

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ06590

Collin Michael Berry,
Petitioner,

v.

N. C. Private Protective Services Board,
Respondent.

PROPOSAL FOR DECISION

This contested case was heard before Administrative Law Judge Beecher R. Gray on August 28, 2012, in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*

Respondent was represented by Jeffrey D. McKinney, Esq.

WITNESSES

Petitioner – Petitioner Collin Michael Berry testified on his own behalf. Phillip Edward Hyde also testified on Petitioner's behalf.

Respondent – Private Protective Services Board Deputy Director Anthony Bonapart testified for Respondent Board.

ISSUES

Whether grounds exist for Respondent to deny Petitioner's application for an armed guard registration permit under N.C. Gen. Stat. § 74C-1 *et seq.* based on Petitioner's lack of good moral character and temperate habits as evidenced by a misdemeanor conviction for Exposing Children to Fire.

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. §§ 74C-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12; 12 NCAC 7D § .0700.

FINDINGS OF FACT

1. Respondent Board is established under N.C. Gen. Stat. § 74C-1, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the armed guard business.
2. On April 4, 2012, Petitioner applied to Respondent Board for a renewal armed guard registration permit. Petitioner's application was introduced as Respondent's ***Exhibit 1***. Exhibit 1 was admitted as part of the record.
3. As part of his application, Petitioner provided the Board with a criminal record check for New Hanover County, North Carolina, which revealed the following:

New Hanover (3/12/12) (M) Exposing Children to Fire,
Case Number 12CR002302, Prayer for Judgment

4. Deputy Director Bonapart testified that, because of Petitioner's criminal conviction, his application for registration was denied. Respondent Board introduced as ***Exhibit 2***, a "For Cause" denial letter dated May 15, 2012. Exhibit 2 was admitted as part of the record.
5. Petitioner testified on his own behalf. Petitioner explained that on the morning of the day the charges arose, he went Kohl's department store to run in and exchange some shoes. He testified that he left his two children ages seven (7) and five (5) in the vehicle unattended. He was in the store for approximately eight to nine (8-9) minutes. When he got back out to the car a police officer was standing beside his vehicle. The police officer informed him that the legal age to leave a child anywhere unattended was eight (8). Petitioner testified that he did not retain an attorney, but went to court and asked for a prayer for judgment.
6. Phillip Edward Hyde, Project Manager at the Brunswick Nuclear Plant in Southport, North Carolina, Petitioner's supervisor, testified on Petitioner's behalf. Project Manager Hyde testified that Petitioner was an exemplary employee who is former military and very well-trained. He explained that Petitioner self-reported the misdemeanor charge

incident to the company which conducted an internal review cleared Petitioner to continue working—an access clearance also approved by the Nuclear Regulatory Commission. Manager Hyde spoke highly of Petitioner’s character and said that he would not be here to testify for just anyone.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under N.C. Gen. Stat. § 74C-5, Respondent Board may refuse to issue or renew an armed guard permit for lack of good moral character or temperate habits.
3. Respondent presented evidence that Petitioner lacked good moral character or temperate habits through Petitioner’s criminal record—consisting of a single misdemeanor offense.
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 Private Protective Services Board will make the final decision in this contested case. It is proposed that the Respondent Board **REVERSE** its denial of Petitioner’s application for an armed guard registration permit.

NOTICE AND ORDER

The North Carolina Private Protective Services 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 November, 2012.

Beecher R. Gray
Administrative Law Judge