

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 09270

STACY ELMER GUTHRIE,)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On January 29, 2016, Administrative Law Judge Donald W. Overby 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 a Private Investigator license based on Petitioner's lack of good moral character and temperate habits as evidenced by an unfavorable employment history.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74C-8; 74C-12(a)(2) and (25); 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 and the private investigation profession.
2. Petitioner applied to Respondent Board for a Private Investigator license.

3. Respondent denied the Private Investigator license due to Petitioner's unfavorable employment history with a municipal law enforcement agency and a licensed contract security guard and patrol company.
4. Petitioner requested a hearing on Respondent's denial of the Private Investigator license application.
5. By Amended Notice of Hearing dated December 11, 2015, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his Private Investigator license would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on December 29, 2015. Petitioner appeared at the hearing.
6. Barry S. Echols, Director of Respondent Board, testified to the receipt of Petitioner's application and assignment of the file to an Investigator to conduct the required background investigation.
7. Kim Odom, an Investigator for the Petitioner Board, testified she was assigned Petitioner's application for investigation. Investigator Odom is a 21 year career investigator for the Board and has conducted "thousands" of such investigations.
8. Investigator Odom testified that on September 15, 2015, she reviewed Petitioner's personnel and Internal Affairs files at the Smithfield Police Department. Chief Mike Scott provided the file, but stated that he did not know Petitioner. Petitioner was hired June 3, 1998 with the Smithfield Police Department as a police officer and resigned September 8, 1999. There was one evaluation in the file for the period of June 1998 to December 1998 and it was rated with all "meets or exceeds expectations." Petitioner received a letter of counselling dated August 28, 1999 for tardiness; the letter noted that Petitioner was tardy by approximately 20 minutes, three times in the preceding 12 months.
9. However, the file further revealed that a complaint was received by the police department in September 1999 regarding Petitioner. An anonymous person called and stated that they had proof that Petitioner was having sex with a female, who was not his wife, while on duty. The complaint was found to be substantiated.
10. The investigation revealed that the caller was a Private Investigator who was hired by the female's husband to follow her. The caller stated that on August 14, 1999, between 1:00 a.m. and 2:00 a.m., Petitioner met the female at the Starvin' Marvin's and they went to Wal Pat Road. The caller then observed Petitioner and the female having sex on Petitioner's patrol car. During the September 8th call, the caller was actually following Petitioner again and a lieutenant from the police department took an unmarked vehicle to try and find Petitioner, but was unable to do so. The caller called back and advised that Petitioner and the female had just finished having sex. The caller stated that he took photographs.

11. Petitioner was placed on investigative suspension without pay on September 8, 1999.
12. The Internal Affairs Investigator from the police department met with Petitioner on September 8, 1999. The investigator told Petitioner that he would investigate whether Petitioner had sex with the female while on duty, two times. Petitioner advised that he had already admitted the September 8, 1999 instance to the Chief. Petitioner then asked what would happen if he resigned and he was told that he would not have to answer any questions. Petitioner then resigned.
13. A memo from the Chief was also in the file. It stated that Petitioner initially denied knowing the female, but then admitted to the Chief that he had sex with her on August 13th and September 8th as alleged.
14. The Report of Separation, dated September 8, 1999, stated, "This officer resigned during an internal affairs investigation into alleged misconduct on his part. It was his decision to resign rather than answer questions." The Report of Separation showed that the agency would not consider him for reappointment and would not recommend work as a law enforcement officer elsewhere.
15. On September 17, 2015, Investigator Odom met with Captain Choe with the Smithfield Police Department. He stated that he has no idea whether Petitioner would have been fired. He stated that he did not supervise Petitioner. He stated that he was an average officer. He would not comment on whether he would recommend Petitioner for the license.
16. Investigator Odom then interviewed Petitioner. During this interview, Petitioner stated that he worked for Allied Barton from August 2007 until October 2008. He stated that he was terminated for inappropriate use of the CCTV system; his employer stated that they alleged that he was zooming in on people. Investigator Odom asked Petitioner why he would have zoomed in on people, and he stated that he would do it if someone came in without "badging in."
17. Investigator Odom discussed with him his employment at the Smithfield Police Department. He stated that he met the woman in question at a gas station which he stopped at frequently. He stated that he did not know the woman was married. He stated that he only had sex with her once, in September. Petitioner told Investigator Odom that the police department told him that the information in the internal affairs complaint could become public. He stated that he did initially deny to the Chief knowing the woman, but admitted it within a few minutes.
18. Petitioner claimed to Investigator Odom that the police department never said they would terminate him. He thought they would fire him, but they never said so.
19. On October 5, 2015, Investigator Odom spoke with Gene Eggleston with Ultimate Security Agency. He stated that Petitioner worked for him as a security officer. He stated that he did a good job and they had no problems with him. He stated that

