

1-1007-9378-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF BARBER EXAMINERS

In the Matter of Lowell J. Smith,
License No. 2

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 3:00 p.m., January 30, 1995, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota. Joan M. Wood, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Complaint Committee of the Board of Barber Examiners ("the Board"). Lowell J. Smith, ("the Respondent"), 11530 Juniper, Coon Rapids, Minnesota 55448, appeared on his behalf. The record closed the day of the hearing.

This Report is a recommendation, not a final decision. The Board of Barber Examiners will make the final decision after a review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Maureen Tibbetts, Executive Secretary, Board of Barber Examiners, No. 335, 1 University Avenue West, St. Paul, Minnesota 55104, telephone: 612/642-0489, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issue in this contested case proceeding is whether or not disciplinary action should be taken against the occupational license of the Respondent or

the grounds set forth in Minn. Stat. § 214.101, subd. 1 (1994). Specifically, the issues are (1) whether Respondent is a licensee of the Board, (2) whether full payment of Respondent's child support arrearages has been made, and (3) whether the suspension of Respondent's license or probation is appropriate.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Board of Barber Examiners received a notice on January 10, 1995 from Todd County Social Services requesting that a hearing be conducted for suspension of the occupational license of Respondent, Lowell J. Smith, because Respondent is in arrears in child support payments. (Ex. C-2.)

2. That the social security number of the Lowell J. Smith named in the notice from Todd County is 468-94-3161 and his date of birth is October 17, 1967. (Ex. C-2.) The social security number of the Lowell J. Smith licensed by the Board is 468-94-3161 and his date of birth is October 17, 1967. (Ex. B.)

3. The Lowell J. Smith, who is named in the notice from Todd County Social Services, currently holds an apprentice barber license, No. 2, issued by the Board. (Ex. B.)

4. In a Judgment and Decree dated August 29, 1994, the Respondent was ordered to pay child support of \$176 per month and medical support of \$50 per month. (Ex. A.)

5. As of January 24, 1995, Respondent is in arrears in child support payments in the amount of \$3,154.76. (Ex. C.)

6. To date, Respondent has failed to pay all of the support ordered and has not paid the arrearages of child support.

7. The Respondent believes that if he loses his license he will be under an extreme hardship since he is his family's main breadwinner. He has an 11 month old daughter.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction hereunder and authority to take the action proposed pursuant to Minn. Stat. §§ 14.50, 214.101 and 154.161 (1994).

2. The Board gave proper notice of this hearing and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 214.101, subd. 1(b), provides, in part, as follows:

. . . If the board finds that the person is licensed by the board and evidence of full payment of arrearages found to be due by the court or the public agency is not presented at the hearing, the board shall suspend the license unless it determines that probation is appropriate under subd. 2. The only issues to be determined by the board are whether the

person named in the court order or public agency notice is a licensee, whether the arrearages have been paid, and whether suspension or probation is appropriate. The board may not consider evidence with respect to the appropriateness of the underlying child support order or the ability of the person to comply with the order. The board may not lift the suspension until the licensee files with the board proof showing that the licensee is current in child support payments and maintenance.

4. Lowell J. Smith is a licensee of the Board, as described in Minn. Stat. § 154.161.

5. Full payment of Respondent's child support arrearages has not been made.

6. Under Minn. Stat. § 214.101, subd. 2, the Board is authorized to allow the Respondent to continue to practice on probation if the suspension of the license would create an extreme hardship to either the Respondent or to persons whom the Respondent serves.

7. Respondent is in violation of Minn. Stat. § 214.101, subd. 1 (1994), therefore, grounds exist to suspend Respondent's occupational license.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Board take disciplinary action against Lowell J. Smith's apprentice barber license.

Dated this ____ day of February, 1995.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

MEMORANDUM

There is no doubt that Mr. Smith is licensed by the Board and has substantial child support arrears. The Board is therefore authorized to suspend his license. Mr. Smith is amenable to working out an arrangement

with the Board that would make his license probationary if he pays support and reduces the arrearages. The parties, together with Todd County, are encouraged to discuss an agreement whereby Mr. Smith can continue to be a barber while he makes support payments and reduces the arrears within a reasonable time. Mr. Smith expects his income to increase if he passes his barber exam and runs his own shop.

