

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 00487

<p>Nickolas Scott Chatham Petitioner,</p> <p>v.</p> <p>NC Private Protective Services Board Respondent.</p>	<p>PROPOSAL FOR DECISION</p>
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On February 25, 2020, 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 a Private Investigator Associate license based on Petitioner's lack of good moral character and temperate habits as evidenced by an unfavorable employment history.

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)(8); 74C-12(a)(25).

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 security guard and patrol business, private investigator business, or seven other occupations and professions defined by statute as "private protective services profession."

2. Petitioner applied to Respondent Board for a Private Investigator trainee or associate license.

3. Respondent denied the Private Investigator Associate license due to Petitioner's unfavorable employment history.

4. Petitioner requested a hearing on Respondent's denial of the trainee or associate license.

5. By Notice of Hearing dated January 31, 2020, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his application would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on Tuesday, February 25, 2020. Petitioner appeared at the hearing.

6. Brian Jones, Director of Respondent Board, testified to receipt of the application, assignment to an Investigator, the Board's law and administrative rules, an unfavorable employment history being considered a lack of good moral character in certain circumstances, and denial of the application.

7. Investigator Nicky Ezell testified that he was assigned the background investigation required for any application for a license. He testified Petitioner otherwise qualified for a trainee license and has no criminal record and has a good credit history; also that Petitioner received a very positive recommendation from his former employer, Gordon Ingle, CEO, Turtle Creek Assets, as a process server.

8. Investigator Ezell reviewed the personnel file of Petitioner at the Randolph County Sheriff's Department, Asheboro, NC. The file was provided by a Lieutenant Cook. Petitioner was employed as a sworn deputy from December 16, 2016 to September 11, 2017 and was terminated. There was no pertinent information in his file except for the incident report for the events that resulted in his termination. He reviewed the reports and supporting documents of the incident and testified to his summary.

9. On September 9, 2017 at about 2:14 a.m., the Randolph County Sheriff's Office received a call involving the discharge of a weapon at 4784 Randolph Church Road, Liberty, NC. The victim stated he and others were at a bonfire party and a vehicle had struck another vehicle and later shots were fired during a disturbance. The victim stated a white Honda had arrived at the party. The victim stated the vehicle stopped and he told the occupants that if they were staying, they needed to move their vehicle. The victim stated the driver moved the vehicle but struck another vehicle. The victim stated the driver then ran from the vehicle into the woods, leaving the additional passengers behind. The victim stated that after about 20 minutes, the driver returned to the vehicle and became furious that his vehicle's window had been broken and a fight began. The other subjects returned to the vehicle and someone fired multiple shots from a firearm. The vehicle fled and returned about 15 minutes later. Upon the vehicle's return, the vehicle turned donuts and fired additional shots before fleeing.

10. The Sheriff's Office responded and conducted a traffic stop in Ramseur, NC of the suspect vehicle. During the stop, the deputies engaged one of the rear passengers who was on a cellular phone and asked for his identification. The subject stated his name was "Nick" and he continued talking on the phone. The subject told the deputy he did not think he needed to provide

his information. The deputies were later able to identify him as Nickolas Chatham (*i.e.* Petitioner) who had his Randolph County Deputy Sheriff's badge in his possession.

11. During the investigation at the scene of the bonfire party, five .45 caliber shell casings were located. The firearm which was located initially was a .45 caliber and the right front passenger was later charged with possessing the weapon. A search warrant was executed on the vehicle and the cellular phones of the subjects. During the search, a small amount of marijuana was found in the front passenger side door and a pill bottle with a label which had an odor of marijuana was in the right rear passenger seat pocket, the location of where Petitioner was seated at the time of the traffic stop. Additionally, a Glock .40 caliber firearm with a magazine containing live rounds was in the trunk. The firearm was determined to be Petitioner's duty weapon.

12. During the interview of Petitioner, the investigating deputy smelled alcohol and asked Petitioner on a scale of 1 to 10, what was his present level of intoxication and Petitioner stated "2". Petitioner told the investigating deputy he was drinking with the subjects and they drove to a party and bonfire. He stated there were about 60 to 70 people present. Petitioner stated the driver wrecked the car and then ran. He stated the party attendees became upset and wanted to fight and someone punched the window of their vehicle and broke it. He stated he heard two shots behind him and behind the car and they left the party.

