

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 PERMIT TO PRACTICE AS A	:	FINAL DECISION
PRIVATE SECURITY PERSON OF	:	AND ORDER
	:	LS0508191RSG
DEVONTES D. HARRIS,	:	
RESPONDENT.	:	

Division of Enforcement Case No. 05RSG019

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 23rd day of January, 2006.

Secretary Celia M. Jackson
Department of Regulation and Licensing

IN THE MATTER OF THE APPLICATION :
FOR A PERMIT TO PRACTICE AS A : PROPOSED FINAL DECISION
PRIVATE SECURITY PERSON : AND ORDER
:
DEVONTES D. HARRIS, :
:
RESPONDENT. : LS 0508191 RSG

(Division of Enforcement Case No. 05RSG019)

TO: Devontes D. Harris
8035 West Medford Avenue
Milwaukee, WI 53225

Mark A. Herman
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A hearing in the above-captioned matter was conducted on August 29, 2005 before Administrative Law Judge (ALJ) Colleen M. Baird. The respondent appeared in person, representing himself. The Division of Enforcement appeared by Attorney Mark A. Herman, prosecuting attorney. Based upon the entire record in this case, the undersigned ALJ recommends that the Department of Regulation and Licensing adopt as its final decision and order in the matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Devontes D. Harris was born on February 25, 1981.
2. Mr. Harris' last known address on file with the Department of Regulation and Licensing (hereinafter referred to as the "Department") is 8035 West Medford Avenue, Milwaukee, WI 53225.
3. Mr. Harris applied for and was granted a private security permit on April 19, 2001. That permit expired on September 1, 2004.
4. Mr. Harris applied for a renewal of his private security permit on or about October 27, 2004.
5. The on-line renewal application form for a private security permit requires the applicant to answer the following question:

HAVE YOU EVER BEEN CONVICTED OF A MISDEMEANOR OR DRIVING WHILE INTOXICATED (DWI), IN THIS OR ANY OTHER STATE, OR ARE CRIMINAL CHARGES OR DWI CHARGES CURRENTLY PENDING AGAINST YOU? (If YES, provide information)
6. Mr. Harris answered "No" in response to question above concerning his criminal charges or convictions.
7. A search of the records of the Crime Information Bureau in the Wisconsin Department of Justice and information received from the Clerk of Courts for Milwaukee County, indicates that Mr. Harris had been convicted of the following:
 - a). April 24, 2003-Misdemeanor- Carrying a Concealed Weapon (Milwaukee County Court Case

8. Information received from the City of Milwaukee Municipal Court indicates that Mr. Harris was convicted of the following:
 - a). December 27, 2002-Ordinance Violation-Carrying Concealed Weapon (City of Milwaukee Municipal Court Case #02158790)
9. At no time prior to his October 2004, renewal application did Mr. Harris inform the Department of his April 24, 2003, misdemeanor conviction or his December 27, 2002, municipal ordinance violation.
10. On June 30, 2005, the Department denied Mr. Harris' application for renewal of his private security permit.
11. The Department's decision states that the documentation on file establishes that Mr. Harris had been convicted of a misdemeanor crime, the circumstances of which substantially relate to the private security profession.
12. The legal basis for the Department's decision is § 440.26, Wis. Stat., and Chapters RL 31 and RL 35, Wisconsin Administrative Code.
13. Mr. Harris made a timely request for a hearing on the denial of his application for a permit.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter under § 440.26, Wis. Stats.
2. The circumstances of the conviction detailed above substantially relate to the practice of a private security person within the meaning of §111.335 (1)(c)(1), Wis. Stats. and §RL 35.01(2). Wis. Admin. Code.
3. By failing to disclose to the Department his 2002 ordinance violation and 2003 misdemeanor criminal conviction at time of his renewal application, the respondent provided false information in an application for a credential within the meaning of §RL 35.01(17), Wis. Admin. Code.

