

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15DOJ03448

<p>Donelle Farrar Petitioner</p> <p>v.</p> <p>N C Private Protective Services Board Respondent</p>	<p>PROPOSAL FOR DECISION</p>
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THIS MATTER came on for hearing before Hon. J. Randolph Ward, on June 23, 2015 in Raleigh, upon Respondent's request, pursuant to N.C. Gen. Stat. § 150B-40(e), for designation of an Administrative Law Judge to preside at the hearing of this contested case under Article 3A, Chapter 150B of the North Carolina General Statutes.

APPEARANCES

Petitioner: Sandra J. Polin
Attorney at Law
Apex, North Carolina

Respondent: Jeffrey P. Gray
Bailey & Dixon, LLP
Raleigh, North Carolina

ISSUES

Whether Petitioner should be denied a Private Investigator Associate license based on lack of good moral character and temperate habits, as evidenced by an unfavorable employment history.

APPLICABLE STATUTES

N.C. Gen. Stat. §§ 74C-8(d)(2), 74C-12(a)(25), and 150B-40(e).

EXHIBITS ADMITTED INTO EVIDENCE

Respondent's Exhibits ("R. Exs.") 1 – 3

WITNESSES

For Petitioner: Mr. Donelle Farrar, Petitioner
Rev. Charles Tyner, White Oak Missionary Baptist Church
Mr. Hart Miles, Atty., Miles Law Firm, P.A.

For Respondent: Mr. Anthony Bonaparte, Dep. Director, N.C. Private Protective Services Board

UPON DUE CONSIDERATION of the arguments of counsel; the exhibits admitted; and the sworn testimony of each of the witnesses, in light of their opportunity to see, hear, know, and recall relevant facts and occurrences, any interests they may have, and whether their testimony is reasonable and consistent with other credible evidence; and upon assessing the preponderance of the evidence from the record as a whole in accordance with the applicable law, the undersigned makes the following:

FINDINGS OF FACT

1. The Private Protective Services Board (hereinafter, “Respondent” or “the 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 private protective services industry, which is defined to include Private Investigators.
2. On November 3, 2014, Petitioner Donelle Farrar applied to the Board for a Private Investigator Associate License, under the sponsorship of Anthony Rogers, a licensed Private Investigator. By letter dated April 29, 2015, Petitioner was advised that the Board denied his application on April 23, 2015 due to “unfavorable employment history” and gave Petitioner due notice of his right to file an appeal to be heard in the Office of Administrative Hearings (“OAH”).
3. Respondent acknowledged receipt of Petitioner’s timely request for hearing and served him with a Notice of Hearing on May 12, 2015. The Notice stated that the reasons for the denial were “1) Unfavorable employment history; and 2) lack of good moral character and temperate habits.” The second reason consists of a statutory requirement for licensure set out in N.C. Gen. Stat. §74C-8(d)(2).
4. Anthony Bonapart, Deputy Director for the Board, testified Petitioner’s employment history was characterized as “unfavorable” because his record with the Wake County Sheriff’s Office indicated that he had been disciplined by his employer on three occasions that suggested he had been dishonest. Mr. Bonaparte testified that incidents of apparent dishonesty generally triggered further investigation by the Board.
5. Petitioner began working for the Wake County Sheriff’s Department in November 1996, when he was the minimum age of 21 years old, and resigned on January 16, 2008 to take a contract position in Afghanistan. He first worked as a courtroom bailiff and later was a civil process server. From April 2004 until April 2005, he was assigned to the Information

Desk in the Wake County Public Safety Center due to a disciplinary action. From April 2005 until December 2007, he was a patrol deputy and was among the first assigned specially to respond to domestic violence calls. He was demoted in December 2007 to the rank of Detention Officer and resigned in January 2008 to accept a position with DynCorp International in Afghanistan. After that company's contract in Afghanistan ended in 2012, Petitioner was the owner and operator of the firm Signal 88 Security, in Raleigh, through the date of his application to Respondent.

