

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
19 DOJ 03748

Coyte Charles Franklin Kennedy Jr

Petitioner,

v.

NC Private Protective Services Board

Respondent.

**PROPOSAL  
FOR DECISION**

THIS MATTER is before the Office of Administrative Hearings (“OAH” or “Tribunal”) on the appeal of Petitioner Coyte Charles Franklin Kennedy Jr. from the denial of his armed guard registration by Respondent, the North Carolina Private Protective Services Board (“the Board”).

Given the nature of Petitioner’s appeal, the issue before this Tribunal in this contested case is whether the Board erred in denying Petitioner’s armed guard registration based on a lack of good moral character and temperate habits. Based on the evidence presented at hearing, and for the reasons set forth below, this Tribunal recommends that the Board RESCIND its denial and issue Petitioner’s armed guard registration.

*Coyte Charles Franklin Kennedy Jr, pro se.*

*Jeffrey P. Gray, Esq. for Respondent, North Carolina Private Protective Services Board.*

## I.

### PROCEDURAL HISTORY

By correspondence dated 27 March 2019, the Board denied Petitioner's armed guard registration.<sup>1</sup> Petitioner subsequently requested a hearing on the Board's denial and, by Notice of Hearing dated 27 June 2019, the matter was scheduled for hearing on 27 August 2019 at 2:00 p.m. at the OAH in Raleigh, North Carolina. The Notice of Hearing was filed in the OAH on 28 June 2019.

On 27 August 2019, the undersigned Administrative Law Judge called this contested case for hearing. Both Petitioner and the Board appeared at the scheduled hearing and presented evidence, both testimonial and documentary.

## II.

### FINDINGS OF FACT

This Tribunal makes the following Findings of Fact for the purpose of this Proposal for Decision:

#### A. *The Parties*

1. The Board is an occupational licensing agency responsible for administering the licensing of and setting the educational and training requirements for persons, firms, associations, and corporations engaged in private protective services professions within the State.

2. Petitioner is a person seeking an armed guard registration with the Board.

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<sup>1</sup> See R's Ex. 2.

**B. *Contested Action and Related Matters***

3. An employee of North State Security (“North State”) in Winston-Salem, North Carolina for approximately two (2) years, Petitioner has “climbed up the ladder” within the company. He has been “promoted to corporal” and currently works with North State in the capacity of a recruiter.

4. In connection with his North State employment, Petitioner submitted an armed guard application with the Board.<sup>2</sup> Petitioner’s application was one for renewal as Petitioner had an existing armed guard registration with the Board.

5. The renewal application required Petitioner to answer a series of questions, including whether he had ever pled guilty or been convicted of any crime (felony or misdemeanor) and whether he had ever pled guilty or been convicted of a traffic-related offense. Petitioner answered both questions in the affirmative.

6. Petitioner’s Criminal History Check, which was submitted as part of the application process, revealed that Petitioner had been convicted of violating a domestic violence (“DV”) protective order on 17 August 2018 – a Class A1 misdemeanor.

7. Brian Jones, Director of the Board, testified at hearing that, based on the Board’s registration guidelines, applications are denied if an applicant has been convicted of one or more Class A1 misdemeanors within ten years of the date of application. Based on the Board’s registration guidelines and Petitioner’s conviction, the Board determined Petitioner’s application should be denied.

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<sup>2</sup> See R’s Ex. 1 (containing various documents including P’s renewal application, criminal records check, and letters of support of Petitioner from his employer, North State).

8. At hearing in this matter, Petitioner testified that he was paying child support and was entitled to visitation. He explained that the DV charge stemmed from from visitation issues between him and the mother of his daughter and that, while subject to the Order, a police officer claimed he “saw a car that looked like [Petitioner’s].” Petitioner was not identified, only a car that looked like his, and he was charged based on this claim.

9. Petitioner received notice that an arrest warrant had been issued and, after consulting with his supervisor at North State, he voluntarily surrendered himself because “he knew he didn’t do anything.” At hearing, Petitioner explained that there was no altercation between him and the mother and that, at the time of the Order, he “had no contact with [the mother] her and was not communicating with her at all.” He testified that a permanent DV order was never entered because there was “insufficient evidence to do it.”

10. During his testimony, Petitioner stated that “all [he] ever want[ed] to do is work [and] take care of [his] kid.” He grew up in the community in which he now works and explained why this was significant:

I [have] utilized my abilities to connect with the community that [North State] work[s] in. And a lot of kids look up to me because I am from the neighborhood that I patrol in. And North State has truly and honestly changed my life, my way of thinking.

...

The area I grew up we [were] always taught not to trust the police. Since I have been at North State and working hand in hand with the police, it [has] showed me that

there is something positive and it makes me want to . . . become a police officer also.

. . .

And, it makes me want to show kids that look up to me that you can make a change in your neighborhood also. And, with me not being out there anymore it makes me feel like I am letting them down because they are so used to seeing me . . . in the patrol car . . . making sure they are okay.

