

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 DOJ 09336

GARY DEAN BROOKS)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On December 29, 2015, 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 an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of felony Conspiracy to Defraud the United States.

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, *et seq.*

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 federal court, White Plains, State of New York, on September 25, 2002, for felony Conspiracy to Defraud the United States (Mail and Wire Fraud.)

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.
5. By Notice of Hearing dated December 8, 2015, and mailed via certified mail, 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 December 29, 2015. Petitioner appeared at the hearing.
6. Petitioner testified that the United States Postal Inspectors started investigating him without his knowledge in 1998. He lived in King, North Carolina and worked at the Lorillard Tobacco Company in Greensboro, North Carolina. The company would ship cigarettes from the warehouse in North Carolina to its customers in New York, using a warehouse in White Plains, New York to then store the cigarettes.
7. His contact at the warehouse in New York would contact him when he needed to cover the inventory shortage after he had stolen cases of cigarettes from the warehouse. Petitioner would show him how to cover the inventory shortage and in return the contact would mail him money through the United States Postal Service.
8. He received over \$50,000.00 from this accomplice in New York. The accomplice in New York was selling the stolen cigarettes in New York City.
9. In 2002 the ring was broken up and he was charged with Conspiracy to Defraud the United States (Mail and Wire Fraud).
10. He retained an attorney and the attorney cut a deal with the federal prosecutor. He went to court in White Plains, New York and entered a guilty plea. The court found him guilty and sentenced him to three years' probation and \$54,000.00 in restitution. Petitioner repaid the restitution amount even prior to tendering his plea of guilty.
11. Petitioner's probation was transferred to North Carolina and he was supervised here. He satisfactorily completed probation without any problems.
12. He was 51 years old at the time of the offense. He retired from the Army Reserves with 25 years' service in 2003. His Military Occupation Specialty for 17 years was Infantry, "11Bravo." He retired as a Command Sargent Major, which is the highest rank for an enlisted man in the Army.
13. Petitioner worked for four other companies after being fired from Lorillard, including Grass America in Kernersville, North Carolina.

14. He has been licensed to sell mobile homes in North Carolina and licensed as a Transporter by the North Carolina Board of Funeral Services. He disclosed his conviction on each application.
15. Prior to this conviction, Petitioner has no other criminal charges other than traffic offenses.
16. Most recently, Petitioner worked for Lankford Protective Services, Inc. beginning July 2015 and was assigned to three different warehouses where he patrolled the areas and worked static posts at the entry gate.

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 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 a conviction in federal court, White Plains, New York for Conspiracy to Defraud the United States (Mail and Wire Fraud.)
5. Petitioner presented evidence sufficient to explain the factual basis for the charge and, based upon the Petitioner's military record, the length of time since his conviction, and his clean criminal record both before and after his conviction, he 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 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. 27699-6700.

This the 1st day of February, 2016.

Donald W. Overby
Administrative Law Judge