

JUL 02 2014

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	FINDINGS OF FACT,
APPLICATION FOR LICENSE FOR)	CONCLUSIONS OF LAW,
KAREN DRISCOLL)	RECOMMENDED ORDER AND
)	ORDER
)	
)	CAUSE NO. A- 2003

This matter came on for hearing on the 26th day of June, 2014, before Laura L. Arp, a hearing officer duly appointed by the Director of the Nebraska Department of Insurance. The Nebraska Department of Insurance (“Department”) was represented by its attorney, Krystle Ledvina Garcia. Karen Driscoll (“Applicant”) was present and was not represented by an attorney. The proceedings were tape recorded by Brandis Courser, a licensed Notary Public. Exhibits 1 through 9 were admitted at the hearing without objection, testimony of Applicant was given at the hearing, and the matter was taken under advisement. As a result of the hearing, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Applicant submitted an application for a Nebraska Insurance Producer License to the Nebraska Department of Insurance on April 18, 2014.
2. The Department is the agency of the State of Nebraska charged with licensing insurance agents and brokers.
3. The Department’s Producer Licensing Division Administrator made the decision to deny Applicant’s application based on Applicant’s record of criminal convictions, including a 2005 conviction for intent to deliver an exceptionally hazardous drug and a 2005 conviction for theft by unlawful taking under \$100.

4. The Producer Licensing Division Administrator sent a certified letter to Applicant on May 5, 2014 in which Applicant was informed of the license denial and given notice of her right to request a hearing for reconsideration of the denial.

5. On or about June 3, 2014, the Department received Applicant's written request for a hearing to reconsider the denial of her application.

6. Applicant was served with notice of the June 26, 2014 hearing by certified mail, return receipt requested. The Department received the return receipt showing delivery to Applicant's address. Applicant appeared in person at the date and time specified in the Notice of Hearing.

7. The "Background Information" section of Applicant's application for an insurance producer license (E2 at A1), discloses that Applicant has been convicted of a crime. The application provides the following requirement: "If you answer yes, you must attach to this application: (a) a written statement explaining the circumstances of each incident, (b) a copy of the charging document, (c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment." Applicant provided a written statement (E2 at A1): "I received a charge of a felony charge in 2006 for ongoing criminal conduct. I was placed on 5 years probation and a suspended 25 year prison sentence. In 2009 I received a probation violation and was sent to prison. I got out in 2010." Applicant did not provide charging documents or documents demonstrating resolution of the charges or a final judgment.

8. The "Background Information" section of Applicant's application (E2 at A1) also provides: "If you have a felony conviction involving dishonesty or breach of trust, have you applied for written consent to engage in the business of insurance in your home state as required by 18 USC 1033?" Applicant checked "No" in answer to this question.

9. Applicant's criminal background is documented in the evidence admitted without objection at the hearing.

a. Applicant was convicted of possession of drug paraphernalia on December 26, 2001 in Pottawattamie County, Iowa. (E3 at A4).

b. In the Iowa District Court for Pottawattamie County, Case No. SRCR128114, on November 29, 2004, Applicant pled guilty to two counts of possession of methamphetamine. (E3 at A2).

c. In the County Court for Douglas County, Case No. CR05-15913, on or about October 20, 2005, Applicant pled guilty to theft by unlawful taking. (E2 at A2, E5).

d. In Douglas County District Court, Docket No. 167847, on January 4, 2006, Applicant pled no contest to amended charges of unlawful possession of a controlled substance, a Class IV Felony, and was adjudged by the court to be guilty as charged. (E2 at A2, E4).

e. In the Iowa District Court for Pottawattamie County, Case No. SRCR128771, on January 23, 2006, Applicant pled guilty to possession of methamphetamine. (E3 at A3).

f. In the Iowa District Court for Pottawattamie County, Case No. FECR042379, on April 17, 2006, Applicant pled guilty to Count I of the charges, "ongoing criminal conduct," which involved "with intent to defraud another, . . . a series of acts committed for financial gain, and did so on a continuous basis." On November 5, 2009, Judge Kathleen Kilnoski found Applicant in violation of the terms of her probation and reinstated the original sentence of a period not to exceed twenty-five years. (E3 at A5).

