



## **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-12; 74C-13; 12 NCAC 7D § .0800.

## **EXHIBITS**

Respondent's Exhibits 1 and 2 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 security guard and patrol business.
2. Petitioner applied to Respondent Board for an armed guard registration.
3. Respondent denied the armed guard registration due to Petitioner's criminal record which showed the following: a conviction in Philadelphia, State of Pennsylvania, on February 7, 1986 for felony Aggravated Assault.
4. Petitioner requested a hearing on Respondent's denial of the armed guard registration.
5. By Notice of Hearing dated July 24, 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 August 27, 2013. Petitioner appeared at the hearing.
6. Petitioner testified that in 1985 he was living in Trenton, New Jersey and had been a member of the United States Army. He had gotten out in 1980 and moved to Trenton.

7. Petitioner was dating a girl who was seeing him and another guy at the same time. He and the guy each knew about the other and tempers began to flare. One day he was walking down the street in his neighborhood and the girl he was seeing and the other guy were walking down the other side of the street. The guy approached him and accused him of seeing his woman. The guy tried to punch him and a fight ensued. He got the better of the guy during the street fight and the guy pressed charges against him about three days later.
8. Petitioner was outside a nightclub in Trenton when the police stopped him and ran his information. The police notified him that a warrant was out for his arrest. He was transported to Trenton's lockup on Broad Street. He stayed overnight and was then released.
9. Petitioner went to court but the complainant did not show. The court issued another court appearance. Petitioner moved to Philadelphia, PA, and failed to show for the second hearing and the New Jersey court issued a bench warrant for his arrest.
10. One day Petitioner was walking home in Philadelphia and the Philadelphia police stopped him. They ran his information and saw a warrant had been issued in New Jersey for his arrest. He was arrested and stayed in jail for 89 days. He was released and assigned a public defender. He went back to court in New Jersey and entered a guilty plea. The court found him guilty of felony Aggravated Assault. He was ordered to complete a 9 month drug and alcohol rehabilitation program.
11. Petitioner is married and has a 21 year old daughter. His wife of 23 years, Renita Kay Torain, testified on his behalf. She knows him to be honest and has never seen him fight. He supports his family, is active in his community, his church and with youth sports at a charter school in Kinston.
12. Petitioner has held an unarmed guard registration since 2008. Because of the age of this felony offense, he was eligible for his unarmed; since it is a felony he was denied for his armed registration.

**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 Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to the given

labels. A court need not make findings as to every fact, which arises from the evidence, and need only find those facts that are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612, aff'd, 335 N.C. 234, 436 S.E.2d 588 (1993).

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 assault 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 Philadelphia, Pennsylvania for felony Aggravated Assault.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and has rebutted the presumption.
6. Further, although its effective date July 1, 2013 was prior to the denial, Session Law 2013-24, recently enacted by the General Assembly, requires occupational licensing boards to consider certain factors—including the date of the crime and the circumstances surrounding the commission of the crime – prior to denying an application for a criminal record. This felony was 27 years ago, involved two men dating the same woman and Petitioner was not the aggressor in the altercation.

**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. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that Petitioner be issued an armed 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 any attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

**IT IS SO ORDERED.**

This the 10th day of December, 2013.

---

Augustus B. Elkins II  
Administrative Law Judge