
STATE OF UTAH
DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

DONYALE WEST,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2018-028 PL

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on May 30, 2018, at 10:03 a.m., for an appeal of the denial of applicant's resident producer individual license. The applicant, Mr. Donyale West (hereafter "Respondent"), appeared *pro se*. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, hereafter ("Complainant"). The formal administrative hearing was held pursuant to the March 14, 2018 Order of Conversion to Formal Proceeding and Amended Scheduling Order dated May 3, 2018. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent's license application was denied on March 1, 2018, by the Utah Insurance Department's Producer Licensing Division Director based upon Utah Code Subsections 31A-23a-

104(2)(b)(v), 31A-23a-105(2)(b)(i), 31A-23a-107(2)(a) and 31A-23a-111(5)(b)(i). Respondent filed a timely request for review, dated March 7, 2018.¹

Based on the foregoing, Complainant's exhibits and witness testimony, and on Respondent's exhibits and witness testimony, the undersigned makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. On February 15, 2018, Respondent West, a resident of Utah, applied for a resident producer individual license.²
2. Respondent's application was denied on March 1, 2018.³ Complainant's denial letter stated, "Your application for a resident producer individual license in Utah dated February 5, 2018, [sic] is hereby **denied**. The denial is based on one or more of the following: As a result of having been convicted of Attempted False Evidence of Title and Registration, a 3rd Degree Felony amended to a Class A misdemeanor, you fail to meet the character requirement of trustworthiness pursuant to Utah Code Ann. Ann. § 31A-23a-107(2)(a)." [Bold in original].
3. Complainant's grounds for denial were further articulated: "As a result of failing to report at the time of filing the license application a criminal prosecution taken against you, you violated Utah Code Ann. § 31A-23a-104(2)(b)(v) and 105(2)(b)(ii)."

¹ Both parties stipulated in the Amended Scheduling Order of May 3, 2018, that documents, exhibits and witness lists would be exchanged on or before May 23, 2018. Complainant complied but Respondent declined to file such although Respondent's Exhibit 1, Robert Park Reference Letter, was admitted at hearing without objection.

² Ex. 1, Resident Producer Individual Application.

³ Ex. 5, License Denial Letter.

4. Complainant further stated: "As a result of providing incorrect, misleading, or materially untrue information in the license application, you violated Utah Code Ann. § 31A-23a-111(5)(b)(ix)."
5. In conclusion, Complainant stated: "As a result of the above violation(s), you are unqualified for a license pursuant to Utah Code Ann. § 31A-23a-111(5)(b)(i)."
6. On March 7, 2018, Respondent filed a timely written request for an administrative hearing to appeal the license denial decision.⁴
7. Complainant's other grounds for denial were based on Respondent's failure to report the misdemeanor conviction on his license application.
8. Complainant's statutory proof of untrustworthiness hinged upon Respondent's conduct and guilty plea to Attempted False Evidence of Title and Registration, pursuant to the Utah Motor Vehicle Code, Utah Code § 41-1A-1315, which was entered as a Class A Misdemeanor, on September 30, 2015.⁵

ANALYSIS

At issue is whether or not Respondent has sufficiently proven by a preponderance of evidence that Respondent is qualified and should have been granted his insurance license upon application. Among the evidence weighed, the court heard personal sworn

⁴ Ex. 6, Appeal Request Letter, dated March 7, 2018.

⁵ Ex. 3, Change of Plea, State v. West, Fourth District Court – Heber (Sept. 30, 2015). The sentence included 365 days of jail which was suspended. He was ordered to perform community service, pay a fine, placed on probation, and ordered to complete an A.C. E.S. Misdemeanor Class. A lesser included offense, Utah Code §41-1A-1303, an infraction, was dismissed with prejudice upon defendant West's guilty plea. See Ex. 4, Docket Sheet, State v. West, Fourth District Court. Respondent completed all conditions of his sentence, and testified he completed probation early with no subsequent incidents to date. R. at 14:04-18:20. The Complainant entered Exhibit 7 into the record which showed that Respondent received a traffic citation four months previously and was convicted of a Class C Misdemeanor for Failure to Register or Expired Vehicle Registration, Utah Code §41-1A-1303. Ex. 7, West Valley City v. West, WVC Justice Court (March 5, 2015).

testimony from Respondent and sworn testimony from Mr. Randy Overstreet, Producer Licensing Division Director, Utah Insurance Department.

First, Respondent argued he failed to disclose the misdemeanor conviction on his license application due to his reasonable misunderstanding of the language on the application form.