GAB

1-1007-9416-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF BARBER EXAMINERS

In the Matter of Steven D. Pearson,
License No. 1195

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 2:00 p.m., February 9, 1995, at the Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota. Joan M. Wood, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103, appeared on behalf of the Complaint Committee of the Board of Barber Examiners ("the Board"). Steven D. Pearson, ("the Respondent"), did not appear. The record closed the day of the hearing.

This Report is a recommendation, not a final decision. The Board of Barber Examiners will make the final decision after a review of the record and may adopt, reject, or modify the Findings of Fact, Conclusions and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Maureen Tibbetts, Executive Secretary, Board of Barber Examiners, No. 335, 1 University Avenue West, St. Paul, Minnesota 55104, telephone: 612/642-0488 to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issue in this contested case proceeding is whether or not disciplinary action should be taken against the occupational license of the Respondent on the grounds set forth in Minn. Stat. § 214.101, subd. 1 (1994). Specifically

the issues are (1) whether Respondent is a licensee of the Board, (2) whether full payment of Respondent's child support arrearages has been made, and (3) whether the suspension of Respondent's license or probation is appropriate.

Based upon all the proceedings herein, the Administrative Law Judge makes following:

FINDINGS OF FACT

1. The Board of Barber Examiners received a notice on January 13, 1995 from the Kanabec County Family Service Agency requesting that a hearing be conducted for the suspension of the occupational license of Respondent, Steven D. Pearson, because Respondent is in arrears in child support payments. (Ex. B-2.)

2. That the social security number of the Steven D. Pearson named in the notice from Kanabec County is 469-82-1137 and his date of birth is December 17, 1958. (Ex. B-2.) The social security number of the Steven D. Pearson licensed by the Board is 469-82-1137 and his date of birth is December 17, 1958. (Ex. C.)

3. The Steven D. Pearson, who is named in the notice from Kanabec County, currently holds a registered barber license, No. 1195, issued by the Board. (Ex. C.)

4. The Respondent was ordered to pay child support of \$232 per month pursuant to orders dated February 23, 1993, and September 2, 1993. (Ex. A.)

5. As of January 13, 1995, Respondent is in arrears in child support payments in the amount of \$5,127.58. (Ex. B.)

6. To date, Respondent has failed to pay all of the support ordered and has not paid the arrearages of child support.

7. The Notice of and Order for Hearing and a blank Notice of Appearance form were served upon the Respondent by first class mail at 236 Summit Lane, Mora, Minnesota 55051, on January 27, 1995. The notice urged the Respondent to attend the hearing and stated that:

Respondent is urged to attend; failure to do so may prejudice his rights in this and any subsequent proceedings in this matter, may result in the allegations contained herein being taken as true, and may be basis for the suspension or probation of respondent's license.

8. The Child Support Officer's letter of January 13, 1995, to the Board indicates that 236 Summit Lane, Mora, Minnesota 55051, is the Respondent's current address. (Ex. C-2.)

9. That the Respondent has not filed a Notice of Appearance form in this case, has not contacted the Board, its attorneys, or the Administrative Law Judge, and did not appear at the hearing of this matter.

10. That the allegations contained in the Notice of and Order for Hearing are hereby taken as true and incorporated into these Findings of Fact pursuant to Minn. Rules pt. 1400.6000.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Board and the Administrative Law Judge have jurisdiction hereunder and authority to take the action proposed pursuant to Minn. Stat. §§ 14.50, 214.101 and 154.161 (1994).

2. The Board gave proper notice of this hearing and has fulfilled all relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 214.101, subd. 1(b), provides, in part, as follows:

. . . If the board finds that the person is licensed by the board and evidence of full payment of arrearages found to be due by the court or the public agency is not presented at the hearing, the board shall

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The board may not lift the suspension until the licensee see files with the board proof showing that the licensee is current in child support payments and maintenance.

4. Steven D. Pearson is a licensee of the Board, as described in Minn. Stat. § 154.161.

5. Full payment of Respondent's child support arrearages has not been made.

6. Respondent is in violation of Minn. Stat. § 214.101, subd. 1 (1994), therefore, grounds exist to suspend Respondent's occupational license.

7. Under Minn. Stat. § 214.101, subd. 2, the Board is authorized to allow the Respondent to continue to practice on probation if the suspension of the license would create an extreme hardship to either the Respondent or to persons whom the Respondent serves.

8. No evidence was presented at the hearing to show an extreme hardship.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Board take disciplinary action against Steven D. Pearson's registered barber license.

Dated this 2nd day of February, 1995.

/s/

GEORGE A. BECK

Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to send its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped - Tape No. 22,299.