
STATE OF UTAH

DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

JUSTIN COMPANION,
Insurance License Applicant,

Respondent.

ORDER

Docket No. 2018-4060

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on January 24, 2019, for a license denial hearing. Mr. Justin Companion, 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 January 3, 2019 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 license application for a resident limited line producer license. The denial was based on the following grounds: Utah Code Subsection 31A-23a-107(2)(a) (failure to meet the trustworthiness requirement); Utah Code Subsection 31A-23a-111(5)(b)(i) (unqualified for licensure); Utah Code Subsection 31A-23a-111(5)(b)(xiv)(B)

(misdemeanor convictions for insurance fraud involving fraud, misrepresentation, theft, or dishonesty); and Utah Code Subsection 31A-23a-111(5)(b)(ix) (providing incorrect, misleading, incomplete, or materially untrue information in the license application). In essence, the denial was based upon two grounds to find the applicant to be untrustworthy: a license application form inaccuracy and two convictions for misdemeanor insurance fraud. The denial was dated December 28, 2018. Respondent's request for hearing was filed timely on January 10, 2019.

Both parties exchanged documents and identified exhibits which were admitted into the record. The undersigned administered the oath to the witnesses.

LEGAL STANDARD

The parties must prove by preponderance that the license denial was improper or proper. A preponderance of the evidence standard "means the greater weight of the evidence, or as sometimes stated, such degree of proof that the greater probability of truth lies therein." *Handy v. United States Bank, NA.*, 2008 UT App 9, ¶ 25, 177 P.3d 80 (quoting *Wightman v. Mountain Fuel Supply Co.*, 302 P.2d 471, 473 n.5 (1956) (further citation omitted)).

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

FINDINGS OF FACT

1. On November 8, 2018, Respondent Justin Companion, a resident of Utah, filed a written application with the Department for a resident limited line producer

individual license to sell Guaranteed Automobile Protection Insurance, known as GAP Insurance, a limited line insurance product.^{1 2}

2. On November 28, 2018, Respondent's application was denied. The denial was based primarily upon the recency of his two guilty pleas to a Class A Misdemeanor False or Fraudulent Insurance Claim under Utah Code § 76-6-521 (1)(b), offense date of September 17, 2014; and a Class B Misdemeanor False or Fraudulent Insurance Claim under the same statutory section, offense date of November 19, 2014.
3. On May 3, 2016, Respondent entered two guilty pleas to the two misdemeanors.³
4. On June 13, 2018, Respondent completed his sentence and satisfied the terms of his probation.
5. Respondent applied previously for the GAP insurance license on August 12, 2017, approximately fourteen months prior to this application, and more than a year after his conviction date.⁴
6. Respondent's application was denied on November 28, 2018, based upon Respondent's false statement in his application, dated November 8, 2018, wherein he answered "No" to the question if he had "ever been named or involved as a party in an administrative proceeding, including FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration?" The application

¹ Complainant Ex. 1, UID 033-039.

² Utah Code Subsection 31A-1-301 (76) defines guaranteed automobile protection insurance to mean "insurance offered in connection with an extension of credit that pays the difference in amount between the insurance settlement and the balance of the loan if the insured automobile is a total loss."

³ Complainant Ex. 1, State v. Companion, Third District Court – West Jordan, Case No. 151401385 (May 3, 2016), UID 007-024. On July 12, 2016, Companion was ordered to pay fines, to serve suspended jail time, and complete 24-month probation. The Court ordered probation terminated successfully, within eleven months, on June 13, 2017, because Respondent had complied with the conditions of his probation. The case was closed. UID 023-024.

⁴ See Utah Insurance Department v. Justin Companion, 2017-087 LC (January 5, 2018). UID 026-032.

form included an explanation that the term “involved” also meant “having a license, or registration application denied”⁵

7. Respondent testified under oath that he failed to read the form closely enough, focusing on the term “arbitration proceeding,” which was an “honest mistake.” Nonetheless, his response was incorrect. R. at 25:50-26:22.
8. Respondent and Mr. Randy Overstreet, Director, Producer Licensing Division, exchanged emails during November 16-19, 2018. They discussed the filed application. Mr. Overstreet stated, “Unfortunately, with the recentness of your two convictions involving false or fraudulent insurance claims if you submitted your license application, it may be denied again.”⁶
9. Respondent replied, “Regarding the Misdemeanor convictions, it is coming up on 5 years next year. Like I mentioned, that was a one-time mistake that I made in my life and will never happen again. I need this license to keep my current job and position, so please consider it and let me know. Thank you.” Id.
10. Mr. Overstreet, Licensing Division Director for the Utah Insurance Department, stated, “My recommendation would be to wait at least five years from the convictions before applying for an insurance license. I checked with our resident licensing specialist, Heidi, who said that we have received your application, but we are still waiting for the fingerprint background check. If your license application is denied, you will have a right to a hearing in the matter.”⁷

⁵ Complainant Ex.1, Application, UID 036-037.

