

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

12 DOJ 01696

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Ryan Patrick Brooks	)	
Petitioner	)	
	)	
vs.	)	<b>PROPOSAL FOR DECISION</b>
	)	
N. C. Private Protective Services Board	)	
Respondent	)	

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On May 29, 2012, Administrative Law Judge Melissa Owens Lassiter heard this contested case in Raleigh, North Carolina pursuant to N.C. Gen. Stat. § 74C-5, 74C-12, and § 150B-38 et seq.

APPEARANCES

For Petitioner: Pro Se

For Respondent: Jeff McKinney  
Bailey & Dixon, LLP  
P.O. Box 1351  
Raleigh, North Carolina 27602-1351

ISSUE

Whether sufficient grounds exist for Respondent to deny Petitioner’s unarmed guard permit application based on the "For Cause" grounds that Petitioner falsified his application by not disclosing he had convictions from September 12, 2009 for the traffic offense of Driving While Impaired, a misdemeanor probation violation, and a misdemeanor flee/elude arrest with motor vehicle?

OFFICIAL NOTICE TAKEN OF STATUTES AND RULES

N.C. Gen. Stat. §§ 74C-3(a)(6), 74C-8, 74C- 9, 74C-12, 74C-12, 12 NCAC 7D § .0800

EXHIBITS ADMITTED INTO EVIDENCE

For Petitioner: None

For Respondent: 1 - 3

## WITNESSES

For Petitioner :       Petitioner

For Respondent:       Anthony Bonapart, Deputy Director

## FINDINGS OF FACT

1. Pursuant to N.C. Gen. Stat. § 74C-1 et seq., Respondent Board is established, and is charged with the duty of licensing and registering individuals engaged in the armed and unarmed guard business.
2. On or about September 12, 2011, Petitioner submitted an unarmed guard registration renewal application to Respondent. On Respondent's Exhibit 2, Petitioner answered "No" to the following question: "Have you ever pled guilty or been convicted of any crime (Felony or Misdemeanor)?" (Resp Exh 1) However, Petitioner also submitted a criminal background report with his permit application to Respondent showing Petitioner's criminal history as indicated below. (Resp. Exh. 1)
3. A certified Criminal Record Check from Wake County, North Carolina revealed that Petitioner had a conviction for the traffic Offense of Driving While Impaired, misdemeanor conviction for probation violation, and misdemeanor conviction for flee/elude arrest with motor vehicle. All three convictions are the result of Petitioner being stopped by Raleigh Police on September 12, 2009. (Resp Exh 2)
4. On November 22, 2011, Respondent denied Petitioner's application for registration For Cause based on Petitioner's criminal history. (Resp Ex 3)
5. Respondent's Deputy Director, Anthony Bonapart, investigated Petitioner's application, and interviewed Petitioner by telephone on December 12, 2011. Petitioner advised that Raleigh Police stopped him on September 12, 2009, for speeding on Highway 64 as he drove towards Pittsboro. Petitioner indicated that he did not see the police following him initially, but pulled over after he saw the police behind him. Raleigh Police arrested him for driving while impaired. Petitioner advised that he pled guilty to the misdemeanor offense of driving while impaired. Petitioner performed the required community service hours, and alcohol assessment class. He was sentenced to one year supervised probation.
6. Bonapart sent his investigative information to Respondent's registration person. On January 5, 2012, Respondent issued a second denial letter to Petitioner for falsifying his application "by not disclosing information regarding" the above-referenced convictions. (Resp. Exhs. 1, 3)
7. At the contested case hearing, Petitioner explained that he completed his permit application in a hurry, and did not intentionally mark "No" to question no. 1 on the application. Petitioner knew he had been convicted of the above-referenced convictions, and attached a copy of his criminal history record that reflected such convictions to his permit application. When he read question no. 1 on the application, he saw the word "felony" but overlooked the term "misdemeanor." He has nothing to hide. On cross-examination, he acknowledged that he was convicted of the two misdemeanors and DWI traffic offense. The probation violation was due to

his failure to pay the \$97.00 monthly probation fee required every time he visited with his probation officer. He could not pay the monthly fee after having paid over \$200 in court costs. He completed the required alcohol assessment class, and community service requirement. He attended the unarmed and armed guard training, and still is employed by Encompass Southeast Security pending the outcome of this case.

#### CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction to hear this contested case pursuant to N.C. Gen. Stat. § 74C-8 and -12, and N.C. Gen. Stat. § 150B-38.
2. Pursuant to N.C. Gen. Stat. § 74C-12, Respondent Board may refuse to issue an unarmed guard registration permit for cause, such as falsification of any application for registration.
3. In this case, Respondent Board presented evidence that Petitioner answered "No" to the application question, if he had ever pled guilty or been convicted of a felony or misdemeanor, when in fact, Petitioner had been convicted of 2 misdemeanors.
4. However, Petitioner produced sufficient evidence to show he did not intentionally falsify his unarmed guard application by answering, "No" to application question no. 1. Petitioner completed his application in a hurry, and did not carefully read the question. Petitioner included a copy of his criminal history, disclosing his misdemeanor convictions, to Respondent and submitted such to Respondent along with his permit application. Petitioner showed that he did not intend to falsify his application or hide his criminal convictions from Respondent.

#### PROPOSAL FOR DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that Respondent Board REVERSE its decision to deny Petitioner's application for a renewed unarmed registration permit, and issue an unarmed guard permit to Petitioner.

#### NOTICE AND ORDER

The N.C. Private Protective Services Board will make the Final Agency Decision in this contested case. That agency is required to give each party an opportunity to file exceptions to this proposed decision and to present written arguments to those in the agency who will make the final decision. N.C. Gen. Stat. § 150B-36(a). Pursuant to N.C. Gen. Stat. § 150B-36(b), Respondent is required to serve a copy of the Final Decision on all parties, and serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 5th day of June, 2012.

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Melissa Owens Lassiter  
Administrative Law Judge