

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05833

<p>Aundra Lynn France Petitioner,</p> <p>v.</p> <p>N C Private Protective Services Board Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On September 25, 2015, Administrative Law Judge Randall May 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 misdemeanor Simple Assault.

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; 14B NCAC 16 § .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 Forsyth County, State of North Carolina, on August 5, 2015 for misdemeanor Simple Assault.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated August 11, 2015, Respondent advised Petitioner that a hearing on the denial of her unarmed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on September 29, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above conviction, was admitted into evidence as part of Respondent's Exhibit 1.
7. Petitioner testified that in 2014 she was a school bus driver servicing schools in the City of Winston-Salem. One evening she was assigned to pick up kids from Reynolds High School because the bus driver assigned to that school was unavailable. She had to make several pick-ups from the school that day. On one of her pick-ups a male student got on the bus and called her by her nickname, "Ms. Cookie". She stated that she did not want to be called that on that day so she nudged the student in the side and told him to go sit down.
8. When asked to give more specifics about the incident she related that she could not remember more. She stated that she suffered from short term memory loss after the incident. When the police came to arrest her she did not remember any more about the incident. When asked who filed charges against her for nudging the boy she stated that she did not remember. She did not remember going to court but does remember being arrested.
9. The boy was about 15 or 16 years old. She does not know why she was not charged with "Assault on a Minor."
10. Her court-appointed attorney told her to plead guilty, which she did.
11. She believes she is a "good, law-abiding citizen."
12. She has worked for Lankford Protective Services since January 2015. She was assigned to the furniture market at the Furniture Mart and also acted as crossing guard for the school system in Winston-Salem.
13. Todd Apple, Regional Director for Lankford Protective Services, testified as a character witness. Petitioner fully disclosed the incident, and after reviewing her criminal history record and finding no other offenses, he decided to hire her. She

is an exemplary employee, and he was comfortable enough with her to assign her to be a crossing guard.

14. She is very well liked at the Furniture Mart and the Site Manager specifically asked that she be assigned again for the October, 2015 show.

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 an act of violence 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 Forsyth County, North Carolina for misdemeanor Simple Assault.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge, presented a credible character witness, and has rebutted the presumption.

BASED ON the foregoing, the undersigned makes the following:

PROPOSAL FOR 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 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 is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

IT IS SO ORDERED.

This the 8th day of December, 2015.

J Randall May
Administrative Law Judge