

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
20 DOJ 02155

William Thomas Whiting Petitioner, v. NC Private Protective Services Board Respondent.	PROPOSAL FOR DECISION
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This case came on for hearing on July 28, 2020, before Administrative Law Judge Stacey Bice Bawtinhimer in Raleigh, North Carolina. This case was heard after Respondent requested designation of an Administrative Law Judge to preside at the hearing of a contested case under Article 3A, pursuant to N.C.G.S. § 150B-40(e).

APPEARANCES

For Petitioner: William Thomas Whiting, *pro se*

For Respondent: Jeffrey P. Gray
Bailey & Dixon, LLP
P.O. Box 1351
Raleigh, North Carolina 27602.

ISSUE

Whether Petitioner should be denied a Security Guard and Patrol business license based on Petitioner's unfavorable work history, lack of veritable experience, and for falsifying his application.

WITNESSES

For Petitioner: William Thomas Whiting
Skillia Whiting, spouse

For Respondent: Paul Sherwin, Director
William Thomas Whiting

EXHIBITS

For Petitioner: None
For Respondent: Resp. Exs. 1-5

APPLICABLE STATUTES AND RULES

(including but not limited to)

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

N.C. Gen. Stat. § § 150B-38 *et seq.*
N.C. Gen. Stat. § § 74C-3(a)(6); 74C-8; 74C-9; and 74C-12(a)(1)&(25)
14B NCAC 16 .0201, .0204 and .0301

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, Respondent’s draft Proposed Decision, the documents, and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge makes the following **FINDINGS OF FACT**.

In making the **FINDINGS OF FACT**, the undersigned Administrative Law Judge has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate facts for judging credibility, including, but not limited to, the demeanor of the witness, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences, about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

FINDINGS OF FACT

1. Both parties are properly before this Administrative Law Judge, in that jurisdiction and venue are proper, both parties received notice of hearing, and that the Petitioner received by certified mail, the proposed denial letter, mailed by Respondent the North Carolina Private Protective Services Board (the “Board” or “Respondent”) on May 26, 2020.
2. The 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.
3. William Thomas Whiting (“Whiting” or “Petitioner”) applied to Respondent Board for a Security Guard and Patrol business license. (Resp. Ex. 1)
4. The Board’s Screening Committee recommended denial of Whiting’s application for lack of verified work experience, unfavorable work history, and falsification of his application.
5. The Board subsequently denied Whiting the Security Guard and Patrol business license and he timely requested a hearing on the Board’s denial.

6. By Notice of Hearing dated May 26, 2020, and mailed via certified mail, Respondent advised Petitioner that a hearing on the denial of his Security Guard and Patrol business license would be held at the Office of Administrative Hearings, 1711 New Hope Church Road, Raleigh, North Carolina 27609 on July 28, 2020. (Resp. Ex. 2) Petitioner appeared at the hearing.

7. The Board's Investigator Lee Kelly ("Kelly") was unavailable to testify and Petitioner waived his right to cross-examine the Investigator as the author of his background investigation report.

8. Paul Sherwin, Director of Respondent Board, testified to the application process for any license issued by the Board. A background investigation is part of the process.

9. Petitioner's background investigation was conducted by Investigator Lee Kelly and Director Sherwin read the background report into the record. (Resp. Ex. 3)

10. Although Petitioner did not object to Director Sherwin reviewing the report and its admission into evidence, the Undersigned notes that the report contained uncorroborated hearsay and, other than Petitioner, that none of the informants testified at the hearing.

11. 14B NCAC 16 .0301 sets forth the requirements for a Security Guard and Patrol business license. Pursuant to .0301(a) an applicant must have three years' experience in supervising security guards or law enforcement engaged in a security guard and patrol function. 14B NCAC 16 .0204(a) provides that a year equals 1,000 hours. Investigator Lee determined that Petitioner lacked the three years (or 3,000 hours) experience necessary to be issued a license.

12. According to his application Petitioner has worked for the Mecklenburg County Sheriff's Office as a Detention Officer. He later worked as a patrol officer, then a detective for almost ten (10) years with the Charlotte-Mecklenburg Police Department ("CMPD").

13. While at CMPD, Whiting was in the Special Investigations Bureau, Vice, and Narcotics Department. Whiting started as an officer but later became lead detective and trained all officers in that department. He also worked undercover and as a task force officer who supervised and coordinated other officers in his DEA cases.

14. It is not clear if Investigator Kelly was aware or took into consideration Whiting's job responsibilities as a lead detective. Investigator Kelly determined that Whiting did not act in a supervisory position in any of these jobs.

15. Petitioner told Investigator Kelly that he worked as a supervisor for several off-duty jobs through the Police Department including coordinating security at a Presbyterian church. Further, Petitioner considered himself a "supervisor" over patrol officers as a detective.

16. Investigator Kelly also reviewed Petitioner's personnel file, as well as an investigative file for Petitioner in Internal Affairs from the Charlotte-Mecklenburg Police Department. Petitioner has three sustained complaints. He was suspended without pay and cited to the City's Civil Service Board for termination.

