

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

In the Matter of the Petition for Reinstatement of:

AARON J. ESSERT,

Petitioner.

Case No. 2013-45

OAH No. 2017090498

ORDER OF DECISION

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Structural Pest Control Board as its Decision in the above-entitled matter.

The Decision shall become effective on January 3, 2018.

IT IS SO ORDERED December 4, 2017.



DAVID TAMAYO
President, Structural Pest Control Board

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DECISION

This matter was heard before a quorum of the Structural Pest Control Board (Board) comprised of Dave Tamayo, President, Darren Van Steenwyk, Vice President, Curtis Good, and Mike Duran on October 10, 2017, in Sacramento, California. Administrative Law Judge Karen J. Brandt, Office of Administrative Hearings, presided.

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

Aaron J. Essert (petitioner) represented himself.

Evidence was received, the record was closed, and this matter was submitted for decision on October 10, 2017.

FACTUAL FINDINGS

1. Effective August 17, 2011, petitioner and the Board entered into a Stipulation for a Probationary License (Stipulation), by which the parties agreed that petitioner would be granted a five-year probationary applicator's license, subject to various terms and conditions, including that petitioner would obey all local, state and federal laws. The Stipulation listed 12 convictions that petitioner had sustained between 1995 and 2010.

2. Pursuant to the Stipulation, on August 17, 2011, petitioner was issued Probationary Applicator's License No. RA 52425 in Branches 2 and 3 (applicator's license).¹

¹ As set forth in petitioner's license history, petitioner was issued licenses prior to the applicator's license for which he seeks reinstatement: (a) on August 28, 1996, petitioner was

3. On May 10, 2013, an Accusation and Petition to Revoke Probation was filed against petitioner, which sought to revoke petitioner's applicator's license based upon his conviction on August 23, 2012, for possession of a controlled substance, a felony. On August 15, 2013, the Board adopted a Default Decision and Order, revoking petitioner's applicator's license, effective September 14, 2013.

Petitioner's Subsequent Convictions

4. After the May 10, 2013 Accusation and Petition to Revoke Probation was filed, petitioner sustained the following convictions:

(a) On May 13, 2013, in Kern County Superior Court, Case No. BM818912A, petitioner, on a plea of nolo contendere, was convicted of violating Vehicle Code section 12500, subdivision (a), driving without a license, a misdemeanor.

(b) On November 20, 2013, in Kern County Superior Court, Case No. BF148409A, petitioner, on a plea of nolo contendere, was convicted of violating Health and Safety Code section 11352, subdivision (a), transporting and selling a controlled substance, a felony.

(c) On April 17, 2014, in Kern County Superior Court, Case No. BF153996A, petitioner, on a plea of nolo contendere, was convicted of violating: (1) Penal Code section 107, escaping from a state facility, a felony; (2) Health and Safety Code section 11350, subdivision (a), possessing a controlled substance, a felony; (3) Vehicle Code section 23152, subdivision (c), driving a vehicle while addicted to a drug, a misdemeanor; and (4) Vehicle Code section 14601.1, subdivision (a), driving while license suspended, a misdemeanor.

(d) On February 25, 2015, in Kern County Superior Court, Case No. BF158816A, petitioner, on a plea of nolo contendere, was convicted of violating: (1) Vehicle Code sections 23152, subdivision (e), and 23550, subdivision (a), driving a vehicle while under the influence of a drug within 10 years after three or more violations, a felony; (2) Vehicle Code section 20002, subdivision (a), hit and run, a misdemeanor; and (3) Vehicle Code section 14601.1, subdivision (a), driving while license suspended, a misdemeanor.

(e) On February 2, 2016, in Kern County Superior Court, Case No. BF162130A, petitioner, on a plea of nolo contendere, was convicted of violating

issued Applicator's License No. RA 4910, which was cancelled on August 28, 1999; (b) on May 3, 2000, petitioner was issued Applicator's License No. RA 14744, which was cancelled on May 3, 2003; and (c) on March 17, 2004, petitioner was issued Applicator's License No. RA 41597, which was cancelled on March 17, 2010.

Vehicle Code sections 23152, subdivision (e) and 23550.5, driving while under the influence of a drug with an enhancement for a prior felony, a felony.

