

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 08649

Rashon Devell Woodard Petitioner, v. NC Alarm Systems Licensing Board Respondent.	PROPOSAL FOR DECISION
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On November 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 an alarm installation registration based on Petitioner's lack of good moral character and temperate habits as evidenced by numerous misdemeanor drug convictions.

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 alarm installation registration.

3. Respondent denied the alarm registration due to Petitioner's criminal record which showed the following:
 - a. A conviction in Wayne County, State of North Carolina, on May 17, 1999 for misdemeanor Possession of up to ½ ounce of Marijuana;
 - b. A conviction in Wayne County, State of North Carolina, on February 22, 2011 for misdemeanor Possession of Drug Paraphernalia; and
 - c. A conviction in Wayne County, State of North Carolina, on October 7, 2014 for misdemeanor Possession of up to ½ ounce of Marijuana.
4. Petitioner requested a hearing on Respondent's denial of the alarm installation registration.
5. By Notice of Hearing dated August 29, 2016, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on November 29, 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. Respondent Board's Deputy Director, Donald W. Foster, testified that in a telephone interview as part of the Board's internal review process, Petitioner told him that as to the May 17, 1999 Possession of Marijuana conviction that he was a "young kid acting dumb" and admitted that he possessed the marijuana at the time of his arrest. He told Deputy Director Foster that as to the February 22, 2011 Possession of Drug Paraphernalia conviction that his roommate left a small pipe in his vehicle. As to the October 7, 2014 conviction of Possession of Marijuana he told Deputy Director Foster that he was driving a friend's vehicle when police discovered a "joint" inside the vehicle and since he was driving, he was charged.
8. Deputy Director Foster stated the convictions show a pattern or progression of marijuana usage over the past 17 years, with the most recent conviction less than two (2) years ago.
9. On his application Petitioner only admitted a single conviction, erroneously stating it was in 2012.
10. In 1999, Petitioner was 19 years old and older than just a "young kid."
11. Petitioner testified, but managed to confuse the facts of each conviction. For instance, he admitted that for the 2011 conviction it was his car and not a friend's, there was also a "grinder" in the car (in addition to the pipe.)
12. Petitioner also responded to a direct question from the Court that there was no

marijuana in the car for the 2014 conviction.

13. Petitioner stated he no longer uses drugs, and that in his last three jobs he was subjected to random drug tests and never failed one.
14. Prior to employment with Defenders, Inc., Petitioner was employed as an Asset Manager for American Furniture Rentals, with Wisdom Beverage, and for a group home for seven (7) years starting in 2005.
15. Petitioner has a 20 year old daughter in college and a 7 year old daughter.
16. Six (6) letters of recommendation of character, including from a law enforcement officer, various friends, and a former co-worker were admitted as Petitioner's Exhibits 1 through 6. The Court considered each of these letters.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings.
2. Under G.S. § 74D-6(3), Respondent Board may refuse to grant an alarm installation 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 an alarm installation registration if it is determined that the applicant has been convicted of one or more crimes involving the possession of illegal drugs.
4. Under G.S. §§ 74D-6(2) & 74D-10(a)(4), conviction of any crime involving illegal possession of drugs 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 Wayne County, State of North Carolina, on May 17, 1999 for misdemeanor Possession of up to ½ ounce of Marijuana; a conviction in Wayne County, State of North Carolina, on February 22, 2011 for misdemeanor Possession of Drug Paraphernalia; and a conviction in Wayne County, State of North Carolina, on October 7, 2014 for misdemeanor Possession of up to ½ ounce of Marijuana.
6. Petitioner presented insufficient evidence to explain the factual basis for the charges and has not rebutted the presumption. Further, his most recent conviction was only 18 months prior to the date of his application.

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 denied an alarm installation registration.

NOTICE AND ORDER

The North Carolina Alarm Systems Licensing 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 any oral or written arguments to the agency pursuant to N.C. Gen. Stat. §150B-40(e).

A copy of the final agency decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency and a copy shall be furnished to his attorney of record. N.C.G.S. § 150B-42(a). It is requested that the agency furnish a copy to the Office of Administrative Hearings.

This the 30th day of December, 2016.

Donald W Overby
Administrative Law Judge