

Care Standards

The Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008

Heard on the 27 January and 4 March 2014 at Pocock Street, London before:

Judge Meleri Tudur
Ms M Adolphe, Specialist Member
Ms B Chatfield, Specialist Member

Ms Anne Effiong Ewa

Appellant

v

CARE QUALITY COMMISSION

Respondent

[2013] 2099.EA

DECISION

Appeal

1. By notice dated 28 September 2013, Ms Ewa appeals against the Care Quality Commissions decision dated 3 September 2013 refusing her application to register as a manager in respect of a regulated activity pursuant to Section 28(3) of the Health and Social Care Act 2008.
2. The appeal is made pursuant to Section 32 of the Health and Social Care Act 2008.

The Law

3. Section 20 of the Health and Social Care Act 2008 enables regulations to be made in respect of regulated activities. The relevant regulations to an application to be registered as a manager of a regulated activity are the Health and Social Care Act 2008 (Regulated Activities) Regulations 2010 ("the Regulations").

4. Section 15(2) of the Act sets out the criteria for grant or refusal of an application for registration as a manager and provides that if the Respondent is satisfied that the requirements under the 2010 regulations are being and will continue to be complied with, then it must grant the application, otherwise it must refuse it.
5. Regulation 6 sets out the requirements for a registered manager, and Regulation 6(2)(a) provides that the applicant must be of good character and physically and mentally fit.
6. On appeal to the Tribunal under section 32 of the Act, the Tribunal may confirm the decision or direct that it shall not have effect.

The Evidence

7. The case had a number of undisputed facts as follow:
 - a) On the 21 March 2010, the Appellant drove a car on her own whilst holding only a provisional driver's licence.
 - b) The holder of a provisional licence may only drive on public roads if accompanied by a person over the age of 21 and holding a full licence for over three years. Driving on her own was illegal and could invalidate any motor insurance.
 - c) The Appellant was involved in a road traffic accident with another vehicle and the police and an ambulance were called to the scene.
 - d) The police requested the Appellant's details and she provided to them the name and the address of another person, known to her, by the name of Beverley Aboayage.
 - e) On the 21 June 2012, Ms Ewa was arrested for the offence and on the 22 June 2012 accepted a police caution for the offence of doing an act which had a tendency to pervert the course of public justice in that she gave false details at the scene of a road accident to the Police.

Oral Evidence

8. The Tribunal heard oral evidence from the Appellant, confirming her position throughout that she attended, within three days of the accident, at Clapham Police Station to present her documents and to admit to giving false information at the scene of the accident. She further described how she had been upset and distressed at the time of the accident and in a state of shock.
9. She described the slip of paper that she had been given at the scene by a police officer requiring her to produce her documents and the same slip had been provided to her as a receipt for presenting her documents to the police when she attended at Clapham Police Station. She explained that she had

been unable to find the receipt subsequently having moved house twice since the accident.

10. The Appellant was adamant that she had reported to the Police within three days of the incident that she had lied and acknowledged that what she had done was wrong and had provided her own details. She maintained throughout her evidence that she did not present any documentary evidence at the scene of the accident to confirm her alleged identity of Beverly Aboayage. She stated that she had not at any other time been involved with the police and had no previous convictions.
11. The Appellant gave oral evidence that she has been a carer since 2000 and has never had any complaints against her regarding her conduct or her character, honesty or integrity.
12. Two character references were produced from two of the Appellant's former employers which confirmed her good character, honesty and integrity. Included was a reference from Supreme Care, the company that owned the vehicle she was driving at the time of the accident.
13. The Tribunal also heard oral evidence from Ms D Antoine, Registration Assessor for the Respondent who had prepared the report assessing the application for registration as a manager. She confirmed that she has been so employed by the Respondent since 2010 and that she was satisfied with all aspects of Ms Ewa's application other than the one incident of lying and providing false identification which was recorded as soft intelligence on her Enhanced Criminal Records Bureau Check.
14. Ms Antoine described the process that she had followed to obtain details of the soft intelligence held on Ms Ewa. The Respondent does not send as a matter of course a copy of the Enhanced CRB disclosure to the Registration Assessor. The Assessor is informed that there is information on the disclosure and then she telephones the Newcastle office of the DBS to obtain full details of the information disclosed. She confirmed that in the present case, she had telephoned the office in Newcastle twice, before the Fit Person Interview with the Appellant and for the second time, after the interview to confirm the details given was correct.
15. Ms Antoine confirmed that the handwritten notes produced at pages D44a-e were a copy of the notes that she had taken during the second conversation. She further confirmed that the notes of interview contained at pages D50-52 of the tribunal bundle were verbatim notes of the Fit Person Interview she conducted with the Appellant which lasted in excess of three hours. She further confirmed that when she asked the Appellant about the incident and made reference to "using someone else's ID" she believed that she was asking about the use of false documentation, rather than the use of a false name, as reflected in the Appellant's answers to her questions.
16. Ms Antoine's evidence was that she had not concerns about the Appellant's application other than the question of her good character as indicated by the

