
STATE OF UTAH

DEPARTMENT OF INSURANCE

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

ABIGAIL CHRISTINE WILLIAMS,
Insurance License Applicant,

Respondent.

AMENDED ORDER

Docket No. 2019-4114

Administrative Law Judge
Lisa Watts Baskin

This matter came before the undersigned on May 31, 2019, at 1:00 p.m., for a license denial hearing. Ms. Abigail Christine Williams (hereafter the "Respondent"), appeared *pro se*. Ms. Helen Frohlich, Assistant Utah Attorney General, appeared for the Utah Insurance Department, (hereafter the "Complainant"). The administrative hearing was held as a formal proceeding pursuant to the Order of Conversion to Formal Proceeding, dated April 26, 2019. The matter was recorded.

PROCEDURAL BACKGROUND

Respondent filed a timely written hearing request to challenge the Complainant's license denial for a resident producer individual license. The license application was denied on April 3, 2019, pursuant to Utah Code Subsections 31A-23a-111(5)(b)(ii), (ix), and (xiv)(B), 31A-23a-105(2)(b)(ii), and 31A-23a-107(2)(a)(ii). Respondent's request for review was filed on April 8, 2019. Both parties exchanged exhibits and identified witnesses.

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

FINDINGS OF FACT

1. On March 5, 2019, Respondent Williams, a resident of Utah, applied for a resident producer individual license for personal lines of auto insurance.¹
2. On the application form, Respondent answered "No" to the License Application Question: "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor." This was an incorrect statement.²
3. Respondent's application was denied by Complainant's Notice of Agency Action and Order, on April 3, 2019.³
4. The grounds for denial were Respondent's:
 - (a) failure to report at the time of filing the license application that she had a criminal prosecution taken against her in violation of Utah Code Subsection 31A-23a-105(2)(b)(ii);
 - (b) providing incorrect, misleading, incomplete, or materially untrue information in his license application in violation of Utah Code Subsection 31A-23a-111(5)(b)(ix);

¹ Complainant Ex. 1, Printed Copy of Online License Application, UID 012-18.

² Complainant Ex. 1, License Application, UID 014.

³ Complainant Ex. 1, License Application, UID 001-006.

- (c) conviction for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty, Utah Code Subsection 31A-23a-111(5)(b)(xiv)(B);
 - (d) disqualification for a license, Utah Code Subsection 31A-23a-111(5)(b)(i);
and
 - (e) failure to meet the trustworthy character requirement, Utah Code Subsection 31A-23a-107(2)(a)(ii).
5. Respondent pleaded guilty and was convicted of Retail Theft, Utah Code § 76-6-602, a Class B misdemeanor, on April 8, 2015. She was fined \$680 which she paid in full. She completed one-year probation. The case was closed.⁴
 6. At the license denial hearing, Respondent admitted under oath that she first filled out the paper application form in her handwriting.
 7. She testified that she directly informed Mr. Michael Rasband, Licensing Coordinator, Teleperformance, in person of her previous retail theft conviction prior to filling out the paper form. R. at 6:59-7:28.
 8. Respondent testified that she was told from Teleperformance that if [the conviction] was not in the criminal background report, that “she would be fine to continue with the application for license.” R. at 6:59-7:28; 8:15-8:17.
 9. Respondent proved there were no criminal records found on February 19, 2019.⁵

⁴ Complainant Ex. 1, Court Docket, West Jordan Justice City Court, West Jordan City v. Williams, Case No. 151300366. April 8, 2015. UID 008-011; UID 023-026.

⁵ Respondent Ex. 1, Completed background check information sheets, dated February 19, 2019, which showed no misdemeanor or felony records found in Salt Lake County Third District Court, Utah Courts Information Xchange System, United States District Court, District of Utah, and First Advantage National Criminal File, pp. 1 – 4.

