

IN THE MATTER OF

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010

BETWEEN

THE POLICE

Complainant

AND

SIONE FIFITA

Respondent

HEARD at Auckland on 14 July 2020

APPEARANCES

Constable N Stringer and Sergeant A McMillan for NZ Police
Sione Fifita, Certificate holder supported by S Naido, J Ferguson & R Robinson

DECISION

[1] The Police laid a complaint against Mr Fifita after he had been charged with wounding with intent to injure. He subsequently pleaded guilty to the charge and was sentenced to 1 month and 14 days home detention. The offending took place while Mr Fifita was working as a security guard.

[2] The Police are seeking the cancellation of Mr Fifita's certificate of approval (COA) as the conviction is grounds for disqualification under s 62 of the Act, and Mr Fifita's actions amount to misconduct while working as a security guard. They accordingly say that Mr Fifita is not a suitable person to hold a certificate.

[3] Mr Fifita accepts his conviction is grounds for disqualification and that the actions that resulted in his conviction amount to misconduct during his work as a security guard. However, he is genuinely remorseful, says that it was a one-off event resulting from severe stress and that he has learnt a lot since then. He accordingly asks for his COA to be reinstated.

[4] Having been convicted of a disqualifying offence is a mandatory ground for cancellation of a certificate. Therefore, I must cancel Mr Fifita's certificate unless I am satisfied that the grounds for disqualification should be waived because he is suitable to be a certificate holder despite the disqualifying conviction. Misconduct is a discretionary ground for cancellation of a COA. However, where misconduct is established instead of cancelling Mr Fifita's COA I can suspend it, order Mr Fifita to undergo training, or impose other penalties as set out in s 81 of the Act.

[5] The Police are seeking cancellation of Mr Fifita's certificate both because of the seriousness of the offending and also because they say Mr Fifita had previously been given both a formal written warning and a verbal warning after unacceptable behaviour at the same venue.

[6] While both prior events occurred at or outside the same bar neither occurred while Mr Fifita was working as a security guard. Mr Fifita advises that the events which resulted in him receiving a written warning happened after he tried to protect others. Both Mr Fifita and Mr Robinson dispute that they ever received a verbal warning in relation to the other incident and say it occurred after some people high on drugs were looking for a fight.

[7] Mr Fifita and his support witnesses all say that Mr Fifita's offending was out of character and that he is sorry for his actions. Mr Fifita is no longer living in the stressful and somewhat toxic situation he was at the time of his offending. In addition, he has completed five months of living without violence training with Friendship House and a Wrap mental health programme.

[8] Mr Fifita was able to articulate some of what he has learnt from these programmes. His friends describe him as a humble and hardworking person. All his referees, including his previous employer, have expressed surprise and shock about what happened. They confirm that not only is Mr Fifita genuinely sorry for what has happened but that the consequences of his actions shocked him into seeking help. They consider that he has undergone a lot of personal growth in the 18 months since his offending and that he is unlikely to reoffend.

[9] Both the District and High Courts judges involved in Mr Fifita's sentencing accepted that Mr Fifita had accepted responsibility for his offending from the outset, that he is truly and genuinely remorseful and that he is fundamentally a good man. The High Court concluded that Mr Fifita's lapse was uncharacteristic and that apart from this lapse "he is a man of good character who is well liked and respected for his honesty and hard work".

[10] I agree with these conclusions. I also accept that Mr Fifita has paid a high price for what has happened. He has not only got a serious conviction on his record, but he lost his job following the event. In addition, his COA was suspended on 26 February 2019 so he has been unable to work in the security industry since then.

[11] Based on all the evidence before me I am satisfied that Mr Fifita is, despite his disqualifying conviction, suitable to be a certificate holder. Therefore, I grant a waiver from disqualification under s 64 of the Act. The offending was however serious and the conduct which resulted in Mr Fifita's conviction occurred while he was working as a security guard and amounts to misconduct. While misconduct is a discretionary ground for cancellation of a COA I consider that it is appropriate to impose a lesser penalty to cancellation.

[12] I conclude that the appropriate penalty is an extension to the suspension of Mr Fifita's COA together with an order that he undergo further training. Other than the training ordered below I do not impose any further restrictions on Mr Fifita resuming work in the security area. I accept the additional steps and restrictions suggested by Mr Collinson in his email to the Police are appropriate. However, I consider that Mr Fifita is sufficiently mature and self-aware to make appropriate arrangements directly with Mr Collinson to ensure suitable support is put in place before he restarts work.

[13] I therefore make the following orders:

- a) I uphold the Police complaint that Mr Fifita has been convicted of a disqualifying offence and is guilty of misconduct.
- b) Waiver of the grounds for disqualification is granted under s 64 of the Act.
- c) Mr Fifita's Certificate of Approval is suspended for a period of 18 months effective from Tuesday 26 February 2019. This means the suspension will end of 26 August 2020.
- d) Before Mr Fifita can resume working in the security industry he must:

- Complete a refresher course of the 3-tier self-defence and de-escalation training run by his prospective employer, and
- Enrol in the NZQA level 2 security training either with Stratcom or some other accredited provider. He should use his best endeavours to complete this training within 12 months of restarting work.

DATED at Auckland this 16th day of July 2020



P A McConnell
Private Security Personnel Licensing Authority