

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ07300

William John Cherpak,
Petitioner,
v.
N. C. Private Protective Services Board,
Respondent.

PROPOSAL FOR DECISION

On September 25, 2012, the Administrative Law Judge Beecher R. Gray called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey D. McKinney, Bailey & Dixon, LLP, P.O. Box 1351, Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied an unarmed guard registration renewal based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction 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 his unarmed guard registration renewal.
3. Respondent denied the unarmed guard registration due to Petitioner's criminal record which showed the following:

A conviction in Guilford County, State of North Carolina, on January 23, 2011, for Misdemeanor Assault on a Female.

4. Petitioner requested a hearing on Respondent's denial of the renewal of his unarmed guard registration.
5. By Notice of Hearing dated August 13, 2012, 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 September 25, 2012. Petitioner appeared at the hearing.
6. Petitioner testified that in January 2011 he was living in High Point, NC with his wife, his 18-year old daughter and her baby. The daughter's baby that was about 1-year old at the time. The daughter had been very disrespectful to him in recent years. On this particular night, his wife was watching the daughter's baby. At midnight, his wife called his daughter asking when she was coming home. His wife has a medical condition and wanted his daughter to come home to attend to her baby. The daughter finally came home after midnight and started yelling and cursing at his wife.
7. Petitioner intervened and started yelling at his daughter for the way she was treating his wife. His wife started screaming at him for yelling at the daughter and during the exchange he place his left hand on her right shoulder and pushed her out of the way.
8. He testified that as he talked to his wife, his daughter sneaked behind him and sprayed him with pepper spray. He was momentarily incapacitated by the spray and went into the bathroom to wash out his eyes. His daughter went outside and called the police. When he came back into the kitchen the police had arrived. He said that during questioning by the police he told the officer that he pushed his wife during the altercation. He was placed under arrest at that time. He went to court and was convicted of Assault on a Female.
9. The daughter does not live with them anymore.
10. Petitioner has worked for Protection Network, Inc. for about a year. He is assigned to patrol 12 different condominium projects. He has recently been promoted to Captain.
11. Petitioner submitted a letter of recommendation from GiGino Carbone, CEO, of Protection Network, Inc. attesting to his value as an employee and stating that he displays high morals and professionalism and he is well-liked by his fellow officers and clients. Petitioner has never been disciplined by his employer for any reason.

12. He also submitted a letter from his neighbor of the last eleven (11) years testifying to numerous acts of kindness and consideration by Petitioner.
13. Petitioner's wife also submitted a letter of character which explained their relationship with their daughter and that the incident in question was a result of their inability to control their daughter. She stated that her husband is always professional and has never had any problems at work.

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 renewal 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 assault 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 Guilford County, North Carolina for a conviction of misdemeanor Assault on a Female.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and has rebutted the presumption.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued his unarmed guard registration renewal.

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, in accordance

with N.C. Gen. Stat. § 150B-36(b).

This the 8th day of January, 2014.

Beecher R. Gray
Administrative Law Judge