

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
22 DOJ 02695

James Bryan Talton Petitioner, v. North Carolina Alarm Systems Licensing Board Respondent.	PROPOSAL FOR DECISION
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On August 23, 2022, Administrative Law Judge Stacey B. Bawtinheimer called this case for hearing in Raleigh, North Carolina.

APPEARANCES

For Petitioner: James Bryan Talton, *pro se*
741 NC Highway 581 South
Goldsboro, North Carolina 27530

For Respondent: Jeffrey P. Gray
Bailey & Dixon, LLP
jgray@bdixon.com

ISSUE

Whether Petitioner should be denied a Burglar Alarm registration based on Petitioner's conviction of one (1) count of Forgery, a Class I felony, within 15 years of the date of his application?

APPLICABLE STATUTES AND RULES

Official notice is taken of the following statutes and rules applicable to this case:

N.C. Gen. Stat. §§ 74D-2; 74D-6; 93B-8.1; 150B-38, *et seq.*

WITNESSES AND EXHIBITS

For Petitioner: James Bryan Talton, Petitioner
Michael R. Lane, Employer and Owner of Lane
Communications and Services, LLC

No Exhibits

For Respondent: Paul Sherwin, Director of Board

Resp't Exs. 1 and 2

PROPOSED FINDINGS OF FACT

1. The North Carolina Alarm Systems Licensing Board (“Respondent” or “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 installation business.

2. James Bryan Talton (“Petitioner”) applied to the Respondent Board for an alarm installation registration.

3. Respondent denied the alarm installation registration due to Petitioner’s criminal record which showed the following:

A conviction in Wayne County, State of North Carolina, on July 22, 2012 for one (1) count of felony Forgery of notes, checks, and other securities; counterfeiting of instruments.

4. Petitioner requested a hearing on Respondent’s denial of the alarm installation registration.

5. By Notice of Hearing dated July 15, 2022, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his alarm installation registration application would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on August 23, 2022. Petitioner appeared at the hearing.

6. Petitioner’s Criminal History Record Check which showed the above was admitted into evidence as part of Petitioner’s application. Resp’t Ex. 1.

7. Paul Sherwin, Director of Respondent Board, testified that Petitioner applied for an alarm installation registration on December 13, 2021. His criminal history record check submitted with his application indicated that he had been convicted of the crime in paragraph 3, above, which is a Class I felony. Pursuant to the Board’s denial guidelines (found at <http://www.ncdps.gov/asl> and click on “Forms”), which was not provided as evidence during the hearing of this matter and is not a rule, an applicant who has been convicted of one or more Class I felonies within 15 years of the date of application shall be denied by staff.

8. Petitioner’s conviction occurred seven (7) years and five (5) months prior to the date of application and, therefore, it would no longer be considered grounds for denial after July 22, 2029.

9. Petitioner's application was denied. He requested an internal appeal which was considered by Director Sherwin. During his internal appeal, Petitioner provided Director Sherwin with a written explanation of the charge and conviction.

10. Petitioner's written explanation stated:

These convictions took place in 2014, two years after the offenses in 2012. These actions are ones that I deeply regret and do not take lightly, however, ones that took place during a hardship within our family when my wife became unemployed and I became the sole income source while working for a purely commissions-based insurance company, AFLAC. This turn of events, and the need to support my family, led me to utilize a loophole in the company's policy writing which did not require a phone number or social security number in order to write an insurance policy and receive payment to keep my family afloat. While I admit wrongdoing, own up to my mistakes, and have served my time on supervised probation and repaid the company through restitution, I want to ensure the Private Protective Services (PPS) board that this in no way is a true reflection of my character and that I have completely changed my life since these offenses happened, 10 years ago.

11. Director Sherwin upheld the denial and Petitioner requested that his application be considered by the Respondent Board's Screening Committee. Petitioner's application was considered at the May 19, 2022 meeting of the Committee at which Petitioner appeared and Petitioner offered an explanation and answered questions.

12. Before a licensing board can deny an applicant's license based on a criminal conviction, the board must consider ten (10) factors per N.C. Gen. Stat. § 93B-8.1(b1). During the internal appeal process, the Board did not consider all 10 factors.

13. A memorandum prepared by Director Sherwin, for the Screening Committee for the registration denial appeal set forth eight (8) of the factors the Committee was required to consider pursuant to N.C. Gen. Stat. § 93B-8.1(b1) when considering Petitioner's conviction:

- (1) The level and seriousness of the crime: Class I felony
- (2) The date of the crime: February 22, 2012
- (3) The age of the person at the time of the crime: 32
- ...
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed: Sentenced to 6-10 months of community punishment, 60 months supervised probation and ordered to pay \$869.50 in court costs and \$51,377.46 in restitution.
- (6a) The completion of, or active participation in, rehabilitative drug or alcohol treatment: N/A
- (6b) A Certificate of Relief granted pursuant to G.S. 15A-173.2: N/A
- (7) The subsequent commission of a crime by the applicant: No

(8) Any affidavits or other written documents, including character references: Yes (Michael R. Lane, owner of Lane Communications & Security, LLC)

14. Director Sherwin did not include for the Board's consideration factors 4 and 5 which are:

(4) The circumstances surrounding the commission of the crime, if known.

