

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 06492

Ushica Lee Burns Petitioner, v. N C Private Protective Services Board Respondent. Respondent.	PROPOSAL FOR DECISION
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THE ABOVE-ENTITLED MATTER was heard before the undersigned Augustus B. Elkins II, Administrative Law Judge, in Raleigh, North Carolina. This case was heard pursuant to N.C.G.S. § 150B-40, designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, Chapter 150B of the North Carolina General Statutes. The record was left open for the parties' submission of further materials, including but not limited to supporting briefs, memorandums of law and proposals. The record now closed, this Proposal for Decision is submitted.

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 felony Unlawful Neglect of Child or Helpless Person.

APPLICABLE STATUTES

Notice is taken of the following statutes applicable to this case: N.C.G.S. §74C-1, *et seq.*

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following Findings of Fact. In making the Findings of Fact, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate

factors for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

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 York County, State of South Carolina, on September 17, 2007 for felony Unlawful Neglect of Child or Helpless Person.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated September 8, 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 October 27, 2015. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. Petitioner testified that in 2007 she lived in Rock Hill, South Carolina. Her 15 year old son was a Special Education student and attended Southpoint High School in Rock Hill, South Carolina. Her son would tell school officials that he was not getting any food at home and that he was being beaten. The school officials alerted Child Protective Services of the accusations being made by her son. Child Protective Services initiated an investigation into the allegations, which lasted about a week. Shortly after the investigation was concluded the Rock Hill police came to her home and arrested her.
8. A court appointed attorney was assigned to her case. She entered a not guilty plea in court. After hearing the evidence of the case the court found her guilty of Unlawful Neglect of Child or Helpless Person. She was placed on one year probation and had to pay \$300.00 in court costs. Her son is now 23 and lives in York, South Carolina.

9. Petitioner worked for Delta Protection Agency, LLC for one year. She was assigned to patrol apartment complexes and hotels.

BASED UPON the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the Undersigned makes the following:

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 negligence of a child is an offense involving moral turpitude and is, therefore, *prima facie* evidence that the applicant does not have good moral character or temperate habits. Under G.S. § 74C-8(d)(2), conviction of any crime involving an act of Unlawful Neglect of Child or Helpless Person is an offense involving moral turpitude, and is, therefore *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 York County, South Carolina for a felony Unlawful Neglect of Child or Helpless Person.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and has rebutted the presumption.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

PROPOSAL FOR DECISION

The Undersigned finds and holds that there is sufficient evidence in the record to properly and lawfully support the Conclusions of Law cited above. Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby proposes that Petitioner be granted an unarmed guard registration.

NOTICE

The agency making the final decision in this contested case 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. N.C.G.S. § 150B-40(e). The agency that will make the final decision in this contested case is the North Carolina Private Protective Services Board. A copy of the final agency decision or order shall be served upon each party personally or by certified mail addresses to the party at the latest address given by the party to the agency and a copy shall be furnished to any attorney of record. It is requested that the agency furnish a copy to the Office of Administrative Hearings.

IT IS SO ORDERED.

This is the 27th day of January, 2016.

Augustus B. Elkins II
Administrative Law Judge