13. Petitioner told the investigators he was upset and went back to the party to find out whose car was damaged. Petitioner stated that once back at the party, the driver did donuts and they left again. He denied assaulting anyone and denied three times possessing his duty weapon or a backup weapon. Later during the interview, Petitioner stated he thought his duty weapon was in his vehicle and that it may be in the suspect vehicle. Petitioner stated he may have put it in the trunk at some point during the night instead. He stated he did not see anyone with a gun or anyone shoot. He later stated he unloaded his duty weapon at one of the subject's house and placed it in the vehicle's trunk because he knew he would be drinking. The search warrant on the cellular phone possessed by Petitioner revealed numerous records indicating his possible involvement in prostitution. There were also photographs of two of the subjects who were involved in the incident appearing to be smoking marijuana prior to the party. The search of the driver's phone revealed information concerning drug sales.

14. Petitioner was not criminally charged for anything related to this incident but was terminated from the Sheriff's Office on September 11, 2017.

15. Investigator Ezell personally interviewed Petitioner, who told a version of the incident substantially different on numerous pertinent points from the interview notes from the investigation, and his statements to the investigators at the Randolph County Sheriff's Office.

16. Petitioner told Investigator Ezell that on the evening of the incident (*i.e.* September 9, 2017), he was with friends at a home when they were picked up by subjects he did not know. Petitioner stated he thought they were going to the store and they actually went to a bonfire party. Petitioner stated he did not know who the party was being held by. He stated he was seated in the right rear of the car. Petitioner stated his friend was seated in the driver's side rear seat and his friend's relative was in the middle rear seat of the car. Petitioner stated he knew the driver from

about 10 years prior but had not seen him since and did not know the front passenger. Petitioner stated while at the party, shots were fired, and they left. He stated they were stopped by the sheriff's deputies shortly after leaving. Petitioner stated he thought it was a "normal" traffic stop and he did not cooperate with the deputies when they asked for his identification. He stated he felt there were not entitled to his identification since he was only a passenger. Petitioner stated they were taken out of the car, questioned and the car was impounded. He stated his duty weapon was unloaded and locked in the trunk of the vehicle and he had done so prior to the party because he was drinking. Petitioner stated he was shocked when he was later terminated by the Sheriff's Office. Petitioner stated he believed he was terminated because they thought he was lying about the incident.

17. Investigator Ezell asked numerous questions and advised Petitioner of the information he had read from the reports at the Randolph County Sheriff's Office concerning the incident. Petitioner stated he was unaware of any hit and run involving the vehicle they were in or any fight that had occurred. Petitioner stated he was at the location of the bonfire and was not with the others he had arrived with. Petitioner stated he was not close to the car and after he heard the shots he returned to the car where the others were, and they left. Petitioner stated he did not remember if the others were already in the car or not when he arrived. He stated he did not remember returning to the party for a second time or the driver doing donuts with additional shots being fired. Petitioner stated he did not remember anyone breaking the vehicle's window and saw no broken glass. He stated he did not see anyone fire a gun and he did not see anyone with a gun. Petitioner stated his duty weapon was in the trunk of the vehicle unloaded.

18. Investigator Ezell advised Petitioner a search warrant was executed on his cellular phone, the additional subjects' phones and the vehicle. Investigator Ezell advised Petitioner that the right front passenger was also arrested for possession of a .45 caliber handgun and .45 caliber expended casings were located at the scene. Petitioner claimed the information was placed on his phone earlier in the day when he loaned his phone to his friend who was also the left rear passenger in the vehicle during the incident. Investigator Ezell asked Petitioner about the photograph on his phone depicting his friend smoking what investigators believed to be marijuana. Petitioner stated he knew nothing about the photograph nor had any knowledge concerning the smoking of marijuana. Petitioner reiterated his phone was used earlier by his friend.

19. During the personal interview Petitioner was also questioned about his employment with Elite Protective Services, an unlicensed security guard and patrol company that the Board had been investigating. Petitioner worked for Elite from October 22, 2018 until February 21, 2019.

20. Petitioner told Investigator Ezell that he knew the company was unlicensed. He described the owners as being "shady."

21. Petitioner stated he applied as an armed guard after viewing an ad on Indeed.com. He worked primarily at game room-type businesses in Salisbury, Charlotte, Greensboro and Thomasville. He also worked at apartment complexes. He worked about 40 hours per week. Petitioner stated he did not wear a uniform or badge and but was armed. He does not have a concealed carry weapons permit and was not registered with Respondent Board.

