

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
SEAN JONES,	:	LS0309181RSG
RESPONDENT.	:	

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 30th day of June, 2004.

Patricia Hoeft, Director
Bureau of Real Estate & Direct Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY	
PROCEEDINGS AGAINST	PROPOSED DECISION
	LS0309181RSG
SEAN JONES (Denial of Renewal)	
RESPONDENT.	

PARTIES

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Sean Jones
6016 33rd Avenue
Kenosha, WI 53142

Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

This proceeding was commenced by the filing of a Notice of Hearing on September 18, 2003. The hearing was held on December 11, 2003. Attorney Claudia Berry Miran appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Jones did not appear at the hearing. The hearing transcript was filed on December 18, 2003.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Sean Jones, d.o.b. 01/11/72, was first licensed as a private security person by the Department of Regulation and Licensing on June 2, 2000 with license #14409.

2. Respondent's last-known address on file with the Department of Regulation and Licensing is 6016 33rd Avenue, Kenosha, WI 53142.

3. On or about July 21, 2003, respondent submitted his renewal application for a private security permit. Respondent's renewal application was denied on the grounds that he was convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private security guard, and that he failed to notify the Department within 48 hours after the entry of the judgment of convictions.

4. The renewal application for a private security person permit requires that the applicant answer the following question:

Have you been convicted within the past two years of a felony, misdemeanor or a violation of any state or local law (other than traffic) that is punishable by a forfeiture, or are charges pending?
(If yes, provide information.)

5. In his renewal application, Respondent answered, "No", to the question stated in paragraph 4 above.

6. On February 28, 2001, respondent was convicted in Kenosha County, WI of operating a vehicle without a valid driver's license (second offense), a misdemeanor, and obstructing an officer, also a misdemeanor.

7. On January 30, 2002, respondent was convicted in Kenosha County, WI of resisting an officer, a misdemeanor.

8. Respondent did not notify the Department of Regulation and Licensing, of his convictions for the misdemeanors referenced in paragraphs 6 and 7 above, within 48 hours after the entry of the judgment of convictions.

9. The crime, obstructing an officer, for which respondent was convicted on February 28, 2001, substantially relate to practice as a private security person.

10. Respondent did not appear at the hearing held in this matter.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to s. 440.26 Wis. Stats.

2. Respondent's conduct as described in Findings of Fact 3-9 herein, constitutes a violation of s. 440.26 (4m) (b), Stats., and s. RL 35.01 (2), (17) and (18), Code.

3. By failing to appear at the hearing held in this matter, respondent is in default under s. RL 2.14 Wis. Adm. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the decision of the Department of Regulation and Licensing, Division of Board Services, to deny the renewal application of Sean Jones be, and hereby is, **AFFIRMED**.

This order is effective on the date on which it is signed on behalf of the Department of Regulation and Licensing.

OPINION

The Division of Enforcement states in its Notice of Hearing that on or about July 21, 2003, Mr. Jones submitted his renewal application for a private security permit. His renewal application was denied on the grounds that he was convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private security guard, and that he failed to notify the Department within 48 hours after the entry of the judgment of convictions. The evidence presented establishes that the violations occurred.

I. Applicable Law

440.26 Private detectives, investigators and security personnel; licenses and permits.

(4m) Reporting Violations of Law. (a) Definition. In this subsection, "violation" means a violation of any state or local law that is punishable by a forfeiture.

(b) Reporting requirement. A person who holds a license or permit issued under this section and who is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation. Notice may be made by mail and may be proven by showing proof of the date of mailing the notice.

(6) Discipline. (a) Subject to the rules adopted under s. 440.03 (1), the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has done any of the following:

1. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.

3. Made a false statement in connection with any application for a license or permit under this section.

RL 35.01 Unprofessional conduct. The department may

deny an application for renewal, limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder or any owner of an agency has engaged in conduct reflecting adversely on professional qualification. Conduct reflecting adversely on professional qualification includes, but is not limited to, any of the following:

(2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26 (4m), Stats., shall send to the department within 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.