⁶ Complainant Ex. 1, Email correspondence, UID 040-041.

⁷ Complainant Ex. 1, Email correspondence, UID 040-041.

11. As Complainant's witness, Mr. Overstreet testified he did not alert Respondent about Respondent's false statement in his license application, despite their ongoing internet correspondence, because he said Respondent did not qualify for a license anyway due to his misdemeanor fraud convictions. R. at 32:27-33:01.
12. Mr. Overstreet testified about the insurance fraud crimes and their direct relevance to the statutory licensure requirement of trustworthiness in the insurance industry. He also testified to the department's origins of the customary practice to require a license applicant to have completed a five-year period without any conviction since the previous conviction.⁸ R. at 33:30-36:40; 39:11-40:00.

ANALYSIS

The inquiry here is to identify by a preponderance of the evidence the legal bases for the Department to require a previously-convicted individual, who is now an initial license applicant, to prove trustworthiness by remaining crime-free for a period of five years post-conviction. In short, the five-year requirement as applied is an unauthorized waiting period when applied to initial license applicants rather than former licensees.

Upon the court's own review of Utah Code, the Utah Administrative Code, and administrative court orders, the five-year waiting period is nothing more than a customary practice or pattern within the Department. The Department's five-year threshold which is imposed upon an initial applicant, i.e., not a former licensee, is not enacted in statute, not articulated in administrative rule, and not administered uniformly in practice.

⁸ In previous sworn testimony in the previous administrative hearing, Mr. Overstreet testified that the timeline was five years from the date of the offense. See Utah Insurance Department v. Companion, Docket No. 2017-087 LC, January 5, 2018, at ¶ 6. He was questioned directly by the court regarding the previous statements. R. at 36:54-37:30.

In the instant case, Respondent Companion appeals the denial of his GAP insurance license, yet a second time, despite the fact that the five-year waiting period has not elapsed. Approximately four years and three months have elapsed since his latest offense date of November 19, 2014. Approximately two years and eight months have elapsed since he pleaded guilty to two misdemeanors on May 3, 2016. Findings of Fact, ¶¶ 2, 3, 4. On June 13, 2018, his probation was terminated. Findings of Fact, ¶ 4.

Respondent is a combat veteran with the United States Marine Corp who served three deployments to Afghanistan. He survived the suicide explosion of an improvised explosive device (IED) in 2009 and then returned to serve two more tours. His background is relevant to his past criminal behavior and his attempts to retain gainful employment. In Respondent's written testimony, he states, "Once I separated from active duty in the Marine Corps, I had no idea what to do in the civilian world. All I ever knew how to do was the things I was trained and learned to do in the Marines. My injuries I have sustained during my combat deployments have greatly affected my life. I no longer have the physical abilities to do most of the normal labor that jobs require."⁹ Respondent is employed at Truck Ranch in Lehi, Utah, and has been there for approximately three months. Respondent testified that he is required to obtain the GAP license as a condition of his ongoing employment. Respondent testified that he lost his previous employment with Image Auto Sales because he was denied the necessary GAP license. Respondent testified that he "cannot wait five years from the conviction date." He testified that he has no conviction prior to or subsequent to crimes committed in 2014. R. at 6:50-17:22. He provided 17 positive customer reviews regarding his car sales work at Image Auto Sales and

⁹ Respondent Ex. 1, Appeal Letter, dated January 10, 2019.

Truck Ranch. Truck Ranch promoted him to Finance Manager and entrusted him with the keys to the dealership, opening and closing the business, and managing the dealership without any guidance.¹⁰ This evidence weighs heavily in favor of Respondent.

At the formal hearing, the undersigned requested Complainant to identify the legal authority the Department relies upon to implement the five-year waiting period. Mr. Overstreet testified that the five-year requirement was derived from previous administrative decisions and legal advice. “Historically, over the years, I have generally applied five years from the date of conviction. It is not specified in statute.” R. at 33:32-35:06. He testified that he has tried to apply consistency with the prior decisions. He also testified that for nearly thirteen years, he has relied upon the opinion of the Department’s past legal counsel and past decisions by previous presiding officers. “That was the pattern that was established at the time, and I continued with it.” R. at 33:32-35:06. The Department’s attorney, Assistant Attorney General, Ms. Helen Frohlich, cited no statutory authority or written orders to the court in response to the court’s inquiry.

