

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 DOJ 13653

MARCUS L. FULLER,)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On July 23, 2013, Senior Administrative Law Judge Fred G. Morrison Jr. 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's firearms trainer certification should be revoked for making a false statement or giving false information in connection with any application for license registration or permit or for the renewal or reinstatement of a license, registration or permit, and for submitting inaccurate scores in violation of the Board's armed training requirements.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case: N.C.G.S. § 74C-12 (a)(1); 12 NCAC 7D § .0807; 12 NCAC 07D .0906.

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, including certifying armed guard trainers.
2. Petitioner is certified by Respondent Board as an armed trainer, and has been so

licensed since 2003.

3. Respondent received an anonymous letter on March 19 & 20, 2013, alleging Petitioner allowed certain guards to fire more rounds than is permitted to qualify; allowed certain guards to fire rounds from a closer distance than permitted; and, had the guards in question go to the firing range at the same time, making it easier to falsify records.
4. Respondent conducted an investigation of Petitioner concerning these allegations.
5. Judy Pittman, Training Supervisor for Respondent Board, reviewed the Board's armed guard roster for Alpha Protection Agency (Alpha); Alpha's roster of employees at the Environmental Protection Agency (EPA); Employment Security Commission reports for two quarters of 2009, all of 2010 and 2011, and the first two quarters of 2012; unarmed and armed guard training records for all Alpha employees at EPA, and qualification targets for these armed employees for the years 2010, 2011 and 2012. Further, Ms. Pittman interviewed the Petitioner, the author of the anonymous letter (identified as Sgt. John Richardson of Alpha Protection Agency) and 45 of the approximately 55 armed guards in question.
6. When interviewed by Ms. Pittman, Petitioner denied he had conducted firearms training in any way other than as prescribed by the Respondent's law and rules.
7. Alpha Protective Services has since filed for bankruptcy and a new company, L&A Security AJV (L&A), now has the contract at EPA. Petitioner is the license holder for L&A, its Qualifying Agent and Chief.
8. Ms. Pittman re-scored all of the targets and some of the targets were randomly re-scored by Investigations Supervisor Phil Stephenson. The re-scored targets were then compared to the Post-Delivery Report submitted to the Board by Petitioner. A chart was created showing the discrepancies in the scores reported on the Post-Delivery Report and the actual scores on the re-scored targets. A copy of the chart was admitted into evidence as Respondent's Exhibit 2.
9. The Petitioner's firearms trainer certificate had been suspended for 30 days in 2005, but the suspension was suspended upon payment of a civil penalty.
10. Based upon its investigation, the Respondent Board voted to revoke Petitioner's firearms instructor certification at its February 21, 2013, meeting. Petitioner was so notified by Board Finding dated February 22, 2013. (Respondent's Exhibit 1).
11. Petitioner requested a hearing on the revocation of his firearms trainer certificate.
12. By Notice of Hearing dated July 23, 2013, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his firearms instructor certification would be held at the Office of Administrative Hearing, 1711 New Hope Church

Road, Raleigh, North Carolina 27609 on July 23, 2013.

13. Petitioner appeared and testified at his hearing. He admitted that the results of the investigation were accurate; that he had scored guards' targets so as to give them a passing score or higher score and reported those scores to the Board.
14. Petitioner admitted what he did was wrong. He stated that he was just trying to help people and "helping officers."
15. Petitioner must maintain his firearm trainer certificate to serve as Chief of L&S.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. Under G.S. §74C-12(a)(21), Respondent Board may deny, suspend or revoke any license, registration, permit or certificate if it is determined that the holder has made any false statement or given any false information to the Board.
3. Pursuant to 12 NCAC 07D .007, an armed guard must attain a score of at least 80 percent accuracy on a firearms range qualification course.
4. Pursuant to 12 NCAC 07D .0906, the certified firearms trainer must submit a Post-Delivery Report to the Board indicating each guard's score.
5. Respondent Board presented evidence and Petitioner admitted that he had intentionally reported inaccurate scores for armed guards he trained.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned proposes that the revocation of Petitioner's firearms instructor certificate be **UPHELD**.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with G.S. §150B-40(e).

NOTICE

The North Carolina Private Protective Services Board is the agency that will make the Final Decision in this 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.G.S. §150B-40(e).

This the 3rd day of September, 2013.

Fred G. Morrison Jr.
Senior Administrative Law Judge