

NOV 13 2020

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	
APPLICATION FOR LICENSE FOR)	FINDINGS OF FACT, CONCLUSIONS
BENJAMIN R. GROTE)	OF LAW, RECOMMENDED ORDER
)	AND ORDER
)	
)	CAUSE NO. A-2233
)	

This matter came on for hearing on October 29, 2020, before Thomas C. Green II, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its counsel, Michael Anderson. Benjamin Grote (“Applicant”) appeared pro se. The proceedings were recorded by Shelly Storie, a licensed Notary Public. The Department and Applicant presented evidence at the hearing and the matter was taken under advisement. The hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. The Department is the agency of the State of Nebraska charged with licensing insurance producers.
2. On or about July 28, 2019, in the District Court of Woodbury County, Iowa, Applicant pled guilty to misdemeanor public intoxication and was sentenced to one day in the Woodbury County Jail. The sentence was suspended and the Applicant was released from custody. (Ex. 1, testimony of Applicant)
3. On or about October 28, 2019, the Applicant plead guilty to felony Operating While Intoxicated – Third Offense in the District Court of Woodbury County, Iowa. As a result of the guilty plea, the Applicant was committed to the Woodbury County Jail for 45 days and required to complete

two years of probation thereafter. According to a statement provided by the Applicant's probation officer and testimony of the Applicant: (a) the Applicant's probation will end on October 28, 2021; (b) the Applicant has been compliant and completed everything that his current parole officer has asked of him; (c) the Applicant attends Alcoholics Anonymous (AA) meetings weekly and has a sponsor; (d) the Applicant completed Intensive Outpatient treatment in April 2020 and has been sober since May 2020; and (e) the Applicant is currently partaking in a Relapse Prevention class offered through the probation program. (Ex. 1, testimony of Applicant)

4. On or about September 28, 2020, the Applicant applied for a Nebraska resident producer's license. At the time that he completed the application for license, Applicant was approximately four months in arrears on a child support obligation. Applicant properly disclosed his criminal convictions and the child support arrearage on his application. (Ex. 1)

5. On or about October 7, 2020, the Department denied Applicant's application for licensure due to Applicant's criminal convictions and for having a child support obligation arrearage, as provided by Neb. Rev. Stat. §§44-4059(1)(f) and 44-4059(1)(m). (Ex. 1)

6. On or about October 8, 2020, Applicant submitted a timely request for appeal. (Ex. 1)

7. Applicant testified at the administrative hearing, explaining the circumstances of his criminal convictions and child support arrearage. Applicant stated he had experienced marital problems, that his marriage ended up in divorce and that he had emotional difficulty dealing with the breakup of the marriage. In an attempt to deal with the emotional issues, the Applicant testified that he turned to alcohol consumption, which lead to the criminal convictions. From there, the Applicant testified that his situation continued to spiral downward as the criminal convictions caused him to lose his license to practice pharmacy, which then lead to a loss of his job as a pharmacist. The Applicant's monthly child support obligation was based upon his substantial earnings as a pharmacist; once he

lost his pharmacist job, the Applicant was unable to find employment that paid anywhere near the amount he was able to earn as a pharmacist. The Applicant testified that his income went from in excess of \$63/hour to only \$9/hour at a fast food establishment, leaving him without the funds necessary to pay the court ordered monthly child support obligation. The Applicant testified that he has hired an attorney to bring an action to modify the child support obligation. The Applicant is currently working for American Income Life Insurance Company performing administrative tasks and seeks a producer license to increase earnings potential. (Testimony of Applicant)

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control, and discretion over the licensing of insurance producers in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and 44-4047 to 40-4069.

2. The Department has personal jurisdiction over Respondent.

3. Pursuant to Neb. Rev. Stat. §§44-4059(1)(f) and 44-4059(1)(m), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine, or any combination of actions, including having been convicted of a felony or a Class I, II, or III misdemeanor, or failing to comply with a court order imposing a child support obligation pursuant to the License Suspension Act.

4. If the director does not renew or denies an application for a license, the director shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the director within thirty days for a hearing before the director to determine the reasonableness of the director's action. The hearing shall be held within thirty days

and shall be held pursuant to the Administrative Procedure Act, pursuant to Neb. Rev. Stat. §40-4059(2).

DISCUSSION

Applicant's criminal convictions and child support arrearage constitute a sufficient statutory basis to deny his application as a Nebraska resident insurance producer. However, such denial is discretionary, not mandatory. The purpose of the license denial hearing is to determine the reasonableness of the denial. In the context of a proper denial, the hearing gives an applicant the opportunity, and the burden, to explain underlying circumstances and show why a license should be granted. The Applicant has successfully met this burden.

The evidence established Applicant's criminal convictions and child support arrearage came in the aftermath of the Applicant's divorce. Since that time, Applicant has been sober, compliant with probation, routinely attends AA meetings and is trying to improve his earning potential in order to increase the amount that can be paid toward child support. The letter from the Applicant's parole officer presented a glowing review of the Applicant and his efforts to comply with everything asked of him by his parole officer. Finally, Department counsel has recommended approval of Applicant's request for licensure.

In short, the weight of the evidence presented favors overturning the Department's initial denial.

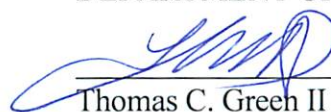
RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law made herein, it is recommended that the initial decision to deny Applicant's licensure request be REVERSED, and that Applicant's request

for licensure as a resident insurance producer be approved upon Applicant's completion of a §1033 waiver request.

Dated this 13th day of November, 2020.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Thomas C. Green II
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of the Denial of Application for License for Benjamin R. Grote, Cause No. A-2233.

Dated this 13 day of November, 2020.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Range
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon the Applicant by mailing a copy to him at 404

Black Forest Drive, Papillion, NE 68133, via regular U.S. mail on this 16th day of November,
2020.

Shelly Storie