
STATE OF UTAH
DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

KEVIN BUCKNER,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2018-4039

Lisa Watts Baskin
Administrative Law Judge

This matter came before the undersigned on October 15, 2018, for a license denial hearing. Mr. Kevin Buckner, respondent, appeared *pro se*. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department (hereafter “the Department”). The administrative hearing was held as a formal proceeding pursuant to the September 20, 2018 Order of Conversion to Formal Proceeding. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent filed a timely, written hearing request to challenge the Utah Insurance Commissioner’s license denial of his application for a resident producer individual insurance license, which was denied on numerous grounds: Utah Code Subsections 31A-23a-107(2)(a)(ii) and 31A-23a-111(5)(b)(i)(iv), and (xiv). The denial order was dated September 14, 2018. Respondent’s request for hearing was filed timely on September 20, 2018. Both parties exchanged documents, exhibits and witness identifications pursuant to the Scheduling Order, dated October 4, 2018. The hearing was rescheduled to October 15, 2018, upon Respondent’s written request to which there was no objection.

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

FINDINGS OF FACT

1. On August 9, 2018, Respondent Kevin Buckner, a resident of Utah, filed a written application with the Department for a resident producer individual insurance license. Complainant's Ex. 1, Application, UID 008-014.
2. Respondent's application was denied on September 14, 2018, based upon the record of his guilty pleas to multiple convictions, including three Class B misdemeanors, two Class A misdemeanors, and numerous outstanding judgments. (Complainant's Ex. 1, Court Dockets, UID 015-089; Declaration of Randy Overstreet, ¶ 3, (a) through (l), UID 004-007.
3. On September 6, 2018, Respondent pled guilty to Class B Misdemeanor Theft. Complainant's Ex. 2, Roy City v. Buckner, pp. 1-4. He served jail time and was placed on probation for twelve (12) months.
4. On August 29, 2018, Respondent pled guilty to Class B Misdemeanor, Retail Theft. Complainant's Ex. 3, South Salt Lake City v. Buckner, pp. 1-4.
5. The Department's denial identified multiple statutory grounds for denial: Utah Code Ann. Subsections 31A-23a-107(2)(a)(ii) (lack of trustworthiness); 31A-23a-111(5)(b)(i) (unqualified for licensure under Utah Code §§ 31A-23a-104, 31A-23a-105, and 31A-23a-107); 31A-23a-111(5)(b)(iv) (failing to pay a final judgment); and 31A-23a-111(5)(b)(xiv)(2) (misdemeanor conviction involving fraud, misrepresentation, theft or dishonesty). Complainant Ex. 1, Notice of Agency Action and Order, UID 001-007.

ANALYSIS

Respondent appeared in court, exhibiting youthfulness, strength, intelligence, and a capacity for hard work. His life now appears to be on a trajectory of success and exhibits a pattern of good judgment since 2017. Respondent passed the licensing examination on his first try, is employed by GoHealth, a conscientious and supportive insurance employer, and trains and tutors other co-workers under the direction of GoHealth, since passing his test. Respondent's Ex. 1, Buckner Letter. Nevertheless, Respondent's numerous convictions, dating from December 2010 to September 6, 2018, weigh heavily in favor of the Department's denial decision. Those convictions include issuing a bad check and unlawful acquisition of a debit card which are central to the issue of his trustworthiness in financial matters. Furthermore, he has two recent convictions for theft and retail theft. Findings of Fact, ¶¶ 3, 4.

At the evidentiary hearing, Respondent acknowledged his criminal past but requested discretionary leniency to obtain a license with concomitant department probation and employer monitoring. R. at 4:37-5:39. Upon questioning, Respondent admitted that he failed to disclose his most recent convictions on August 29, 2018, and September 6, 2018, which are required by Utah Code § 31A-23a-105(2)(c)(i)(B), even though those convictions occurred post-application. Respondent emphasized he made correct statements about past misdemeanor convictions on his original application however. R. at 6:40-9:15; 37:51-38:26. Respondent provided oral testimony to the court regarding his trustworthiness and his sincere efforts to change his life. R. at 12:38-13:50. He introduced into evidence numerous letters of reference from former and current employers, a friend, a current co-worker, and his mother. Respondent's Ex. 2, 3, 4, 5, 6, 7, 8. He also provided proof of chapter 7 discharge of debts through bankruptcy proceedings in California, dated April 2, 2018. Respondent's Ex. 9.¹ Respondent's witness, his mother Linda Maestas,

¹ A writ of garnishment, dated April 6, 2018, remains outstanding. Complainant's Ex. 1, UID 084.

testified at length about her son's past decisions, the difficult circumstances surrounding the recent death of his father, and Respondent's considerable efforts and progress to correct past mistakes. She requested a "do over" for her son. R. at 14:06-21:42.

In contrast, Complainant's witness, Randy Overstreet, Director, Producer Licensing Division, testified about the potential for fraud in insurance and the insurance industry's necessary regulation and reliance upon the trustworthiness of its licensees. He explained that the selling of insurance is highly regulated and depends largely upon honesty because the buyer is purchasing a promise of insurance protection. R. at 50:40-53:40. Overstreet emphasized Respondent's considerable number of convictions and their types. In two convictions for theft and retail theft, they are particularly concerning to him due to their financial implications and their recency. R. at 53:50-54:30. Overstreet testified to the importance that any past criminal conduct truly be a problem in the past. R. at 53:30-54:00. He also testified about the Department's standard guideline that there must exist a pattern of honesty--for a span of approximately five years -- since the date of the last offense. R. at 55:43-56:05; 100:24-101:30. Although not a lifetime ban, Overstreet said much more time must elapse before Respondent is ready to be qualified. R. at 54:15-54:50.

Respondent is to be commended for his efforts to better himself, to correct past mistakes, and to establish a career in the insurance industry. Despite those relevant efforts, Respondent cannot demonstrate a pattern of trustworthiness yet that warrants the granting of his resident producer individual insurance license.

Based upon the evidence and testimony presented at the hearing, Respondent's prior and recent convictions, an outstanding writ of garnishment and a very recent payment arrangement with the district court,² Respondent failed to prove by a preponderance of evidence that his

² R. at 11:45-11:53.

insurance application was improperly denied. Utah Admin. Code R590-160-5(10). Complainant conversely proved by a preponderance of evidence that the insurance application was properly denied. The Department's license denial is UPHELD.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over the parties and subject matter of this administrative action. Utah Code Ann. §§ 31A-1-105; 31A-2-201; 63G-4-201; Title 31A, Chapter 23a, Part 100, and Utah Admin. Code R590-160.
2. Respondent, in being convicted of multiple misdemeanors since 2010 to September 2018, is unqualified to engage in the business of insurance.
3. Respondent, in having a writ of garnishment, dated April 6, 2018, is unqualified to engage in the business of insurance.
4. Respondent failed to satisfy the burden of proof that he can meet the statutory requirements of Utah Code Ann. §§ 31A-23a-104, 31A-23a-105, and 31A-23a-107.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and for good cause, the Administrative Law Judge hereby enters the following Order:

The department's denial of Respondent's application for a resident producer individual insurance license is UPHELD.

DATED this 19th day of October, 2018.



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