Based upon the court’s independent review of the Insurance Code, the only reference to a five-year waiting period was found in Utah Code Subsection 31A-23a-111(8).¹¹ Notably, this statutory provision applies to *only* those individuals who are already licensed by the department and have committed an act or failed to act in a way that would warrant sanctions. Utah Code Section 31A-23a-111 lists the sanctions: **31A-23a-111. Revoking, suspending,**

¹⁰ *Id.*

¹¹ Other time limitations are found in this same code chapter. Utah Code Subsection 31A-23a-111(2) permits license reinstatement within one year after the day the license is lapsed or voluntarily surrendered. Subsection 31A-23-111(5)(a) permits the Commissioner to suspend a license “for a specified period of 12 months or less.” These timelines appear inconsistent with Subsections (8)(a) and (b).

surrendering, lapsing, limiting, or otherwise terminating a license—Forfeiture—Rulemaking for renewal or reinstatement. [Boldface in original.]

First, Subsection 31A-23a-111(8)(a) provides:

“An order revoking a license under Subsection (5) or an agreement to surrender a license in lieu of administrative action may specify a time, not to exceed five years, within which the former licensee may not apply for a new license.”

Subsection (8)(a) only applies to a former licensee and sets a discretionary ceiling to be specified, but in no case in excess of five years, before a former licensee may apply for a new license. In other words, it does not forbid the implementation of any time less than five years to apply for a new license after it has been revoked.

Second, Subsection 31A-23a-111(8)(b) provides:

“If not time is specified in an order or agreement described in Subsection (8)(a), the former licensee may not apply for a new license for five years from the day on which the order or agreement is made without the express approval by the commissioner.”

Again, this code provision does not apply to applicants who seek an initial license as in the instant case. Instead, the provision applies to cases only if no time is already specified in an order or agreement. The statute also permits the specific waiver of the timeline by the Commissioner. However, in the instant case, under any conditions, the revocation or surrender of a license is not at play.

It is apparent to the court that the statutory criteria for the Commissioner to take action under Utah Code Subsection 31A-32a-111(5)(a), the Commissioner must first make a finding under Subsection (5)(b). However, Subsection (5) is wholly inapplicable to the statutory

sanction of waiting five years under Subsection (8)(b) because only in revocation or surrender cases does the five-year language apply. Indeed, it is illogical that revocation or surrender could be imposed upon any initial resident applicant.¹² Granted, Respondent failed to meet the trustworthiness requirements due to the misdemeanor convictions and false statement in his application. Findings of Fact, ¶¶ 2, 3, 4, 6. However, to impose a five-year waiting period resulted in an inordinate and overly punitive result.¹³

In analyzing the plain language of the statute, it is clear that Subsection 31A-23-111(8) (a) and (b) define the way those sanctions, i.e., order of revocation or surrender of license as agreed or not, are to be administered to already licensed individuals. Nevertheless, the five-year waiting period is still entirely discretionary with the Commissioner. To summarize Utah Code Subsection 31A-23a-111(8), the Commissioner: (a) *may* sanction the *former licensee* by either revocation of or agreement to surrender the license for a specified time, but not to exceed five years; or (b) *may* forbid a former licensee from applying for a new license for five years *unless* the Commissioner expressly approves otherwise. (Emphasis added.)

Mr. Overstreet testified that the earliest date the Respondent's license application could be granted would be September [17], 2019, which is at least five years from the date of the Respondent's misdemeanor fraud offense. R. at 39:11-40:40. He earlier stated that in some

¹² Utah Code Subsection 31A-23-111(5)(a) (vi) provides that the Commissioner may combine sanctions, which would include denial of license application. However, denial of an initial license application is not the same as a sanction under Subsection (8)(a) and (b), which would effectively be denial of license *renewal*. The public policy to sanction licensed individuals is based upon the rationale that those who have been granted authority to engage in an activity that is part of or related to the insurance business may be held to a higher standard than those unlicensed individuals who have no acquired knowledge or specialized experience in abiding by or violating an insurance statute, rule, order, or agreement.

