

BEFORE THE BOARD OF PRIVATE SECURITY
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-09-0350-PSP REGARDING:

THE APPLICATION FOR LICENSURE) Case No. 320-2010
OF EUGENE C. LAMB, Security Guard)
License Pending.)
)
)

**PROPOSED FINDINGS OF FACT;
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

I. INTRODUCTION

Eugene Lamb (applicant) appeals from the Montana Board of Private Security’s denial of his request to be licensed as a private security guard in Montana. Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on October 15, 2009. Joseph Nevin, agency legal counsel, represented the Department of Labor and Industry Business Standards Division (BSD). Lamb represented himself. Lamb and Dennis Clark, Board Investigator, both testified under oath. The parties stipulated to the admission of BSD’s Exhibits Bates Stamped 1 through 25. Based on the evidence and argument adduced at hearing, the hearing examiner makes the following findings of fact, conclusions of law, and recommended order.

II. FINDINGS OF FACT

1. On July 14, 2008, Lamb filed an application for licensure as a private security guard.
2. Question 7 asked Lamb whether he had any criminal charges pending. Question 8 asked Lamb whether he had ever pled guilty. Question 9 asked Lamb whether he had ever entered a plea of no contest or nolo contendere. Lamb answered “no” to all three questions.
3. Question 16 asked Lamb whether he had ever used alcohol or any mood altering substance in a manner that had adversely affected his ability to practice the profession of private security guard. Lamb answered “yes” to this question.
4. After receiving the application, the Board completed a criminal background check on Lamb. The background check disclosed that Lamb had in fact been convicted in 1986 for a misdemeanor charge of possession of dangerous drugs.

5. On July 30, 2008, the Board sent a letter to Lamb requesting that he provide background information on the charges listed in the criminal history report. In response, Lamb provided a letter to the Board indicating that he “didn’t realize that a misd[emeanor] was put in your record.” Bates Stamp Exhibit 5. He failed to include any documentation with his letter that would explain anything about the charges and convictions that existed in his record.

6. Because of Lamb’s failure to disclose his conviction and his failure to include any supporting documentation, the Board again contacted Lamb on August 7, 2008. In its letter, the Board stated that Lamb’s reply was inadequate because it did not provide any documentation to show the underlying basis for the conviction. Bates Exhibit 6.

7. On August 28, 2008, Lamb responded that he was never convicted of the charges in “Cycle 1” of his criminal record. He did, however, provide a copy of the dismissal of the Cycle 3 case. That documentation showed that the case was dismissed. See Exhibit Bates Stamp 9.

8. In order to permit Lamb to file documentation about the convictions, the Board delayed acting on his application. On March 12, 2009, the Board again contacted Lamb asking him to provide some documentation on his criminal convictions so that the matter could be placed on the Board’s April 2009 agenda. This time, Lamb provided no response at all.

9. On May 27, 2009, the Board, not having received any explanation as to the criminal convictions or the basis for his initial denial that he had any criminal record, noticed that matter for the application for consideration by the Board at its June 23, 2009 meeting. In doing so, the Board invited Lamb to attend the meeting on any concerns that the Board might have with the application. Lamb chose not to attend the meeting.

10. At the June 23, 2009 Board meeting, the Board voted to deny Lamb’s application for licensure based on his failure to disclose the existence of his criminal conviction, his repeated failure to provide any explanation to the Board about the criminal conviction, and his failure to provide any additional explanation as to why he had answered yes to Question 16 which indicated that alcohol or substance use had affected his ability to perform the functions of a private security guard.

III. CONCLUSIONS OF LAW

1. The applicant seeks to have the denial of his application for licensure overturned. As such, he bears the burden of proof to demonstrate that the Board’s denial of his license was erroneous either in fact or law. *See generally*, 2 Am. Jur. 2d *Administrative Law* § 251.

2. A professional licensing board may grant or deny a license. Mont. Code Ann. § 39-1-307(1)(e). Grounds for disciplinary action against a licensee may also

serve as a basis for denying a license to an applicant. Mont. Code Ann. § 39-1-137(1). The purpose of the chapter regulating licensing of private investigators is “to increase levels of integrity, competency, and performance of security companies and their employees . . . to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees” Mont. Code Ann. § 37-60-103.

3. Mont. Code Ann. § 37-1-316 provides in pertinent part that the following is unprofessional conduct (and, therefore sanctionable conduct) for a licensee or license applicant:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use of sale of drugs, fraud, deceit or theft, whether or not an appeal is pending;

* * *

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license . . .

* * *

4. The applicant violated Mont. Code Ann. § 37-1-316(3). The phrasing of Question numbers 7 and 8 leave no doubt what is being asked. The applicant knew or reasonably should have known of his misdemeanor conviction yet he failed to disclose it. His statement in his July 30, 2008 letter wherein he stated that he “didn't realize that a misd[emeanor] was put in your record” demonstrates that the applicant knew that he had the misdemeanor conviction at the time he applied for licensure but believed (erroneously) that the misdemeanor drug conviction would not be part of his criminal record and, therefore, chose not to disclose it. Moreover, after the Board made the applicant aware that it had learned of the drug conviction, he should have made some effort to provide documentation or at least explain the specifics of the drug conviction. Indeed, the Board provided him with ample opportunity over a period of months to provide the information or to explain the details of the convictions and charges. He failed to do so, which further convinces the hearing examiner that the applicant was at a minimum misrepresenting the fact of his misdemeanor conviction for possession of dangerous drugs in order to obtain his license. The applicant's violation of Mont. Code Ann. § 37-1-316(3) in failing to disclose his conviction for drug possession demonstrates an adequate and appropriate basis to deny the applicant's request for licensure in Montana.

IV. RECOMMENDED ORDER

Based upon the foregoing, the hearing examiner recommends that the Board affirm the denial of Eugene Lamb's application for licensure as a private security guard.

DATED this 30th day of October, 2009.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

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GREGORY L. HANCHETT
Hearing Examiner

NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.