(5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.

15. The written memorandum was not provided to Petitioner nor introduced as evidence at the hearing. Director Sherwin testified from memory as to its contents.

16. Without full information, the Screening Committee improperly recommended denial of the application which was approved by the full Board at its meeting on May 20, 2022.

17. In addition to not considering all the factors, the Board did not make written findings, signed by the Board Chair, as required by N.C. Gen. Stat. § 93B-8.1(b2).

18. After completing the internal appeal process, Petitioner timely petitioned for this contested case hearing.

19. Petitioner credibly testified essentially to the same facts as in his written statement to Director Sherwin (*see* paragraph 10, above.) He was writing policies for AFLAC and would be paid a commission upon submission of the application. He made up some of the applicant names and other pertinent information.

20. Prior to his arrest, Petitioner left AFLAC and was hired as a Correctional Officer with the North Carolina Department of Corrections and was employed there as a Correctional Officer. After his arrest, Petitioner had to resign this position.

21. Since his conviction, Petitioner has completed all his community service, all conditions of probation, and paid all restitution. Petitioner was required to pay restitution, but it is much higher than the amount he fraudulently took. The restitution was based on the entire amount he had been paid by AFLAC and not just the commissions on the falsified application.

22. He was 32 years of age when he committed the crimes and 35 when convicted.

23. Prior to this 2014 charge, Petitioner had three traffic related charges (2006, 1999, and 1998). Otherwise, Petitioner has had no other criminal charges or convictions.

24. Since his conviction, Petitioner has obtained three (3) Bachelor of Arts degrees from North Carolina Wesleyan University, one in Religious Studies, one in Criminal Justice, and one in Psychology.

25. He has been an ordained Minister since 2017 and is currently serving as Youth Pastor at Pikes Cross Roads Pentecostal Holiness Church in Pikeville, NC.

26. Michael Ray Lane, owner of Lane Communications & Security, LLC, and Petitioner's current employer, testified to Petitioner's good character. Mr. Lane has known Petitioner since 2014 both personally and professionally. He said Petitioner knows he made a stupid mistake, but Mr. Lane has seen how he turned his life around. Petitioner is the only convicted felon that Mr. Lane would "go to bat for" and the Board should issue his alarm installation registration.

PROPOSED CONCLUSIONS OF LAW

1. The Parties are properly before the Office of Administrative Hearings.
2. Respondent Board may refuse to grant an alarm installation registration if it is determined that the applicant has been convicted of a crime involving fraud. N.C. Gen. Stat. § 74D-6(2).
3. In doing so, however, Respondent Board must specifically consider certain factors prior to denying an application for a criminal conviction. N.C. Gen. Stat. § 93B-8.1(b1).
4. Respondent Board presented evidence that Petitioner has a conviction for fraud in violation of N.C. Gen. Stat. § 74D-6(3). Although the Board was required to consider all 10 factors as required by N.C. Gen. Stat. § 98B-8.1(b1), it did not during the internal appeal process. That defect has been remedied by this hearing.
5. During the hearing, Petitioner presented credible evidence to explain the factual basis for the charge, his conduct since the conviction, and his character.
6. Based on a preponderance of the evidence, there is no nexus between the criminal conduct of 2014 and the prospective duties of Petitioner in the installation of alarm systems. Petitioner has completed all the requirements of his conviction and has rehabilitated himself.
7. A weighing of the factors in N.C. Gen. Stat. § 93B-8.1(b1) deemed relevant to this application indicate that Petitioner is fit to be licensed.

PROPOSED FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby recommends that Petitioner be issued 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 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 Agency Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED.

This the 12th day of September, 2022.



Stacey Bice Bawtinheimer
Administrative Law Judge

CERTIFICATE OF SERVICE

The undersigned certifies that, on the date shown below, the Office of Administrative Hearings sent the foregoing document to the persons named below at the addresses shown below, by electronic service as defined in 26 NCAC 03 .0501(4), or by placing a copy thereof, enclosed in a wrapper addressed to the person to be served, into the custody of the North Carolina Mail Service Center who subsequently will place the foregoing document into an official depository of the United States Postal Service:

James Bryan Talton
741 NC Hwy 581 South
Goldsboro NC 27530
Petitioner

Jeffrey P Gray
Bailey & Dixon, LLP
jgray@bdixon.com (served electronically on September 12, 2022)
Attorney For Respondent

This the 13th day of September, 2022.



Jerrod Godwin
Law Clerk
N.C. Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285
Phone: 919-431-3000