6. The Board's review of Petitioner's personnel file indicated that all evaluations and overall scores while at the Sheriff's Department were "meets" or "exceeds expectations." There were several commendations concerning Petitioner's teaching of Basic Law Enforcement Training, and in-service courses.
7. Petitioner's first disciplinary action arose from having stopped his patrol vehicle in an irregular position in a parking area on Wake Forest Road, blocking access to some handicap spaces. He became involved in a conversation with a young lady that lasted an unanticipated 40 minutes. A citizen called the Sheriff's Department to complain. When his supervisor contacted him and asked his location, Petitioner said he was on Raleigh Boulevard, which was where he intended to go next. On April 12, 2000, he was suspended by the Sheriff's Department for 20 hours for giving this false information to his supervisor.
8. On April 20, 2004, while driving his patrol car, Petitioner reached for some papers on the back seat, and briefly lost control of the vehicle, allowing it to spin. However, he was able to regain control before the automobile struck anything, and there was no damage to the car, persons or property. A witness to the incident called in a report that a Deputy was driving recklessly. When contacted about the incident, Petitioner initially denied that he was the Deputy involved. Petitioner was suspended on April 28, 2004 for 60 hours without pay. He was also taken off patrol, and reassigned to the information desk at the Public Safety Center.
9. Petitioner received a speeding ticket, and/or committed a red light violation, when pursuing a motorist who was speeding in a school zone, and paid the associated fine. On one occasion, Petitioner paid the property tax on his personal vehicle late. The evidence does not show that these were, or involved, acts of moral turpitude.
10. Petitioner's personnel file also contained a memorandum regarding Petitioner being demoted from the rank of Master Deputy Sheriff to the rank of Detention Officer effective December 10, 2007. It stated that the demotion was the result of an internal investigation in which he was cited for conduct unbecoming a law enforcement officer, with no additional details. The Petitioner told the Board's investigator, and testified at the hearing, that the discipline arose out of his arrest of a recalcitrant drunken female driver, who refused to blow the breathalyzer. After the arrestee was processed, she was having trouble finding someone to take her home. Petitioner was going off duty, so he gave her a ride in his patrol car as far as his home, and then used his personal vehicle to take her the extra distance to her home. His assistance did not have a direct law enforcement purpose, and violated Department policy. The woman reported this favor to the Department, in what

Petitioner speculated was her vain hope that it would help her get out of the Driving While Impaired conviction she eventually received. She did not accuse Petitioner of any misconduct towards her. However, Petitioner testified that this episode occurred at a time when multiple instances of abusive treatment of women under similar circumstances were in the news, and that the Department felt it was important to stringently enforce its rules.

11. Prior to the December 2007 incident, Petitioner had applied to work for DynCorp International in Afghanistan. The Sheriff's Department recommended him for the position. He was hired, received the necessary security clearances from the Federal government, and served as the head of a domestic violence unit, working with the Afghan police, until DynCorp's contract ended in April 2012.
12. Including his work with his own security company, Petitioner accumulated 19 years of law enforcement related experience. His two documented misstatements of fact occurred when he was 25 and 29 years old. There is no evidence that Petitioner's intent in the third incident was more malevolent than an ill-advised bending of the rules to help a citizen. On the date of the hearing, Petitioner was 39 years old.
13. The Board's Investigator contacted Anthony Rogers, Petitioner's sponsor, who said that that he was aware of the 2004 and 2007 incidents in his discipline records. The Investigator also interviewed Lieutenant Newkirk of the Wake County Sheriff's Office, who had supervised Petitioner while he was in the Patrol Division. He stated that Petitioner did a good job as one of the first Domestic Violence Officers. He said that he would recommend Petitioner for a Private Investigator Associate's license and thinks that he would be good at that job.
14. Two character witnesses testified on behalf of Petitioner. Pastor Charles Tyner, the minister at the White Oak Missionary Baptist Church in Apex since 1972, testified that he has known Petitioner "all his life," because his parents and Petitioner were members of his church. He considers Petitioner to be a man of good character, has never known him to lie or steal, and would recommend him for licensure. Pastor Tyner has been an educator for thirty years, including service as a high school principal, and he served on the Wake County Board of Education for eight years. He was aware of Petitioner's service as a Deputy Sheriff, and a private contractor in Afghanistan, but not the disciplinary matters discussed at the hearing.
15. Hart Miles, a licensed attorney for 19 years, whose practice includes State and federal criminal defense, has known Petitioner since 1996. Mr. Miles was an Assistant District Attorney when Petitioner was a courtroom bailiff. Mr. Miles testified that he knew Petitioner to be professional as both a courtroom deputy and a road deputy who "handled himself well," and never knew of his integrity being questioned by a Judge or an Assistant District Attorney. Mr. Miles testified that what he had heard during the hearing about Petitioner's disciplinary history was concerning, but felt that his willingness to finally admit and take responsibility for his errors somewhat mitigated that concern.
16. Petitioner testified that he graduated from Broughton High School in Raleigh in 1994;

