

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 00236

CHARLOTTE WORRIAX MENDOZA,)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

**PROPOSED
FINAL DECISION**

On June 28, 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 an unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Assault and Battery.

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:
N.C.G.S. §§ 74D-2; 74D-6; 74D-8; 74D-10; 14B NCAC 17 .0300., *et seq.*

FINDINGS OF FACT

1. Respondent Board is established pursuant to N.C. Gen. Stat. § 74D-2, *et seq.*, and is charged with the duty of licensing and registering individuals engaged in the alarm systems sales and installation 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 Robeson County, State of North Carolina, on February 23, 2013 for misdemeanor Assault and Battery.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration permit.
5. By Second Amended Notice of Hearing dated May 11, 2016, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of her alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on June 28, 2016. 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, Petitioner's application.
7. Petitioner testified that she was at a birthday party for her grandson. The grandson's other grandmother was also present and was drunk. The other grandmother cursed her and threw a beer on her and they got into a fight. The other grandmother evidently went to the magistrate's office and took out a warrant against her.
8. The warrant was served only a day before the court date.
9. Petitioner answered "guilty" during the Calendar Call. The prosecuting witness - - the other grandmother - - did not appear. Petitioner stated that she said "guilty" because she had in fact been in a fight.
10. She has no hard feelings against the other grandmother and they still see each other although their children are no longer together.
11. Petitioner is a native of Robeson County and has never been charged with any other crime, not even speeding.
12. Petitioner worked as a private duty nurse for 15-16 years, then accepted a job with R&R Protective Services after her patient died in his 90's. She liked her security job and wants to continue in this profession.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings.
2. Under G.S. § 74D-6(3), 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. § 74D-6(2), Respondent Board may refuse to grant a registration if it is determined that the applicant has been convicted of a crime involving an act of violence.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving an act of violence is *prima facie* evidence that the applicant does not have good moral character or intemperate habits.
5. Respondent Board presented evidence that Petitioner had demonstrated intemperate habits and lacked good moral character through a conviction in Robeson County, North Carolina for misdemeanor Assault and Battery.
6. Petitioner has presented sufficient evidence to explain the factual basis for the charge and, from a practical standpoint, she should not have pled guilty. She has an otherwise clean criminal record, has an honest, forthright demeanor, served as a nurse for many years, and has, therefore, rebutted the presumption.

Based on the foregoing, the undersigned makes the following:

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an unarmed guard registration permit.

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 any written arguments to the agency pursuant to N.C. Gen. Stat. §150B-40.

This the 4th day of August, 2016.

Donald W Overby
Administrative Law Judge