Petitioner was “willing to step up to the plate.” He stated that he had to lay him off, but that Petitioner would definitely be eligible for rehire.

20. Investigator Odom attempted to reach Miguel Fonseca with Integrity Construction and Paint, another previous employer, but the number was disconnected.
21. On September 29, 2015, Investigator Odom left a message for Harlan Calhoun, QA for Allied Barton. On October 5, 2015, Mr. Calhoun called Investigator Odom back, stating that he could only determine from his file that Petitioner is not eligible for rehire, but would get additional information and call her back. Mr. Calhoun called Investigator Odom back and stated that Petitioner was written up for zooming in on women with the CCTV cameras. He was then later terminated, however, for reviewing pornography on the customer’s computers. He stated that the employer’s IT department received a hit that someone was viewing websites that were not allowed and Petitioner was assigned to that post. He was terminated that day.
22. On October 6, 2015, Investigator Odom spoke with Jarvis Woodburn, Petitioner’s sponsor. He stated that Petitioner disclosed the situation with Smithfield Police Department, but he had not heard about Allied Barton. Mr. Woodburn stated, however, that the company may know about it.
23. On October 6, 2015, Investigator Odom spoke again with Petitioner. Investigator Odom asked him about Allied Barton’s statement that he was fired due to viewing porn on the computer. He stated that he never viewed pornography on the computer and that they could not view sites like that on the computer. He stated that he was told he was fired because of the zooming in incidents.
24. Petitioner testified in his own behalf. He admitted to one incident of sex with the female to whom he was not married while with the Smithfield Police Department and expressed the pain it had caused him for 16 years. He denied that he had ever admitted to having had sex with her twice, and says it did not happen.
25. Petitioner testified that the Allied Barton incident “did not happen the way Ms. Odom was told.” He denied ever looking at pornography. He did zoom in on people, including women, but only if they were allowed in the door by somebody else who swiped a badge to allow entrance.
26. Petitioner testified he was given supervisory duties after only a few months and ahead of others who had been employed by Allied Barton for six or seven years. The same supervisor who had been singing his praises and got him promoted early in his career with Allied Barton was the same person who summarily terminated Petitioner approximately one year later. Petitioner attempted to rationalize why he may have been terminated by pointing a finger at others with whom he worked, but not that supervisor.
27. Petitioner is currently employed by InQuest, and is licensed as a Private Investigator

in Virginia and South Carolina. On cross-examination, Petitioner stated he did not know if South Carolina and Virginia conducted extensive backgrounds, including review of personnel files, as is done in North Carolina.

28. A copy of a letter from Kevin M. Hession, Regional Operations Manager for InQuest, was admitted into evidence.

CONCLUSIONS OF LAW

1. The parties are properly 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. Certain conduct, especially if occurring in the context of employment in a position of trust such as a law enforcement officer, security guard or military, is deemed to be a lack of good moral character by the Board.
4. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through his conduct at the Smithfield Police Department and subsequent resignation and his actions and subsequent dismissal from Allied Barton Security.
5. Petitioner failed to present evidence sufficient to explain the factual basis for the conduct or to rebut the presumption. Specifically, Petitioner's explanation of the incidents while he was a sworn officer with the Smithfield Police Department is inconsistent with the Department's file, and apparently statements he made at the time. Further, Petitioner's explanation of the Allied Barton incidents is inconsistent with the employer's file and its resulting action terminating Petitioner. Petitioner was not completely honest and forthcoming in his testimony before this Tribunal.

Based on the foregoing, the undersigned makes the following:

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be denied a Private Investigator license.

NOTICE AND ORDER

The North Carolina 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 22nd day of February, 2016.

Donald W Overby
Administrative Law Judge