

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 07051

<p>Scott Christopher Baucom Petitioner,</p> <p>v.</p> <p>N C Private Protective Services Board Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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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 now 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 embezzlement.

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 Mecklenburg County, State of North Carolina, on August 8, 2001 for felony embezzlement.
4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration application.
5. By Notice of Hearing dated September 24, 2015, the 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 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 2001 he was living in Charlotte, NC and was working for Ace Vending, a full line vending machine service company which offered drinks, snacks, food, ice cream, coffee, and other products. He worked for the company from 1999 to 2001. He drove a truck filled with merchandise to restock clients' vending machines located in various locations in Charlotte and the surrounding area.
8. As part of restocking the machines, Petitioner was required to take the money out of the machines and place the funds in a money pouch. He would then take the pouch to the truck and deposit it in a safe located inside the truck. At the end of the day he would open the safe and turn the pouch into the accounting office. He was not tasked with counting the money; just placing the money in the pouch and turning it into the accounting office. He started keeping some of the money for himself. It started out small, \$1.00 here and there, then he started keeping \$5.00 or more at a time.

9. The company started struggling financially. The owner started to suspect that all the drivers were keeping some of the money, thus effecting profits. The owner of the company called Petitioner into his office and questioned him about missing funds. He admitted to the owner that he was keeping some of the money for himself. The owner pressed charges against him. He was later arrested at his house and spent one day in jail.
10. The court appointed an attorney to represent him. He entered a guilty plea at his trial. The court found him guilty of taking \$15,000.00 from the company and sentenced him to six years-probation and he had to pay back the \$15,000.00 dollars. He paid restitution in full and his probation ended in 2008.
11. Petitioner worked for Landmark Security, Inc. beginning February 2015. He was assigned to the Concord Mills Mall and South Park Mall. He worked stationary posts and patrolled the area to deter crime. He also began working a number of jobs after his conviction, including S&S Maintenance, to help pay the restitution. He still works for S&S.
12. On August 28, 2015 the Board received a letter of recommendation from Timothy Jayne, Director of Operations for Landmark Security. Mr. Jayne stated Petitioner is very honest and sincere, worthy of the company's trust, and Landmark supports Petitioner's registration as an unarmed guard. This letter was admitted into evidence as Petitioner's Exhibit 1. Also, the Board received a letter of recommendation from Todd Shackelford, President, S & S Maintenance, Inc., stating Petitioner is a key employee with his company and is "honest and dependable." This letter was admitted into evidence as Petitioner's Exhibit 2. Petitioner's resume was admitted into evidence as Petitioner's Exhibit 3.

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 larceny and/or fraud 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 Mecklenburg County, North Carolina for a felony embezzlement.
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and, based upon the letter of character from his employers, including Landmark Security, 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 26th day of January, 2016.

Augustus B. Elkins II
Administrative Law Judge