

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

In the Matter of the Petition for Reinstatement of:

JOSE EVERETT FISHER,

Petitioner.

Case No. 2014-30

OAH No. 2016090668

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 2, paragraph 5, insert the prefix "FR" in front of "43561 (petition)".

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 19, 2017.

IT IS SO ORDERED December 20, 2016



For the Structural Pest Control Board
Department of Consumer Affairs

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DECISION

This matter was heard on October 12, 2016, in Sacramento, California, before a quorum of the Structural Pest Control Board (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 Everett Fisher (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 May 10, 2007, the Board received an Application for a Field Representative's License, Branch 1, from petitioner. On June 22, 2007, the Board denied the application. On January 17, 2008, complainant Kelli Okuma, in her official capacity, filed a Statement of Issues against petitioner. Complainant alleged that there was cause to deny petitioner's application due to: (1) his September 2, 1999, conviction for possession or sale of a controlled substance, cocaine, a felony; (2) his September 27, 2004, convictions for corporal injury to a spouse and dissuading a witness, both felonies; and (3) his actions that lead to these convictions.

2. On August 30, 2008, petitioner and the Board entered into a Stipulated Settlement and Disciplinary Order (Stipulated Settlement). In the Stipulated Settlement, petitioner admitted the truth of the allegations in the Statement of Issues. The Board issued petitioner Field Representative's License No. FR 43561 (license), effective August 30, 2008, in Branch 1, fumigation, subject to probationary terms, for a three-year period.

3. On December 30, 2013, complainant Susan Saylor, in her official capacity, filed an Accusation against petitioner. Complainant sought to revoke petitioner's license due to: (1) his April 25, 2013, conviction for restricting, obstructing or delaying a peace officer; and (2) his actions that lead to this conviction. As a result of his criminal conviction, petitioner was sentenced to formal probation for three years. The circumstances leading to this conviction occurred on March 7, 2013. Police officers were dispatched to his home after petitioner's girlfriend contacted the police to report that petitioner was acting strange. When the officers arrived, they found petitioner naked inside his home. He refused to speak with the police, attempted to choke a dog, and fought the police when they attempted to arrest him.

4. On August 19, 2014, a hearing was conducted concerning the Accusation before Felix W. Loya, an Administrative Law Judge (ALJ) with the Office of Administrative Hearings. Petitioner was present at the hearing. On September 17, 2014, ALJ Loya issued a Proposed Decision. ALJ Loya revoked petitioner's license and granted the complainant's request for cost recovery in the amount of \$3,340, which petitioner was required to pay as a condition precedent to reinstatement of the revoked license. On October 24, 2014, the Board adopted the Proposed Decision as its Decision, which became effective November 23, 2014. Petitioner has made 28 monthly payments of \$50 per month, for a total of \$1,400, leaving an unpaid balance of \$1,940.

Petition for Reinstatement

5. On August 3, 2016, petitioner filed the instant Petition for Reinstatement of Revoked Field Representative's License No. 43561 (petition). This was petitioner's first petition for reinstatement. He stated in the petition that he has worked for Coastal Fumigation, Inc. (Coastal) in Santa Maria from August 27, 2011, to the present. He confirmed that since his license revocation, he is no longer on parole or probation, he has no pending criminal charges against him, and he has not been charged or disciplined by any structural pest control board or pesticide regulation agency. He stated that the only criminal offense that he has been convicted of since his license revocation was for a traffic violation of running a red light for which he paid a \$555 fine.

6. At the hearing, petitioner expressed regret for his past mistakes and took responsibility for his conduct. He is 45-years old, and has a girlfriend, a 23-year old son, and a 13-year old daughter for whom he provides support. Petitioner recognized he has mental health issues that require ongoing medical treatment. He has been clean and sober since 2011. He attends some narcotics anonymous meetings (NA).

7. Petitioner admitted his mental health issues, and his failure to take his prescription medications, contributed to his conduct that led to his 2013 conviction. He currently addresses his mental health well-being on a daily basis. He takes his prescription medication every night as prescribed and sees his psychiatrist on a monthly basis. He finds speaking with his psychiatrist beneficial. His boss is aware of his mental health condition and his addiction issues. His boss has been very supportive of him and takes measures to accommodate him at work to reduce his stress level. Petitioner identified the support systems in his life to include his boss, his psychiatrist, his family, including his uncle who attends NA meetings, his pastor from his church, and his applying Native American traditions to his life.

8. Petitioner understands the Board has the obligation to protect the public safety. He now knows that having his license is a privilege and not a right. He attends training courses at his place of employment and is aware of the changes in the law. He knows that he needs to maintain his sobriety and his mental health well-being. Petitioner stated that if he were to have his license reinstated, he would make sure he protects it. He would use the license to help his boss do the additional work that the license would enable him to do, and he would be an example to his fellow co-workers about the importance of maintaining the privilege of having the license. He currently speaks to youths about the importance of not getting into trouble because it can later affect their employment opportunities.

9. Ismael Rodriguez testified on behalf of petitioner. He is petitioner's boss at Coastal. He has known petitioner for over 20 years and knows petitioner's family. He is aware of petitioner's past convictions. He is also aware of petitioner's mental health and addiction issues, and he speaks regularly with petitioner about his challenges. Petitioner has been a good employee. He is timely, has a good attitude, and has great customer service skills. Mr. Rodriguez accommodates petitioner at work to help reduce his stress level. If petitioner were to have his license reinstated, he would utilize petitioner in work duties that require his having the license. Mr. Rodriguez is trying to get petitioner away from some of the physical aspects of fumigation work given petitioner's age. Petitioner attends the training courses regarding developments in the structural pest control industry at Coastal. Mr. Rodriguez has not seen petitioner have a mental health breakdown since his 2013 incident. He has not seen petitioner consume alcohol or illegal drugs since petitioner became sober in 2011.

10. Petitioner provided a letter from his psychiatrist in support of his petition. She confirmed that petitioner is under her care, that he is stable, and he is not a threat to himself or others.

Discussion

11. Prior to the revocation of his license, petitioner had worked as a Field Representative for approximately six years without incident. Petitioner's most recent conviction occurred more than three years ago. He provided sufficient evidence of his rehabilitation since his conviction. Petitioner demonstrated that he has learned from his

mistakes and that he has taken significant steps to develop a solid network of support for his mental health well-being and his addiction issues. The Board recognizes petitioner's work relationships at Coastal have been beneficial for him and believes that he should strive to continue to maintain these relationships. The Board also commends petitioner for making 28 monthly payments of \$50 per month to pay his prior cost obligation to the Board. 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 Everett Fisher for reinstatement of Field Representative's license number FR 43561 (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 42 months 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. Payment of Costs

Petitioner shall continue to make payments to the Board of \$50 per month such that he will have complied with the Board's October 24, 2014 Decision to make payment to the Board of a total of \$3,340. The full amount shall be paid before his probation is completed. The Board acknowledges that, as of the hearing of this petition for reinstatement, petitioner had paid \$1,400 of the \$3,340 required to be paid.

DECISION

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

This Decision shall become effective on January 19, 2017.

IT IS SO ORDERED.

Dated: December 20, 2016



DAVID TAMAYO
President
Structural Pest Control Board