incident in which she lied to the police and provided a false identity. She perceived Ms Ewa to be continuing in her lying, by stating that she had not provided false documentation when she understood her to have admitted to using false documentation at the Fit Person Interview. She had then denied that same action in the appeal. She did not accept that the notes taken from the telephone conversation could be subject to any other interpretation than that the Appellant had produced false documentation at the scene of the accident.

17. The Tribunal read the statement of Peter Nunn Registration Manager with the Respondent since May 2010. In his statement he described a management review meeting held on the 6 March 2013 where it was decided that the Appellant's application for registration should be refused on the basis that she was not of good character and that as she had not been honest in her dealings with the police, the Respondent could not be confident in her honesty with future dealings with them. The meeting had decided to seek further information from Clapham Police Station to try to verify the Appellant's version of events and that she had attended and provided documents and was told the matter was resolved. The Respondent was unable to obtain further information from Clapham as the Police Station had since closed.

Tribunal's conclusions with reasons

18. The Tribunal considered the evidence presented and found this single issue appeal particularly difficult in terms of the decision to be made.
19. The Tribunal reminded themselves of the criteria for registration, and noted that the person making the application must be of "good character". The burden of proof in appeals against a decision not to register is on the Appellant. The burden is therefore on the Appellant to show that she is of good character rather than for the Respondent to show that she is not of good character.
20. We considered the definition of "good character" and concluded that it cannot mean that only a person of unsullied and unblemished character can be registered. In our view, the threshold for good character is lower than perfect, but higher than of "bad character". A "bad character" in criminal proceedings means a person with previous criminal convictions.
21. We looked at the evidence that was presented on behalf of the Appellant. Her appeal and her evidence has been consistent throughout and it is that she lied to the police at the scene of the accident, but subsequently went to Clapham Police Station to produce her documents and to admit to her deception. We accepted her evidence that she was upset and in a state of shock after the collision and that her behaviour was out of character, having had no previous involvement with the police. She has no previous convictions and there have been no complaints about her conduct or her integrity during the 14 years that she has worked as a carer in the health and social care industry.

22. We found her evidence about the visit to the Clapham Police Station credible to the extent that she would have been required to produce her documents, and did so. It is also of note that she continued to live at the same address for another 11 months after the accident and was not contacted by the Police, which would have been more likely in the event that she had failed to produce her documents as required and the police had been led to question Beverley Aboagye.
23. We accepted the Appellant's evidence of her attending at Clapham Police Station admitting to lying to the Police at the scene of the accident and then genuinely assuming the matter was at an end.
24. When she was eventually arrested in June 2012, she admitted that she had lied to the police and was cautioned on that basis. We consider that the police would not have offered and accepted a caution had they considered this to be a very serious offence, for which the Appellant should be given a significant punishment.
25. We therefore conclude that one admitted offence to which the Appellant admitted as soon as she was able, and which appears to have been dealt with relatively informally by the police, when placed in the context of a previously unblemished record, no previous convictions and fourteen years of good service in the health and social care industry, should be regarded as not indicating bad character, and should not be sufficient to prevent the registration of the Appellant as a manager.
26. We conclude that the appeal should be allowed.

Order

Appeal allowed.

**Judge Meleri Tudur
Tribunal Judge Care Standards
7 March 2014**