

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13DOJ18988

Kelsie Lamel Floyd Petitioner v. N C Private Protective Services Board Respondent	PROPOSAL FOR DECISION
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This contested case was heard before Administrative Law Judge J. Randolph Ward on January 28, 2013, in Raleigh, North Carolina.

APPEARANCES

Petitioner appeared *pro se*.

Respondent was represented by attorney Jeffrey P. Gray.

WITNESSES

Petitioner - Petitioner testified on his own behalf.

Respondent - Private Protective Services Board Deputy Director Anthony Bonapart testified for Respondent Board.

ISSUE

Whether sufficient grounds exist for Respondent to deny Petitioner's renewal application for unarmed registration.

BURDEN OF PROOF

Respondent has the burden of proving that Petitioner lacks good moral character. Petitioner may rebut Respondent's showing.

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-1 *et seq.*; 20-166 (a1); 20-166(c); 74C-8(d)(2); and, 74C-12(a)(1).

FINDINGS OF FACT

1. Respondent N.C. Private Protective Services Board, established pursuant to G.S. 74C-1 *et seq.*, is charged with the duty of licensing and registering individuals engaged in the private protective services profession, including armed and unarmed security guards.
2. Petitioner Kelsie Lamel Floyd began regular employment as an unarmed guard with Lankford Protective Services on March 23, 2012, under an Unarmed Registration granted by Respondent.
3. On March 8, 2013, Petitioner signed an application to Respondent for renewal of his registration. (A copy of Petitioner's renewal application appears as the first page of the documents introduced by Respondent as Ex. 1.) Respondent's Amended Notice of Hearing states that Petitioner was "denied registration for the following reason: Guilford County, NC (7/18/13) (T) Felony Hit/Run, Fail Stop, Prop Damage; Prayer for Judgment; Case No. 2013CR071178."
4. On March 7, 2013, Petitioner was driving near Moses Cone Hospital in Greensboro, when his car struck another vehicle, and he was charged the following day with violation of N.C. Gen. Stat. 20-166 (a1), for leaving the scene of an accident causing bodily injury, a Class H felony. Petitioner testified that the officers that came to his home to serve him said that he was charged with this felony because the driver of the other vehicle had gone to an immediate care clinic for evaluation after the accident.
5. Petitioner creditably testified, consistent his written statement of March 26, 2013 (R. Ex. 1, pp. 24-25), and the Court's disposition of the charge against him (see P. Ex. 1, and, an identical copy of this record, R. Ex. 1, p. 31), that he accidentally collided with the other vehicle, bumper to bumper, after it appeared to be entering an intersection to make a turn, but instead stopped suddenly for a traffic light turning red; that very little damage was done to the other car; and, that following this incident, the other driver was extremely belligerent, persistently cursing and berating him, even refusing to cooperate when he offered to exchange insurance information, and that he consequently left the scene.
6. On July 18, 2013, Petitioner entered a plea to the lesser included offense of N.C. Gen. Stat. 20-166(c), leaving the scene of an accident causing only property damage or having no reason to believe that bodily injury resulted, which is a misdemeanor. The Court entered a "prayer for judgment continued" ("PJC"), and assessed Petitioner only the cost of court. There is some suggestion in the record that Respondent Board may have made its decision under the misapprehension that Petitioner had pled guilty to a felony.

7. The offense to which Petitioner pled guilty, and the underlying facts, are not characterized by the dishonesty, deceit, violence, theft or depravity associated with offenses involving “moral turpitude.” *See, e.g., State v. Shelly*, 627 S.E.2d 287, 295, 176 N.C.App. 575 (2006). Under the circumstances of this case, the misdemeanor to which Petitioner pled guilty was not an “offense involving moral turpitude,” within the meaning of G.S. 74C-1 *et seq.*
8. In his renewal application, Petitioner answered “No” to questions inquiring whether he had “ever pled guilty or been convicted of” either “any crime (felony or misdemeanor)” or “a traffic related offense.” According to the “Background Search Results” (included in R. Ex. 1), these were truthful answers when Petitioner completed his renewal application on March 8, 2013.

CONCLUSIONS OF LAW

1. Under G.S. §74C-8(d)(2), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character, exemplified by conviction or the entry of a plea of guilty to certain crimes involving firearms, illegal drugs, violence, theft “or any offense involving moral turpitude.”
2. Under G.S. §74C-12(a)(1), Respondent Board may refuse to grant a registration if it is determined that the applicant lacks good moral character.
3. Petitioner’s breach of the traffic laws was not an “offense involving moral turpitude,” within the meaning of G.S. 74C-1 *et seq.*
4. Respondent Board has not presented evidence substantiating that Petitioner lacks good moral character.

Based on the foregoing, the Undersigned makes the following:

PROPOSAL FOR DECISION

The North Carolina Private Protective Services Board will make the final decision in this contested case. It is proposed that the Board **REVERSE** its initial decision to deny Petitioner’s renewal application for unarmed security guard registration.

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.

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 pursuant to 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.

This the 21st day of February, 2014.

J. Randolph Ward
Administrative Law Judge