

STATE OF IOWA
BEFORE THE BOARD OF BARBERING

IN THE MATTER OF:

CASE NO. BA T122

DIA NO. 11BB005

Troy Donovan Walker

License No. 13684

Respondent

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On April 26, 2011, the Iowa Board of Barbering (Board) issued a Notice of Hearing and Statement of Charges to Troy Donovan Walker (Respondent), which alleged the following three counts:

Count I: Obtaining, possessing, or attempting to obtain or possess, or administering controlled substances without lawful authority, in violation of Iowa Code sections 147.55,158.12, 272C.3(2011) and 645 IAC 25.2(7).

Count II: Failure to comply with the terms of a board order, in violation of Iowa Code section 147.55,158.12, 272C.3(2)(a) (2011) and 645 IAC 25.2(20).

Count III: Conviction of a crime related to the practice of barbering, which will affect Respondent's ability to practice, and the failure to report conviction of a crime, in violation of 147.55,158.12, 272C.3(2011) and 645 IAC 25.2(15).

A hearing was held on July 24, 2012 at 11:00 a.m. in the Lucas State Office Building, fifth floor conference room, Des Moines, Iowa. Appellant Troy Donovan Walker appeared for hearing and was self-represented. The state was represented by Assistant Attorney General David Van Compernelle. The following Board members were present for the hearing: Charles Wubbena, Chairperson; Dennis Rafdal; John Anderson; and Valerie Felton. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at Respondent's request, pursuant to Iowa Code section 272C.6(1)(2011) and 645 IAC 11.32. After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2011), to deliberate its decision. The administrative law judge was instructed to prepare the Board's written decision, in accordance with its deliberations.

THE RECORD

The record includes the testimony of Marvin Firch, Troy Walker, and Vicki Gutowski; and State Exhibits 1-3.

FINDINGS OF FACT

Respondent's Criminal History and Licensing History

1. On April 5, 2010, Troy Donovan Walker (Respondent) filed an Application to Reactivate Iowa Barber License number 13684. At the time of his application, Respondent disclosed that he had been convicted of three crimes: Operating While Intoxicated-1st Offense, Sexual Abuse in the Third Degree, and Child Endangerment. Respondent further disclosed that the conviction for Sexual Abuse in the Third Degree was later vacated and that he pled guilty to Lascivious Acts With A Child, a Class D Felony.

Upon Board request, Respondent provided the following documentation of his criminal history:

- a. Conviction for Operating While Intoxicated (OWI), First Offense on May 13, 2003. Respondent was placed on probation for 24 months, fined, and ordered to complete school for drinking drivers.
- b. Convictions for Sexual Abuse in the Third Degree and Child Endangerment on February 13, 2006. Respondent was sentenced to incarceration for a term not to exceed 10 years on the conviction for Sexual Abuse in the Third Degree. He was sentenced to incarceration for a term not to exceed 2 years on the conviction for Child Endangerment. Respondent was also fined and required to register as a sex offender with the Iowa Division of Criminal Investigation.

On October 6, 2006, the Des Moines County District Court issued an Order Correcting Sentence and an Amended Judgment Entry. The Amended Judgment Entry imposed the special sentence required by Iowa Code section 903B.1 based on Respondent's guilty plea to Sexual Abuse in the Third Degree.

c. Respondent filed an application for post-conviction relief in March 2009, based on a claim of ineffective assistance of counsel. The application for post-conviction relief was granted and Respondent's Conviction for Sexual Abuse in the Third Degree was vacated. On June 21, 2010, Respondent pled guilty to Lascivious Acts With A Child, a class D felony, and was resentenced to incarceration for a term not to exceed five years. Respondent was given credit for all time served on the original conviction for Sexual Abuse in the Third Degree.

d. Respondent served approximately four years and six months of his sentence. While in prison, Respondent completed a Substance Abuse Program in October 2006 and a Sex Offender Treatment Program in September 2009. Respondent was released on parole on February 13, 2010 and was required to register as a sex offender. The terms of his parole required him to wear an ankle bracelet, maintain a curfew, maintain sobriety, maintain employment, and meet with his parole officer every three weeks. Respondent was also required to participate in a weekly sex offender treatment program.

