

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

In the Matter of the Petition for Reinstatement of:

JOSE G. RAMIREZ,

Petitioner.

Case No. 2012-57

OAH No. 2016091029

ORDER OF DECISION

DECISION

The Proposed Decision of Gene K. Cheever, Administrative Law Judge, in Sacramento, 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 3, paragraph 7, "Terminex" is stricken and replaced with "Terminix".

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 January 20, 2017.

IT IS SO ORDERED December 21, 2016



For the Structural Pest Control Board
Department of Consumer Affairs

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

In the Matter of the Petition for
Reinstatement of:

JOSE G. RAMIREZ

Petitioner.

SPCB No. 2012-57

OAH No. 2016091029

DECISION

This matter was heard on October 12, 2016, in Sacramento, California, before a quorum of the Structural Pest Control Board. Administrative Law Judge Gene K. Cheever, Office of Administrative Hearings, State of California, presided.

Tim McDonough, Deputy Attorney General, Department of Justice, Office of the Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Jose G. Ramirez (petitioner) was present at the hearing and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on October 12, 2016.

FACTUAL FINDINGS

Procedural History and Background

1. On April 26, 2002, the Board issued Field Representative's License No. FR 34598, Branch 1, to petitioner. On June 30, 2007, the Board cancelled this license from its files.¹

2. On February 1, 2008, the Board issued Field Representative's License No. FR 42769 (license), Branch 1, to petitioner. On May 23, 2012, complainant William H. Douglas, in his official capacity, filed an accusation (Accusation) against petitioner.

¹ The record does not reflect why the Board cancelled petitioner's license in 2007.

Complainant alleged that there was cause to discipline petitioner's license based on: (1) his September 25, 2011, felony conviction of robbery, second degree; (2) his September 25, 2007, misdemeanor convictions of driving while under the influence of (DUI) alcohol or drugs and evading a peace officer; (3) his June 20, 2007 misdemeanor DUI conviction; (4) his February 22, 2001 misdemeanor conviction of driving while his license was suspended or revoked; and (5) his misrepresentation on his January 15, 2008, application for a Field Representative's License wherein he stated he had never been convicted of a criminal offense. Petitioner did not appear at his hearing on the Accusation.

3. On August 13, 2012, the Board issued its Default Decision and Order (Decision) against petitioner regarding the Accusation. In its Decision, the Board determined that cause existed to discipline petitioner's license based on the convictions and misrepresentation. Effective September 12, 2012, petitioner's license was revoked.

Initial Petition for Reinstatement

4. On November 13, 2014, the Board received petitioner's first Petition for Reinstatement of Revoked Field Representative's License (first petition). On January 14, 2015, the Board heard petitioner's first petition. Petitioner did not appear at the hearing. On March 12, 2015, the Board issued its Decision denying the petition because petitioner failed to meet his burden of proof to establish that cause existed to grant the petition.

Current Petition for Reinstatement

5. On August 26, 2016, the Board received petitioner's current Petition for Reinstatement of Revoked Field Representative's License (petition). He stated in the petition that since his license revocation, he had worked for Fume Force from March 2013 through January 2015, as a roofing worker, and he had worked for Terminix from January 2015; through the present as a roofing worker. Petitioner confirmed that since his revocation, he was no longer on parole or probation, he has no pending criminal actions against him, he has not been convicted of any criminal offenses, and he has not been charged or disciplined by any structural pest control board or pesticide regulation agency.

6. Petitioner's testimony at the hearing was sincere and credible. He acknowledged that during the time he was convicted of crimes, he "hung out with the wrong crowd." Petitioner joined a gang when he was 13 or 14-years old. He left the gang when he was about 20-years old. If asked, he would now tell young children to stay away from gangs because they are "not worth it." He currently has four children, two daughters ages 19 and 16, and two sons, ages 14 and 2. His 14-year old son is disabled. Petitioner attends church. He does not believe he is an alcoholic and he still drinks alcohol on occasion. He has performed the community service that he was required to perform as part of his court sentence, and he has completed his court ordered formal probation. He expressed regret for his past mistakes.

7. Petitioner has 18 years of experience working in the structural pest control industry. If his license is reinstated, he intends to open a structural pest control business. He currently attends industry-related continuing education programs through his employment with Terminex, but he does not otherwise attend continuing education programs. Petitioner understands the Board has the obligation to protect the public safety. He likewise understands the Board is concerned with applicants who misrepresent matters on their applications and are not honest. Petitioner assured the Board he would not repeat his past mistakes.

Discussion

8. The Board finds that sufficient time has passed since petitioner's convictions. Petitioner has completed his formal probation. He testified in a sincere and honest manner at hearing. After consideration of the evidence, petitioner has met his burden and established that it would not be against the public interest to reinstate his Field Representative license, on a probationary basis, with appropriate terms and conditions.

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. In a proceeding to restore a revoked or surrendered license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation, which must be sufficient to overcome the former adverse determination. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

3. As set forth in the Factual Findings as a whole, petitioner has met his burden and established that it would not be against the public interest to reinstate his Field Representative license, with appropriate terms and conditions designed to protect the public.

ORDER

The petition of Jose G. Ramirez for reinstatement of Field Representative's license number FR 42769 (Branch 1) is GRANTED. Upon reinstatement, petitioner's license shall be immediately REVOKED. The order of revocation shall be stayed, and petitioner shall be placed on probation for a period of five years on the following terms and conditions:

1. **Obey All Laws**

Petitioner shall obey all laws and rules relating to the practice of structural pest control.

2. **Quarterly Reports**

Petitioner shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation**

Should petitioner leave California to reside outside this state, he must immediately notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

4. **Notice to Employers**

Petitioner shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on petitioner by said decision. Within 30 days of the effective date of this decision, and within 15 days of undertaking new employment, petitioner shall cause his employer to report to the Board in writing acknowledging the employer has read this decision.

5. **Completion of Probation**

Upon successful completion of probation, petitioner's Field Representative license will be fully restored.

6. **Violation of Probation**

Should petitioner violate probation in any respect, the Board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. **Continuing Education Course – Branch 1**

Petitioner Jose G. Ramirez shall complete a continuing education course for pest control in Branch 1 (fumigation) within eighteen (18) months of the effective date of this decision.

//

//

DECISION

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

This Decision shall become effective on January 20, 2017.

IT IS SO ORDERED.

Dated: December 21, 2016



DAVID TAMAYO
President
Structural Pest Control Board