

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of:

JASON E. SCHOENSTEIN
Field Representative License No. FR 38469

Petitioner.

Case No. 2009-22

OAH No. 2018030313

DECISION

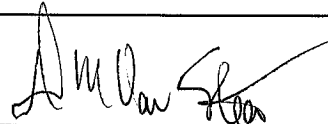
The Proposed Decision of Timothy J. Aspinwall, Administrative Law Judge, in Sacramento, California, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 1, in the caption, "License No. 38469" is stricken and replaced with "Field Representative License No. FR 38469".
2. On page 1, paragraph number 1, insert the prefix "FR" in front of "38469".
3. On page 1, paragraph number 2, insert the prefix "FR" in front of "38469".
4. On page 4, in the ORDER, insert the prefix "FR" in front of "38469".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

The Decision shall become effective on June 29, 2018.

IT IS SO ORDERED May 30, 2018.



DARREN VAN STEENWYK
President
Structural Pest Control Board
Department of Consumer Affairs

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This matter was heard on April 18, 2018, in Sacramento, California, before a quorum of the Structural Pest Control Board (Board). Timothy J. Aspinwall, Administrative Law Judge, Office of Administrative Hearings, presided.

Tim McDonough, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Jason E. Schoenstein (petitioner) appeared on his own behalf.

Evidence was received and the matter was submitted for decision on April 18, 2018.

FACTUAL FINDINGS

License and Disciplinary History

1. On April 11, 2005, the Board issued Field Representative's License No. 38469, Branch 3 to petitioner. On February 26, 2007, petitioner's Field Representative's License was upgraded to include Branch 2.

2. On October 15, 2008, the Board filed Accusation No. 2009-22 against petitioner's Field Representative's License No. 38469, alleging that petitioner failed to provide proof of having acquired 20 hours of continuing education, as claimed in his renewal application dated June 18, 2007. The Board requested in writing on November 27, 2007, January 15, 2008, and February 11, 2008, that petitioner submit copies of his continuing education certificates for the preceding three-year renewal period. He did not do so. The

Accusation also alleged that petitioner engaged in fraud and misrepresentation to the Board when he certified under penalty of perjury on his renewal application that he had acquired and could demonstrate 20 hours of continuing education, when in fact he failed to obtain 20 hours of continuing education and/or failed to demonstrate that he had done so. Based on these underlying facts, the Board charged petitioner in the Accusation with: (1) failure to provide proof of continuing education, (2) misrepresentation, and (3) fraudulent acts.

3. The Board issued a Default Decision and Order revoking petitioner's license, effective February 11, 2009. The basis for the default was that on October 22, 2008, an employee of the Department of Justice served petitioner by Certified and First Class Mail with Accusation No. 2009-22 at his address of record which petitioner is required to maintain with the Board. On or about November 17, 2008, the documents served were returned by the U.S. Postal Service marked "unclaimed." Petitioner failed to maintain an updated address with the Board, and thereby made himself unavailable for service of process. Petitioner thus failed to avail himself of his right to have a hearing on the merits of Accusation No. 2009-22.

Petition for Reinstatement

4. On February 5, 2018, petitioner filed his Petition for Reinstatement of Revoked Field Representative's License (Petition). At hearing, petitioner testified that he voluntarily left the pest control business in 2007, and wrongly assumed he would not need to maintain continuing education. He testified that he could not recall whether he made a false statement that he completed 20 hours of continuing education. He also testified that he could not recall why he filed the 2007 application for renewal (Factual Finding 2) if he intended to leave the pest control business.

5. Petitioner indicated in his Petition and his testimony that in October 2009, he was convicted of misdemeanor alcohol-related reckless driving in violation of Vehicle Code section 23103.5, and that in June 2010, he was convicted of misdemeanor driving under the influence of alcohol in violation of Vehicle Code section 23152, both in San Mateo County Superior Court. Petitioner did not provide any evidence regarding the circumstances of his arrests and convictions. He did not provide any evidence that he has completed any court mandated or voluntary alcohol abuse treatment program. Petitioner testified, without supporting evidence, that he does not currently have a problem with alcohol.

6. Petitioner testified that he currently works as a licensed security guard. In early 2018, he decided to file his Petition. He has since sought to complete continuing education, but testified he could not find a continuing education provider who would allow him to take courses without a license. He was not cognizant in his testimony that there are continuing education providers that will allow unlicensed individuals to enroll in their courses.

7. Respondent acknowledged in his testimony having read and signed the Guidelines for Petitions for Reinstatement, which include criteria for assessing rehabilitation.

Petitioner did not offer any explanation why he did not provide rehabilitation evidence consistent with the rehabilitation criteria.

Discussion

8. Petitioner submitted insufficient evidence of rehabilitation. For example, he did not provide proof of continuing education, third-party declarations regarding his character and professional responsibility, or independent evidence regarding his management of alcohol consumption. Also, petitioner did not acknowledge why he made a false statement on his 2007 application for license renewal. Based on the evidence as a whole, petitioner failed to provide sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public interest to grant his Petition at this time.

LEGAL CONCLUSIONS

1. Government Code section 11522 provides that a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

2. Petitioner bears the burden of establishing that he is sufficiently rehabilitated to justify reinstatement of his license. As set forth in the Factual Findings, petitioner did not submit sufficient evidence of rehabilitation to support a finding that it would be consistent with the public interest to grant the petition at this time. The petition must therefore be denied.

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ORDER

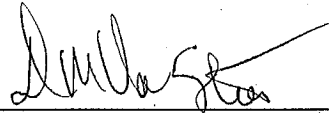
The Petition for Reinstatement of Revoked Field Representative's License No. 38469, filed by petitioner Jason E. Schoenstein, is DENIED.

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on June 29, 2018.

IT IS SO ORDERED.

Dated: May 30, 2018



DARREN VAN STEENWYK
President
Structural Pest Control Board.