

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
22 DOJ 03701

<p>Rakeem Noel Michel Petitioner,</p> <p>v.</p> <p>NC Private Protective Services Board Respondent.</p>	<p><b>PROPOSAL FOR DECISION</b></p>
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This contested case was heard by Michael C. Byrne, Administrative Law Judge, on October 25, 2022, at the Office of Administrative Hearings in Raleigh, North Carolina.

**APPEARANCES**

Petitioner Rakeem Noel Michel: pro se

Respondent NC Private Protective Services Board:

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 convictions for Misdemeanor Larceny (November 2015) and Unauthorized Use of a Motor Vehicle (March 2022).

**APPLICABLE STATUTES AND RULES**

Official notice is taken of the following statutes and rules applicable to this case: N.C.G.S. 74C-3(a)(6); 74C-8; 14B N.C.A.C. 16.0703.

Based on all evidence in the record, including admitted exhibits and the testimony of witnesses, the Tribunal makes the following:

## FINDINGS OF FACT

1. Respondent NC Private Protective Services Board (“Respondent”) is established pursuant to N.C.G.S. Chapter 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.
2. Petitioner applied to Respondent for an unarmed guard registration.
3. Respondent denied the unarmed guard registration due to Petitioner’s criminal record which showed the following, among numerous other criminal charges and convictions of mostly minor criminal offenses:
  - a. A conviction in Wake County, North Carolina for the criminal offense of “Misdemeanor Larceny” on November 30, 2015; and,
  - b. A conviction in Cabarrus County, North Carolina for the criminal offense of “Unauthorized use of a motor-propelled conveyance,” (or motor vehicle) a Class 1 misdemeanor, on March 16, 2022.
4. Petitioner requested a hearing on Respondent’s denial of the unarmed guard registration. A hearing was duly noticed, and Petitioner appeared and gave testimony under oath. Petitioner was a credible witness.
5. Petitioner did not dispute the two convictions listed above. Petitioner stated that the convictions are not who he is, and that he wished to move forward. Petitioner enjoys his work as an unarmed security guard. Petitioner stated that the 2022 conviction stemmed from his renting a vehicle on behalf of a friend, who then failed to return the vehicle. The rental company filed a police report. Petitioner, as the person who rented the vehicle, was charged and ultimately convicted of the resulting criminal offense.
6. Petitioner served as a “Temporary unarmed security guard” (see 14B N.C.A.C. 16.0103) for Majestic Security Services, Inc.
7. Kevin C. Tibbetts (“Tibbetts”), the owner of Majestic Security Services, Inc., appeared at the contested case hearing as a witness for Petitioner. Tibbetts testified without contradiction that Petitioner had performed very well during his employment with Majestic Security Services and conducted his duties reliably and professionally. Tibbetts further testified that he had never come to testify on behalf of a denied applicant before and that Petitioner’s good work conduct had prompted him to take that step. Tibbetts was a credible witness.
8. Paul Sherwin (“Sherwin”), Respondent’s Director, appeared on behalf of Respondent and established that Respondent denied Petitioner’s certification because of the criminal convictions listed above. Sherwin was a credible witness. Sherwin emphasized that the 2015 misdemeanor conviction, standing alone, would not have led to Respondent denying

Petitioner's application. Sherwin emphasized that the two convictions, including the recent 2022 conviction, were both cause for denial under Respondent's rules and a cause for concern as an unarmed guard is placed in a position of trust.

9. Barring the recent criminal conviction, the Tribunal discerns no reason that, with appropriate time, Petitioner may not render valuable service as an unarmed guard in North Carolina. It is clear Petitioner made mistakes resulting in numerous criminal charges and some convictions, for which Petitioner bears responsibility. It is equally clear that Petitioner seems determined to take a different path in the future.

