

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14DOJ08155

Bobby Andrew Boudreau Petitioner v. N C Private Protective Services Board Respondent	PROPOSAL FOR DECISION
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On November 18, 2014, Administrative Law Judge Randolph Ward 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 should be denied an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction for felony Possession of Narcotics in the State of Connecticut.

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-11; 74C-12; 12 NCAC 7D § .0700.

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 unarmed guard registration.
3. Respondent denied the unarmed guard registration due to Petitioner's criminal record

which showed the following:

A conviction in Guilford, State of Connecticut, on May 3, 2000 for felony Possession of Narcotics.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated October 22, 2014, 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 November 18, 2014. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the aforementioned conviction, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. Petitioner testified that in 1999 he was living Guilford, Connecticut. Late one afternoon, he was driving from the Social Security Administration in Branford, Connecticut. Someone called him, and he became upset, started driving erratically, and was pulled over by the police. Once he stepped out of the car, he voluntarily surrendered two bags of cocaine to the police that he was carrying on his person. The police placed him under arrest and charged him with Possession of Narcotics. He was taken into custody and jailed. A court-appointed attorney was assigned to defend him. The attorney recommended that he plead guilty to DUI. Petitioner entered a guilty plea, but the court found him guilty of the possession charge and sentenced him to 120 days in jail.
8. Since Petitioner had received an "unconditional discharge" after serving his sentence, he did not think the above criminal charge was on his record.
9. Petitioner moved to Wilmington, North Carolina four (4) years ago.
10. Petitioner confirmed that at the time of his arrest and conviction, his legal name was "Barbara Ann Boudreau," as shown on his Criminal History Record Check.
11. Petitioner has worked for A1 Security Services, Inc. ("A1") since February 2014. He is assigned to the Screen Gems Studios in Wilmington where he patrols the area to deter crime. Prior to being employed at A1, Petitioner was self-employed and also worked in various factory jobs.
12. Petitioner has been a member of Alcoholics Anonymous since 1987, but admitted he had a drink approximately five (5) months ago. He testified that he works hard to maintain sobriety and considers himself to be a moral person. He suffers from COPD from years of smoking.
13. Petitioner submitted into evidence three (3) letters of character or recommendation (P. Exs. 1-3) The owner of A1 stated that Petitioner "has been one of the most dedicated

employees of A1 Security Services,” “set[s] an example to other employees by showing initiative to recognize tasks that need to be done before being asked,” and “is professional, dependable and always complies with the company’s standard operation procedures.” Nova Swanson, a psychologist with Delta Behavioral Health, who has seen Petitioner since 2010, acknowledged Petitioner’s involvement in AA, stated that Petitioner is motivated for change, exhibits no evidence of violent or abusive behavior, and is quiet and thoughtful with a strong work ethic. Ms. Swanson further stated that she considers Petitioner to be an appropriate candidate for an unarmed security guard job. Debbie Kinsey of Port City Community Church wrote about Petitioner’s involvement in various programs at the church, and his sobriety and recovery. She describes him as having a “strong moral compass.”

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
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 illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, and/or narcotic 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 Guilford, Connecticut for felony Possession of Narcotics.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and, through his testimony and letters of character or recommendation, has rebutted the presumption.

Based on the foregoing, the undersigned makes the following:

PROPOSAL FOR DECISION

The undersigned is persuaded that Mr. Boudreau is honest and sincere in his efforts to “stay on the straight and narrow,” and eager to do his job well. By history, he must be considered a greater-than-average risk to fail to show up for work, but that is likely to be the worst outcome. Consequently, due to the strong statement of his employer, based on his first-hand experience working with Petitioner, it is recommended that Petitioner be issued an unarmed guard registration.

NOTICE AND ORDER

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

It hereby is ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 19th day of December, 2014.

J. Randolph Ward
Administrative Law Judge