

STATE OF NORTH CAROLINA
COUNTY OF PASQUOTANK

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
12DOJ08447

JOVAN LAMONT SEARS, Petitioner, v. NORTH CAROLINA PRIVATE PROTECTIVE SERVICES BOARD, Respondent.	PROPOSED DECISION
---	--------------------------

On October 23, 2012, Administrative Law Judge Beecher R. Gray heard this case 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 unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor larceny by employee.

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 under 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 unarmed guard registration.

3. Respondent denied Petitioner's unarmed guard registration application because of Petitioner's criminal record, which showed the following:

A conviction in Pasquotank County, State of North Carolina, on October 5, 2006, for Misdemeanor Larceny by Employee in Case No. 06 CR 0151360

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated September 18, 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 October 23, 2012. Petitioner appeared at the hearing.
6. Petitioner testified that in 2006 he resided in Elizabeth City, North Carolina and worked for a company called Houtz & Barwick. The company made aluminum chairs for patios and outdoor recreation. He asked his supervisor if he could sell the scrap aluminum that was left over from making chairs and his supervisor said "yes." Petitioner and a friend collected the scrap aluminum to sell. He and his friend made about \$200.00 from selling the scrap aluminum.
7. After the owner of the company found out about the scrap sales, he fired the supervisor and pressed charges against Petitioner and Petitioner's friend.
8. Petitioner testified that he did not retain an attorney but went to court and told the judge what happened. He told the judge that he thought he could take the scrap aluminum because his supervisor had given him permission. He entered a guilty plea. The court entered a prayer for judgment, and he was ordered to pay the owner back the cost for the scrap aluminum he had collected and sold.
9. Petitioner stated that he has worked for Silbar Security Corporation for about one (1) year. He was assigned to the Currituck Club where he worked at the entry gate controlling entry and exit into the area.
10. Petitioner's current employer sent a character letter which was admitted into the record as Petitioner's Exhibit 1.
11. The offense appeared to arise out of a misunderstanding based upon a good faith belief that Petitioner's supervisor was authorized to allow Petitioner to take scrap aluminum. The offense is a misdemeanor offense and is over six (6) years old. Petitioner has had no further reportable criminal charges.

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 any crime involving an act of larceny 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 Pasquotank County, North Carolina for a misdemeanor involving an act of larceny.
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:

DECISION

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

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 20th day of May, 2013.

Beecher R. Gray
Administrative Law Judge