### **CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapters 74C and 150B of the North Carolina General Statutes.
2. To the extent that the Findings of Fact contain Conclusions of Law and vice versa, they should be so considered without regard to their given labels. Charlotte v. Health, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).
3. An administrative tribunal need not make findings as to every fact which arises from the evidence and need only find those facts which are material to the settlement of the dispute. Flanders v. Gabriel, 110 N.C. App. 438, 440, 429 S.E.2d 611, 612 (1993).
4. All parties have been correctly designated and there is no question of misjoinder or nonjoinder.
5. Respondent is established pursuant to N.C.G.S. 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. Respondent is authorized by law to make rules setting minimum standards for certification in the fields it oversees.
6. Among the minimum standards set by Respondent for certification as an unarmed security guard is that all applicants must be:

*(3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage, conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, or larceny, or a history of addiction to alcohol or a narcotic drug. For the purposes of this Rule, "conviction" means and*

*includes the entry of a plea of guilty, plea of no contest, or a verdict rendered in open court by a judge or jury.*

14B N.C.A.C. 16.0703 (emphasis supplied).

7. This rule has an equivalent in the General Statutes of North Carolina:

*(2) That the applicant is of good moral character and temperate habits. **The following shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, State, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm or other deadly weapon; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving unlawful breaking or entering, burglary, or larceny; or a history of addiction to alcohol or a narcotic drug; provided that, for purposes of this subsection, “conviction” means and includes the entry of a plea of guilty or no contest or a verdict rendered in open court by a judge or jury.***

N.C.G.S. 74C-8 (emphasis supplied).

8. “All of the essential elements of the crime of unauthorized use of a conveyance, N.C.G.S. 14-72.2(a), are included in larceny, N.C.G.S. 14-72, and we hold that it may be a lesser included offense of larceny where there is evidence to support the charge.” State v. Reese, 31 N.C. App. 575, 230 S.E.2d 213 (1976); State v. Ross, 46 N.C. App. 338, 339, 264 S.E.2d 742, 743 (1980); State v. Hole, 240 N.C. App. 537, 540, 770 S.E.2d 760, 763 (2015).
9. The Tribunal concludes as a matter of law that Petitioner has twice been convicted of crimes of larceny, thus creating prima facie evidence that the applicant does not have good moral character or temperate habits and requiring the applicant to rebut that prima facie evidence.
10. “Character,” said Mr. Erskine in the trial of Thomas Hardy for high treason, “is the slow spreading influence of opinion arising from the deportment of a man in society, as a man’s deportment, good or bad, necessarily produces one circle without another, and so extends itself till it unites in one general opinion.” Even more is this true when the effort is a restoration of a character which has been deservedly forfeited. It then is a question of time and growth. In re Dillingham, 188 N.C. 162, 124 S.E. 130, 132 (1924).
11. Petitioner, despite his obvious current good intentions, cannot by words (and a brief employment history) alone rebut, as a matter of law, the character presumption in October 2022 regarding a criminal conviction in March 2022. The criminal conviction is simply too recent. As with In re Dillingham, this is a question of time and growth.

12. The Tribunal believes that one year from now, if Petitioner provides evidence that he continues to comport himself in accordance with law, there would be good reason for Respondent to give Petitioner the benefit of the doubt and grant his application for unarmed guard certification.

### **PROPOSAL FOR DECISION**

The Tribunal proposes that Respondent **UPHOLD** its denial of Petitioner's unarmed guard application, but that Respondent give due consideration to Petitioner's future application when Petitioner has had additional time to demonstrate that his character is now in conformance with law-abiding conduct.

### **NOTICE**

The agency making the final decision in this contested case 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. N.C.G.S. 150B-40(e).

The agency that will make the final decision in this contested case is the **North Carolina Private Protective Services Board**.

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 any attorney of record. N.C.G.S. 150B-42(a).

**SO ORDERED.**

This the 27th day of October, 2022.



Michael C. Byrne  
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:

Rakeem Noel Michel  
4015 Stockbrook Drive  
Charlotte NC 28215  
Petitioner

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

This the 27th day of October, 2022.



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Jerrod Godwin  
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