Petition for Reinstatement

5. On August 11, 2017, the Board received petitioner's petition for reinstatement of his revoked applicator's license. On his petition, petitioner checked the "Yes" boxes in response to the questions asking whether, since his applicator's license was revoked, he had been convicted of a crime and was currently on probation. He stated that in 2016, he was employed as a fireman/cook at the California Department of Forestry and Fire Protection (Cal Fire) Baseline Camp, and that since February 2017, he has been employed by S.T.O.Pests Pest Control as a helper.

6. With his petition, petitioner included the following documents:

(a) Petitioner wrote a letter which stated that the last 10 years have been the "hardest" of his life. He had "back surgery and got hooked on the really hard medications and it all went downhill from there." He went to prison for four years, "but spent that time being a productive member of society working for" Cal Fire. He completed a four and one-half month inpatient program at Turning Point California. He is now back at home with his new wife and children. He is attending church weekly and going to leadership meetings. His family owns S.T.O.Pests Pest Control. He someday hopes to run the company.

(b) John Essert is petitioner's father and the owner/operator of S.T.O.Pests Pest Control. He wrote a letter dated August 7, 2017, in support of petitioner. Mr. Essert would like petitioner's applicator's license to be reinstated so petitioner may work as a Route Technician. Mr. Essert feels that there has been a "deep heart felt change" in petitioner's life in the "last couple of years." After watching petitioner closely while petitioner has been working as a helper, Mr. Essert is confident that petitioner can be trusted with license responsibilities.

(c) Fabian Trebizo is a caseworker in the Male Community Reentry Program (MCRP) at Turning Point of Central California, Inc., Kennemer Center Residential Treatment Program. In his letter dated August 9, 2017, Mr. Trebizo wrote that petitioner entered the MCRP program on December 13, 2016, and was discharged on May 5, 2017. According to Mr. Trebizo, petitioner was a "productive participant who was always on time for his group sessions and had full participation." After petitioner's 30-day initial "blackout," he began working for S.T.O.Pests Pest Control. Petitioner spent the "majority" of his time working, and when he was onsite, he was a "great example to his peers." Mr. Trebizo believes that petitioner has become a "productive, responsible member of society," and that receiving his applicator's license would be a "great thing for himself and his family."

(d) Olivia Leyva is a caseworker and supervisor in the MCRP. Ms. Leyva described the MCRP as being designed to “help participants successfully re-enter the community from prison and reduce recidivism.” According to Ms. Leyva, petitioner “attended rehabilitative services that prepared him for his successful re-entry into the community.” Ms. Leyva observed “firsthand the growth and success” of petitioner. He returns occasionally to update them on his success. Ms. Leyva believes that petitioner should be given the opportunity to regain his applicator’s license. He has “shown he can be trust worthy, he is reliable, and has good work ethics.”

(e) Petitioner submitted a certificate from Turning Point indicating that he successfully completed 143 days in the MCRP.

(f) Petitioner submitted a State License Release dated July 31, 2017, issued by the Kern County Department of Child Support Services to the Department of Motor Vehicles, which stated that petitioner’s license was now eligible for renewal.

Testimony at the Petition Hearing

7. At the petition hearing, petitioner recognized that he had a long history of being in and out of jail. He explained that he had back surgery, and was prescribed OxyContin for the pain. Within a year, the drug had “stolen [his] life.” He has been struggling and fighting his addiction since then. He was sent to prison for a second time. He was assigned to a Cal Fire fire camp, which he described as a “humbling experience.” He left the fire camp four or five months early to attend the MCRP program at Turning Point. He is still on probation, which he believes will end in six or seven months.

8. Petitioner’s father owns S.T.O.Pests Pest Control. Petitioner has been working there since he was 16 years old. He would like to be part of this family-owned business. He and his wife intend to buy 10 percent of the company this coming January.

9. Petitioner is now 40 years old. He has a 22-year-old son from his first marriage. He remarried shortly before he went to prison. His wife had two children from her previous marriage. Her first husband died in an oilfield accident. Their children are now six and 13 years old.

10. Petitioner’s sobriety date is November 8, 2015. He was an inpatient in Turning Point’s MCRP program for almost five months. He described himself as a “polysubstance abuser.” He used both OxyContin and heroin. He attended Narcotics Anonymous (NA) while he was at Turning Point. He now returns to Turning Point about once every three weeks to talk to current residents about his experiences. He lives one day at a time trying to remain clean and sober. He is subject to random urine testing at work and by his probation officer approximately every two weeks. He no longer has any urge to use drugs, but sometimes he has dreams about it. When he does, he gets on his knees and prays to stay clean that day. He now takes ibuprofen to address any back pain he may experience.

