

JAN 19 2023

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
KASSIDY S. HURLBUTT

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

CAUSE NO. A-2308

This matter came on for hearing on December 20, 2022, before Cheryl Wolff, 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. Kassidy S. Hurlbutt (“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. Applicant is appealing the denial of her resident producer’s license pursuant to Neb. Rev. Stat. §44-4059(1)(f) for having been convicted of a felony.
3. Applicant first appeared before the Department at an administrative hearing on a previous license denial on September 21, 2021, and her license was rejected on October 6, 2021, in Cause No. A-2270 (“A-2270”).

4. In A-2270 the Department held that while the Applicant had paid restitution and completed one of the four years her sentence of supervised probation, she should not be issued a license due to a felony criminal conviction for Theft by Deception (value \$1000 or more but not over \$5000), a Class IV Felony, but granted leave for Applicant to reapply after completing her probation.

5. On or about November 21, 2022, the Applicant reapplied for a Nebraska resident producer's license. The application included an attachment from the District Court of Buffalo County, Nebraska, indicating that on or before September 19, 2022, the Applicant the was granted early discharge from probation for a felony conviction in Case No. CR20-6, (Ex. 1, Attachment 1).

6. On or about November 22, 2022, the Department again, denied Applicant's application for licensure due to Applicant's felony criminal conviction, and Applicant appealed on November 30, 2022. (Ex. 1, Attachment 2 and 3).

7. On or about December 5, 2022, the Applicant was served the Notice of Hearing in this matter by regular mail and certified mail sent to her address at 2820 5th Ave., Kearney, Nebraska 68845. The Applicant also received the Notice of Hearing in this matter by electronic mail at khurlbutt@valleymedicalmgt.com, from which the Department received a delivery and read receipt. (Exhibit 2).

8. At the December 20, 2022, administrative hearing, the Department requested that the hearing officer take judicial notice of the record and recording of Applicant's prior administrative proceeding for A-2270. The Applicant offered no objection and referred to the evidence she offered in A-2270 in her own testimony. The Hearing Officer granted the request and took judicial notice of A-2270, including the evidentiary record and the recording of the hearing held on September 21, 2021.

9. At the administrative hearing, held on or about December 20, 2022, the Applicant testified this was her second application for a Nebraska resident producer's license because her first application was denied by the Department due to her felony conviction. The Applicant stated all her evidence, other than the documentation attached to her second application, was part of the record of her prior proceeding. Applicant testified that she has been released from probation after completing approximately one-half of the time originally ordered. Applicant also testified that she has worked hard during the past year to better herself. She continued counselling and is now in a better mindset and more mentally stable. She also started a new job in medical billing for claims to support her family.

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 Applicant.

3. Pursuant to Neb. Rev. Stat. §§44-4059(1)(f), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license for the conviction of a felony.

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 conviction constitutes a sufficient statutory basis to deny her 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 show why a license should be granted.

The Applicant testified that since the denial of her initial license application on October 6, 2021, she has worked hard to better herself and received an early discharge from her court-ordered supervised probation. She briefly referred to her prior criminal conduct occurring during a period of time in which she was suffering from dissociative symptoms related to PTSD. In 2021, the Applicant's counselor believed the dissociative symptoms had been eliminated. Applicant had made restitution of the amounts improperly taken and offered evidence indicating that Sapp Bros., Inc. submitted a letter to prosecutors requesting that they not move forward with a criminal action against the Applicant. However, even after receiving that letter from Sapp Bros, the state proceeded with the prosecution, resulting in a conviction and corresponding sentence of four (4) years of supervised probation. The Applicant complied with the probation requirements and received an early discharge from supervised probation, having served one-half of the four years originally ordered.

Applicant is again requesting to be provided a resident insurance producer's license, despite her conviction, primarily because she has been discharged from her court-ordered supervised probation. Discussion contained in the Findings of Fact, Conclusions of Law, Recommended Order and Order for A-2270 included a statement that satisfactory completion of the court ordered probation would allow adequate time for the Applicant to demonstrate work related stresses would not lead to

criminal activity or conflict with the ethical standards of an insurance producer. However, when read in context, that statement referenced the completion of the four years of probation. It also did not bind the Department to grant a license after discharge from supervised probation. While the Department again applauds the Applicant for her continued efforts, an application for licensure remains premature as the felony conviction was for a crime that included dishonesty, breach of trust, and theft. Satisfactory completion of the court ordered probation does show that the Applicant completed the punishment for her crime, but the Applicant's own testimony is the only evidence offered, other than the passage of time, to show she will meet the ethical standards required of an insurance producer if faced with financial difficulties or other stressful situations in the future.

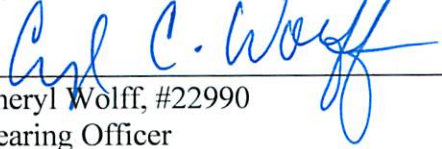
The weight of the evidence presented by the Applicant does not sufficiently support a finding that the director's action in denying the Applicant's request for license was unreasonable.

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 SUSTAINED, and that Applicant's request for licensure as a resident insurance producer is denied.

Dated this ___ day of January, 2023.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE

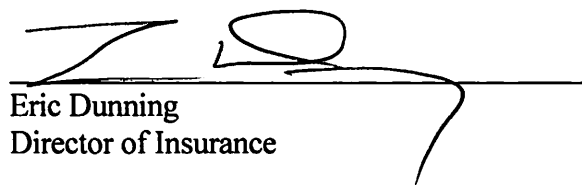

Cheryl Wolff, #22990
Hearing Officer

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 Cassidy S. Hurlbutt, Cause No. A-2308.

Dated this 19th day of January, 2023.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Eric Dunning
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 her at 1315 E. 33rd Drive, Kearney, NE 68847, via regular U.S. mail on this 19th day of January, 2023.

