

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION
FOR A RENEWAL PERMIT TO PRACTICE
AS A PRIVATE SECURITY PERSON OF:

MAX C. SCHULTZ,
APPLICANT

FINAL DECISION AND ORDER
LS0104201RSG

The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 24th day of August, 2001.

Oscar Herrera
Secretary

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

IN THE MATTER OF THE APPLICATION
FOR A RENEWAL PERMIT TO PRACTICE
AS A PRIVATE SECURITY PERSON OF

MAX C. SCHULTZ
Applicant

PROPOSED DECISION
LS0104201RSG

The parties to this proceeding for the purposes of sec. 227.53, Stats., are:

Max C. Schultz

1200 East Singer Cr., #71

Milwaukee, WI 53212

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

Department of Regulation & Licensing

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A Class II hearing was held in the above-captioned matter on May 23, 2001, at 1400 East Washington Avenue, Madison, Wisconsin. Applicant Max C. Schultz appeared in person and without legal counsel. The Department of Regulation & Licensing, Division of Enforcement, appeared by Attorney Steven M. Gloe.

Based upon the entire record in this case, the administrative law judge recommends that the Department of Regulation & Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Max C. Schultz (Schultz), applicant herein, born on October 17, 1965, and residing at 1200 East Singer Cr., #71, Milwaukee, WI 53212, was licensed as a private security person by permit #5399, issued on September 26, 1997. Schultz allowed his permit to expire on August 31, 2000.
2. On or about December 13, 2000, Schultz submitted his application for renewal of his private security permit. On his renewal application, Schultz answered "Yes" to the question "Have you been convicted within the past two years of a felony, a misdemeanor or a violation of any state or local law (other than traffic) that is punishable by a forfeiture, or are charges pending?"
3. On February 22, 1999, on his plea of guilty, Schultz was convicted of battery in the Circuit Court for Milwaukee, in violation of sec. 940.19(1), Stats. he was sentenced to six months in the Milwaukee County House of Corrections, and the sentence was stayed pending successful conclusion of two years of probation. Under the terms of the probation, Schultz was to continue AODA treatment, participate in domestic violence counseling, submit to random urine screens, and have no contact with the victim.
4. The circumstances underlying the conviction involved the occurrence of a domestic dispute with Schultz' live-in girl friend, which culminated in his striking her.
5. Schultz did not successfully complete probation, and he ultimately served the balance of his sentence in jail.
6. On March 5, 2001, the Department of Regulation & Licensing filed its Notice of Intent to Deny Schultz' application for renewal of his private security permit on the basis of his conviction of a crime the circumstances of which were deemed to be substantially related to the circumstances of the practice of a private security person, within the meaning of sec. 111.335(1)(c)1., Stats.

CONCLUSIONS OF LAW

1. The Department of Regulation & Licensing has jurisdiction in this matter under sec. 440.26(6), Stats.
2. The circumstances of Schultz' conviction for battery substantially relate to the circumstances of the practice of a private security person within the meaning of sec. 111.335(1)(c)1., Stats., and Schultz has thereby violated a law the circumstances of which substantially relate to the practice of a private security person, in violation of sec. RL 35.01(2), Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the decision of the department to deny Schultz' application for renewal of his private security permit is affirmed.

IT IS FURTHER ORDERED that upon successful completion of not less than eight hours of training or therapy in the area of stress and anger management approved in advance by the department, Schultz may reapply for reinstatement of his private security permit.

OPINION

The threshold question in this case is whether the circumstances of Mr. Schultz' conviction are substantially related to the circumstances of the practice of a private security person. Applicant testified that the circumstances of the conviction are not so related, because his mental and emotional state at the time of the occurrence in question were influenced by the recent death of his mother, the suicide of a close friend, the loss of his job and a recent alcohol relapse. He further testified that his judgment was compromised by his grief and intoxication, and that when he had an argument with his girlfriend he lost control and slapped her once. He argues that the incident was out of character for him, and thus not indicative of his normal behavior or of any propensity for violence so as to establish any nexus to his probable future conduct.

In *County of Milwaukee v. LIRC*, 139 Wis.2d 805, 407 N.W.2d 908 (1987), the court set forth the test to be utilized in analyzing whether a conviction is substantially related to a particular licensed activity.

We reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. What is important in this assessment is not the factual details related to such things as the hour of the day the offense was committed, the clothes worn during the crime, whether a knife or a gun was used, whether there was one victim or a dozen or whether the robber wanted money to buy drugs or to raise bail money for a friend. All of these could fit a broad interpretation of "circumstances." However, they are entirely irrelevant to the proper "circumstances" inquiry required under the statute. It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

The full assessment of what may be termed the "fostering" circumstances may, at times, require some factual exposition. For instance, in "disorderly conduct" cases the type of offensive circumstances is not as explicit as it is in sexual assault, armed robbery, theft or embezzlement convictions for example. However, such factual inquiry would have as its purpose ascertaining relevant, general, character-related circumstances of the offense or job. *139 Wis.2d 805 at 823*.

A character trait indicative of a tendency toward violent behavior is without question substantially related to the circumstances of employment involving personal contact with the public while maintaining security in factories, business establishments, schools, hospitals and sports stadiums. Were it concluded that the character traits and character related circumstances demonstrated at the time of Mr. Schultz' illegal activity are indicative of the nature of his character today, there would be more than adequate basis for deciding that Mr. Schultz should be permanently denied a private security permit. The opposite conclusion is reached, however. Mr. Schultz' testimony was credible and convincing, and satisfactorily establishes that his behavior on this one occasion is not and was not typical of his underlying character. After testifying as to the series of events following his arrest, and about his having absconded when it became apparent that his probation was to be revoked, Mr. Schultz described his current circumstances as follows:

I regret having absconded. I think that was wrong. But in retrospect I can see that my time on the road was a healing experience for me. And by the time I did surrender myself to custody I was in a much better position to be able to handle the stress of being incarcerated, and I did good time, and it was a valuable experience, I can say, being locked up for those three and a half months. So I regret breaking the law, but I don't regret the way it happened. I don't regret the experiences that I had, because they were very beneficial to me. And ironically, I have a new career now in banking and finance. So I really don't need a security license anymore. But on principle, I think the Department of Regulation and Licensing made the wrong interpretation of the law when they decided to deny me. So I think on principle I should be eligible for one in the unlikely event I should ever decide to get one again.

I attend AA, which is not a cure, but it is very helpful. I have plans to get back into actual psychotherapy and I'm working with my employer about getting better insurance, because right now . . . there's a very small cap on the amount of money that insurance companies are willing to spend on therapy and I don't have the personal finances to be able to fund the psychotherapy that I need. So I'm working on getting a better insurance program. I keep myself busy. Keep myself busy with work,

family. I'm spending a lot more time with my children these days. Hanging out with my father a lot. And I keep myself busy, that's my main way to stay away from alcohol.

I've had a few successful treatments for alcohol prior to my crime and the subject of anger management was addressed, definitely. How can I elaborate? I've voluntarily stayed out of relationships since this incident and I'm working on becoming a more, I guess I should say, calmer, peaceful person, more mellow person, so that next time I get into domestic disputes, it's really not in character for me to lash out the way I did, I must say, It was an isolated incident, the only time it's ever happened in my life. So I think I have my anger issues pretty well taken care of. I'm very conscious of my emotions and I deal with them appropriately.

In the Supreme Court case cited above, the court extensively discusses the policy objectives of the prohibition against discrimination in employment and licensure, and the exceptions thereto for substantially related convictions. That discussion includes the following:

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

It is highly desirable to reintegrate convicted criminals into the work force, not only so they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them. This is a worthy goal and one that society has shown a willingness to assume, as evidenced by the large sums of money expended in various rehabilitative programs. However, the legislature has clearly chosen to not force such attempts at rehabilitation in employment settings where experience has demonstrated the likelihood of repetitive criminal behavior. *139 Wis.2d 805 at 822.*

The evidence in this record establishes that the public has little to fear from this individual, and that the likelihood of repetitive criminal behavior is obscure. Nonetheless, inasmuch as Mr. Schultz has never completed any formal course or training in anger and stress management, the prosecutor appropriately suggested that the reinstatement of applicant's permit be conditioned on his successful completion of an approved course of training or therapy in that area. The recommendation is that upon completion of such a remedial course, Mr. Schultz be permitted to again apply for reinstatement of his permit.

Dated this 7th day of August, 2001.

Respectfully submitted,

Wayne R. Austin

Administrative Law Judge