11. The church petitioner belongs to is called "The Rock." His father is the associate pastor. One night a week, petitioner takes a church class called Adverse Childhood Experiences (ACE), during which he tries to understand the childhood experiences that lead to his addiction. He also attends the church's leadership meetings and Sunday services.

12. Petitioner currently works for S.T.O.Pests Pest Control as a helper to Steve Shepard, who is a two percent owner and manager of the company. Petitioner receives \$500 per month for this work. His wife receives death benefits from the death of her previous husband, but these payments will end in March 2018.

13. Mr. Shepard testified on petitioner's behalf. Mr. Shepard has known petitioner for more than 20 years. He is a member of the same church. He described petitioner as "like a little brother." He has seen petitioner go through his first marriage at 17 years old, his divorce, his drug addiction, and his prison sentences. Petitioner has been working as Mr. Shepard's helper for five to six months. Petitioner's sobriety has made a real difference in Mr. Shepard's ability to work with petitioner. In the past, Mr. Shepard had petitioner fired due to his drug addiction. Mr. Shepard believes that petitioner's marriage and children have "grabbed ahold" of him and caused him to change. Petitioner is now serious about being a father. Mr. Shepard asserted that he would not allow petitioner to work with him if petitioner were not drug-free, and that he would "shut [petitioner] down" if petitioner "messes up."

Discussion

14. As set forth in California Code of Regulations, title 16, section 1937.2, subdivisions (b) and (c), when considering a petition for reinstatement, the Board evaluates evidence of rehabilitation submitted by the petitioner, considering the following criteria: (a) the nature and severity of the acts or crimes under consideration; (b) evidence of any acts committed subsequent to the acts or crimes under consideration; (c) the time that has elapsed since commission of the acts or crimes referred to in (a) and (b); (d) the extent to which the petitioner has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed; and (e) evidence, if any, of rehabilitation submitted by the petitioner.

15. From all the evidence petitioner presented, it appears he is making a serious effort to remain clean and sober. His effort is commendable. He is encouraged to continue to remain drug-free.

16. But there was not sufficient evidence to establish that petitioner is currently ready to have his applicator's license reinstated. He has a very long history of drug abuse and convictions. The applicator's license he seeks to reinstate was granted on a five-year probationary basis in 2011 pursuant to a Stipulation that listed 12 prior convictions. His 2011 probationary license was revoked in 2013 after he was convicted in 2012 of possession of a controlled substance. After his applicator's license was revoked, he was convicted of multiple crimes relating to the use, possession and sale of controlled substances. Although he has been clean and sober since November 2015, he was either in prison, a fire camp, or an

inpatient facility until May 2017. He is still on probation and under the scrutiny of a probation officer. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation because such conduct is expected].) He is not regularly attending NA. Rehabilitation must be demonstrated by sustained conduct over an extended period of time. (See *In re Menna* (1955) 11 Cal.4th 975, 991.) There has not been sufficient time since petitioner's discharge from Turning Point's MCRP program to assess whether his recovery will be stable and long-lasting.

17. In sum, when all the evidence is considered in light of the criteria set forth in California Code of Regulations, title 16, section 1937.2, subdivisions (b) and (c), in order to protect the public health, safety and welfare, petitioner's petition for reinstatement of his revoked applicator's license must be denied.

LEGAL CONCLUSIONS

1. In a proceeding for reinstatement of a revoked license, the burden at all times is on the petitioner to establish rehabilitation. (See *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398, citing *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091-1092; *Feinstein v. State Bar* (1952) 39 Cal.2d 541.)

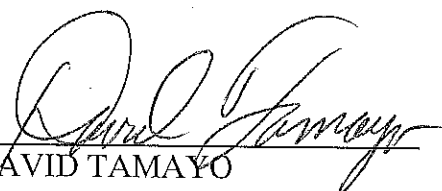
2. As set forth in Finding 16, petitioner failed to establish by clear and convincing evidence that he has engaged in sustained and long-lasting rehabilitation to ensure that the public would be adequately protected if his applicator's license were reinstated at this time. Consequently, to protect the public health, safety and welfare, his petition for reinstatement must be denied.

ORDER

The petition of petitioner Aaron J. Essert for reinstatement of his revoked Applicator's License No. RA 52425 is DENIED.

This Decision shall become effective on January 3, 2018.

IT IS SO ORDERED December 4, 2017.



DAVID TAMAYO
President
Structural Pest Control Board