

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 08745

ERICK MAURICE WALLACE, )  
)  
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 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 of misdemeanor Possession of Stolen Goods/Property.

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 Mecklenburg County, North Carolina on December 17, 2010 for misdemeanor Possession of Stolen Goods/Property.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated November 10, 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 December 16, 2014. Petitioner appeared at the hearing.
6. Petitioner testified that in 2010 he lived in Charlotte, NC and worked for Bud Security as an unarmed security guard. He was assigned to work at Channel 3 News Station (WTVD) in Charlotte; he worked the 3<sup>rd</sup> shift. An employee at Channel 3 news had a large amount of coins (nickels, dimes and quarters) on his desk in a large ash tray. Petitioner needed some gas for his car one night so he took some of the coins totaling eight (8) dollars.
7. He stated that the employee worked the day shift, arrived at work at approximately 8:00 a.m., and saw that money was missing from his ash tray. The employee immediately called the police. The police arrived and began an investigation into the theft. The police asked Petitioner if they could search his vehicle and he gave his permission. The police found the coins in his vehicle which were returned to the owner. The police issued him a criminal citation and a summons.
8. Petitioner retained an attorney to represent him. He went before a judge and entered a guilty plea. The court found him guilty and ordered him to pay court cost and complete 100 hours of community service. Petitioner was to receive a deferred prosecution but got into an altercation with his uncle and it was withdrawn. A letter from Petitioner's attorney, admitted into evidence as Petitioner's Exhibit 1, confirmed these facts.
9. Petitioner admitted he took the change. On cross-examination, he could not explain why he was charged with "possession of stolen goods" and not the theft itself.
10. Further, Petitioner offered into evidence a Petition and Order of Expunction signed by a District Court Judge on December 27, 2012 expunging this matter. (Petitioner's Exhibit 4.) The Court examined the original of this document and there is no apparent reason as to why this charge appears on a criminal history record check of Petitioner.
11. Petitioner has not been charged with any other criminal offense since being charged with this one in 2010.
12. Petitioner has worked at Landmark Security Incorporated where he worked at a grocery store and patrolled the area to deter crime. Landmark Security is aware of this criminal conviction and the facts surrounding it.
13. Petitioner's father, Samuel E. Wallace, Sr. testified on his behalf. He stated his son was raised in a Christian home; he is a "good guy" but made a mistake. He intended to put

the money back before the owner knew it was missing.

### 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 larceny 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 Mecklenburg County, North Carolina for a misdemeanor Possession of Stolen Good/Property.
5. Petitioner presented evidence that this charge should have been expunged from his record.
6. He further presented sufficient evidence to explain the factual basis for the charge and has rebutted the presumption even if the charge were validly on his criminal history.

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 be issued an unarmed guard registration.

### 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 28<sup>th</sup> day of January, 2015.

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Donald W. Overby  
Administrative Law Judge

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
14 DOJ 08745

<p>Erick Maurice Wallace Petitioner</p> <p>v.</p> <p>N.C. Private Protective Services Board Respondent</p>	<p><b>ORDER AMENDING DECISION</b></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 amended to read Proposal For Decision in the case caption.

This the 4<sup>th</sup> day of February, 2015.

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Donald W. Overby  
Administrative Law Judge