Failure to Disclose

Respondent testified at the hearing that he thought his misdemeanor conviction was a traffic violation and therefore excluded from disclosure on the application form. R. at 24:36, 34:12, 36:22-36:40. The license application form makes the following inquiry: "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?" The form next provides exceptions: "You may exclude the following misdemeanor convictions or pending misdemeanor charges: *traffic offenses*, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license." (Emphasis added). Respondent answered in the negative. Ex. 1, p. 3.

At the hearing, Respondent read into the record the following written statement he made in response to UID staff's inquiry of February 23, 2018, about his undisclosed criminal record. "I apologize. I must have read the application incorrectly. I thought it said I can disregard traffics [sic] violations and so I didn't include it." Ex. 2, p. 8-9; R. at 27:30-28:41.

Petitioner showed his reframed intent to include any and all details, such as the one in the instant case, in any future license applications. In his Request for Hearing, he stated: "At the time of reporting it was my understanding that this was a traffic violation. The question stated that I did not have to include traffic violations. I do not get into trouble often. I do not spend time in court enough to know that even though this happened in traffic it must not [be] a traffic violation. I barely get speeding tickets. When I go for my series 6, 63, and 65 licensing I will for sure include this. I think it also said withing [sic] 5 years so I am even thinking even if it is past 5 years I will include it because I don't want any further confusion with this." Ex. 6, p.25.

Complainant argued that Respondent should have known the distinction between a traffic citation and a felony charge. R. at 18:48–19:27, 43:47. Mr. Overstreet admitted, however, that he could see how Respondent thought it was a traffic citation and therefore not subject to disclosure. R. at 21:35, 44:51-45:03. In light of this admission and the fact that the traffic violation, albeit a charged felony, is provided in the Utah's Motor Vehicle Code, Title 41A, Respondent was able to show his reasonable understanding that he need not disclose it. (Emphasis added). Furthermore, Respondent testified that he had no intention to be dishonest in his application. R. at 36:22.

For these reasons, Respondent's license should not have been denied neither for failing to disclose a misdemeanor conviction which he reasonably perceived to be a traffic violation nor for making a statement that was incorrect, misleading, incomplete, or materially untrue. See Utah Code § 31A-23a-111 (5)(b)(ix). This portion of the denial is reversed.

Second, Respondent argued that he is competent and trustworthy and therefore meets the character requirements for licensure.

Failure to Meet Character Requirements of Competence and Trustworthiness.

Utah law requires an insurance license applicant to meet character requirements prior to licensure and upon renewal. Utah Code § 31A-23a-107(2)(a) provides that an “applicant for a license under this chapter shall show to the commissioner that: . . . (2(a) if a natural person, the applicant is competent and trustworthy.” Utah Code Ann. § 31A-23a-111(5)(a) states, “If the commissioner makes a finding under Subsection (5)(b), . . . the commissioner may: . . . (iv) deny a license application.” (Emphasis added). The statute is clear that the Commissioner of Insurance has the discretion to either grant or deny a license.

Subsection 31A-23a-111 (5)(b) provides, “The commissioner may take an action described in Subsection (5)(a) if the commissioner finds that the licensee: . . . (i) is unqualified for a license or line of authority under Section . . . 31A-23a-107.” (Emphasis added). The statutory language of Subsection 111(5)(b)(i) cites the statutory character requirements of competence and trustworthiness in Subsection 107(2)(a), although rather indirectly. In each instance, the statute uses discretionary verbiage, which neither requires nor prohibits the denial of the license.

Respondent was accurately determined to have failed to meet the character requirements. Findings of Fact, ¶¶ 2 and 5. Respondent argued he met such requirements, having made a single mistake. R. at 27:30-29:27. He admitted both in writing and in court that he printed off or copied motor vehicle registration tags and

taped the fraudulent tags to his license plate to appear as if his car were properly licensed. Ex. 2, p. 9; R. at 29:00-29:10, 33:58-34:04.⁶ He also testified that he had been licensed in the insurance industry in Arizona, knows it well, and has no issues within the industry. R. at 28:39-29:00.