17. Whiting was “cited” for termination but was not terminated because he chose to resign prior to the Civil Service Board in order to care for his mother.

18. Investigator Kelly restated his summary of Whiting’s Internal Affairs file. According to Kelly, Whiting had three allegations of misconduct; 1. “unbecoming conduct” with a confidential female informant with the CMPD; 2. “truthfulness” about providing financial assistance to the informant and erasing his cell phone; and 3. “violation of rules” by disclosing information to the informant.

19. The actual Internal Affairs file was not provided and all evidence cited by Investigator Kelly is inadmissible hearsay evidence.

20. In his sworn testimony, Whiting denied having an inappropriate relationship with a female informant. At the time Whiting interacted with her, the female was no longer acting as a confidential informant. Whiting had invited the former informant to his church where he worked and she called him “Pastor”. He explained that he is a pastor -- his friends call him “Pastor Will” -- and he has a ministry on the side. While at work he was “Detective Whiting” but while off duty he was “Pastor Will.” It was Pastor Will who gave the former informant the television set and paid her car insurance, not Detective Whiting.

21. During this time, Whiting helped the former informant get a job so she could see her son in prison. When she could not drive to the job because her car insurance was due, Whiting paid her car insurance. Whiting’s wife corroborated in her sworn testimony that she was aware of Whiting’s interactions with the former informant and saw no inappropriate behavior on her husband’s part.

22. The former informant was also HIV positive and had hepatitis. Whiting visited her in the hospital and prayed for her. In 2018, the former informant got sick again and lost her job. After she called him around Christmas time, he went to a pawnshop to get her a TV as a Christmas present.

23. Based on the credible sworn testimony of Whiting and his wife, Skillia Whiting, there was no evidence that Whiting had any unbecoming conduct with a female who was a confidential informant. The preponderance of the evidence showed that Whiting acted in a pastoral capacity to a “former” informant. Moreover, his behavior was commendable.

24. Whiting did not explain why he was initially untruthful when asked about the TV Christmas present or his provision of financial assistance to the former informant, but he did seek to cure his mistakes by subsequently telling the Internal Affairs sergeants the truth about his financial assistance.

25. With respect to the “truthfulness” citation about erasing his cell phone. At that time, Whiting had three cell phones, a DEA phone, Vice and Narcotics phone, and his personal phone, while he was working in Vice and Narcotics. Whiting denied he intentionally erased the contents of his cell phone and testified that cell phones are wiped immediately after given notice on the phone. The Unit determined it was an intentional act but no one testified from the Unit as to their rationale for this determination. The credible evidence showed that Whiting did not intentionally

erase his phone's contents.

26. Finally, Whiting testified that he did invite the former informant to the church he attended which also happened to be the location of his secondary employment job site but not for the purpose of disclosing confidential information. Moreover, he denied any disclosure of confidential information to the former informant. The credible evidence provided by Whiting proved by a preponderance that he did not disclose confidential information.

27. Other than these 3 conduct citations, "Whiting's evaluations showed that he had exceeded standard evaluations throughout his career while assigned to Patrol, while assigned as a Community Coordinator and then with the DEA Task Force." (Resp. Ex. 3)

28. Whiting also had no issues while employed with the Mecklenburg County Sheriff's Office and met expected work performance in all his job responsibilities there.

29. In his interview with Investigator Kelly, Whiting stated that he resigned to care for his mother; he did not resign in lieu of being terminated by the Civil Service Board. This was why he answered "no" on his application which asked, "Have you ever been involuntarily dismissed, fired, or allowed to resign in lieu of firing?" Although Whiting gave a plausible alternative reason for resigning, the timing of his resignation was understandably suspect and it would not have been unreasonable for Kelly to assume that Whiting's resignation was motivated, at least in part, by the pending review.

30. During his interview, Whiting was forthcoming with Kelly that he had a "conduct charge" while at CMPD.

31. Whiting has no criminal record, unfavorable credit history, or any other issue which would result in the denial of his application.

32. The Board's Screening Committee recommended denial of his application for lack of verifiable work experience, unfavorable work history, and falsification of his application.

33. During his testimony, Whiting reiterated his view that as a detective he was the supervisor of patrol officers on cases he worked. He also coordinated other detectives. He also considers his off-duty employment as church security eligible hours and these hours might have qualified him. However, Whiting could not quantify the number of his hours worked in this supervisory position.

34. Whiting claimed that much of his employment history was missing from his application and that the Board had disregarded this work experience. Whiting stated he had worked six different full and part-time jobs with the Virginia Department of Correction. Whiting indicated that he had attached his resume to the application.

35. Moreover, Whiting also was under the impression that the work experience requirement on the Online Application did not require three (3) years of acting as a manager or supervisor in law enforcement.

