

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 05959

Mario Da'Shawn Cotton Petitioner, v. N C Private Protective Services Board Respondent.	PROPOSAL FOR DECISION
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On September 29, 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 permit based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Assault on a Female in the State of North Carolina.

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 Cumberland County, State of North Carolina, on November 19, 2013 for misdemeanor Assault on a Female.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated August 17, 2015, 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 September 29, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check, which showed the above, was admitted into evidence as part of Respondent's Exhibit 1.
7. Petitioner testified that in October 2013 he lived in Fayetteville, N. C. His friend decided to have a house party and asked him to be the bouncer for the party. Petitioner admitted he drank a few beers during the party. His friend got into an altercation with another girl at the party. The girls were brandishing knives during the altercation so he quickly stepped in to break up the fight. His friend got angry at him and struck him with a piece of wood. He responded by pushing her away from him and she fell backwards. When she got up, she called the police. The police arrived and questioned his friend about the incident. Based on her statement, he was arrested and charged with Assault on a Female. The court appointed an attorney to represent him.
8. The attorney recommended he enter a guilty plea. The court sentenced him to six months' probation. He had to pay \$268.00 in court costs and complete the mandated anger management course. He completed all the court's requirements.
9. He no longer has a relationship with the girl who was the alleged victim. He stated that he is married now and trying to care for his family. He has two children.
10. The "assault" was actually the result of him trying to break up a fight.
11. Petitioner testified he had worked as a bouncer since age 18; he is now 28. He had never had training until he took the Respondent Board's unarmed guard training. He feels he now has a better understanding of the use of force.
12. Petitioner does not believe this offense represents who he is. He wants to work to protect his community.
13. Petitioner worked for Shadow Protective Services for approximately one year and was assigned to hotels in the Fayetteville area. He patrolled the areas to deter crime.

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 assault 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 Cumberland County, North Carolina for misdemeanor Assault on Female.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge 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.

SO ORDERED this the 8th day of December, 2015.

J Randall May
Administrative Law Judge