ORDER

NOW, THEREFORE, IT IS ORDERED that the private security permit of Devontes D. Harris be, and hereby is, REPRIMANDED.

IT IS FURTHER ORDERED that the private security permit of Devontes D. Harris, shall be LIMITED as follows:

1. Beginning on the effective date of this order, Mr. Harris shall be required to work as an employee of a supervising employer who agrees to prepare and submit written quarterly reports which describe Mr. Harris' work activities and his compliance with the laws governing a private security permit. The work reports shall be submitted according to a schedule established by the Department Monitor who coordinates compliance with the terms of this order. All work reports and other materials shall be addressed and sent to the following:

Department Monitor
Department of Regulation and Licensing
P.O. Box 8935
Madison, Wisconsin 53708-8935
FAX (608) 266-2264
Tel. (608) 267-3817
E-mail: department.monitor@drl.state.wi.us

2. Mr. Harris shall be restricted from holding a firearms permit or working at any work site which requires use or possession of a firearm.

3. Mr. Harris shall provide a complete copy of this final decision and order and a copy of his conviction record to his supervising employer, and to any future employer, during the period that his license is limited. Mr. Harris shall arrange for his supervising employer to accept the responsibilities of this order and to immediately notify the Department if Mr. Harris violates

the terms of this order.

4. Mr. Harris shall not work simultaneously for more than one private security company or employer who does not accept the requirements of this order. Mr. Harris may not work as a private security person through his own company or as an independent contractor.

5. If Mr. Harris changes employers, he shall notify the Department Monitor within three (3) business days and shall arrange for his new employer to accept the supervisory responsibilities of this order.

6. Mr. Harris' permit may be subject to immediate suspension should he be arrested or convicted of a crime substantially related to the practice of a private security person or for a substantial violation of the terms of this order. Mr. Harris is put on notice of the requirements of Wis. Admin, Code RL 35.01(2) that a credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26(4m), Wis. Stat., shall send to the Department within 48 hours after the judgment of conviction, a copy of the complaint or other information which describes the nature of the crime or conviction. The Department will determine whether disciplinary action must or should be taken against Mr. Harris.

7. The period of limitations shall be for not less than two years and shall be subject to on-going review and monitoring by the Department, until such time as the Department removes the limitations. The limitations period shall be tolled during any period during which Mr. Harris is not employed as a private security person. After substantial compliance with the terms of this order, Mr. Harris may petition the Department for removal of the limitations on his private security permit.

ANALYSIS

The first issue raised for consideration in this proceeding is whether Mr. Harris' convictions substantially relate to the practice of a private security person within the meaning of Wis. Stat. § 111.335(1)(c)(1). The second issue is whether Mr. Harris made a material misstatement on his renewal application when he failed to inform the Department of his 2002 ordinance violation and his 2003 misdemeanor conviction. The evidence shows that the circumstances involved in Mr. Harris' conviction are more likely than not substantially related to the practice of one who holds a private security permit. The evidence further shows that Mr. Harris failed to timely report his conviction and that he continued to work after the expiration of his permit.

The circumstances involved in Mr. Harris' misdemeanor conviction are as follows: Mr. Harris testified that he asked a friend of his cousin for a ride to a local auto parts store. Unbeknownst to Mr. Harris, the driver had a concealed automatic handgun with a fully loaded extended 32-round magazine in the back seat of the vehicle. The driver told the police that the handgun belonged to Mr. Harris. The police report noted that Mr. Harris was observed moving about in the vehicle in a manner consistent with placing something on or near the floor of the vehicle. Mr. Harris testified that he was essentially "framed" because he was the only occupant in the car without a criminal record; the driver was a felon and would have gone to prison for possessing a firearm. A jury trial was held and the driver was subpoenaed but did not appear. Mr. Harris was found guilty of Carrying a Concealed Weapon; a Class A Misdemeanor. Mr. Harris unsuccessfully appealed his conviction and has since served his sentence.^[1]

The circumstances involved in Mr. Harris' municipal ordinance violation are as follows: Mr. Harris was pulled over for running a red light and upon a safety sweep of the vehicle, the officer found a four-inch steak knife in the glove box of Mr. Harris' vehicle. At the Department's licensing hearing, Mr. Harris admitted that he kept the knife in his glove box along with other eating utensils because he often ate lunch or dinner at work. However, there was no mention in the police report of other utensils or of the explanation given by Mr. Harris at the hearing in this matter.