(State Exhibit 2)

2. The Board initially denied Respondent's request to reactivate his Iowa barber license based on his criminal convictions. Respondent appealed. The Board held an evidentiary hearing and ultimately decided to grant the application for reactivation. At the time of hearing, Respondent was attending weekly sex offender treatment and was compliant with the terms of his parole. Respondent's parole officer supported his request for reactivation. (State Exhibit 2)

3. The Board's November 22, 2010 Findings of Fact, Conclusions of Law, Decision and Order placed Respondent's barber license on probation for a term of ten (10) years, subject to a number of terms and conditions. Respondent's terms of probation included, but were not limited to:

A. Respondent was required to provide a copy of the Board's Decision and Order to any prospective employer. The prospective employer was required to sign a statement verifying that he/she had read the Decision and Order, understood it, and was willing to comply with any restrictions placed on Respondent's barber license, including filing employer reports with the Board.

Respondent was required to provide the Board with the signed statement from his employer prior to starting work.

B. Respondent was not permitted to work alone in the barber shop. A supervisor or another employee was required to be present in the barbershop with the Respondent.

C. Respondent's employer was required to provide a written report to the Board every six (6) months reporting on Respondent's performance as a barber and his compliance with all restrictions outlined in this Order.

D. Respondent was also required to provide written reports to the Board every six months. Respondent was required to report and verify his current address, telephone number, employment, compliance with the terms of the Board's probation, and compliance with the terms of his criminal parole.

E. Respondent was required to fully comply with all terms of his criminal parole and to report any violation of his criminal parole to the Board within ten (10) days of its occurrence.

F. Respondent was required to report any new criminal charges (with the exception of non-OWI related traffic tickets) to the Board within ten (10) days of charges being filed.

G. Respondent was prohibited from having an ownership interest in a barber shop.

(State Exhibit 2; Testimony of Marvin Firch)

4. Following the reactivation of his barber license on November 22, 2010, Respondent's employer (who was Respondent's nephew) sent a written notice to the Board acknowledging that he had read the Board's Decision and Order. However, the Board never received a written bi-annual report from Respondent's employer. (Testimony of Marvin Firch)

5. On January 27, 2011, a warrant was issued for Respondent's arrest on a parole violation. Respondent made an initial appearance and was charged with a parole

violation on February 1, 2011. Pursuant to the terms of his probation, Respondent should have notified the Board of the parole violation charge within ten (10) days. Respondent never notified the Board of his parole violation charge or of the parole revocation. (Testimony of Marvin Firch; State Exhibit 3)

Respondent admits that his parole was revoked after he provided 4 or 5 urine specimens that tested positive for cocaine. Respondent was on a waiting list for drug treatment when his parole was revoked. Respondent served 15 additional months in prison after his parole was revoked. Respondent was released on May 11, 2012 after he had completed his entire sentence. Respondent is not currently on parole but is required to be registered as a sex offender until May of 2022. Respondent was unable to enter a drug treatment program while in prison. He has not completed any additional drug treatment since his relapse. (Testimony of Respondent; State Exhibit 3)

Respondent never reported his parole violation to the Board. The Board learned of Respondent's parole violation and his incarceration through an anonymous complaint. (Testimony of Marvin Firch)

Respondent testified that he did not notify the Board about his parole revocation because he did not have the Board's paperwork with him in prison. However, Respondent was in contact with his family and with his girlfriend while he was in prison and could have obtained the information he needed to make a report. Respondent testified that he did not understand that he was required to file quarterly reports with the Board regardless of whether he was employed as a barber. (Testimony of Respondent)

Respondent is not currently employed. He allowed his barber license to lapse in June 2012 because he had not completed the continuing education required for license renewal. (Testimony of Respondent)

CONCLUSIONS OF LAW

Count I

The Board is authorized to suspend or revoke a license for violations of any of the rules promulgated by the Board.¹ The Board is specifically authorized to impose any of the