11. Petitioner's wife, Lerencia Bethea, testified that they married after this incident, and explained that "all [Petitioner] cared about was his daughter" and being a part of her life. Ms. Bethea testified that Petitioner does not have violent tendencies and described him as the opposite, "a teddy bear."

12. Lt. David Araual Steven Jones, a company police officer with North State, has known Petitioner for two years. He has watched Petitioner grow as a security guard. Petitioner has been on administrative leave since his arrest and he has been further impressed as Petitioner has performed office functions such as recruitment, processing, etc.

13. Lt. Jones has been in Petitioner's presence when he has received a text message from his daughter's mother; he described her as being "antagonistic." He described Petitioner's relationship with his daughter as "loving, caring, gentle," and that he would do anything for her.

14. Lt. Jones and Petitioner are frequently on patrol together since Lt. Jones is the nightshift SRO for Forsyth County schools. Based on this first-hand

personal knowledge, Lt. Jones testified that Petitioner has no tendency to violence, and he has never witnessed Petitioner having an angry outburst.

### III.

#### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, this Tribunal makes the following Conclusions of Law:

1. “No private person, firm, association, or corporation shall engage in, perform any services as, or in any way represent or hold itself out as engaging in a private protective services profession or activity in this State without having first complied with the provisions” of the Private Protective Services Act (“Act”). N.C. Gen. Stat. § 74C-2(a). The private protective services profession includes the security guard and patrol profession. N.C. Gen. Stat. § 74C-3(a)(6).

2. The Act requires, among other things, that “[a]ny person, firm, association, or corporation desiring to carry on or engage in the private protective services profession in this State” be licensed in accordance with its provisions. N.C. Gen. Stat. § 74C-8(a). An applicant seeking a license is required to apply in writing to the Board and undergo a criminal record check demonstrating, among other things, that “the applicant is of good moral character and temperate habits.” N.C. Gen. Stat. § 74C-8(b) and (d).

3. Subsection (d) of General Statute 74C-8 identifies the following convictions and offenses that constitute “prima facie evidence that the applicant does not have good moral character:”

[C]onviction 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 or entering, burglary, larceny, or any offense involving moral turpitude; or a history of addiction to alcohol or a narcotic drug[.]

N.C. Gen. Stat. §74C-8(d)(2). If the Board determines that the applicant lacks good moral character or demonstrates intemperate habits, it “*may* . . . deny, suspend, or revoke a registration.” N.C. Gen. Stat. §74C-12(a)(25) (emphasis added).

4. Petitioner was convicted of violating a domestic violence protective order based on a police officer’s identification of his vehicle in an area presumably prohibited by the order. Given the nature of Petitioner’s violation, this Tribunal is not convinced that the violation is one that falls within category of convictions/offenses specifically enumerated in subsection (d)(2) of General Statute 74C-8. This includes the category of “any offense involving moral turpitude,” which this Tribunal has previously described “as a conduct by a person, which is inherently base, vile, or depraved, and contrary to the accepted rules of morality.” *Scott Antonio Hart v. North Carolina Private Protective Services Board*, 2011 WL 2029163 (N.C.O.A.H. April 15, 2011) (further explaining that “[c]rimes of moral turpitude include crimes against individuals, crimes against the government, crimes against property, sexual offenses, fraud, and some weapons and drug offenses.”) However, even assuming that Petitioner’s conviction does create a presumption regarding his lack of good moral

character or temperate habits, it has sufficiently been rebutted by Petitioner in the course of these proceedings.

5. As an initial matter, this Tribunal notes that the use of the term “may” in subsection (a) of General Statute 74C-12 “generally *connotes permissive or discretionary action and does not mandate or compel a particular act.*” *Campbell v. First Baptist Church of City of Durham*, 298 N.C. 476, 483 (1979) (emphasis added). Thus, while subsection (a) of General Statute 74C-12 authorizes the Board to deny a registration, it does not necessarily mandate that it take this particular action. In this case, Petitioner’s registration should not be denied not only because of Petitioner’s evidence explaining the nature of the violation but also due to the evidence from Petitioner’s two character witnesses demonstrating his peaceable nature and good moral character. Such evidence, in its totality, rebuts any presumption Petitioner’s conviction may raise regarding his lack of good moral character or that he has demonstrated intemperate habits

6. Accordingly, for the foregoing reasons, this Tribunal concludes that the Board should rescind its denial and issue Petitioner an armed guard registration.

#### IV.

#### PROPOSED FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this Tribunal recommends that the Board **RESCIND** its denial of Petitioner’s armed guard registration and that Petitioner be **ISSUED** an armed guard registration.

V.

**NOTICE**

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 to serve a copy of its Final Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700.

**SO ORDERED**, this the day of November, 2019.



Tenisha S Jacobs  
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:

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Petitioner

This the 8th day of November, 2019.



Daniel Chunko  
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