22. Petitioner said he carried a firearm based on having a BLET certificate although he was not employed by a law enforcement agency.

23. He was never asked for any further registration or license while he was employed.

24. He left Elite due to disagreements over scheduling, inconsistent pay, unstable location assignments, and training issues and accepted a better position with Turtle Creek Assets.

25. In conclusion Investigator Ezell testified that all of Petitioner's personal character references said positive things about him and recommended him for the license.

26. Petitioner testified in his own behalf, focusing mainly on the incident that resulted in his termination as a deputy sheriff with the Randolph County Sheriff's Office.

27. Petitioner's version of the incident at the contested case hearing was different from what was contained in his personnel file at the Sheriff's Office, which was different from what he told Investigator Ezell during his personal interview. In all respects he attempted to minimize his knowledge of what occurred and his participation in the events.

28. Petitioner claimed he knew the driver of the vehicle as an old friend who he had gone to visit, then they decided to go to the bonfire party. His story varied as to what time they left the friend's house, when and if they ate dinner, how much they had to drink, and how his duty gear, including his duty handgun, ended up in the trunk of the vehicle.

29. Although he claimed not to know any of the others, he referred to the one he claimed he loaned his phone to as a "friend." He variously claims the driver was an old friend from 10 years ago and the rear seat passenger was his friend he was visiting.

30. His version of the events at the bonfire party were inconsistent with his previous versions. He testified he only heard the gunshots and he denied he was in the vehicle when it returned to do donuts in the field although he was in the vehicle when it was stopped.

31. He also claimed that as a sworn law enforcement officer he was not aware there was marijuana in the vehicle, including the seat pocket in front of him, and also continued to claim he gave his phone to an unknown third person (but one referred to at varying points as a "friend") who used it to take pictures of two other people he was with possibly using an illegal drug. Petitioner also claims this "friend" solicited prostitution on his phone.

32. Further, Petitioner has no plausible explanation as to why he refused to identify himself to the deputies who stopped the vehicle he was riding in – fellow officers from his same agencies.

33. The undersigned finds that Petitioner's testimony is not credible. Petitioner's testimony simply was not believable. The undersigned strongly believes that Petitioner continues to not be truthful and to shade his version of the pertinent facts to fit what he thought this Tribunal might want to hear.

34. As with law enforcement officers, truth and honesty are essential attributes for any person to hold a Private Investigator's license.

35. Even if his specious version of what occurred before, during, and after the bonfire party were somehow true, refusal to identify himself to law enforcement during a traffic stop in and of itself demonstrates a lack of good moral character.

36. Even if his version of events is completely true, his willingness to be employed with a group that even he thought was shady, his belief that merely having completed BLET gave him authority to carry concealed firearms, his carrying his official badge and carrying his service weapon with him knowing he was consuming alcohol and going to a party to consume more alcohol, and more, all demonstrate either a gross lack of understanding of basic laws that should have been just plain good sense and/or common knowledge even without having attended any type of law enforcement training. His willingness to continue association with persons of questionable integrity even after such was made clear brings into question is integrity and basic decision-making. Even taking any one of his version's as true, the events of that evening show that Petitioner lacks good moral character and temperate habits.

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 determines that the applicant has demonstrated intemperate habits or lacks good moral character.
3. Under G.S. § 74C-8 an unfavorable employment history, especially if related to the criminal justice system, can be 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 lacks good moral character through employment with an illegal, unlicensed security guard and patrol company, including acting as an armed guard without the requisite training, and his conduct surrounding the incident that resulted in his dismissal as a Deputy Sheriff with the Randolph County Sheriff's Office.
5. Petitioner presented insufficient evidence to explain his conduct regarding his unlawful employment as an armed security guard and his dismissal from the Randolph County Sheriff's Office.

Based on the foregoing, the undersigned makes the following:

PROPOSED DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby recommends that Petitioner be denied a Private Investigator Associate license.

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 12th day of May, 2020.



Donald W Overby
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:

Jeffrey P Gray
Bailey & Dixon, LLP
jgray@bdixon.com (served electronically on May 12, 2020)
Attorney For Respondent

Nickolas Scott Chatham
306 Hickory Chapel Road
High Point NC 27260
Petitioner

This the 13th day of May, 2020.



Jerrod Godwin
Administrative Law Judge Assistant
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