Handgun Permit Review Board (HPRB)

Department of Public Safety and Correctional Services (DPSCS)
6776 Reisterstown Road, Suite 200, Baltimore, MD 21215-2340

Minutes to the Meeting – June 17, 2019

Board Meeting was held at: The Community Building, 100 Community Place, Crownsville, MD 21032

Board meeting commenced at 6:00pm.

Present for the board was: Frederic Smalkin – Chairman, James Ballard – Vice Chairman, Jacques Cowan, and Daniel Crowley. Nicholas Paros was abent.

Present for DPSCS was: Stevi Ambrose – Administrator and James Pasko – Assistant Attorney General.

Present for the MSP was: Major Adam Stachurski, Capt. Andrew Rossignol, Lt. Padraic Lacy, and F/Sgt. Donald Pickle.

1) Fredrick Smalkin introduced himself and the names of the other Board members to the room.
2) James Ballard introduction and statement.
3) Jacques Cowan introduction.
4) Daniel Crowley introduction.
5) Discussion of the newly introduced "White Paper" document that was distributed at the beginning of the meeting.
    a. Motion to adopt "White Paper" document into procedure by Daniel Crowley, Seconded by James Ballard, All member in favor.
6) Chairman Smalkin announced that the Handgun Permit Review Board hearings would be moving to the Fifth Regiment Armory located at 219 29th Street, Baltimore, MD 21202. The Board would also begin meeting every possible Monday for the remainder of 2019 beginning July 8th.
7) Chairman Smalkin announced that the hearing dockets would be posted to the MD Handgun Permit Review Board's website when they become available.
8) There being no other business the Board adjourned at 6:16pm.

Prepared by Stevi Ambrose, HPRB Administrator

WHITE PAPER ON BURDEN OF PROOF

I. Burden of Proof by Parties at a Handgun Permit Review Board Hearing

In essence, the burden of proof in matters heard by the Maryland Handgun Permit Review Board ("the Board) is based upon which of two functions one is discussing. Is it the burden of proof a party has when presenting before the Board, or is it the burden of proof that the Board has when making its decisions based on both parties' submissions?

The ancient legal principles involved are not difficult to understand. The party having the burden of proof must, to win, convince the fact-finder (a Judge, Jury, or Board) that he or she has proved his or her case by a preponderance of the evidence. The preponderance of the evidence can be depicted by a balanced scale. In order to win, the party with the burden of proof must make the scale tip in his favor, even if only by a small amount. If the scales are evenly balanced or tip in favor of his opponent, the party with the burden of proof has lost his case.

In prior cases, it had been the custom of the Board to place the burden of proof on the Maryland State Police ("the MSP") rather than upon the applicant, but that custom was based on a misinterpretation of governing law. The misinterpretation leading to the prior practice apparently stemmed from the incorrect assumption that MSP handgun licensing decisions are "contested cases" requiring the MSP to carry the burden of proof at Board hearings. Those statutes do not in fact require the MSP to bear the burden of proof at the Board's first-level hearings, because the MSP is not an agency required by law to hold a hearing before granting or denying a license to an applicant.

Cases that are "contested cases" are those in which the licensing agency must by law offer a hearing to an applicant before making a determination. Those agencies must justify their decisions by the preponderance of the evidence when reviewed. The MSP is not required by law to offer a hearing before making a decision on a handgun permit.

The relevant statutes are as follows:

> "Contested case means a proceeding before an agency to determine the grant, denial, renewal, revocation, suspension, or amendment of a license that is required by statute or constitution to be determined *only after an opportunity for an agency hearing."* Md. State Gov. Code Ann. sec. 10-202(d)(1)(ii) (emphasis added).

> "The standard of proof in a contested case shall be the preponderance of evidence unless the standard of clear and convincing evidence is imposed on the agency by regulation, statute, or constitution." Md. State Gov. Code Ann. sec. 10-217

The MSP is not required by statute or constitution to hold a hearing when determining applications for handgun permits. *Cf., e.g.,*

Criminal Injuries Comp. Bd. v. Gould, 273 Md. 486, 331 A.2d 55 (1975):

> As another reason demonstrative of an intent to exempt such proceedings from the applicability of the Administrative Procedure Act, it could be argued with some force that since no hearing before

> the Board is required under Art. 26A, § 8 (d) to determine in the first instance the legal rights or privileges of a claimant, such a proceeding before the Board precludes it from being a "contested case" within the definition of Art. 41, § 244 (c). Compare *Murray v. Department of Social Services*, 260 Md. 323, 272 A. 2d 16 (1971) (where an "opportunity for a fair hearing" before the Department of Social Services was required under the provisions of the Social Security Act).

Thus, the MSP's decision involving a handgun permit is not a "contested case," and the Board is not required by law or regulation to place a burden of proof upon the MSP, but has inherent authority to require that the applicant prove his or her case by a preponderance of the evidence.

II. Proof Considered by the Board when Deciding a Case

The Board must provide hearings for those contesting decisions of the MSP. It has the customary power of judicial and quasi-judicial bodies in the common law system to determine the order of its proceedings and the burden of proof it demands of the parties. The Board has determined that the person seeking relief should go first in the order of presenting cases (as is the order of presentation in cases at common law) and must prove his or her case by a preponderance of the evidence in order to obtain relief from the Board. The preponderance of the evidence is a customary standard of proof in civil matters.

The Board must justify its own decisions, if appealed, on the basis of the preponderance of the evidence. That is because the Board, unlike the MSP, has a statutory duty to allow hearings. Thus its decisions when appealed to the Office of Administrative Law fit the definition of a "contested case," and the Board's duty is to base its determination upon the preponderance of the evidence under sec. 10-217.

Accordingly, the Board will consider all the evidence presented at a hearing and make its final determination based upon the preponderance of the evidence. This standard is required by statute law and consonant with the common law. The ultimate result of a case should be based upon the Board's determination as fact finders (like a judge or jury in a civil trial) of where the preponderance of the evidence lies, as well of course as their application of relevant law to the facts as found by the Board.