

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
12DOJ06817

Tiffany Ann Misel,  Petitioner,  v.  North Carolina Private Protective Services Board,  Respondent.	<b>PROPOSAL FOR DECISION</b>
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This contested case was heard before Administrative Law Judge Beecher Gray on August 28, 2012 in Raleigh, North Carolina.

#### **APPEARANCES**

Petitioner Tiffany Ann Misel appeared *pro se*.

Respondent was represented by Jeffrey D. McKinney, Esq.

#### **WITNESSES**

For Petitioner: Petitioner Tiffany Ann Misel

For Respondent: Private Protective Services Board Investigator Cynthia Hepburn

#### **ISSUES**

Whether grounds exist for Respondent to deny Petitioner's application for a private investigator license under N.C. Gen. Stat. § 74C-1 *et seq.* on the grounds of a lack of verifiable experience.

#### **BURDEN OF PROOF**

Respondent has the burden of proving that Petitioner failed to present sufficient documents evidencing verifiable experience. 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-2; 74C-3(a)(8); 74C-8; 74C-9; 74C-12; 12 NCAC 7D .0200; 12 NCAC 7D .0400

**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 private investigator business.
2. On July 22, 2011, Respondent received Petitioner's application for a Private Investigator License. Petitioner's application was introduced as ***Respondent's Exhibit 1***. Respondent's Exhibit 1 was admitted as part of the record.
3. On July 28, 2011, Respondent sent a letter to Petitioner informing Petitioner that she must submit additional information regarding her employment history. The July 28, 2011 letter was introduced as ***Respondent's Exhibit 2***. Respondent's Exhibit 2 was admitted as part of the record.
4. On August 4, 2011, Respondent received Petitioner's corrected employment history. The corrected employment history was introduced as ***Respondent's Exhibit 3***. Respondent's Exhibit 3 was admitted as part of the record.
5. Board Investigator Cynthia Hepburn testified that she was the investigator assigned to review Petitioner's application and to make a recommendation to the Board whether to grant or deny Petitioner's application.
6. Investigator Hepburn testified that each applicant for a private investigator license must submit documentation to establish to the Board's satisfaction that the applicant has had three years of experience conducting investigations with a contract security company or with a private person, firm, association, or corporation.
7. Investigator Hepburn explained that for purposes of the experience requirements, three years of experience is considered to be 3,000 hours.
8. Investigator Hepburn explained that documents actually evidencing the work performed, such as work orders, reports, notes, logs, or other similar documents prepared concurrent with the work being performed are sufficient to fulfill the experience requirement to the Board's satisfaction.

9. Petitioner submitted an affidavit from Cornelius Van Hout, an Economic Crime Investigator in the Butte County California District Attorney's Office, acknowledging the duties and responsibilities, but did not provide a job description or other work documents. Investigator Van Hout's affidavit restated a list of job duties that Petitioner provided to him in an e-mail dated prior to the affidavit. Investigator Hepburn talked with Investigator Van Hout by telephone and he confirmed that the affidavit was accurate and that Petitioner had done the work as stated in the affidavit. Investigator Hepburn informed Petitioner that this statement would not be acceptable verification of investigative experience.
10. Petitioner provided another written statement from Mike Johnson with the California Bureau of Automotive Repair who wrote that Petitioner worked approximately 147 to 175 hours as an undercover operator for the Bureau from 1996 to 1998. Mike Johnson stated that he would lean more toward the 175 hour number rather than the 147 hour number. Her duties included taking possession of state-owned vehicles--which had been modified to require a particular service--and then traveling to various automotive repair shops to do undercover smog checks. Petitioner submitted detailed reports of each undercover operation she conducted. Investigator Hepburn informed Petitioner that this statement would not be acceptable verification of investigative experience.
11. Investigator Hepburn further testified that Petitioner contacted Lori Stocks with the Butte County District Attorney's office. Lori Stocks was unable to remember what Petitioner's job title was during the time she worked for them. In her e-mail reply, Lori Stocks replied that she thought Petitioner was an office assistant.
12. Investigator Hepburn testified that--in her opinion--Petitioner failed to provide sufficient documentation that she had three years of experience conducting investigations with a contract security company or with a private person, firm, association, or corporation. Investigator Hepburn explained that Petitioner did not provide documentation to substantiate her experience, but rather relied on statements from previous employers, which Petitioner was informed would not be acceptable, in Investigator Hepburn's view.
13. Investigator Hepburn recommended to the Board that it deny Petitioner's application for a private investigator license because Petitioner failed to provide documentation sufficient to verify investigative experience.
14. The Board denied Petitioner's application for a private investigator's license for lack of verifiable experience, but did grant Petitioner an associate license.
15. Petitioner, testifying in her own behalf, explained, consistent with the affidavit of Economic Crimes Investigator Van Hout, that she worked at the Butte County District Attorney's office from 1996 to 1998. She explained that she began as an intern, but after four months began working full time as an investigative assistant. Petitioner testified that she performed a number of investigative duties in that position. Petitioner testified that she worked between 1000 and 1100 hours a year in that position. Petitioner stated,

