

STATE OF NEW YORK
DEPARTMENT OF STATE

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In the Matter of the Application of

RICHARD W. McMAHON

DECISION

For a License as a Private Investigator

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This matter came on for hearing before the undersigned, Roger Schneier, on January 4, 1995 at the office of the Department of State located at 270 Broadway, New York, New York.

The applicant, of 428 McCall Avenue, West Islip, New York 11795, was represented by Ira Greene, Esq., 26 Court Street, Suite 1610, Brooklyn, New York 11242.

The Division of Licensing Services was represented by Supervising License Investigator Michael Coyne.

ISSUE

The issue before the tribunal is whether the applicant has sufficient experience to qualify for a license as a private investigator.

FINDINGS OF FACT

1) By application dated March 5, 1994 the applicant applied for a license as a private investigator (State's Ex. 2). By letter dated July 26, 1994 he was advised by the Division of Licensing Services that it proposed to deny the application for want of sufficient qualifying experience, and that he could request an administrative review. By letter dated August 7, 1994 the applicant requested such a review, and by letter dated September 26, 1994 he was advised that after review the Division of Licensing Services still proposed to deny the application. By letter dated October 6, 1994 the applicant requested an administrative hearing, and on November 21, 1994 a notice of hearing was served on him by certified mail (State's Ex. 1).

2) The applicant seeks to support the application with a claim of experience gained in three separate time periods: 22 months commencing in 1949, during which the applicant was in the United States Army; 1974 to 1981, during which he was a Court Officer assigned to the Supreme Court in Brooklyn; and September 1983 through January 1984, during which he was a Court Officer assigned to the Unified Court System, Office of Court Security Services, Applicant Verification Unit. The Division of Licensing Services has granted him credit only for those final 6 months.

The Army experience involved the applicant's assignment to the Criminal Investigations Division (CID) in Japan. The applicant's unrefuted testimony was that in that position he engaged in the investigation of crimes for approximately 50% of the 22 months.

As established by the testimony of the applicant's former commanding officer, the Court Officer experience from 1974 to 1981, a period of 96 months, included conducting internal investigations relative to criminal activity involving narcotics and other contraband and confidential court records. The applicant spent 20% of his time in that position conducting such investigations.

OPINION

I- As the person who requested the hearing, the burden is on the applicant to prove, by substantial evidence, that he has acquired the required experience. 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). Such evidence need not be documentary, and may consist of sworn testimony.

II- General Business Law (GBL) §72 establishes certain experience criteria 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."

The applicant's experience has been as a government investigator, first in the United States Army, and then in the New York State Unified Court System. The Division of Licensing Services has conceded that he is entitled to full credit for the 6 months in which he served in the Office of Court Security Services, Applicant Verification Unit. I find that, in addition, he is entitled to 11 months credit for the 22 months in the Army CID during which he spent 50% of his time conducting investigations, and to 19 months credit for the 96 months period from 1974 to 1981 during which he spent 20% of his time conducting internal investigations as a court officer. All told, therefore, the applicant is entitled to credit for the required 3 years of qualifying experience.

It is important to note that the applicant does not seek to qualify with equivalent experience. He relies on experience as a government investigator. Therefore, the requirement of 19 NYCRR 172.1 that the experience be obtained in a position in which the primary duties are investigative, which applies to equivalent experience, is of no relevance. Application of Oddo, 42 DOS 94. Investigations do not have to have been the primary duties of an applicant who performed such investigations while an employee of the State or Federal government, so long as over the course of employment a sufficient amount of experience is accumulated. Application of Oddo, supra.; Application of Murphy, 4 DOS 87; Application of Molow, 56 DOS 85; Application of Aquigliaro, 24 DOS 84; Application of Langevin, 37 DOS 81; Application of Palmore, 1 DOS 81.

The Division of Licensing Services has proposed to reject the application, apparently because the applicant was unable to provide sufficient documentary evidence of his experience. The testimony, however, has established that the applicant has the claimed experience.

CONCLUSIONS OF LAW

The applicant has established by substantial evidence that he has sufficient experience to qualify for a license as a private investigator. SAPA §306[1]; GBL §72.

DETERMINATION

WHEREFORE, IT IS HEREBY DETERMINED THAT the application of Richard W. McMahon for a license as a private investigator is granted.

These are my findings of fact together with my opinion and conclusions of law. I recommend the approval of this determination.

Roger Schneier
Administrative Law Judge

Concur and So Ordered on:

ALEXANDER F. TREADWELL
Secretary of State
By:

Phillip M. Sparkes
Special Deputy Secretary of State