Taken at face value, Mr. Harris' convictions are troubling. The circumstances of the convictions are inconsistent with one who is entrusted with the responsibility of guarding and protecting the public. Respect for, and obedience to, the law should be a hallmark trait of a private security person. It is concluded, therefore, that the circumstances of Mr. Harris' convictions are more likely than not substantially related to the practice of a private security person. It is also concluded that the Department was initially justified in denying the renewal of his permit.

However, the evidence obtained at the hearing does not in this examiner's opinion, fully support an outright denial or revocation of Mr. Harris' permit. Rather, a limited license for a prescribed period would be a better fit given the circumstances. Any person can make mistakes and display poor judgment; even a wholly innocent person could find

themselves in a potentially incriminating situation. To some extent, and for reasons perhaps not fully known, that is what may have happened to Mr. Harris. It is sometimes difficult to appreciate the context wherein circumstances like those described by Mr. Harris may occur, but they can occur.

As to the allegation that Mr. Harris failed to inform the Department of his convictions when he attempted to renew his permit, there can be little doubt that timely disclosure was not made. The legal requirements are clear: a credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26(4m), Wis. Stat., 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 in order that the Department may determine whether disciplinary action must or should be taken against the credential holder. §RL 35.01(2), Wis. Admin. Code. The Department's renewal application also explicitly inquires as to whether the applicant has 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 whether there are charges pending. If the applicant answers the question in the affirmative, a judgment of the conviction is required to be submitted.

Mr. Harris testified that he did not think that he was required to report his misdemeanor conviction because it was on appeal. This testimony was consistent with his prior letters to the Department in which he stated that he thought that the "initial verdict would not remain until the appeal process was completed." (Exhibits 7, 9). With respect to the ordinance violation, Mr. Harris testified that he did not believe that he had to report it on his renewal application since two years had already passed since the violation. While it may be difficult for those with legal training to accept that Mr. Harris would have any doubt about his conviction status, it is possible that a layperson, such as Mr. Harris, may have misinterpreted the legal effect of his appeal. Mr. Harris' demeanor at the hearing and previous letters to the Department are more suggestive of a person who was confused or misinformed about his legal status, than one who was deliberately trying to mislead the Department.

It is appropriate to recognize that despite his recent convictions, Mr. Harris' overall prior track record has been good. He was granted a private security permit in 2001 and has worked as a security guard for approximately three years without any complaints or disciplinary action. Mr. Harris' misdemeanor conviction in 2003 was his first criminal conviction. He has not had any new criminal convictions. Mr. Harris is a high school graduate and completed training in the Job Corps. It was obvious that Mr. Harris derives a great deal of self-esteem from his occupation. Mr. Harris testified that he aspires to become a law enforcement officer someday. For these reasons, Mr. Harris should be given the benefit of the doubt to prove that the circumstances surrounding his prior convictions were isolated incidents, not likely to reoccur. Mr. Harris is a young person who is capable of learning from his mistakes, changing his behavior and abiding by the requirements of the law. For these reasons, it is foreseeable that Mr. Harris could successfully complete the requirements of this order and petition for removal of the limitations on his private security permit in the future.

Dated this 2nd day of December, 2005.

Colleen M. Baird
Administrative Law Judge

[1] The Court of Appeals issued a decision on July 6, 2005, affirming Mr. Harris' misdemeanor conviction and upheld the judgment and order of the Circuit Court for Milwaukee County.