¹³ Utah Code Subsection 31A-23-111(5)(a) states that the sanctions may be a combination of revocation, suspension, license or line limitations, license application denial, or forfeiture. However, the language of Subsection (5)(a)(iv), which states "denial of license application," cannot be applied to former licensees. License revocation or surrender is the only condition wherein the five-year period could apply.¹³

cases we “would go shorter than that, but not in cases of insurance fraud.” R. at 35:44. Mr. Overstreet testified that generally, the pattern over the years has been to apply the five-year waiting period from the date of conviction. R. at 38:24-38:32. Upon questioning, he stated that “if you were going by the offense date, I would not give him one day less than that, because it was very serious what happened. I would say you would need to wait at least five years. I would after that In my personal bias, I would prefer a longer period would be waited for.” He then referred to the date of “disposition” to which the five years would apply. R. at 39:13-40:40. This lack of clarity and uniformity weighs heavily against the Complainant. It discloses the potential and actual harm done when applying a customary “pattern” of the five-year waiting period. Relying upon the sworn testimony of the Department’s witness, the cut-off date could be the offense date, the conviction date, or the disposition date, also depending upon the severity of the crime. In short, the five-year waiting period requirement is not authorized by statute under any proposed cut-off date. In the instant case, the requirement resulted in an inordinate and overly punitive result. The incorrect and unlawful requirement to apply the five-year waiting period to initial license applicants is unconscionable and must be suspended immediately.

In Utah Admin. Code **R590-244. Individual and Agency Licensing Requirements.**, the administrative rule provides the Insurance Commissioner with the authority to adopt rules to implement the provisions of the Insurance Code. [Boldface in original.] However, the five-year waiting period is neither mentioned in the rule nor articulated as to its limited application to former licensees, and most importantly, its application to initial license applicants.

There is some guiding language in Utah Admin. Code **R590-244-2. Purpose and Scope**, which delineates an initial license applicant from a former licensee. It reads: “The purpose of this rule is to provide standards for: (a) an individual or agency licensee for: (i) obtaining, renewing, or reinstating a license.” The various phases wherein licenses are granted are clear here. Furthermore, the definition of “license application” in Subsection (4) of the rule means information submitted by a license applicant . . . “used by the commissioner to evaluate the applicant’s qualifications and decide whether to: (a) issue or decline to issue a license; (b) add or decline an additional line of authority to an active license; (c) renew or decline to renew an active license; or reinstate or decline to reinstate an inactive license.” In short, an initial application is very different than an application to renew or reinstate.

Respondent filed an inaccurate application by denying any previous administrative involvement. Findings of Fact, ¶¶ 6, 7, 8, 12. However, Respondent conceded this point as an honest mistake due to his inattention. Evidence showed the parties were in informal contact from November 16-19, 2018. When questioned by the court, Complainant admitted to failing to address or ignoring the false statement during their informal correspondence because he knew the license would be denied based upon Respondent’s criminal behavior and the timelines to be applied. Findings of Fact, ¶ 12. The false statement weighs heavily against Respondent because it violated Utah Code Subsection 31A-23a-111(5)(ix). However, in light of the ongoing courteous correspondence, this disqualifying criteria could have been corrected easily enough. No such corrective action is required but in light of the stated foregone conclusion and ongoing feedback, it weighs against Complainant in his approach in the instant case. The inaccuracy was present during the review process, such as before fingerprints had

been received, and it could have easily been corrected before the denial notice. This ground alone cannot justify the license denial.

The purposes of the Insurance Code are provided in Utah Code § 31A-1-102. Subsection (2) states a purpose to “ensure that policyholders, claimants, and insurers *are treated fairly and equitably.*” (Emphasis added). Respondent has not been treated fairly and equitably in the instant case.

CONCLUSIONS OF LAW

For the following reasons, Complainant failed to prove by a preponderance of the evidence that Respondent’s license application was properly denied and the five-year waiting period was properly applied.

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 and 203; Title 31A, Chapter 23a, Part 100, Utah Code; and Utah Admin. Code, R590-160 and R590-244.
2. The Commissioner has legal authority to deny or grant an insurance license pursuant to Utah Code § 31A-23a-111.
3. Respondent, in being convicted of one Class A misdemeanor and one Class B misdemeanor, pursuant to Utah Code § 76-6-521, may be prohibited from engaging in the business of insurance due to its fraudulent nature related to the insurance industry.
4. Complainant failed to satisfy the burden of proof that there are statutory requirements or rules that require the five-year waiting period to be applied to a

license applicant who seeks to obtain an initial license after a conviction in May 2016.

5. Complainant erred in its application of Utah Code § 31A-23a-111.

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:

Complainant's denial of Respondent's application for a limited license for GAP insurance is REVERSED.

Respondent is GRANTED a resident limited line producer license for GAP insurance only and may conduct transactions only for that product of insurance, with conditions.

Respondent is placed on probation for a 12-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 13th day of February, 2019.



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 uidadminscases@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.