

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 05095

CAMERON IMHOTEP CLINKSCALE,)
Petitioner,)
v.)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
Respondent.)
_____)

PROPOSAL FOR DECISION

On February 26, 2013, Administrative Law Judge Gene Cella 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 unarmed registration based on Petitioner's lack of good moral character and temperate habits as evidenced by two (2) convictions of misdemeanor Disorderly Conduct in the State of Ohio.

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

A conviction in Franklin County, State of Ohio on February 28, 2011 for misdemeanor Disorderly Conduct; and

A conviction in Franklin County, State of Ohio on September 24, 2008 for misdemeanor Disorderly Conduct.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated January 31, 2013, 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 February 26, 2013. Petitioner appeared at the hearing.
6. Petitioner testified that he was raised in Columbus, Ohio. He stated that in 2008 he was 18 years old and was attending a parade in downtown Grove City, Ohio when two guys jumped him behind a school. They thought he had marijuana on his person and wanted to take it from him. A witness called the police who arrived at the scene and arrested all three of them. A public defender was assigned to him by the court. He plead not guilty but was found guilty of Disorderly Conduct by the court. He had to pay a \$100.00 fine.
7. Although Petitioner was convicted of Disorderly Conduct, in the 2008 charge the underlying offense involved an act of violence which is prohibited by N.C.G.S. § 74C-8 (d) (2).
8. In regards to the 2011 conviction Petitioner testified that he purchased a car from a man in the local community. He stated that the car did not have tags but he drove the car home anyway without tags and was pulled over by the police in his driveway. He stated that the police searched the car and found a cigar wrapper. The police charged him with Possession of Drug Paraphernalia. The applicant stated that he pled not guilty but was convicted of Disorderly Conduct.
9. Although Petitioner was convicted of Disorderly Conduct the underlying offense involved the illegal use of a controlled substance which is prohibited by N.C.G.S. § 74 C-8 (d) (2).
10. Petitioner testified that he moved to North Carolina to get away from bad influences in his life.
11. Petitioner has worked for Securitas Security Services USA, Inc. since August 2012 as an unarmed guard.

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 violence or the illegal use of a controlled substance 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 Franklin County, Ohio for two (2) counts of misdemeanor Disorderly Conduct.
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:

FINAL 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

The agency making the final decision in this contested case 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. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board.

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

This the _____ day of April, 2013.

Eugene J. Cella
Administrative Law Judge