consistent with the Van Hout Affidavit, that she performed duties, including, but not limited to:

1. Skip tracing to locate suspects;
  2. Conducting criminal background checks on suspects;
  3. Obtaining photos and other relevant information on suspects from California DMV;
  4. Assembling and conducting photo line-ups;
  5. Contacting and interviewing merchants and suspects in an effort to collect funds and determine criminal intent;
  6. Requesting and reviewing suspects' bank records and statements to determine criminal intent;
  7. Testifying, on a limited basis, in court; and
  8. Maintaining records and logs of all contact, attempted contact, and conversations, as well as the status of each case.
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16. Petitioner explained that the Butte County District Attorney's office does not keep records for more than 6 years. Therefore, she could not provide the exact type of documentation the Board was requesting.
  17. Petitioner worked with the Bureau of Automotive Repair for a period of 2 years. She performed approximately 147 to 175 hours as an undercover operator with the Bureau.
  18. Petitioner received an Associate Degree from Butte Community College. Petitioner further testified that she had received additional training certificates related to the private investigator industry. The Board, or its agents, allowed Petitioner 500 hours credit for her Associate Degree.
  19. Petitioner, at the time of this hearing, had been employed with SLC Securities for two months using her associate's license.
  20. Petitioner presented the e-mail that she sent to Investigator Van Hout containing information that Investigator Van Hout used in his affidavit. Her email was admitted into the record as ***Petitioner's Exhibit 1***.
  21. Petitioner presented an e-mail with Helen Parker, which was admitted into the record as ***Petitioner's Exhibit 2***.
  22. Petitioner also presented ***Petitioner's Exhibit 3***, which also was admitted into the record.
  23. Petitioner presented a copy of the denial letter from the Board as ***Petitioner's Exhibit 4***, which was admitted into the record.

### **CONCLUSIONS OF LAW**

1. Under N.C. Gen. Stat. § 74C-5, Respondent Board may deny a license to an applicant who fails to satisfy the requirements or rules established by the Board.
2. Under 12 NCAC 07D .0401(a), an applicant for a private investigator license shall establish to the Board's satisfaction three years of experience while conducting investigations as defined in G.S. 74C-3(a)(8) with a contract company or with a private person, firm, association, or corporation. Under 12 NCAC 07D .0204(a), 3,000 hours of experience is equivalent to 3 years of experience for purposes of 12 NCAC 07D .0401(a).
3. Under 12 NCAC 07D .0401(b), the Board shall give 400 hours of experience credit for an associate's degree and up to 100 additional hours if the applicant can demonstrate that further training or course-work related to the private protective services industry was received while obtaining the associate's degree.
4. Respondent presented evidence that Petitioner failed to provide sufficient documentation in the form desired by the Board to establish to the Board's satisfaction that she has three years of verifiable experience conducting investigations.
5. Petitioner presented sufficient evidence to rebut the presumption that she failed to provide sufficient documents to establish by a preponderance of the evidence that she had the requisite three years of verifiable experience in conducting investigations as of the time her application was reviewed and determined by the Private Protective Services Board or its agents.

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 a private investigator license on the basis of lack of verifiable experience as an investigator.

### **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 17<sup>th</sup> day of November, 2012.

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Beecher R. Gray  
Administrative Law Judge