

MAY 22 2023

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
TYLER MCCORMICK

) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER
)
) CAUSE NO. A-2324
)

This matter came on for hearing on April 18, 2023, 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, Laurie Burgess. Tyler McCormick (“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 his non-resident producer’s license pursuant to Neb. Rev. Stat. §44-4059(1)(f) for having been convicted of a felony.
3. On or about March 12, 2023, the Applicant applied for a Nebraska non-resident producer’s license. On the application, in response to Question 1(b) the Applicant marked “yes” indicating he had been convicted of a felony. (Ex. 2, Attachment 2).

4. The Application contained an attachment from the Superior Court of Walton County, Georgia, indicating that on or before March 17, 2021, the Applicant received a Final Disposition Felony Sentence with Probation. Applicant was sentenced to 10 years of probation with a behavioral incentive date of March 17, 2024. (Ex. 2, Attachment 3).

5. On or about April 3, 2023, the Applicant was served the Notice of Hearing in the matter of his license denial by regular mail and certified mail, return receipt requested, sent to his address of 1625 Pinebreeze Dr., Marietta, GA 30062. The Applicant also received the Notice of Hearing in this matter by electronic mail at mccfinancialsolutions@gmail.com, from which the Applicant responded to the Department. (Ex. 3).

6. While no formal notice of the license denial or the request for hearing on the denial was found in the record, on or about April 3, 2023, the Applicant responded to the Department by email indicating he would participate in the Hearing on the matter of his license denial on April 18, 2023. (Ex. 3, Attachment 1).

7. At the April 18, 2023, administrative hearing the Applicant appeared via WebEx to offer testimony and introduce evidence. He offered Exhibit 1, which was subsequently received by the Hearing Officer and entered into the record with no objections. He also testified under oath that he was granted a probationary license in his resident state of Georgia in October of 2022. He stated he has committed no other offences after the marijuana possession that was the basis for the felony conviction. If he does have any other charges, he is obligated to report that to the Georgia Department of Insurance. When he successfully completes one year under the probationary license it is his understanding that the license will automatically be converted to a permanent license. He stated that he currently holds non-resident licenses in eight other states. (Ex. 2, Attachment 3 and Testimony of the Applicant).

8. The Applicant also described the circumstances of his felony drug conviction for possession of more than an ounce of marijuana and his release to unsupervised probation on January 20, 2023. (Ex. 1, Attachments 1 and 2). He also stated that his Final Disposition Felony Sentence included a Conditional Discharge that would occur three years after the order, which would occur on March 17, 2024. (Ex. 2, Attachment 3)

9. The Final Disposition Felony Sentence includes a section on Conditional Discharge providing that once the Applicant completes the terms of the sentence or upon his release by the court, he “shall stand discharged of said offense without court adjudication of guilt and shall be completely exonerated of guilt of said offense charged.” (Ex. 2, Attachment 3).

10. On or about January 1, 2020, The Georgia Department of Community Supervision, District 7, placed Applicant on unsupervised status, but indicated fine payments were to continue with no specific end date listed. On the document, the Applicant’s sentence expiration date is listed as March 16, 2031. (Ex. 1, Attachment 1).

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 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 show why a license should be granted.

The Applicant testified that since his felony conviction, he has worked to move his life forward and demonstrate good morals. He has been selling insurance since October 2022 when he received his probationary resident license in Georgia. He has complied with the terms of his probation and was released onto unsupervised probation and continues to pay the required monthly amount towards his fine.

Applicant is requesting to be provided a nonresident insurance producer's license, despite his conviction. While the Department applauds the Applicant for his continued efforts, an application for licensure remains premature as the Applicant only holds a probationary license in his resident state, he remains on probation, and the felony conviction behavioral incentive cannot result in a conditional discharged until March 17, 2024. Satisfactory progress towards completion of his probation does demonstrate that the Applicant has made great strides towards showing he could meet the ethical standards required of an insurance producer in the future. The Applicant is eligible to reapply for a

nonresident license after he has received a conditional discharge from the court or, if a discharge is not granted, then after the terms of his probation are completed.


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 22 day of May, 2023.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



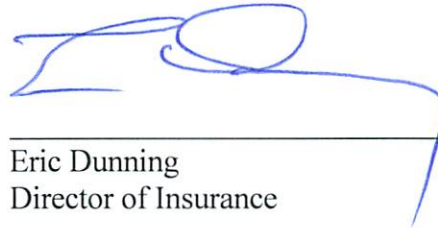
Cheryl Wolff, #22990
Hearing Officer

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 Tyler McCormick, Cause No. A-2324.

Dated this 27th day of May, 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 1625 Pinebreeze Dr., Marietta, GA 30062, via regular U.S. mail on this 27th day of May, 2023.

