

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

In the Matter of the Petition for
Modification/Termination of Probation of:

OAH No. 2017120215

ANGEL SUAREZ,

Petitioner.

DECISION

A quorum of the Structural Pest Control Board (Board) heard this matter on January 9, 2018, in Claremont, California. Administrative Law Judge Ji-Lan Zang of the Office of Administrative Hearings presided.

Tim McDonough, Deputy Attorney General, represented the Attorney General under Government Code section 11522. Petitioner Angel Suarez appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on January 9, 2018, following which the Board met in executive session and decided the matter on the day of hearing.

FACTUAL FINDINGS

1. On August 28, 2007, petitioner applied for an Applicator's License, which was denied by the Board on April 30, 2008. Petitioner appealed. Following a disciplinary hearing in case number 2009-28, on April 20, 2009, the Board issued a Decision and Order, effective May 20, 2009, in which it denied petitioner's application for an Applicator's License, but issued him a probationary license, number RA49913, Branches 2 (general pest) and 3 (termites), for a period of five years, subject to terms and conditions.

2. The disciplinary action in case number 2009-28 stemmed from petitioner's June 8, 2006 convictions for violating Health and Safety Code section 11360, subdivision (a) (transporting or sale of marijuana), with a sentencing enhancement under Penal Code section 12022, subdivision (a)(i), for the use of a firearm, and Health and Safety Code section 11351 (possession of a controlled substance for sale), both felonies.

3. On October 13, 2011, the Board, by a Decision and Order, effective November 12, 2011, revoked petitioner's probationary license in case number 2011-5. The discipline in this case arose from petitioner's January 28, 2010 conviction for violating Vehicle Code section 2800.2 (evading a police officer), a felony, and Vehicle Code section 23152, subdivision (b)(driving with a blood alcohol level of 0.08 percent or higher), a misdemeanor. Additionally, on March 16, 2010, petitioner was convicted of violating Penal Code section 415, subdivision (l)(disturbing the peace, fighting).

4. On November 12, 2013, petitioner filed a Petition for Reinstatement. On March 13, 2014, the Board, by Decision and Order, effective August 22, 2014, in Case No. 2013120791, granted the petition and ordered that an Applicator's License be issued to petitioner. However, the license was immediately revoked, and the revocation stayed. Petitioner's license was placed on probation for a period of four years, subject to terms and conditions. Specifically, petitioner was required to complete certain continuing education classes in the areas of laws and regulations, integrated pest management, and pesticide application prior to the reinstatement of his license. Petitioner did not provide proof of completing the required continuing education courses until May 5, 2016. Thus, petitioner's license was reinstated on May 6, 2016, and his Board probation is scheduled to terminate on May 6, 2020.

5. Petitioner has complied with all terms and conditions of his probation, including payment in full of \$1,500 to the Board for its costs of investigation and enforcement in the matter.

6. On August 15, 2017, petitioner filed a Petition for Modification/Termination of Probation.

7. Petitioner seeks early termination of his Board probation in order to advance in his career and receive a higher salary. Petitioner currently works for a pest control company, but he has experienced difficulty in getting promoted at his job due his disciplinary record with the Board. Petitioner's employer is unwilling to promote him to the position of inspector and give him a raise unless his license is no longer probationary.

8. Petitioner described the criminal convictions which led to his license discipline as "stupid mistakes" that he made when he was young. He is now 33 years old and believes that he has matured. Petitioner asserted that all of his criminal convictions have been expunged, but he did not provide any court documents to corroborate this testimony. No evidence was presented to establish that petitioner has suffered any other convictions after 2010.

9. Petitioner last participated in Alcoholics Anonymous (AA) in 2013, as it was required under the terms of his criminal probation. Petitioner's current employer is aware of petitioner's criminal record, but the company does not conduct any random drug or alcohol testing.

10. Petitioner also explained that it took a long time for him to complete the continuing education classes required by the terms of his Board probation because he was

working. Petitioner is father to five children. He does not volunteer for any civic or community-based organizations because he is, in his words, "busy with the kids."

11. The Board considered all documentary evidence contained in the Petition for Modification/Termination of Probation. The Board also considered petitioner's testimony at the hearing.

LEGAL CONCLUSIONS

1. Petitioner has the burden of establishing that he is entitled to modification of probation conditions and to early termination of his probation. (Evid. Code § 500; *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

2. Petitioner failed to meet his burden of establishing that cause exists to terminate his probation. Although it is commendable that petitioner has complied with the terms of his probation, this compliance carries little weight because he is required to behave in exemplary fashion while on probation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Petitioner cited financial concerns as his sole reason for seeking early termination of his probation, but he provided little evidence of rehabilitation. Petitioner did not submit any documentary evidence to corroborate his testimony that his prior convictions had been expunged. No other witnesses testified or provided letters regarding petitioner's daily conduct and mode of living to lend substance to his own testimony of rehabilitation. Petitioner is not involved with any civic or community-based activities. He also presented no evidence of sobriety or recent participation in AA. Given that petitioner has been on probation for less than two years, he needs more time to establish a solid record of rehabilitation. As such, petitioner's probation shall not be terminated early.

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ORDER

Petitioner Angel Suarez's Petition for Modification/Termination of Probation is denied.

This Decision shall be effective March 23, 2018.

DATED: February 21, 2018



Darren Van Steenwyk, President
Structural Pest Control Board
State of California