
BEFORE THE UTAH INSURANCE COMMISSIONER

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

SHERRY L. BIVEN,

Respondent

**FINDINGS OF FACT, CONCLUSION OF
LAW and ORDER**

Docket No. 2023-4517

Donald H. Hansen
Administrative Law Judge/Presiding Officer

BACKGROUND

Respondent SHERRY L. BIVEN (Respondent) applied for licensure with the Utah Insurance Department (Department) on May 7, 2023, as a resident individual producer. The Department issued its Notice of Agency Action and Order on May 31, 2023, denying Respondent's application based on two unpaid tax liens and court judgments filed by the Utah State Tax Commission, in accordance with provisions of the Utah Insurance Code (Utah Code Sec. 31A-1-101, *et. seq.*), Section 31A-23a-111(5)(b)(xxii), and Utah Administrative Code rule R590-281-4(1)(e).

Respondent timely requested a hearing and an evidentiary hearing was duly noticed and conducted on August 1, 2023. Respondent appeared via Google Meet video conferencing and was not represented by counsel. The Department appeared, represented by Helen Frohlich, Assistant Utah Attorney General, along with its witness, Randy Overstreet, the Department's manager of producer licensing.

The undersigned Donald Hansen is the Administrative Law Judge for the Department and serves as Presiding Officer in this formal adjudicative proceeding.

FINDINGS OF FACT

1. Respondent filed her application for a resident individual producer license with the Department on May 7, 2023.

2. In responding to questions asked in the Department's application form, Respondent answer "yes" to the following question: "Have you ever been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement."

3. A tax lien was filed and a money judgment was entered by the Utah Tax Commission on August 16, 2021, in Utah Third District Court in Salt Lake County against Respondent in the sum of \$3,028.74, representing unpaid state income taxes for tax year 2020.

4. A tax lien was filed and a money judgment was entered by the Utah Tax Commission on October 18, 2021, in Utah Third District Court in Salt Lake County against Respondent in the sum of \$2,441.75, representing unpaid state income taxes for tax year 2018.

5. An additional tax lien was filed and a money judgment was entered by the Utah Tax Commission on October 18, 2021, in Utah Third District Court in Salt Lake County against Respondent in the sum of \$3,300.24, representing unpaid state income taxes for tax year 2019.

6. Each of the foregoing tax liens and judgment remain unsatisfied as of the date of the evidentiary hearing in this case.

7. Respondent has received collection notices from, or on behalf of, the Utah Tax Commission, but has been unable to pay them. She doesn't dispute the validity or amount of the

alleged state income tax obligations.

8. Respondent has been subject to past wage garnishments by the Tax Commission for several years, but garnishments have not been effected for the tax judgments described in Paragraphs 3, 4 and 5 above. Respondent does not know why such garnishments did not occur.

9. Respondent has had difficulty paying state taxes after going through divorce following a 23-year marriage.

10. In June 2020, Respondent was laid off, was very ill, and was unable to work until returning to her full-time job at [REDACTED] in September 2021, where she has worked a total of about 17 years as a [REDACTED], earning [REDACTED] per hour.

CONCLUSIONS OF LAW

1. The Utah Insurance Code, Section 31A-23a-111(5)(b) states: “The [insurance] commissioner may [deny a license application] if the commissioner finds that the ... license applicant: ... (xxii) fails to ... pay state income tax[.]” Respondent is in violation of this provision of the Insurance Code. This statute does not provide exceptions for circumstances demonstrating that an applicant has been subject to personal or financial hardships which interfered with his/her ability to pay state income tax.

2. The Department correctly determined that Respondent failed to pay Utah state income tax for multiple years, and that her application for licensure must be denied in accordance with Section 31A-23a-11(5)(b)(xxii)(A).

ORDER

Based upon the foregoing, the Department's Notice of Agency Action denying Respondent's May 7, 2023, application for licensure is AFFIRMED.

DATED this 8th day of August 2023.

JONATHAN T. PIKE
UTAH INSURANCE COMMISSIONER

/s/ Donald H. Hansen
Donald H. Hansen
Administrative Law Judge/Presiding Officer
Utah Insurance Department
4315 South 2700 West, Suite 2300
Taylorsville, UT 84129
801-957-9321
Email: uidadmincases@utah.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing

FINDINGS OF FACT, CONCLUSION OF LAW and ORDER to:

Sherry L. Biven

[REDACTED]
[REDACTED]
[REDACTED]

Helen Frohlich

hfrohlich@agutah.gov

160 E. 300 S., 5th Floor

P.O. Box 140874

Salt Lake City, UT 84114-0874

DATED this 8th day of August 2023.

/s/ Jeanine Couser

Jeanine Couser

Utah Insurance Department

4315 South 2700 West, Suite 2300

Taylorsville, UT 84129

801-957-9321

Right to Request Reconsideration

Pursuant to Utah Code Sec. 63G-4-302, any party may file a written request for reconsideration with the agency within 20 days after the date of this order. The request should be sent to uidadmincases@utah.gov.

Right to Judicial Review

Pursuant to Utah Code Sec. 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. *See also*, Utah Code Sec. 63G-4-403.

Right to Agency Review

Any party may request agency review of an order in an adjudicative proceeding within 30 days of the date of the order to be reviewed. The request should be sent to uidadmincases@utah.gov. Utah Insurance Department Rule R590-160-8 provides as follows:

(1)

(a) Agency review of an adjudicative proceeding, except an informal adjudicative proceeding that becomes final without a request for a hearing pursuant to Subsection R590-160-7(1), shall be available to a party to a proceeding by filing a request for agency review with the commissioner within 30 days of the date of the order.

(b) Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Agency review shall comply with Sections 63G-4-301 and 63G-4-302.

(3)

(a) The commissioner or the commissioner's designee shall conduct the review.

(b) A designee shall not be the presiding officer who issued the decision under review.

(c) If a designee conducts a review, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) A request for agency review shall comply with Subsection 63G-4-301(1)(b), and shall include the following:

(i) a copy of the order that is the subject of the request;

(ii) the factual basis for the request, including:

(A) citation to the record of the formal adjudicative proceeding; and

(B) clear reference to evidence or a proffer of evidence in an informal adjudicative proceeding;

(iii) the legal basis for the request, including citation to supporting authority;

(iv) for a challenge to a finding of fact in a formal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the entire record; and

(v) for a challenge to a finding of fact in an informal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the evidence received or proffered.

(b) A party challenging a finding of fact in a formal adjudicative proceeding shall:

(i) order a transcript of the recording relevant to the finding;

(ii) certify that a transcript has been ordered;

(iii) file the transcript with the commissioner or the commissioner's designee and serve a copy on each party; and

(iv) bear the cost of preparing the transcript.

(c) The commissioner or commissioner's designee may waive the transcript requirement on motion for good cause shown.

(5) Memoranda.

(a)(i) A party requesting agency review shall submit a supporting memorandum with the request.

(ii) If a transcript is necessary to conduct the agency review, the supporting memorandum shall be filed no later than 15 days after the service of the transcript on the opposing party.

(b) An opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(c) A reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(d) The commissioner or the commissioner's designee may order a party to submit additional memoranda to assist in conducting agency review.

(6) Request for a Stay.

(a) On motion by any party and for good cause, the commissioner or commissioner's designee may stay the presiding officer's order during the pendency of agency review.

(b) A motion for a stay shall be made in writing and may be made at any time during the pendency of agency review.

(c) An opposition to a motion for a stay shall be made in writing within 10 days from the date the stay is requested.

(7) The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.

(8) Failure to comply with Section R590-160-9 may result in dismissal of the request for agency review.