

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 02730

ANDRÉ DESHAUD PICKENS,)
)
 Petitioner,)
)
 v.)
)
 N.C. PRIVATE PROTECTIVE)
 SERVICES BOARD,)
)
 Respondent.)

PROPOSAL FOR DECISION

On May 26, 2015, Administrative Law Judge Melissa Lassiter 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 felony Possession of Cocaine?

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. On September 9, 2014, Petitioner applied to Respondent Board for an unarmed guard registration.
3. On March 31, 2015, Respondent denied the unarmed guard registration due to

Petitioner's criminal record which showed the following:

A conviction in Wilkes County, State of North Carolina, on September 19, 2001 for felony Possession of Cocaine.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated April 15, 2015, 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 May 26, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above felony Possession of Cocaine, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. In 2001, Petitioner was 20 years old, and resided in North Wilkesboro, NC after recently moving there from Texas. Although he was 20 years old, Petitioner was in high school, having never received his high school diploma in the State of Texas. He had never obtained either a Texas or a North Carolina driver's license at that time.
8. One day he picked up a friend who also did not have a driver's license. As soon as he left his friend's house, the police pulled him over. The police discovered he did not have a driver's license, and neither did his friend.
9. The Police conducted a search of the car, and found cocaine in between the seats and two (2) grams of cocaine on his person, for a total of approximately ten (10) grams of cocaine between his car and his person. The cocaine that was in the car was placed there by his friend after they were pulled over by the Police.
10. Beginning August 12, 2014, Petitioner worked for the Bureau of Security Specialists, Inc. as an unarmed guard for eight (8) months, and was assigned to the Wilkes Regional Medical Center where he patrolled the area to deter crime.
11. Petitioner attended Wilkes Community College where he obtained an Associate's degree in Criminal Justice. He then transferred to Gardner-Webb College, and is pursuing a degree in Criminal Justice. He currently has a 3.5 GPA.
12. At hearing, Petitioner emphasized the cocaine offense was 14 years ago, and admits his mistake. He was new to the area, and began hanging around with the "wrong crowd" in an attempt to make friends. He testified he was never a "real drug user."
13. Brent Honeycutt, Operations Manager of Bureau of Security Specialist, Inc., testified on behalf of Petitioner. Mr. Honeycutt has served as Operations Manager for five (5) years at Bureau of Security Specialist, Inc, was a Deputy Sheriff with the Gaston

County Sheriff's Office for five (5) years, and prior to that was employed by the North Carolina Department of Correction.

14. Mr. Honeycutt would not normally hire someone with this type of conviction on his criminal record, but after receiving recommendations from Petitioner's instructors at Wilkes Community College, he decided to give Petitioner a chance.
15. Petitioner received training on-site at Wilkes Regional Medical Center, and the staff soon began giving him very positive feedback about Petitioner. Petitioner excelled at the training, followed all protocols for the hospital, and had a good attitude.
16. As a former law enforcement officer, Mr. Honeycutt believes that the additional cocaine found in the vehicle was not Petitioner's, and was placed there by his friend.
17. Larry Pickens, Petitioner's father, testified on his son's behalf. Petitioner came to live with him in Wilkes County from his mother's home in Texas. He related that his son has dreams, and as a father he wants them to come true for him. He is very proud of him, especially for going to college.
18. Mr. Pickens remembered the incident in question, and in his opinion, his son "let someone in his car who got him in trouble."
19. Two (2) letters of character from instructors at Wilkes Community College were admitted into evidence. Petitioners' instructors have had positive experiences in teaching Petitioner, are impressed with Petitioner's work diligence and desire to improve his knowledge, and highly recommend Petitioner. Instructor Wilkes finds Petitioner to be hard working and ethical in his dealings with others. Instructor Esposito noted that Petitioner discussed his past mistakes with Esposito, and is now dedicating his life to his young son, and his chosen career path. He believes Petitioner has "the ability to conform to our society's laws, and to be a productive member of it."

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 the illegal use or possession of a controlled substance, drug 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 Wilkes County, North Carolina for felony Possession of Cocaine, a controlled substance or drug.

5. Petitioner presented evidence sufficient to explain the factual basis for the charge, and has rebutted the presumption though his demonstrated work ethic, efforts to obtain an education, the testimony of two (2) credible character witnesses, and numerous letters attesting to his good character.

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 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 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 19th day of June, 2015.

Melissa Owens Lassiter
Administrative Law Judge