

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12 DOJ 08309

JOSEPH T. FERRARA,)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

FINAL DECISION

On November 27, 2012, Administrative Law Judge Donald W. Overby called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

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

ISSUE

Whether Petitioner should be denied an armed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by two (2) convictions for DUI and two (2) convictions for misdemeanor Disorderly Conduct in Cumberland County, State of Pennsylvania.

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 an armed guard registration.

3. Respondent denied the armed guard registration due to Petitioner's criminal record which showed the following:

A conviction in Cumberland County, State of Pennsylvania, on October 9, 2007 for misdemeanor DUI.

A conviction in Cumberland County, State of Pennsylvania on October 9, 2007 for misdemeanor DUI – 2nd Offense.

A conviction in Cumberland County, State of Pennsylvania on November 16, 2006 for misdemeanor Disorderly Conduct.

A conviction in Cumberland County, State of Pennsylvania on May 5, 2008 for misdemeanor Disorderly Conduct

4. Petitioner requested a hearing on Respondent's denial of the armed guard application.
5. By Notice of Hearing dated September 13, 2011, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his armed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on November 27, 2012. Petitioner appeared at the hearing.
6. Petitioner testified in regards to the 2006 Disorderly Conduct conviction that in 2006 he was at a friend's house and a buddy of his needed to ride. He stated that he borrowed another friend's car to take him home. He stated that when he was driving he noticed that there was alcohol in the car. He became nervous and made an illegal turn. The police pulled him over for the illegal turn. When asked why he was charged with Disorderly Conduct for making an illegal turn he stated, "That's how they did it in Pennsylvania." Petitioner could not explain why the police did not simply give him a traffic ticket.
7. In regards to the two (2) DUI charges on July 9, 2007, he stated that he and some buddies were at a friend's house drinking. He stated that it became late and he had to take his friend home. While enroute to taking his friend home he was pulled over by the police. He was arrested for DUI and the car was impounded. Later that night his friend's parents came to the police station and bailed him out and his car was also released to his friend's parents. He obtained the keys from his friend's parents and drove the car. He was pulled over in another county (Upper Allen, PA) where he was charged with a 2nd DUI on the same day.
8. Petitioner received 10 days active sentence, two (2) years' probation, and was required to attend a substance abuse class for the two (2) DUI convictions.

9. Regarding the 2008 Disorderly Conduct conviction, Petitioner testified that he and a friend were driving back from lunch and he threw a cup out the window, striking the car behind them. The occupant of the car behind them took down their license plate and called the police. He was located and subsequently charged and convicted of Disorderly Conduct.
10. Petitioner admitted he had a serious problem with alcohol at the time, but drinks very little now; an “occasional beer”. He has not been charged with any criminal offense since 2008.

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 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 multiple counts of the same offense 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 Cumberland County, State of Pennsylvania, on October 9, 2007 for two (2) counts of misdemeanor DUI and for two (2) convictions of misdemeanor Disorderly Conduct.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge but failed to rebut the presumption.

Based on the foregoing, the undersigned makes the following:

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby orders that Petitioner be denied an armed guard registration for a period of 90 days from November 27, 2012, then issued an armed guard registration with three (3) years probation with a condition he receive no further criminal charges.

NOTICE

Under the provisions of North Carolina General Statute 150B-45, any party wishing to

appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of Wake County or in the Superior Court of the county in which the party resides. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.012, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. §150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. §150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 11th day of January, 2013.

Honorable Donald W. Overby
Administrative Law Judge