10. Respondent testified she filled out the paper form by hand but cannot recall if she answered “No” on purpose, due to the extensive paperwork and five-hour application process while at Teleperformance. R. at 6:50; 8:45-9:06.
11. Respondent testified that Mr. Rasband typed in the handwritten materials into the electronic form submitted to the Complainant. R. at 10:00-10:10.
12. Respondent testified that when she received the license denial notice, she requested a copy of her handwritten application form which she had completed and a written statement from Teleperformance, verifying that she had personally informed Teleperformance of her misdemeanor conviction. R. at 10:48-11:45.
13. Respondent testified that Teleperformance denied her request for a copy of the handwritten form and written statement due to its legal nature. R. at 10:48-11:45.
14. Respondent admitted that the submitted form had a “No” answer which was the data entered by Teleperformance “which nobody caught.” R. at 9:22.
15. Respondent admitted that she read the questions and signed the verification that her answers on the electronic application were true and correct. R. at 10:19-10:29.⁶
16. Based upon the evidence presented at the hearing, Respondent failed to prove by a preponderance of evidence that the insurance application was improperly denied. Utah Admin. Code R590-160(10).

⁶ At the license denial hearing, Respondent testified that she could not recall if it was just a mistake after filling out “so much paperwork.”

ANALYSIS

Respondent cannot prove by a preponderance of the evidence that she completed the license application using correct information.⁷ In contrast, she signed the verification that she had read the questions and that her answers were true and correct as submitted. It is a requirement that the application form be filled out correctly, completely, and honestly. The source of the error is important because the gaps in evidence work a distinct hardship upon the Respondent who is making genuine efforts to become licensed. She paid her application fee, attended a full week of paid instruction, submitted to a drug test, and relied upon the statement that she need not report her retail theft conviction on the application. Additionally, there is a chain of custody issue regarding the application itself. Findings of Fact, ¶¶ 11, 12, 13.

Nevertheless, Respondent cannot deny the existence of the misstatement on her application. Findings of Fact, ¶¶ 10, 14, 15. Nonetheless, Respondent could reapply, using correct information and a clear recollection of her conduct. The denial of her license application was proper and is UPHOLD.

⁷ Respondent's testimony is concerning to the undersigned because Teleperformance played a significant role in her license application process which may be the cause of her license denial. She testified she informed Teleperformance of her retail theft conviction before the company advised her to proceed with her application. She testified she was told her background check came up clean which was proved by her exhibit. She entrusted her handwritten application to Teleperformance. However, she cannot prove by a preponderance of the evidence that the handwritten form was entered electronically as she had filled it out. On March 28, 2019, Mr. Rasband informed Complainant's investigator that he could not access NIPR "at this time so I'm unable to upload [Respondent's] SOF sheet & Court Docs for her misdemeanor. He concluded, "I've attached them so that you can review them in the meantime." Complainant Ex. 1, Email Correspondence, UID 020.

CONCLUSIONS OF LAW

1. The department has jurisdiction over the parties and subject matter of this administrative action. Utah Code §§ 31A-1-105; 31A-2-201 (2010); 63G-4-201 through 203; 31A-23a-101 et seq., and Utah Admin. Rule R590-160-1.
2. Respondent, in being convicted of a Class B misdemeanor, is prohibited from engaging in the business of insurance under the Utah Code Subsection 31A-23a-107(2)(a). Findings of Fact, ¶ 5.
3. Respondent, in having failed to report at the time of filing the license application that she had criminal prosecution taken against her, is in violation of Utah Code Subsection 31A-23a-105(2)(b)(ii) and, in providing incorrect, misleading, incomplete, or materially untrue information in her license application, is in violation of Utah Code Subsection 31A-23a-111(5)(b)(ix).
4. The Complainant properly denied Respondent's license application.
5. Respondent failed to satisfy the burden of proof that she can meet the statutory requirements of competence and trustworthiness under Utah Code Subsection 31A-23a-107(2).

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 Notice of Informal Agency Action and Order, dated April 3, 2019, denying Respondent's application for an individual resident producer license is AFFIRMED.

Respondent's March 5, 2019 Application for an insurance license is properly DENIED.

DATED this 7th day of June, 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 § 63G-4-301 and filed with the commissioner in writing or electronically at uidadmincases@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.