

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE	:	
APPLICATION FOR A PERMIT	:	
TO PRACTICE AS A PRIVATE	:	FINAL DECISION
SECURITY PERSON OF	:	AND ORDER
	:	LS0706061RSG
DONALD SWIFT,	:	
APPLICANT.	:	

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Division of Enforcement Case No. 07RSG021

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 2<sup>nd</sup> day of August, 2007.

Secretary Celia M. Jackson  
Department of Regulation and Licensing

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IN THE MATTER OF THE APPLICATION :  
FOR A PERMIT TO PRACTICE AS A :  
PRIVATE SECURITY PERSON OF : PROPOSED DECISION  
: AND ORDER  
DONALD SWIFT, : Case No. LS0706061RSG  
APPLICANT. :  
:

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[DOE Case #07RSG021]

The parties to this action for purposes of §227.53, Wis. Stats., are:

Mr. Donald Swift  
2225 Racine Street  
Racine, WI 53403

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

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

### **PROCEDURAL HISTORY**

A hearing in the above-captioned matter was held on July 10, 2007, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Lara M. Herman. Mr. Swift appeared *pro se*.

Based on the entire record in this case, the undersigned 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. Donald Swift's (dob 6/4/54) latest address on file with the Department of Regulation and Licensing is 2225 Racine Street in Racine, Wisconsin.
2. Mr. Swift applied for a private security permit on or about February 21, 2007. The Department of Regulation and Licensing denied his application on March 30, 2007.
3. The basis for the denial was Mr. Swift's conviction for Obstructing an Officer contrary to § 946.41 (1), Wis. Stats. Mr. Swift was convicted of that offense on March 9, 2004. He was also denied a permit because of his failure to list the conviction on his application.
4. Following the denial of his application, Mr. Swift filed a timely request for a hearing.

### **CONCLUSIONS OF LAW**

The Wisconsin Department of Regulation and Licensing has jurisdiction in this matter pursuant to §§ 111.335 (1) (b), 111.335 (1) (c) 1., and 440.26, Wis. Stats.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that Donald Swift is hereby granted a permit to practice as a private security person subject to the following limitations, terms, and conditions:

1. Mr. Swift shall practice as a private security person only as an employee of a licensed private detective agency. The private detective agency shall designate a supervisor who holds a private security permit in good standing, with no prior discipline, who submits a statement to the Department Monitor that he or she has been designated Mr. Swift's supervisor and that he or she agrees to accept the responsibility of complying with this order. The Department Monitor is the individual designated by the Department of Regulation and Licensing to coordinate compliance with the terms of this Order. Any requests, petitions, reports, and other information required by this Order shall be mailed, e-mailed, sent via facsimile, or delivered to:

Department Monitor  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison, Wisconsin 53708-8935  
FAX: (608) 266-2264  
Telephone: (608) 261-7904  
E-mail: department.monitor@drl.state.wi.us

2. Mr. Swift shall provide a complete copy of this Final Decision and Order to his employer.
3. The Employer shall prepare and submit written quarterly reports according to a schedule established by the Department Monitor describing Mr. Swift's activities and verifying that he is in compliance with the laws governing the practice of a private security person and the terms of this Order.
4. Mr. Swift shall report any change of employment to the Department Monitor within five days of the change. If Mr. Swift changes his employer, he shall provide a complete copy of this Final Decision and Order to the private detective agency, and he shall be responsible for having that agency comply with this order.
5. Mr. Swift may petition the Department for a modification of the terms of this Order after one year from the effective date of this Order. Any such modification shall be accompanied by a written recommendation from Mr. Swift's employer expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license under s. 227.01 (3) (a), Wis. Stats., and Mr. Swift shall not have a right to any further hearings or proceedings on the denial.

### **OPINION**

On March 30, 2007, the Department of Regulation and Licensing denied Donald Swift's application for a private security permit based on his conviction for Obstructing an Officer on March 9, 2004, and for failing to list the conviction on his application. The Department maintains that the circumstances of Mr. Swift's conviction for Obstructing an Officer substantially relate to the practice of a private security person.

At issue, therefore, is whether Mr. Swift's conviction for Obstructing an Officer constitutes a conviction substantially related to the practice of a private security person within the meaning of § 111.335 (1) (c) (1), Wis. Stats., such that his application denial should be affirmed. In *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 at 823, 407 N.W.2d 908 (1987), the court set forth the test to be utilized in making that determination:

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 court also extensively discussed the policy objectives of the prohibition against discrimination in employment and licensure, and the exceptions to it for substantially related convictions as follows:

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. *Id.* at 805.

Mr. Swift readily admitted that he failed to include the conviction for Obstructing an Officer on his application for a private security permit. He also does not deny having committed the offense. Rather, he was direct and forthright in acknowledging his wrongdoing both by failing to include the information on his application and by engaging in the criminal conduct in the first place. Mr. Swift is a fifty-three year old married man with grown children and grandchildren. He has held a variety of different jobs, but none that have apparently required him to hold a professional credential. As such, he does not have any extensive experience filling out applications that require strict attention to detail, nor a complete understanding of the implications for failing to include key information, namely *all* criminal convictions, on such forms.

In balancing the interests of the public versus those individuals who have been convicted of crimes, consideration must be given to a variety of factors including the reaction to responsibility and the character traits of the person. Mr. Swift has been sincere in accepting responsibility for his actions both as it applied to his conviction and also to his failure to reference it on his application. He readily admitted that he had not included the conviction information on his application form, but noted that his failure to include it had not been intended as an act of deception. Mr. Swift acknowledged that it was wrong not to have included the information on the application and further maintained that had he realized its importance, he would certainly have included it. His remorse for not having included the conviction information seemed sincere as was his regret over the obstructing incident.

Additionally, Mr. Swift appears to have a genuine interest in finding employment and believes that his job opportunities are likely to be increased if he is able to obtain his private security permit. He and his family currently reside in Racine, where, according to him and his wife, the economic climate appears to be depressed. As a result, he has had little success of late in finding employment there. Mr. Swift developed an interest in private security work after having been briefly hired by a firm in Milwaukee that provides security services, and he stressed his ongoing interest in wanting to pursue this line of work. By obtaining his private security permit, Mr. Swift believes that he will have greater job opportunities available to him.

At this time, it appears as if Mr. Swift's rehabilitation is well underway. He has a stable home life with a supportive wife and family. He has not engaged in other criminal activities since his conviction but has instead sought to expand his

employment prospects by obtaining a private security permit. Consequently, based upon the entire record in this case an affirmation of his application denial is not justified. However, in light of his criminal record and in order to ensure that the public is adequately protected, it is reasonable to require that certain limitations be placed on Mr. Swift's private security permit. It is therefore recommended that Mr. Swift be given a limited private security permit subject to certain conditions, among them, supervision for a period of one year and the submission of quarterly reports by his employer.

Dated at Madison, Wisconsin, this 17<sup>th</sup> day of July, 2007.

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION & LICENSING  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, Wisconsin 53708  
Telephone: (608) 266-5836  
FAX: (608) 251-3017

Jacquelynn B. Rothstein  
Administrative Law Judge