

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 00708

KENDRIX LAVEL MACE,)
)
)
 Petitioner,)
 v.)
)
 N.C. PRIVATE PROTECTIVE)
 SERVICES BOARD,)
)
)
 Respondent.)
 _____)

PROPOSAL FOR DECISION

On March 26, 2015, Administrative Law Judge Donald W. 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 evidence by two (2) felony convictions of Sell/Deliver Schedule II Controlled Substance.

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 Johnston County, State of North Carolina, on November 10, 2004 for two (2) counts of felony Sell/Deliver Schedule II Controlled Substance.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated March 11, 2015, the undersigned Administrative Law Judge 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 March 26, 2015. Petitioner appeared at the hearing.
6. Petitioner testified that in 2004 he was living in Benson, NC and working at Rick Hendrix Jeep in Fayetteville, NC. He worked the 7:30 a.m. to 5:30 p.m. shift. One day after getting off from work, two (2) Benson Police Officers came to his residence and arrested him for selling cocaine.
7. He retained a lawyer. He stated that his service manager could prove he was at work during the alleged drug transaction and his time sheet showed that he was working. His lawyer talked with his service manager who was willing to testify on his behalf.
8. Petitioner could not recall what day and time the alleged drug transaction took place, but reiterated that it took place while he was at work.
9. He did not know how or why the police identified him as a drug dealer, or how the police got his name.
10. Petitioner contends that the matter was heard in a non-jury trial and when he went before the judge he entered a not guilty plea. On review of the criminal record check that does not seem to have been the case. Any trial in Superior Court for criminal charges are before a jury. Non-jury trials are conducted in District Court; however, District Court does not have jurisdiction to try any felonies, only to dispose of some level of felonies by plea.
11. The Petitioner's criminal record reflects as to "Plea" an entry of GL, which means that Petitioner plead guilty to lesser charges in Superior Court. It appears from the record that Petitioner was charged with four felonies and as a result of his plea of guilty to two charges, then the other two were dismissed. The judge would have been required to hear a recitation of the evidence sufficient to convict Petitioner and Petitioner's counsel would have been given an opportunity to speak of his behalf, however, there would not have been an evidentiary hearing. On Petitioner's plea of guilty, the court found him guilty of two (2) counts of Sell/Deliver Schedule II Controlled Substance.

12. Petitioner has had no further criminal convictions in the last ten (10) years.
13. He worked for Shadow Protective Services for about nine (9) months. He was assigned to monitor swimming pools. Prior to coming to North Carolina, he worked security in Iowa and Florida.

CONCLUSIONS OF LAW

1. The parties are properly 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 involving the sale or use of illegal drugs 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 two (2) convictions in Johnston County, North Carolina for felony Sell/Deliver Schedule II Controlled Substance with a date of offense more than ten years ago.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge, has had a clean record for over a decade, and through his clean record has rebutted the presumption.

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, but be placed on probation for a period of three (3) years; or, if probationary term is not available, then Petitioner should be granted his unarmed guard registration without limitation.

NOTICE AND ORDER

The North Carolina 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 the North Carolina Private Protective Services Board serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

This the 4th day of June, 2015.

Honorable Donald W. Overby
Administrative Law Judge