(17) Providing false information in the application for a credential.

(18) Providing false information to the department or its agent.

RL 2.14 Default. If the respondent fails to answer as required by s. RL 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence. The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.

II. Evidence Presented

(A) Background

Mr. Jones has been licensed as a private security person since June 2, 2000. On or about July 21, 2003, Mr. Jones submitted his renewal application for a private security permit. His renewal application was denied on the grounds that he was convicted of misdemeanor crimes, the circumstances of which substantially relate to the practice of a private security guard, and that he failed to notify the Department within 48 hours after the entry of the judgment of convictions.

The renewal application for a private security person permit requires that the applicant answer the following question, to which the respondent answered no:

Have you been convicted within the past two years of a felony, misdemeanor or a violation of any state or local law (other than traffic) that is punishable by a forfeiture, or are charges pending?
(If yes, provide information.)

On February 28, 2001, respondent was convicted in Kenosha County, WI of operating a vehicle without a valid driver's license (second offense), a misdemeanor, and obstructing an officer, also a misdemeanor.

On January 30, 2002, respondent was convicted in Kenosha County, WI of resisting an officer, a misdemeanor.

(B) Failure to Notify the Department of Misdemeanor Convictions.

Subsection 440.26 (4m), (b), Stats., states that a person who holds a license or permit issued under s. 440.26, Stats., and who is convicted of a felony or misdemeanor, or is found to have committed a violation, in this state or elsewhere, shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation. Notice may be made by mail and may be proven by showing proof of the date of mailing the notice.

The evidence presented establishes that Mr. Jones failed to notify the Department of Regulation and Licensing, of his misdemeanor convictions in Kenosha County in 2001 and 2002, within 48 hours after the entry of the judgment of convictions.

(C) Conviction of Crimes Substantially Related to the Practice

The evidence presented establishes that the crime, obstructing an officer, for which respondent was convicted on February 28, 2001, substantially relate to practice as a private security person.

Subsection RL 35.01 Code states that the department may deny an application for renewal, limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder or any owner of an agency has engaged in conduct reflecting adversely on professional qualification. Conduct reflecting adversely on professional qualification includes, but is not limited to, any of the following:

- (2) Violating, or aiding or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person.

Section 111.321 and 111.322, Stats., prohibit a licensing agency from discriminating against an individual on the basis of a conviction record. Section 111.335 (1) (c), Stats., provides that notwithstanding s. 111.322, it is not discrimination because of conviction record to terminate from licensing any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity.

The purpose of the exception structured by the Legislature in s. 111.335 (1) (c), Stats., was discussed by the Wisconsin Supreme Court in *County of Milwaukee v. Labor and Industry Review Commission*, 139 Wis. 2d 805, 407 N.W. 2d 908 (1987). Although the Court's discussion focused on the employment area, the societal interests discussed are relevant to the licensing area. The Court stated, Id. at 821, that:

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.

In reference to assessing the risk of recidivism, the Supreme Court stated, Id. at 823-824, that:

In balancing the competing interests, and structuring the exception, the legislature has had to determine how to assess when the risk of recidivism becomes too great to ask the citizenry to bear. The test is when the circumstances, of the offense and the particular job, are substantially related. ...

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. ...

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.

In this case, Mr. Jones was convicted on February 28, 2001, of obstructing an officer. He provided false information several times to a police officer regarding his age and identity. In the Criminal Complaint filed in that case, Mr. Jones' conduct and the circumstances surrounding his conviction for obstructing an officer was described, in part, as follows:

