

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 08953

ANTONIO R. DICKENS,)
)
Petitioner,)
)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)

PROPOSAL FOR DECISION

THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, on April 23, 2012 in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40(e), designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The Petitioner submitted a letter from the N.C. Detective Agency in Durham, North Carolina. Respondent filed proposals with the Clerk's Office on June 21, 2013 which was received by the Undersigned on June 25, 2013. The record was closed on June 25, 2013.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by Jeffrey D. McKinney.

WITNESSES

For Petitioner – Petitioner testified on his own behalf.

For Respondent – Anthony Bonapart, Deputy Director, testified for Respondent Board.

ISSUE

Whether grounds exist for Respondent to deny Petitioner's application for a new unarmed guard registration permit pursuant to N.C. Gen. Stat. § 74C-1 *et seq* as evidenced by Petitioner's criminal record.

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-3(a)(6); 74C-8; 74C-9; 74C-11; 74C-12;
12 NCAC 07 SubChapter D

EXHIBITS

Petitioner's letter from the NC Detective Agency after the hearing.

Respondent's Exhibits 1-3 were introduced and admitted.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact by a preponderance of the evidence. In making these Findings of Fact, the Undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in this case.

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 guard business.
2. On September 3, 2012, Petitioner's applied to Respondent Board for a new unarmed guard permit. Petitioner's application was introduced and admitted as Respondent's Exhibit 1.
3. Respondent introduced Petitioner's criminal record search for Wake County as Exhibit 2. Exhibit 2 was admitted as part of the record. The criminal record check revealed the following convictions:

(1) Wake County 10/3/07 (M) Larceny Guilty
4. Mr. Bonapart testified that pursuant to Petitioner's criminal conviction, Petitioner's application for registration was denied. Respondent Board introduced as Exhibit 3, a "For Cause" denial letter dated December 10, 2010. Exhibit 3 was admitted as part of the record.

5. Petitioner testified on his own behalf. Petitioner admitted to the criminal conviction on his record. Petitioner explained that the incident occurred while he was working for a company in Morrisville, North Carolina as a forklift driver. He stated that one of the truck drivers who delivered products would sell MP3 players and memory cards to the employees. He related that the driver would take products from the inventory and falsify the paperwork in order to hide the theft. One day after Petitioner had purchased some MP3 players and Memory Cards, he was pulled over by the police, who searched his vehicle. He was charged with felony larceny, but worked with the police to catch the driver, and then accepted a plea bargain with the district attorney for misdemeanor larceny.

6. Petitioner also introduced a letter from his employer giving Petitioner high praise and stating that Petitioner's efforts have helped secure a contract extension for the company with a client.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings. Respondent is an "occupational licensing agency" pursuant to N.C. Gen. Stat. § 150B-2(4b).

2. Pursuant to N.C.G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated intemperate habits. Acts that are prima facie evidence of intemperate habits or lack of good moral character are found under N.C.G.S. § 74C-8(d)(2). They include conviction of any crime involving the illegal use, carrying, etc. of a firearm; illegal use, sale, etc. of a controlled substance; conviction of a crime involving felonious assault or other act of violence; conviction of burglary, larceny, etc.; or a history of addiction.

3. "The use of the word 'may' generally connotes permissive or discretionary action and does not mandate or compel a particular act." *Brock and Scott Holding, Inc. v. Stone*, 203 N.C. App. 135, 137, 691 S.E.2d 37, 39 (2010) (quoting *Campbell v. First Baptist Church of the City of Durham*, 298 N.C. 476, 483, 259 S.E.2d 558, 563 (1979)) (emphasis added).

4. Under G.S. § 74C-8(d)(2) conviction of any crime involving a larceny is *prima facie* evidence that the applicant lacks good moral character or temperate habits as contemplated in a refusal to grant registration.

5. Larceny is the act of illegally taking away another person's property with the intent to use that property and thus deprive the person of their rightful possession.

6. Good moral character has been defined as "honesty, fairness, and respect for the rights of others and for the laws of state and nation." See *Daniel Brannon Gray v. N.C. Sheriffs*

Education and Training Standards Commission, 09 DOJ 4364 (March 15, 2010 citing *In Re Willis*, 299 N.C. 1, 10 (1975).

7. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through his criminal record.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. The weight of the evidence in this case sustains the holding of the Respondent to deny Petitioner's application for an Unarmed Permit. In accordance with N.C.G.S. § 74C-12(a)(25), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character or has demonstrated intemperate habits. As Petitioner's letter of recommendation was submitted after the hearing with no chance of Respondent exploring its contents, the Board should explore its contents with Petitioner and Respondent before issuing a final decision.

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.

IT IS SO ORDERED.

This is the 8th day of August, 2013.

Augustus B. Elkins II
Administrative Law Judge