

**NORTH CAROLINA**

**OFFICE OF ADMINISTRATIVE HEARINGS**

**WAKE COUNTY**

**15 DOJ 5300**

**TIMOTHY T. J. CONTERRAS** )  
 )  
**Petitioner** )  
 )  
**v** )  
 )  
**NC PRIVATE PROTECTIVE** )  
**SERVICES BOARD** )  
 )  
**Respondent** )  
 \_\_\_\_\_ )

**PROPOSED FINAL  
DECISION**

This matter coming on to be heard and being heard August 25, 2015, and the Petitioner appeared pro se, and the Respondent was represented by attorney Mr. Jeffrey P. Gray, and based upon the evidence presented and the arguments of the parties, the undersigned makes the following findings of fact:

1. Petitioner is a citizen and resident of Cumberland County, North Carolina, and applied to Respondent for an unarmed guard permit.
2. Respondent Board is established pursuant to N.C. Gen. Stat. §74C-1, *et seq.*, and is charged with licensing and registering individuals engaged in the armed and unarmed security guard and patrol business.
3. Respondent denied the unarmed guard registration due to lack of good moral character and temperate habits as demonstrated by Petitioner’s criminal record.
4. Respondent cited the following as reasons for the denial:
  - Boone County, KY – Felony Probation Violation – Guilty – 9-16-2002
  - Boone County, KY – Fugitive from Another State – Guilty – 1-17-2002
  - Isle of Wight County, VA – Felony Credit Card Theft – Guilty – 8-13-2002
  - Isle of Wight County, VA – Felony Hit and Run – Guilty – 8-13-2002
  - (Resp. Ex. 2)
5. Petitioner stipulated that these items were on his criminal record.
6. Petitioner was notified by letter on June 16, 2015, that his application was denied due to his criminal record. (Resp. Ex. 2)

7. Petitioner timely requested a hearing regarding the denial of his armed guard application.

8. Petitioner testified that each of his criminal convictions occurred more than ten years ago when he was a teenager.

9. Petitioner further testified that each offense stemmed from a contentious relationship with a girlfriend who went to great lengths to get even with him for attempting to leave the relationship.

10. Petitioner was convicted of hit and run and credit card theft in Isle of Wight County on March 10, 2003. (Resp. Ex. 1)

11. Petitioner testified that he accepted a plea agreement for time served awaiting trial on those charges.

12. According to Petitioner, he was involved in an automobile accident near his employment in Virginia. Petitioner then reported the incident to a security guard and asked that he contact police. When police arrived they found his girlfriend's credit card in his pocket and cited him for hit and run and credit card theft.

13. Petitioner stated that he had permission to use the credit card, but his girlfriend refused to tell the police this fact.

14. According to the Petitioner, he had several court dates continued because the prosecuting witness, the estranged girlfriend, refused to appear in court.

15. Petitioner accepted a plea agreement on these charges because it enabled him to conclude the criminal charge and be released from pre-trial confinement after approximately one year in jail.

16. Records presented by the Respondent indicate that the Petitioner was ordered to spend two years in prison for the hit and run and credit card theft charges, with credit for time served awaiting trial. (Resp. Ex. 1)

17. However, no jail or prison records were produced to demonstrate that the Petitioner did in fact spend two years in prison, and it is reasonable to assume that an inmate received various credits which would reduce the overall time he is required to serve.

18. Respondent alleged and Petitioner admitted that he had a probation violation in 2002.

19. On April 25, 2002, the Petitioner was placed on probation following conviction for making a bomb-threat. (Resp. Ex. 1)

20. While the Respondent could have alleged the conviction for a bomb threat as cause to deny Petitioner's registration, they chose instead to utilize the probation violation.

21. A probation violation is not a criminal conviction under N.C.G.S. §74C-8(d)(2).

22. Even if the bomb threat conviction had been used for cause to deny registration, the underlying facts flow from Petitioner's association with the same ex-girlfriend. In this instance, she called in on his phone at work which broadcasted the fake bomb threat, and the Petitioner accepted responsibility to protect her from prosecution.

23. Petitioner has been employed at ABM Security Services, and his employer was made aware of these incidents.

24. Petitioner has presented letters attesting to his good character, along with documents from the Commonwealth of Virginia restoring his citizenship rights. (Pet. Ex. 1)

25. Petitioner was credible in his testimony, and he appears now to be of good moral character and temperate habits based upon the testimony and evidence presented.

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.

2. Under G.S. §74C-12(a)(25), Respondent may refuse to grant registration if it determines that an applicant has demonstrated intemperate habits or lacks good moral character.

3. Under G.S. §74C-8(d)(2), conviction of any crime involving acts of violence, conviction for larceny, or offenses involving moral turpitude are prima facie evidence that an applicant lacks good moral character.

4. Felony Credit Card theft is a larceny and implicates the disqualifying language above.

5. A probation violation is not a criminal conviction under N.C.G.S. §74C-8(d)(2).

6. There is insufficient evidence from the facts presented to determine if the hit and run conviction implicates the disqualifying language under the statute.

7. A fugitive warrant is not a criminal offense for which a conviction can be had. A fugitive warrant is issued to detain a defendant for a period of time while the issuing state determines if a governor's warrant is necessary to secure the return of a defendant to the state in which the original offense was committed. In this case, it appears that Petitioner was extradited from Kentucky to Virginia under the fugitive warrant for the bomb threat charge.

8. A fugitive warrant does not implicate the disqualifying language under the statute, even though the underlying charge may.

9. Respondent presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through the conviction of Assault on a Female.

10. Petitioner, however, presented sufficient evidence that he is an honest, trustworthy, and hard-working individual.

11. Petitioner's only involvement with the criminal justice system appears to be the crimes listed herein, and he has an unremarkable record for over 10 years.

12. Petitioner has proven by a preponderance of the evidence that he is of good moral character and temperate habits sufficient for issuance of the license.

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 1st day of October, 2015.

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Philip E. Berger, Jr.  
Administrative Law Judge