served in the Marine Corps, and was honorably discharged; and following discharge, worked at Walmart and at Carolina Builders before going into law enforcement. Petitioner admitted that he was disciplined three times during his 11 years with the Sheriff's Department, but does not believe that these incidents eight or more years ago fairly define who he is.

17. The statute governing licensing by the Private Protective Services Board requires that "the applicant [be] of good moral character and temperate habits." It sets out specific examples that "shall be *prima facie* evidence" of the lack of such character and habits, i.e., convictions of firearms offenses, illegal use or trafficking in controlled substances, criminal violence, thefts, crimes of moral turpitude, and addiction. None of the incidents for which Petitioner was disciplined as a Deputy Sheriff fall within any the statute's examples of *prima facie* evidence of the lack of good moral character and temperate habits. None of Petitioner's infractions evidence the degree of moral degradation exemplified by the criminal and intemperate acts listed in the statute.
18. The preponderance of the evidence shows that Petitioner was culpable of two instances of untruthful denials of embarrassing errors 11 and 15 years ago, when he was in his twenties, and of inappropriately providing transportation to a citizen eight years ago. None of these, either individually or collectively, resulted in criminal sanctions, or separation from his employment as a law enforcement officer. They do not demonstrate that Petitioner lacks good moral character or temperate habits. The absence of similar incidents in the intervening years, and the Petitioner's honorable service in law enforcement and public safety occupations, prove by the preponderance of the evidence that Petitioner possesses good moral character and temperate habits.
19. The parties were timely served with OAH's notice of this hearing on March 11, 2015.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings. N.C. General Statutes § 150B-40(e).
2. The Respondent Board may refuse to grant a license if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character. N.C. Gen. Stat. § 74C-12(a)(25). Serious criminal conduct, acts of moral turpitude, and addiction to drugs or alcohol are *prima facie* evidence of a lack of "good moral character and temperate habits." N.C. Gen. Stat. § 74C-8(d)(2).
3. When assessing whether past transgressions evidence a present lack of good moral character, "the question becomes essentially one of time and growth." *In re Dillingham*, 188 N.C. 162, 124 S.E. 130 (1924). "Whether a person is of good moral character is seldom subject to proof by reference to one or two incidents." *In re Legg*, 325 N.C. 658, 386 S.E.2d 174 (1989). Good moral character has been defined as "honesty,

fairness, and respect for the rights of others and for the laws of the state and nation.” *In re Willis*, 288 N.C. 1, 215 S.E.2d 771 (1975), *app. dismiss.*, 423 U.S. 976 (1975).

4. The preponderance of the evidence shows that Petitioner possesses the good moral character and temperate habits required to be eligible for a Private Investigator Associate License. N.C. Gen. Stat. § 74C-8(d)(2).

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

PROPOSAL FOR DECISION

Based upon the law regarding fitness to receive a Private Investigator Associate License and the facts adduced at the hearing concerning the character and habits of Petitioner, it is respectfully recommended that, if otherwise qualified, the Board grant Petitioner this license.

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 27th day of August, 2015.

J. Randolph Ward
Administrative Law Judge