiter called this case for hearing in Raleigh, North Carolina.

APPEARANCES

For Petitioner: Petitioner appeared *pro se*.

For Respondent: Jeffrey P. Gray, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Should Respondent deny Petitioner's unarmed guard registration application based on lack of good moral character and temperate habits for being convicted of misdemeanor Assault on a Female?

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
2. Petitioner applied to Respondent Board for an unarmed guard registration.

3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following:

A conviction in Wake County, State of North Carolina, on February 16, 2010, for misdemeanor Assault on a Female.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.

5. By Notice of Hearing dated July 15, 2011, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on October 25, 2011. Petitioner did not appear at the hearing. An Order dismissing his petition was never entered.

6. Petitioner was contacted regarding his Petition, and informed Respondent's legal counsel that he did not sign the Return Receipt for his hearing, and the signature appeared to be that of a former girlfriend who had lived with him.

7. Petitioner's hearing was rescheduled by the Office of Administrative Hearings for May 27, 2014. Petitioner appeared at the hearing.

8. At hearing, Petitioner stipulated to his misdemeanor conviction of Assault on a Female. In 2008, Petitioner was in a relationship with a girl who was living with him. She came home about 4:00 a.m. drunk, and passed out. When she awoke she was hung-over, and they began arguing. Petitioner was vacuuming, which was disturbing his girlfriend. She kept unplugging the vacuum cleaner. According to Petitioner, the girlfriend shoved him, and he struck her in the face with his closed fist and "busted her lip." She called the police, and had him arrested at approximately 10:00 a.m. that morning.

9. A court-appointed attorney was assigned to represent Petitioner. The attorney suggested that he plead guilty. The judge sentenced him to one-year supervised probation, and required Petitioner to attend a 26-week domestic abuse program called "DOSE." Petitioner is no longer in a relationship with the girl, but they are still "best friends."

10. Before moving to North Carolina, Petitioner worked security jobs in New York. He has had no criminal charges since 2010. After being denied a registration, he has worked numerous other jobs such as at a Jiffy Lube.

11. He worked for Templar for about a year patrolling the Cookout on New Bern Avenue to deter crime. Petitioner indicated that he could return to work at Templar Security.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. §74C-8(d)(2), conviction of any crime involving an act of violence is *prima facie* evidence that the applicant does not have good moral character or temperate habits.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through conviction in Wake County, North Carolina for a misdemeanor Assault on a Female.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge, and has rebutted the presumption.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Respondent issue an unarmed guard permit to Petitioner.

NOTICE AND ORDER

The NC Private Protective Services Board will make the Final Decision in this contested case. As the Final Decision maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The undersigned hereby orders that agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This 24th day of June, 2014.

Melissa Owens Lassiter
Administrative Law Judge