

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 03472

AARON ARLINGTON ROWE)
)
Petitioner,)
v.)
)
N.C. PRIVATE PROTECTIVE)
SERVICES BOARD,)
)
Respondent.)
_____)

PROPOSAL FOR DECISION

On May 24, 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 armed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Sale, Distribute Marijuana in Fairfax County, Commonwealth of Virginia, and misdemeanor Trespassing in Arlington County, Virginia.

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 an armed guard registration.

3. Respondent denied the armed guard registration due to Petitioner's criminal record which showed the following:
 - a. A conviction in Fairfax County, Commonwealth of Virginia, on January 12, 2016 for misdemeanor Sale, Distribute Marijuana; and
 - b. A conviction in Arlington County, Commonwealth of Virginia, on April 15, 2013 for misdemeanor Trespassing.
4. Petitioner requested a hearing on Respondent's denial of the armed guard registration.
5. By Notice of Hearing dated April 4, 2016, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his armed guard registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on May 24, 2016. Petitioner appeared at the hearing.
6. Petitioner's Criminal History Record Check with convictions shown above, was admitted into evidence as part of Respondent's Exhibit 1, Petitioner's application.
7. As to the recent marijuana sale and distribute conviction, Petitioner testified that he was stopped by the police and a search of his trunk revealed two small baggies of marijuana with a few grams in each. Since it was in separate baggies he was charged with intent to sell and distribute. He explained that the marijuana was two different varieties or strains and he did not want to mix them. He did not deny the charge, or his possession, but testified that he did not sell marijuana.
8. As to the conviction for trespassing, it too was a result of a vehicle stop where he was a passenger and smoking marijuana. This was a plea to a reduced offense but Petitioner did not know where he was trespassing to factually support the plea.
9. Petitioner moved to North Carolina to get away from some bad influences in his life. He has a 16 month old baby boy and lives with the child's mother. He is their source of support.
10. Petitioner began studying Criminal Justice through Strayer University beginning in April, 2016 and wants to make a career of the security profession. He is currently working for Universal Security, which bought ABM Security, as an unarmed guard.
11. Petitioner introduced two (2) letters of character marked Exhibit 1 and Exhibit 2. One was from Labar Bohannon, his Supervisor at Universal, and the other from his girlfriend and the mother of his son. Both stated he was a reliable worker and a person of good moral character.
12. The undersigned asked numerous questions about Petitioner's use of marijuana and asked if Petitioner were willing to take a drug test "today." Petitioner agreed to, and stated that he had truly stopped his drug use. The undersigned found his responses to be truthful.

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. Under G.S. §74C-8(d)(2), conviction of any crime involving an act of the sale or distribution of an illegal substance 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 Fairfax County, Commonwealth of Virginia for misdemeanor Sale, Distribute Marijuana and through a conviction in Arlington County, Commonwealth of Virginia, for misdemeanor Trespassing.
5. Petitioner presented evidence to explain the factual basis for the charge, and although the convictions are very recent, Petitioner's explanation of his commitment to change his life, support his infant child and the baby's mother, and make a career of this profession, coupled with his willingness to take an immediate drug test, has allowed him to rebut the presumption.

Based on the foregoing, the undersigned makes the following:

PROPOSED FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be issued an armed 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. 27699-6714.

This the 21st day of June, 2016.

Donald W Overby
Administrative Law Judge