36. Because of this assertion, with the consent of the Parties, the Undersigned ordered

screenshots of Whiting's entire application from the Board's Permitium on-line application system (Resp. Ex. 4) and an audit of the system showing any modification of Whiting's application (Resp. Ex. 5).

37. Whiting's misimpression about the license requirements is understandable because of the wording of the requirements on the website and application form.

38. The "Requirements to Obtain a License" sections on PPSB Licensing Process website states twice that the work requirement for the Security Guard and Patrol License is:

Three years of experience as a manager, supervisor, or administrator with a contract security company, a proprietary security organization or ***law enforcement agency performing a guard and patrol function.***

(Resp. Ex. 5, pp. 10 & 12)

39. This section could be construed in two ways. First, that you had to have three years in a manager/supervisor position with a contract security company or proprietary security organization ***or*** three years in law enforcement performing a guard and patrol function. This is how Petitioner understood the work experience requirement.

40. But a second interpretation is that the applicant had to have three years of management responsibility in a security company or law enforcement. This is what the application meant to say.

41. In another section of the "New License Application", the actual online application, states the requirement clearer as:

Three (3) years' experience ***performing guard and patrol functions while functioning as a manager, supervisor, or administrator*** with a contract security company, a proprietary security organization, a law enforcement agency or other governmental agency or U.S. Armed Forces.

(Resp. Ex. 5, p. 13)

42. This statement clarifies that the work experience requirement for the Security Guard and Patrol License does include three years of supervisory experience in either a security company or law enforcement agency.

43. Whiting sought to overcome the 3,000 hours supervision requirement and testified that he "supervised" inmates in Virginia and should be given credit for those hours. Inmates are not engaged in a security guard and patrol function as required by 14B NCAC 16 .0301 and neither detention officers nor juvenile counselors are private security or law enforcement officers.

44. Whiting also had other work experience in law enforcement which may have provided the requisite supervisory hours. Whiting thought he had attached his resume to the application as documentation of this additional work experience. But his resume was not attached to the application as he assumed nor did he proffer it as evidence at the hearing. So neither the

Screening Committee nor the Undersigned could determine whether Whiting actually had the supervisory hours in his other work experiences.

45. The Undersigned finds that the Board had probable cause to recommend denial of Whiting's license for lack of verified work experience but not for unfavorable work history or the falsification of his application.

CONCLUSIONS OF LAW

1. The parties properly are before the Office of Administrative Hearings. And jurisdiction and venue are proper.

2. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent that the findings of Facts contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

3. The party with the burden of proof in a contested case must establish the facts required by N.C.G.S. § 150B-23(a) by a preponderance of the evidence. N.C.G.S. § 150B-29(a). The administrative law judge shall decide the case based upon the preponderance of the evidence. N.C.G.S. § 150B-34(a).

4. Petitioner has the burden of proof in the case at bar. *Overcash v. N.C. Dep't. of Env't & Natural Resources*, 172 N.C. App 697, 635 S.E.2d 442 (2006).

5. Under G.S. §74C-12(a)(1) Respondent Board may refuse to grant a license if it is determined the applicant has made a false statement on his or her application.

6. Under G.S. §74C-12(a)(25), Respondent Board may refuse to grant a license if it is determined that the applicant has demonstrated intemperate habits or lacks good moral character. The Board considers an unfavorable work history of the nature of Petitioner's lack of good moral character.

7. Pursuant to 14B NCAC 16 .0301(a) an applicant for a Security Guard and Patrol business license must have three years (or 3,000 hours) experience as a manager, supervisor, or administrator of a contract or proprietary security entity performing guard and patrol functions or with any federal, state, county or municipal law enforcement agency performing guard and patrol functions.

8. Respondent Board presented evidence that Petitioner lacked the requisite experience for licensure.

9. Petitioner Whiting presented sufficient evidence to explain why he answered the question on his application regarding his resignation from the Charlotte-Mecklenburg Police Department and he did not falsify his application.

10. Petitioner Whiting presented sufficient evidence to demonstrate that the results of the Internal Affairs investigation with the Police Department did not constitute an unfavorable work history.

11. Petitioner Whiting did not present sufficient evidence to demonstrate that he has three years or 3,000 hours of experience in the private sector or law enforcement managing or supervising security guard and patrol functions.

PROPOSED FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Undersigned hereby recommends at this time that Petitioner be denied a Security Guard and Patrol business license *only* because he lacked verifiable work experience. This, however, would not preclude Petitioner from reapplying with the necessary documentation to substantiate that he had the requisite supervisory work experience.

NOTICE AND ORDER

The North Carolina Private Protective Services Board will make the Final Agency 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 Decision in this case on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714.

IT IS SO ORDERED AND THE DECISION IS SO PROPOSED.

This the 16th day of September, 2020.



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:

William Thomas Whiting
429 Wheat Field Drive
Mount Holly NC 28120
Petitioner

Jeffrey P Gray
Bailey & Dixon, LLP
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Attorney For Respondent

This the 16th day of September, 2020.



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