

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 9038

DANIELLE J. RANKIN,)
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 no further material. 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 her 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.* based on Petitioner's lack of good moral character and temperate habits.

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 7D § .0700.

EXHIBITS

Petitioner's Exhibits A-C were introduced and admitted.

Respondent's Exhibits 1-4 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 October 10, 2012, Petitioner's applied to Respondent Board for a new unarmed guard permit. Petitioner's application was admitted as Respondent's Exhibit 1.
3. Respondent also introduced Petitioner's criminal record check for Rowan County as Exhibit 2 and for Durham County as Exhibit 3. Respondent's Exhibits 2 and 3 were admitted as part of the Record.
4. Petitioner's criminal record check revealed the following convictions:

(1)	Durham County	11/12/08	(M)	Hit/Run; Fail to Stop; Property Damage	Guilty
(2)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty
(3)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty

(4)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty
(5)	Rowan County	10/30/07	(M)	Simple Worthless Check	Guilty

5. Mr. Bonapart testified that pursuant to Petitioner's criminal conviction, Petitioner's application for registration was denied. Respondent Board introduced as Exhibit 4, a "For Cause" denial letter dated December 17, 2012. Exhibit 4 was admitted as part of the record.

6. Petitioner testified on her own behalf. Petitioner admitted to the criminal convictions on her record. Petitioner explained that the simple worthless check convictions arose from an incident where she paid for gas with a check at a point when she thought she had money in the bank. Thereafter, Petitioner wrote a series of bad check in what she explained was an effort to fix the initial mistake. Petitioner entered a plea of guilty and testified that she paid all the related fines. Petitioner explained that she was a parent who was also attending school. She believed that taking responsibility for her mistakes and dealing with them showed the true strength of character that she had.

7. Petitioner testified that the hit and run incident arose four and a half years ago when she allowed a relative to drive a car that Petitioner had rented. Petitioner explained that the relative hit another car, and then fled the scene to return to Petitioner's apartment. The police ran the tags and found the vehicle. Petitioner was charged as the vehicle was rented in her name. Petitioner's relative refused to testify in the trial. Petitioner was found guilty.

8. Petitioner also introduced several letters of character recommendation. Paulette Thorpe, Petitioner's supervisor at Dick's Sporting Goods for three years, stated that Petitioner had access and worked with sensitive information including social security numbers and account numbers and that Petitioner could be trusted. She also found that Petitioner not only worked well as a team but individually was a person who paid attention to detail. Another employer, Samuel Whitted, manager at Winn Dixie, stated he had known Petitioner for eleven years and found her trustworthy in not only handling money but in following procedures and completing daily tasks.

9. Candy Redmond, IT Manager at the RTP campus of Strayer University, wrote that Petitioner was organized and responsible with excellent communication skills. She further found Petitioner to be an easy going individual who had an excellent rapport with persons of all ages.

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. Under G.S. § 74C-8(d)(2), which provides a non-exhaustive list, conviction of any crime involving a larceny is *prima facie* evidence that the applicant does not have good moral character or temperate habits.

4. Under G.S. § 14-107, Worthless Checks, “It is unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering the check or draft, that the maker or drawer of it has not sufficient funds on deposit in or credit with the bank or depository with which to pay the check or draft upon presentation.”

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. Larceny of property under \$1000 is a class 1 misdemeanor.

6. The United States Supreme Court has described the term “good moral character” as being “unusually ambiguous.” In *Konigsberg v. State*, 353 U.S. 252, 262-63 (1957), the Court explained: The term good moral character...is by itself...*unusually ambiguous*. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague qualification, which is easily adapted to fit personal views and predilections, can be a dangerous instrument for arbitrary and discriminatory denial.... Police administrators, officers and others have considerable differences of opinion as to what constitutes good moral character.”

7. Because of concerns about the flexibility and vagueness of the good moral character rule, any denial, suspension or revocation based on an allegation of a lack of good moral character should be reserved for clear and severe cases of misconduct. See *Jonathan Mims v. North Carolina Sheriff's Education and Training Standards Commission*, 02 DOJ 1263, 2003 WL 22146102

8. Petitioner presented evidence sufficient to explain the misdemeanor convictions and to rebut the evidence of lack of good moral character and temperate habits.

9. Further, 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. (emphasis added) “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).

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 a holding, and the Undersigned so proposes, that the Board **REVERSE** its initial decision to deny Petitioner's application for an Unarmed Permit.

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 7th day of August, 2013.

Augustus B. Elkins II
Administrative Law Judge