

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 08383

JOHN LEE POWELL, SR.,)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

**PROPOSED
FINAL DECISION**

On December 16, 2014, Administrative Law Judge Donald Overby called this case for hearing in Raleigh, North Carolina.

APPEARANCES

Petitioner was represented by attorney Abraham Penn Jones, Attorney at Law, P. O. Box 326, Raleigh, NC 27602.

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 the renewal of his security guard and patrol business license based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction misdemeanor Sexual Battery and failure to report criminal charges, and this conviction, on his renewal application.

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 renewal of his security guard and patrol business license.
3. Respondent denied the renewal of the security guard and patrol business license due to Petitioner's criminal record which showed the following:

A charge in Nash County, State of North Carolina, on June 1, 2012 for felony Attempted 2nd Degree Sexual Offense.

A charge on June 1, 2012, and later conviction in Nash County, North Carolina for misdemeanor Sexual Battery.
4. On the application for renewal of his license dated March 19, 2014 and received by the Board on March 28, 2014 (Respondent's Exhibit 1), Petitioner answered "no" to question 11 which asks: "Have you been charged, arrested, convicted or pled guilty to a criminal offense other than a minor traffic violation?" By signing the renewal application, Petitioner certified that all answers in his application were true and accurate. He also acknowledged that he was aware that any misrepresentation or falsification could result in denial.
5. Petitioner requested a hearing on Respondent's denial of the renewal of his license.
6. By Amended Notice of Hearing dated November 14, 2014 mailed to Petitioner in care of his attorney via U.S. Mail, Respondent advised Petitioner that a hearing on the denial of the renewal of the security guard and patrol business license would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on December 16, 2014. Petitioner appeared at the hearing, and was represented by legal counsel.
7. Anthony Bonapart, Deputy Director of Respondent Board, testified that a standard criminal history record check performed by the Board's staff as a part of the license renewal process revealed that Petitioner had been charged with both of the above offenses, and convicted of the misdemeanor Sexual Battery. He reported neither on his renewal application. Further, Petitioner was required to report the charges within 30 days; he did not do so in 2012.
8. Petitioner admitted that he failed to check "yes" to question 11 on his renewal application. He testified that although it was only two years prior, he had "forgotten," he "just filled it out like he always had for 20 years."
9. Petitioner first stated he was not aware he had 30 days to report any charge, arrest or conviction, but then testified he was going to wait to report the charges until he was actually convicted.

10. Petitioner claimed he forgot to report it on his renewal application because he was so depressed over the charges and conviction.
11. On cross-examination, Petitioner stated he was aware of questions 1 and 2 on the application for guard registrations that asks the same thing as question 11 on the business license renewal, and admitted he had not followed the law and rules of the Board as a licensee.

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 the renewal of a business license 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 Nash County, North Carolina for a misdemeanor Sexual Battery.
5. Petitioner presented insufficient evidence to explain the factual basis for the charge and failed to rebut the presumption. Petitioner's testimony was not credible.
6. Petitioner knowingly, willfully and inexcusably failed to report the charge of both offenses, and the conviction for one, on his renewal application.

Based on the foregoing, the undersigned makes the following:

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner's security guard and patrol license be suspended for a period of one (1) year and upon reinstatement, be placed in a probationary status for a period of three (3) years.

NOTICE AND ORDER

The NC Private Protective Services Board 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).

The undersigned hereby orders that agency serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

This the 28th day of January, 2015.

Donald W. Overby
Administrative Law Judge

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
14 DOJ 08383

<p>John Lee Powell SR. Petitioner</p> <p>v.</p> <p>N.C. Private Protective Services Board Respondent</p>	<p>ORDER AMENDING DECISION</p>
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Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Decision, issued from this Office on January 28, 2015 is amended as follows:

Proposed Final Decision is replaced with PROPOSAL FOR DECISION in the case caption.

This the 4th day of February, 2015.

Donald W. Overby
Administrative Law Judge