On February 2, 2001, at approximately 4:00 p.m., Officer Sandra Pelky was on routine patrol duty with the Pleasant Prairie Police Department, traveling southbound on 39 Avenue, when she observed a vehicle operator whom she believed she recognized from a stop she had conducted a week earlier, for Operating after Revocation. Officer Pelky then ran the plate of this vehicle which came back with a suspended registration. Officer Pelky activated her squad's emergency lights just south of Springbrook Rd. 39 Avenue. The vehicle turned right onto Springbrook Rd. and made a left into the parking lot of a bank. Officer Pelky approached the driver, who was talking on a cell telephone. Officer Pelky asked the driver for his driver's license and he stated that he did not have it with him. The defendant stated that his license was at home and that he had no other type of identification on him. The driver identified himself as David K. Shavazz, DOB: 9/24/76. The defendant stated that he had just turned 25 years old. Officer Pelky ran the driver's and passenger's information through the Department of Transportation and the passenger came back with a suspended driver's license, however, the driver did not come back on file. When Officer Pelky questioned the driver (who was later identified as the defendant) how he could have just turned 25 if he was born in 1976, the defendant stated that the officer did not hear him correctly and that he was born in 1975. The defendant then stated: "why you pickin' on me, cuz I'm black right. . . you a racist b...h, aint you." Officer Pelky asked the defendant if he had just turned 25 as he had said, however the defendant continued to ramble on about the officer's racism. Officer Pelky ran the defendant a second time through DOT and his information did not come back on file.

Officer Pelky asked the defendant if he had any paperwork whatsoever which would assist in his identification, in response to which he stated, "F..k that, I ain't got nothing and if you can't find it in your computer, that's your fault." Officer Pelky then advised the defendant he would have to pay for his citations in cash and explained the procedure. The defendant responded by yelling that he would not have to pay for anything and that he lives in Chicago, so the police (here) would have to come and get him. The defendant was extremely angry and yelling, accusing the entire police department of racism and threatening to sue the entire

department because he was being harassed. Officer Pelky called for two additional squads due to the defendant's disorderly conduct. Officers Myles, Carpenter and Durkee all responded. The defendant was yelling obscenities and making loud racial accusations in the bank parking lot as many customers entered and exited the bank, taking notice of the ruckus.

Officer Pelky and other officers on the scene advised the defendant that he was under arrest and ordered him to exit the vehicle. When Officer Pelky took the keys from the ignition, the defendant yelled at her for "stealing private property." The defendant advised all officers to "stay the F..k away" and further advised that he was seated in private property and therefore the officers could not arrest him. Officers had to ask him numerous times and advise him of the consequences for his failure to comply before the defendant got out of the car. The defendant then offered the DOB: 9/24/78, saying "try that one, you'll see I got a license." The defendant went on and on about suing everyone and alleging racial motives on the part of the officers. While in back of the squad, the defendant told Officer Pelky to try another name, David D. Conley. Officer Pelky also found that name "not on file." When the defendant learned he was going to the jail, he stated. "all right, I lied, my real name is Sean Jones, DOB: 1/11/72." The defendant indicated that the previous identities he provided were his cousins names and DOBs from Chicago. The defendant came back suspended in Illinois with no valid driver's license in Wisconsin. The defendant then stated that he lied because he was trying to get licensed in Wisconsin after being suspended for poor driving in Illinois. The defendant's driving record reveals that has been convicted one time for operating a motor vehicle without a valid operator's license in the three years preceding the commission of this offense. He was arrested on August 30, 2000 in Kenosha County and convicted of that offense on September 13, 2000.

When Officer Pelky advised the defendant that he would be arrested for Obstructing for his lies, he responded by saying "Go ahead, I'll get a signature bond tomorrow and be out in the morning anyway." When advised he would have to pay for his citations before leaving due to his out-of-state residence, the defendant stated, "I won't pay for nothin." Officer Pelky obtained a photograph of the defendant to confirm his identity, however his criminal history revealed that Sean Jones was an alias to Dean Jones from Illinois (same social security number) who is "wanted" in Chicago for Armed Robbery.

Mr. Jones' behavior, as described in the excerpts above taken from the Criminal Complaint filed against him, reflects a character trait of dishonesty. If permitted to continue to practice as a private security person, Mr. Jones would be presented with ample opportunities to engage in similar misconduct. The risk of recidivism is too great to ask the public to bear.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 12th day of March, 2004.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge