

STATE OF NEW YORK
DEPARTMENT OF STATE
OFFICE OF ADMINISTRATIVE HEARINGS

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In the Matter of the Application of

CAROL A. COATS

DECISION

For a License as a Private Investigator

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The above noted matter came on for hearing before the under-
signed, Roger Schneier, on April 25, 2000 at the New York State
Office Building located at 65 Court Street, Buffalo, New York.

The applicant, having been advised of her right to be repre-
sented by an attorney, chose to represent herself.

The Division of Licensing Services (hereinafter "DLS") was
represented by Assistant Litigation Counsel Scott NeJame, Esq.

ISSUE

The issue before the tribunal is whether the applicant has
sufficient qualifying experience to be granted a license as a
private investigator.

FINDINGS OF FACT

1) By application received on or about August 19, 1999 the
applicant applied for a license as a private investigator, basing
the application on experience obtained as a Safety and Security
Officer/Claims Investigator at W.C.A. Hospital, Jamestown, New York
from June 1986 through the present. While she also claims to have
served in paralegal/investigative positions from 1960 through 1986,
the only evidence of such experience which she submitted regards
five months in 1979 during which she served as a student intern for
Southern Tier Legal Services two days a week and, as part, but not
the primary part, of her duties, assisted in investigations (State's
Ex. 2, App. Ex. A).

2) By letter dated November 4, 1999 DLS advised the applicant
that it proposed to deny her application because she had "failed to
satisfactorily prove 3 years of qualifying investigative experi-
ence," and that she could request an administrative hearing, which
she did by letter dated November 25, 1999. Accordingly, the matter
having been referred to this tribunal on January 27, 2000, notice
of hearing of the same date was served on the applicant by certified
mail posted by DLS on March 6, 2000 and delivered on March 13, 2000
(State's Ex. 1).

3) The applicant's position with W.C.A. Hospital involves,
along with routine security duties, the making of investigations
regarding: The cause of false fire alarms; the identity of persons
acting improperly on hospital property; telephone tampering; thefts

and missing property; accidents resulting in injuries; the ownership of abandoned vehicles; the presence of contraband; vandalism; and the locating of missing persons. Also included in what she claims to be qualifying experience is, among other things: The investigation of safety hazards; assuring that proper signs are posted; inquiring into improper plowing; locating hospital personnel; warning contractors to secure tools; explaining an order of protection; showing a safety video to staff; conducting a safety survey and fire inspections; assisting patients in dealing with bureaucracy; marking oxygen canisters with caution tape; preventing a physical confrontation; providing emergency first aid; determining the need to stock certain medical equipment in an out patient clinic; the verification of insurance claims to determine if they are covered services; and dealing with violent or confused patients.

While the applicant claims that her primary duties involve the making of investigations, according to her supervisor such investigations involve approximately 25% of the applicant's time at work (State's Ex. 2).

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that she has acquired the required experience. General Business Law State Administrative Procedure Act (SAPA), §306(1). Substantial evidence is that which a reasonable mind could accept as supporting a conclusion or ultimate fact. *Gray v Adduci*, 73 N.Y.2d 741, 536 N.Y.S.2d 40 (1988). "The question...is whether a conclusion or ultimate fact may be extracted reasonably--probatively and logically." *City of Utica Board of Water Supply v New York State Health Department*, 96 A.D.2d 710, 465 N.Y.S.2d 365, 366 (1983)(citations omitted).

II- General Business Law (GBL) §72 establishes certain experience requirements which must be met by an applicant before a license as a private investigator may be issued:

"Every such applicant for a license as a private investigator shall establish to the satisfaction of the secretary of state...(that he) has been regularly employed , for a period of not less than three years, undertaking such investigations as those described as performed by a private investigator in subdivision one of section seventy-one of this article, as a sheriff, police officer in a city or county police department, or the division of state police, investigator in an agency of the state, county or United States government, or employee of a licensed private investigator, or *has had an equivalent position and experience.*" (emphasis added).

GBL §71[1] defines "private investigator" to "mean and include the business of private investigator and shall also mean and include, separately or collectively, the making for hire, reward or for any consideration whatsoever, of any investigation for the purpose of obtaining information with reference to any of the following matters...; crime or wrongs done or threatened against

the government of the United States of America or any state or territory of the United States of America; the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person, group of persons, association, organization, society, other groups of persons, firm or corporation; the credibility of witnesses or other persons; the whereabouts of missing persons; the location or recovery of lost or stolen property; the causes and origin of, or responsibility for fires, or libels, or losses, or accidents, or damage or injuries to real property; or the affiliation, connection or relation of any person, firm or corporation with any union, organization, society or association, or with any official, member or representative thereof; or with reference to any person or persons seeking employment in the place of any person or persons who have quit work by reason of any strike; or with reference to the conduct, honesty, efficiency, loyalty or activities of employees, agents, contractors, and sub-contractors; or the securing of evidence to be used before any authorized investigation committee, board of award, board of arbitration, or in the trial of civil or criminal cases." (emphasis added).

The applicant's experience was obtained as a Safety and Security Guard/Claims Investigator in the employ of a private hospital and as a student intern at a legal services office. She was not employed by a licensed private investigator or as a sheriff, police officer, or employee of a licensed private investigator, nor is her application supported by a claim of experience or evidence regarding employment as a government investigator. Therefore, for her experience to be used to enable the applicant to be licensed as a private investigator, that experience would have to constitute "equivalent positions and experience", defined in 19 NYCRR 172.1 as:

"...investigations as to the identity, habits, conduct, movements, whereabouts, affiliations, reputation, character, credit, business or financial responsibility of any person, group of persons, association, organization, society, firm or corporation, or as to the origins or responsibility for crimes and offenses, the location or recovery of lost or stolen property, the cause or origin of or responsibility for losses or accidental damage or injury to persons or to real or personal property, or to secure evidence to be used before any authorized investigation committee, board of award, board of arbitration or in the trial of civil or criminal cases including as to the credibility of any witnesses. Such investigations shall be have performed for a period of three years, for an employer, firm, organization or governmental agency, whether subject to the provision of Article 7 of the General Business Law or otherwise, which required such investigations in the course of its regular operations, and *which such investigations were conducted on a full-time basis in a position the primary duties of which were to conduct investigations and same comprised the major*

portion of the applicant's activities therein...."
(emphasis added).

The applicant has established that she conducts investigations as a part of her duties. However, according to her supervisor the making of such investigations is not her primary duty. While she insists that it is, her belief appears to be based upon a misunderstanding of the definition of "investigation" as it applies to her application, since in the summary of her experience which she supplied she has included numerous activities which do not fall within the statutory definition of "investigation." Her experience with Southern Tier Legal Services was not full-time and the conducting of investigations was not her primary duty. The evidence is, therefore, insufficient to support a conclusion that the applicant has been employed in a position in which investigations comprised the major portion of her activities.

CONCLUSIONS OF LAW

The applicant has not established by substantial evidence that she has sufficient experience to qualify for a license as a private investigator and, accordingly, her application should be denied. GBL §72; SAPA §306[1].

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Carol A. Coats for a license as a private investigator is denied.

Roger Schneier
Administrative Law Judge

Dated: May 4, 2000