In contrast, Randy Overstreet testified that the license denial was justified and should be upheld. He described his protocols in examining a license application, including background checks. He also testified that the insurance industry is highly regulated and takes crimes involving dishonesty very seriously. R. at 47:08. He testified that Respondent did not meet the statutory character requirements based upon his use of false evidence and the premeditated nature of his falsifying the registration tags when Respondent had already been convicted of a registration violation. R. 51:24. He aptly testified that in insurance, the product that is bought and sold is only a promise and no other tangible asset is provided until a contingency occurs and a claim needs to be paid. R. at 53:44-54:09. Mr. Overstreet admitted that he found no other criminal conduct or untrustworthy behavior in his investigation of Respondent, including any records from Texas and Arizona.⁷ Mr. Overstreet testified that a period typically longer than 2.5 years since the crime's commission must elapse before Respondent could show a pattern of trustworthiness and his license granted. R. at 47:08.

In the instant case, Respondent completed probation early, by one year, and fully completed the conditions of his sentence. A written letter of recommendation from

⁶ Respondent testified that he is a single dad, with full custody, who needed to drive his 10-year-old son to school and go about life but his old vehicle had problems and therefore he could not get it registered. R. at 25:41-26:39, 33:58-35:03, 35:38-36:12. He explained that in this life one learns by mistakes but that his conduct has not been untrustworthy since and he is entrusted to work with people daily with his current job. R. at 26:10.

⁷ Respondent is a former resident of Arizona and Texas.

his insurance employer, Mr. Robert Park, Senior Marketing Director, spoke directly to Respondent's failure to disclose the traffic violation and vouchsafed for Respondent in general. "I believe this incident will not reflect and HAS not reflected on Donyale's ability to be an honest, reliable, and very trustworthy employee to his current position or the position he is looking to fill here in our agency." Respondent's Ex. 1, Robert Park's Reference Letter, dated April 10, 2018.

Upon witness examination, Mr. Overstreet testified that his denial decision remained unchanged even after receipt of the correspondence from Park, the certificate of completion of Respondent's A.C.E.S. (Thinking Errors) Misdemeanor Class, and the completion of his sentence. R. at 22:27-23:04. Overstreet testified that Respondent's manufacturing the registration tags was fraud and shows dishonesty. "Even though he did successfully complete the court-ordered things that he had to go through, it does not reduce the fact of what happened and what he was charged with." R. at 43:47-44:51.

Based on the evidence presented at the hearing, Respondent has sufficiently shown by a preponderance of evidence that his nondisclosure of the traffic violation was a reasonable misunderstanding and an insufficient basis to deny his licensure. This portion of the denial is REVERSED.

Based upon the evidence presented at the hearing, however, the insurance application was properly denied based upon the record before the Department at the time of denial. This portion of the denial is UPHeld. Respondent has since presented sufficient evidence to justify modification of the denial now, such as Respondent's clean

record since the September 2015 conviction, his completion of his sentence, including training in sound decision making, his offer of ongoing employment, and his employer's clear support. See In Re Application of Eric Colter Cannon, 2010-154-LC, Enf. Case No. 2716 (2010). Utah Admin. Code R590-160-5(10).

Utah Code Subsection 31A-23a-112 (1) provides authority for the commissioner to place a new licensee on probation for a period not to exceed 24 months. For good cause and based on the testimony and evidence, this license is being placed on probation due to his conviction for conduct which conflicted with the trustworthy character requirement in Utah Code Subsection 31A-23a-107. However, based upon Respondent's trajectory of success and support from his employer, a period of probation is warranted. Therefore, the license should be **conditionally** granted, and **probation** ordered.

Based upon the foregoing Findings of Fact and Analysis, and for good cause, the Presiding Officer enters the following:

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the parties and subject matter of this administrative action.
2. The Department's Letter of Denial, Dated March 1, 2018, is reversed in part and sustained in part, but modified.
3. The Respondent's License Application of February 15, 2018, should be granted conditionally, subject to a 24-month period of probation.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law and for good cause, it is ORDERED that:

1. Complainant's March 1, 2018 Letter of Denial is SUSTAINED, but MODIFIED;
2. Respondent's February 15, 2018 Application for Licensure is GRANTED but placed on probation on a 24-month term of probation, during which time Respondent is required to abide by any applicable provision of state law, the Utah Insurance Code or Rule, or any order of the Commissioner during the probation period.

DATED this 8th day of June, 2018.



LISA WATTS BASKIN
Administrative Law Judge
Utah Insurance Department
State Office Building, Room 3110
Salt Lake City, UT 84114

AGENCY REVIEW

To appeal this Order, a party must file a petition for agency review within 30 days from the date of this Order. Petitions for agency review shall be filed in accordance with Utah Code Ann. § 63G-4-301 and filed with the commissioner in writing or electronically at uidadminscales@utah.gov. Failure to file a petition for agency review is a failure to exhaust administrative remedies and will result in the order becoming final.