
BEFORE THE UTAH INSURANCE COMMISSIONER

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

**KATHLEEN JOELLE LEAVITT,
Insurance License Applicant,**

Respondent.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER**

Docket No. 2020-4242

The parties tried this case before the presiding officer on November 6, 2020. Helen Frohlich of the Utah Attorney General’s office represented the Complainant Utah Insurance Department (“the Department”). Craig Johnson represented Respondent Kathleen Joelle Leavitt (“Leavitt”). The parties having presented their evidence and arguments, the presiding officer enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The undersigned enters these findings of fact based on a preponderance of evidence.

1. Leavitt was convicted of Retail Theft, a class B misdemeanor, on April 22, 2019.
2. The items that Leavitt stole were a bathing suit, child’s pajamas and a necklace with a total value of approximately \$50.00
3. Leavitt was 32 years old at the time of the conviction.
4. Leavitt was placed on probation. She successfully completed and was released from probation on March 28, 2020.

5. The Department began issuing temporary, 180-day insurance producer licenses in April, 2020 due to problems in the regular two-year licensing process caused by the coronavirus pandemic.

6. Leavitt applied to the Department for a temporary and a two-year insurance producer license in May, 2020.

7. In both applications, Leavitt disclosed her theft conviction.

8. At the time of application, the department's practice was to deny a license application from an individual with a misdemeanor theft conviction less than four years old.

9. The department adopted this practice for the following reasons:

A. A licensed producer handles client funds and confidential financial information and, therefore, must be honest. A misdemeanor theft conviction demonstrates that an individual is dishonest.

B. Utah statute states that a license application may be denied based on a misdemeanor theft conviction. Utah Code § 31A-23a-111(5)(a)(iv) and (5)(b)(xiv).

C. The Department's administrative rule states that an individual with a Class B misdemeanor conviction may apply for a license only if the individual has a clean criminal record for four years after release from probation. Utah Admin. Code R590-281-4(1)(c).

10. The administrative rule is intended to clarify the meaning of the statute by describing the circumstances in which an individual with a misdemeanor conviction is eligible to apply for a license.

11. Contrary to the Department's practice, the statute and the administrative rule, the

Department issued a temporary license to Leavitt.

12. The temporary license was issued due to a clerical error.

13. Consistent with the Department's practice and rule, the Department denied Leavitt's application for a two-year license based on her misdemeanor theft conviction.

14. At trial, Leavitt presented opinion and anecdotal evidence in support of her contention that she is honest.

CONCLUSIONS OF LAW

1. The Utah Insurance Commissioner, through the designated presiding officer, has jurisdiction of this adjudicative proceeding under Utah Code §§ 31A-1-105, 31A-2-201, 31A-2-308, 63G-4-204 through 209 and Utah Admin. Code R590-160.

2. An applicant for a producer license must "show to the commissioner that the applicant is . . . trustworthy[.]" Utah Code § 31A-23a-107(2).

3. A license application may be denied if the commissioner finds as part of an adjudicative proceeding that the applicant has been convicted of a misdemeanor involving theft or dishonesty. Utah Code § 31A-23a-111(5)(a)(iv) and (5)(b)(xiv).

4. This statute gives the commissioner discretion to determine whether an applicant who has a misdemeanor theft conviction should receive a license.

5. The commissioner has authority under Utah Code § 31A-2-201(3) to adopt rules to implement the provisions of Title 31A.

6. The commissioner exercised this discretion and this rulemaking authority by adopting an administrative rule, Utah Admin. Code R590-281-4(1)(c), that describes the circumstances in which a misdemeanor theft conviction will preclude a person from obtaining a license.

7. Under R590-281-4(1)(c), an individual with a Class B misdemeanor conviction may apply for a license only if the individual has a clean criminal record for four years after release from probation.

8. The four-year waiting period is intended to protect consumers from dishonest licensees. It is a clear objective standard that leaves no room for interpretation. It is similar in purpose and length to the bright-line policy established by the legislature for expunging a criminal conviction. The legislature has determined that, to protect “the interests of the public”, an individual with a class B misdemeanor conviction must have a clean criminal record for four years to be eligible for expungement. Utah Code §§ 77-40-105(3)(c)(iv) and 77-40-107(8)(f). The department’s rule, R590-281-4(1)(c), is reasonable because the purpose and scope of the waiting period for a license are identical to the waiting period that the legislature established for expungement.

9. Under the standard of R590-281-4(1)(c), the only legally relevant facts are the length of time that has passed since release from probation and the applicant’s criminal record since release. Accordingly, in this case, relevant evidence addresses either the length of time since Leavitt’s release or her criminal record during that period. Although Leavitt’s opinion and anecdotal evidence bears on the broader question of whether she is an honest person, it is not legally relevant under the standard of R590-281-4(1)(c).

10. Because less than four years have passed since her release from probation on March 28, 2020, Leavitt is not eligible to apply for a two-year insurance producer license under R590-281-4(1)(c).

11. The decision in Utah Insurance Department v. Sutton, Dft. No. 2018-2019 PL, is not controlling here. First, Sutton was decided on September 14, 2018, well before the adoption of R590-281-4(1)(c) on June 21, 2019. Second, Sutton is factually distinguishable. There, the applicant pleaded guilty to shoplifting a \$3.00 bottle of Advil when he was 18 years old and still in high school. At the time of the license hearing, he had had a clean criminal record for over two years. Sutton presents a more persuasive case for licensure than does the instant case. Here, Leavitt pleaded guilty to shoplifting \$50 of goods when she was 32 years old and more mature than Sutton. Although she has had a clean criminal record since being released from probation, that record is only seven months long.

12. The department properly denied Leavitt's application for a regular insurance producer license.

ORDER

Based on the above Findings of Fact and Conclusions of Law, and good cause appearing, it is ordered that the application of Kathleen Joelle Leavitt for a two-year insurance producer license is denied.

DATED this 13th day of November, 2020.

TANJI J. NORTHRUP
INTERIM UTAH INSURANCE COMMISSIONER

/s/ Reed Stringham
Reed Stringham
Presiding Officer
Utah Insurance Department
3110 State Office Building
Salt Lake City, UT 84114
801-538-3860
Email: uidadmincases@utah.gov

Right To Apply for Reconsideration

Pursuant to Utah Code § 63G-4-302, any party may file a written request for reconsideration with the agency within 20 days after the date of this order.

Right to Judicial Review

Pursuant to Utah Code § 63G-4-401, a party may obtain judicial review of final agency action by filing a petition for judicial review within 30 days after the date the order constituting final agency action is issued.

You may find the rules regarding Administrative Law Judges at

<https://rules.utah.gov/publicat/code/r477/r477-101.htm>.