

**NORTH CAROLINA**

**OFFICE OF ADMINISTRATIVE HEARINGS**

**WAKE COUNTY**

**15 DOJ 5712**

**DAVID WAYNE HOLLAND**

**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 Sampson 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. Petitioner was charged with the felony criminal offense of Larceny by an Employee Sampson County, North Carolina in 2010.
5. Petitioner was convicted of the lesser included offense of Misdemeanor Larceny on March 24, 2011.
6. No other disqualifying evidence was presented.
7. Petitioner was notified by letter on June 11, 2015 that his application was denied due to this conviction.
8. Petitioner timely requested a hearing regarding the denial of this unarmed guard application.

9. Petitioner testified that he had in fact pled guilty to this offense.

10. By way of explanation, however, Petitioner testified that he was not involved in the incident for which he accepted responsibility; Petitioner stated that he was covering for a female employee.

11. The female employee was to have made a nightly deposit to a financial institution, but said deposit was never made.

12. Petitioner was responsible for making the deposit, and it was against company policy for anyone other than the Petitioner to conduct the transaction.

13. Petitioner provided dozens of references in Petitioner's Exhibit 1 attesting to his character, trustworthiness, and integrity.

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 a 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 larceny is prima facie evidence that the applicant does not have good moral character or temperate habits.

4. Respondent presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through a conviction for Misdemeanor Larceny in Sampson County, North Carolina.

5. Petitioner, however, presented sufficient evidence that he is an honest, trustworthy, and hard-working individual, and has sufficient good moral character and temperate habits for issuance of the license, and has proven his case by the preponderance of the evidence.

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 18<sup>th</sup> day of September, 2015.

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Philip E. Berger, Jr.  
Administrative Law Judge