

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
16 DOJ 09260

Frank McKindley Daniel Jr Petitioner, v. NC Private Protective Services Board Respondent.	PROPOSAL FOR DECISION
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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 unarmed guard registration based on Petitioner's lack of good moral character and temperate habits as evidenced by a conviction of misdemeanor Assault on a Female.

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 unarmed guard registration.

3. Respondent denied the armed guard registration due to Petitioner's criminal record which showed the following:

A conviction in Vance County, North Carolina, on March 29, 2013 for misdemeanor Assault on a Female.

4. Petitioner requested a hearing on Respondent's denial of the unarmed guard registration.

5. By Notice of Hearing dated September 19, 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 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. Petitioner testified that he was originally arrested for Assault by Strangulation, a felony, and was jailed. He claimed from the start that it was self-defense.

8. Petitioner stated that on the date of the offense, he walked to his neighborhood convenience store and left his two year old daughter in the care of two teenage cousins. He got a call on his cell phone to come home, that a third girl, "Asia", was abusing his daughter. When he arrived home, he witnessed Asia slapping his daughter and pulling her hair. He yelled at Asia and pulled her off of his daughter.

9. As Petitioner was calling 911, Asia went into the kitchen and got a butcher knife to threaten Petitioner. Petitioner struck Asia in self-defense.

10. When the police arrived in response to the 911 call, Asia was gone. Petitioner did not press charges against Asia.

11. Later, Asia's mother went to the police and swore out a warrant on Petitioner.

12. Petitioner's court-appointed attorney kept having his case continued and Petitioner could not post bond. The maximum sentence Petitioner could have received for a Class A1 misdemeanor, with no prior record, was 60 days. However, Petitioner remained in the Vance County jail for 5 months and was given credit for time served when he was sentenced.

13. Although he professed his actions were self-defense, he pled guilty to misdemeanor Assault on a Female in order to be released.

14. The Court finds Petitioner's testimony to be credible.

15. Petitioner previously worked as a security guard in Baltimore, Maryland in 2008 and 2009 while living there with his daughter's mother, before they moved back to North Carolina.

16. Petitioner is originally from Vance County.

17. Petitioner has been gainfully employed and has supported his family at all times except while incarcerated for this incident.

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 violence or assault 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 Vance County, North Carolina for misdemeanor Assault on a Female.
5. Petitioner presented evidence to explain the factual basis for the charge, is a credible person, has been gainfully employed, and 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).

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 21st day of December, 2016.

Donald W Overby
Administrative Law Judge