

STATE OF IOWA
BEFORE THE BOARD OF BARBERING

IN THE MATTER OF:

CASE NO. BA T122

DIA NO. 10DPHBE005

Troy Donovan Walker

License No. 13684

Applicant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

On April 27, 2010, the Iowa Board of Barbering (Board) issued a Notice of Intent To Deny Licensure to Troy Donovan Walker (Applicant). A hearing was held on October 26, 2010 at 9:00 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 Kristin Ensign. The following Board members were present for the hearing: Clark (Sam) Kauffman; Chairperson; Charles Wubbena; Robert VanVooren, Tammy Ortiz, and Rhonda D. Reif. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The hearing was closed to the public at the Applicant's request, pursuant to Iowa Code section 272C.6(1)(2009) and 645 IAC 11.32. The record was held open for one week to allow the Applicant to submit his Exhibits A and B. After hearing all the evidence and examining the exhibits, the Board convened in closed session, pursuant to Iowa Code section 21.5(1)(f)(2009), 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 Troy Walker, Delmer Walker, and Jarett Walker, State Exhibits 1-8 (See Exhibit Index for description) and Applicant Exhibit A (letter from parole officer) and B (Judgment Entry, 8/9/2010).

FINDINGS OF FACT

1. On April 5, 2010, Troy Donovan Walker (Applicant) filed an Application for Reactivation of Iowa License number 13684, which had become inactive on June 30,

2006. On the application, the Applicant disclosed that he had been convicted of a felony or misdemeanor crime. (State Exhibit 2)

2. Upon receipt of the application, the Board asked the Applicant to provide documentation of his conviction(s), including court records, sentencing orders, final disposition, and any court ordered evaluations. (State Exhibit 3) The Applicant provided documentation showing the following convictions:

a. Operating While Intoxicated (OWI), First Offense on May 13, 2003. The Applicant was placed on probation for 24 months, fined, and ordered to complete school for drinking drivers. (State Exhibits 4, 7)

b. Sexual Abuse in the Third Degree and Child Endangerment on February 13, 2006. The Applicant 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. The Applicant 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 Amended Judgment Entry. The Amended Judgment Entry imposed the special sentence required by Iowa Code section 903B.1 based on the Applicant's guilty plea to Sexual Abuse in the Third Degree. (State Exhibits 5, 7)

c. The Applicant filed an application for post conviction relief in March 2009 based on ineffective assistance of counsel. The application for post conviction relief was granted and the Applicant's Conviction for Sexual Abuse in the Third Degree was vacated. On June 21, 2010, the Applicant 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. The Applicant was given credit for all time served on the original conviction for Sexual Abuse in the Third Degree. (Testimony of Applicant; Applicant Exhibit B)

3. The Applicant served approximately four years and six months of his sentence prior to his release from prison on February 13, 2010. While in prison, the Applicant completed a Substance Abuse Program in October 2006 and a Sex Offender Treatment Program in September 2009. (State Exhibit 6) The Applicant is currently on parole for another seven years and is a registered sex offender. The terms of his parole require

him to wear an ankle bracelet, maintain a curfew, maintain sobriety, maintain employment, and meet with his parole officer every three weeks. The Applicant is also required to participate in a weekly sex offender treatment program. His parole officer is the facilitator for his sex offender treatment group. The Applicant has been compliant with the terms of his parole. The Applicant has no history of sexual acting out behavior in the workplace. Based on the available information, the parole officer does not have any concerns about the Applicant seeking employment as a barber. (Applicant testimony; Applicant Exhibit A)

4. The Applicant is currently living in Burlington, Iowa, where he has started his own lawn care business to support himself. He has strong support from his family and girlfriend. The Applicant previously owned barbershops in Burlington, Iowa from 1985-2003. The Applicant's nephew is a licensed barber who has owned a barber shop since 2003. The Applicant worked for his nephew, Jarett Walker, as a barber from 2003 until his incarceration in 2005. Jarett Walker currently has two other barbers working for him. He is willing to rehire the Applicant if the Board reactivates his barber license. Jarett Walker believes that the Applicant has changed and will not reoffend. As an employer, he is willing to abide by any work restrictions that the Board would place on the Applicant's barber license. (Testimony of Jarett Walker; Delmer Walker; Applicant)

CONCLUSIONS OF LAW

The Board may refuse to grant a license for any grounds for which a license may be revoked or suspended.¹ The Iowa Code authorizes the Board to revoke, suspend, or otherwise discipline a license for conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within a profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.²

The preponderance of the evidence established that Applicant Troy Donovan Walker was convicted of a crime related to the profession of barbering. There are clear public safety concerns if a person who has been convicted of the crime of Lascivious Acts With A Child is permitted to work as a licensed barber. Nevertheless, the Board was persuaded that the Applicant has taken substantial steps to rehabilitate himself. The

¹ Iowa Code section 147.4(2009)

² Iowa Code section 147.55(5)(2009).

Applicant has taken responsibility for his offenses and has served his sentence. He has completed substance abuse and sex offender treatment and continues to participate in a weekly sex offender treatment program. The Applicant has been compliant with the terms of his parole and has gained the confidence of his parole officer, who supports this application for reactivation of his barber license. Based on these circumstances, the Board is persuaded to reactivate Respondent's barber license, subject to conditions deemed necessary to ensure protection of the public.

DECISION AND ORDER

IT IS THEREFORE ORDERED that License Number 13684, previously issued to Applicant Troy Donovan Walker, shall be reactivated and shall immediately be placed on PROBATION for a period of ten (10) years, subject to the following conditions:

- A. Prior to accepting *any* employment as a barber, the Applicant shall provide a copy of this Decision and Order to the prospective employer. The prospective employer shall sign a statement verifying that he/she has read the Decision and Order, understands it, and is willing to comply with any restrictions placed on the Applicant's barber license, including filing employer reports with the Board. The Applicant shall provide the Board with the signed statement from his employer *prior* to starting work.
- B. The Applicant shall not be permitted to work alone in the barber shop. A supervisor or another employee must always be present in the barbershop with the Applicant.
- C. The Applicant's employer shall provide a written report to the Board every six (6) months reporting on the Applicant's performance as a barber and his compliance with all restrictions outlined in this Order.
- D. The Applicant shall also provide written reports to the Board every six months. The Applicant shall 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 probation.

E. The Applicant shall fully comply with all terms of his criminal probation and shall report any violation of his criminal probation to the Board within ten (10) days of its occurrence.

F. The Applicant shall 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. The Applicant shall not have any ownership interest in a barber shop.

H. Upon full compliance with the terms of probation and upon expiration of the ten year probationary period, the Applicant's barber license will be restored to unencumbered active status.

Dated this 22nd day of November, 2010.