

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 01695

Andre Carl Banks Jr.,
Petitioner,

vs.

North Carolina Alarm Systems Licensing
Board,
Respondent.

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PROPOSAL FOR DECISION

This contested case was heard before Administrative Law Judge Beecher R. Gray on May 1, 2012, in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by Jeffrey D. McKinney, Esq.

WITNESSES

Respondent – Anthony Bonapart, Deputy Director, testified for Respondent Board.

Petitioner – Petitioner testified on his own behalf.

ISSUES

Whether grounds exist for Respondent to deny Petitioner's application for alarm system registration permit under N.C. Gen. Stat. § 74D-1 *et seq.* based on Petitioner's lack of good moral character and temperate habits as evidenced by his military criminal history, including convictions for Carnal Knowledge and Sodomy.

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner lacks good moral character or temperate habits. Petitioner may rebut Respondent's showing.

STATUTES AND RULES APPLICABLE
TO THE CONTESTED CASE

Official notice is taken of the following statutes and rules applicable to this case:

N.C. Gen. Stat. §§ 74D-2; 74D-5; 74D-6; 12 NCAC 7 § .0700

FINDINGS OF FACT

1. The parties received notice of hearing by certified mail more than 15 days prior to the hearing, and each stipulated on the record that notice was proper.
2. Respondent Board is established under N.C. Gen. Stat. § 74D-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems business.
3. On August 8, 2010, Petitioner applied to Respondent Board for a new alarm registration permit. Petitioner's application was introduced as Respondent's Exhibit 1, and it was admitted as part of the record.
4. Anthony Bonapart, Deputy Director for Respondent Board, testified that for each application, a criminal background check is conducted. Deputy Director Bonapart testified that Petitioner submitted a Charge Sheet in connection with his application. Respondent Board then introduced that charge sheet as Respondent's Exhibit 2, and it was admitted as part of the record.
5. The Charge Sheet revealed that in 2001, Petitioner had been charged with and found guilty of violations of the UCMJ, including carnal knowledge with a child under the age of 16 years and sodomy with a child under the age of 16 years.
6. Deputy Director Bonapart testified that Petitioner's application for registration was denied because of Petitioner's convictions. Respondent Board introduced a "For Cause" denial letter dated January 5, 2012, as Respondent's Exhibit 3, and it was admitted as part of the record.
7. Petitioner testified on his own behalf. Petitioner stated that he met the young lady in question at the NCO club on the military base where he was stationed in Japan. Petitioner stated that the young lady told him that she was a member of the United States Air Force. Petitioner testified that he and the young lady dated for a couple of months until Petitioner learned that she was only fifteen (15) years old. He then confronted her and ended the relationship.
8. Petitioner testified that he was charged with the charges in the Charge Sheet based on his relationship with the young lady. Petitioner testified that he pleaded guilty to the charges, was demoted to private, and spent six (6) months in jail.
9. Petitioner testified that he has not been in any trouble since that time, that he is married with seven (7) children, and that he has continued to work with security firm, CPI, in a restricted role in South Carolina.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.

2. Under N.C. Gen. Stat. § 74D-6, Respondent Board may refuse to issue an alarm systems registration permit for lack of good moral character or temperate habits
3. Respondent Board presented evidence that Petitioner lacked good moral character or temperate habits through Petitioner's military criminal record.
4. Petitioner presented sufficient evidence to rebut the presumption that he lacks good moral character.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The North Carolina Alarm Systems Licensing Board will make the final decision in this contested case. It is proposed that Respondent Board **REVERSE** its denial of Petitioner's application for a registration permit and, in its discretion, require that Petitioner's registration permit be probationary for a period of one (1) year and, during that probationary period, contingent upon Petitioner's good conduct with no criminal convictions beyond minor traffic offenses.

NOTICE AND ORDER

The North Carolina Alarm Services Licensing Board is the agency that 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).

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 22nd day of June, 2012.

Beecher R. Gray
Administrative Law Judge