¹ Iowa Code sections 158.12, 272C.3(2011)

disciplinary sanctions provided in 645 IAC 25.3 when the Board determines that a licensee has obtained, possessed, or attempted to obtain or possess, or administered controlled substances without lawful authority.²

The preponderance of the evidence established that Respondent obtained and administered controlled substances (cocaine) without lawful authority, in violation of 645 IAC 25.2(7). Respondent admits that he was using cocaine in December 2011 and in January 2012 and that he had 4 or 5 urinalyses that were positive for cocaine. This illegal drug use violates the rules of the Board and resulted in the revocation of Respondent's parole.

Count II

The Board is authorized to impose a wide range of disciplinary sanctions for failure to comply with the terms of a Board order.³ The preponderance of the evidence established that Respondent failed to comply with the requirements of the Board's Decision and Order that was issued on November 22, 2010 when he failed to comply with the terms of his parole, when he failed to report his parole violation to the Board, and when he failed to file a semi-annual written report with the Board.

Count III

Count III alleged that Respondent was convicted of a crime related to barbering (lascivious acts with a child on August 9, 2010) and that he failed to report the crime to the Board within thirty (30) days. The state conceded at hearing that the conviction cited in the Statement of Charges is the same conviction that Respondent disclosed to the Board prior to the reactivation of his license. Respondent did not have any additional criminal convictions that he failed to report to the Board after he was placed on probation. Respondent's illegal drug use was addressed administratively as a parole revocation by the parole board. Count III must be dismissed.

² 645 IAC 25.2(7).

³ Iowa Code section 272C.3(2)(a)(2011); 645 IAC 25.2(20).

Sanction

The Board's decision to reactivate Respondent's barber license on probation was primarily based on the representations made by Respondent and by his parole officer that Respondent was fully compliant with the terms of his parole. The Board understood that Respondent had completed drug treatment and a sex offender program while in prison and was participating in an ongoing sex offender treatment in the community. The Board determined that Respondent should be given the opportunity to show that he could resume the practice of barbering, consistent with all of his professional and legal obligations. It was Respondent's obligation to ensure that he fully understood and fully complied with the terms of probation established by the Board's Order.

Respondent was on probation with the Board for less than three months before he violated his parole. Respondent failed to report his parole violation to the Board and then failed to file his biannual report. The circumstances of Respondent's parole violation indicate that he currently lacks the ability and commitment to practice barbering consistent with his professional obligations and consistent with the public health, safety and welfare. Respondent starting using cocaine while he was employed as a barber. Respondent has not completed any additional drug treatment following this relapse and has not provided any verification that he is no longer using drugs. Moreover, since Respondent has now served out his sentence, he is no longer under court supervision and is not subject to drug screening. In addition, he has not completed the continuing education required to renew his barber license and has not obtained any employment since his release from prison. Based on this entire record, the Board is convinced that license revocation is the most appropriate sanction for Respondent's violations.

DECISION AND ORDER

IT IS THEREFORE ORDERED that License Number 13684, issued to Respondent Troy Donovan Walker, shall be REVOKED, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that Respondent shall immediately return his lapsed barber license to the Board office. Any future request for license reinstatement will be subject to the requirements of 645 IAC 11.31. The burden will be on Respondent to show that

the basis for the revocation no longer exists and that it is in the public interest for his license to be reinstated.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6, that Respondent shall pay \$75.00 for fees associated with the disciplinary hearing and \$82.50 for the court reporter fees. The total fees of \$157.50 shall be paid within thirty (30) days of receipt of this decision.

Dated this 20th day of August, 2012.



Charles Wubbena, Chair
Iowa Board of Barbering

Pursuant to Iowa Code section 17A.19(2011) and 645 IAC 11.29, any appeal to the district court from a decision in a contested case shall be taken within 30 days from the issuance of the decision by the board. The appealing party shall pay the full costs for the transcript of the hearing. 645 IAC 11.23.

cc: David Van Compernelle, Assistant Attorney General