10. Applicant submitted four letters of support.

a. Exhibit 6 is a letter from Garrett Laufer, the Finance and Insurance representative for the auto group in which Applicant works. Mr. Laufer speaks highly of Applicant's professionalism, character, and performance.

b. Exhibit 7 is a letter from Patrick Johnston, Finance Director at Edwards Subaru, Hyundai & Mitsubishi. Mr. Johnston has worked with Applicant for the past two and a half years and has been Applicant's direct supervisor for the past four months. Mr. Johnston states that Applicant is an asset to the organization and a true example of giving someone a second chance.

c. Exhibit 8 is a letter from Heather Ireland, Office Manager of Edwards Auto Group. Ms. Ireland describes Applicant as trustworthy. Ms. Ireland states that Applicant has worked her way up the ladder to become finance manager of Edwards Auto Group. Ms. Ireland states, "you will rarely meet someone as deserving of a second chance."

d. Exhibit 9 is a letter from Todd Edwards, General Manager of Edwards Auto Group. Mr. Edwards has been Applicant's direct supervisor for a number of years and finds her to be a dependable and trustworthy employee. Mr. Edwards states, "I am willing to make that investment in her and put my name on the line to give her that opportunity."

11. At the hearing, Applicant testified that she has not incurred so much as a speeding ticket since she was released from jail in 2010.

12. Applicant further testified that she intends to stay employed at Edwards Auto Group and an insurance producer license is needed in her position as finance manager so that she would be able to sell credit life and gap insurance as part of the auto purchase financing process. Without the insurance license, Applicant must have a colleague perform the gap and credit life insurance portions of the financing process.

13. When questioned about her criminal history and substance abuse issues, Applicant testified that substance abuse was a major factor in all of her past criminal acts.

DISCUSSION

Applicant has a significant history of methamphetamine abuse and related crimes to support her habit. There is a risk that if Applicant relapsed, her judgment would become impaired and she would return to criminal activity. However, after considering the evidence along with Applicant's testimony and demeanor at the hearing, I recommend that Applicant be granted an insurance producer license. This recommendation is based on the following facts.

First, Applicant's employer supports her application for an insurance producer license. Applicant seeks an insurance license so that she will be able to offer certain types of insurance as part of the auto financing process she performs every day at her job. Applicant would be selling credit life and gap insurance under the direct supervision of Todd Edwards, General Manager of Edwards Auto Group. Mr. Edwards has been Applicant's direct supervisor for a number of years and finds her to be a dependable and trustworthy employee. In his letter to the Department in support of Applicant, Mr. Edwards states, "I am willing to make that investment in her and put my name on the line to give her that opportunity."

Second, Applicant has made meaningful changes in her life. Applicant's criminal history was directly related to drug abuse, and her criminal activity stopped when she quit using drugs. Applicant's testimony and the Department's search of court records indicate that Applicant has not been charged with any violations of the law in the past four years. At the hearing, Applicant described the point at which she knew things had to change and expressed remorse for the harm she inflicted on herself and her family while she was using drugs. Applicant also testified about her life

from 2010 to today. Applicant has repaired her relationships with family members and took care of her sister's children when her sister was unable to care for them.

Applicant has worked at Edwards Auto Group for two and one-half years. Applicant has been promoted several times and is currently the finance manager. An insurance license is necessary for Applicant to perform her job duties. Denial of an insurance producer's license would limit Applicant's chance for success as a productive member of society.

CONCLUSIONS OF LAW

1. The Department has jurisdiction and control over the licensing of Applicant to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §§ 44-101.01 and § 44-4047 to 44-4067.
2. The Department has personal jurisdiction over Applicant.
3. Applicant met the requirements for timely appeal of a license denial set forth at Neb. Rev. Stat. § 44-4059(2).
4. The Director may deny the issuance of an insurance producer license on the basis of Applicant's previous felony or Class I, II, or III misdemeanor convictions pursuant to Neb. Rev. Stat. § 44-4059(1)(f).
5. Applicant's criminal history provides sufficient grounds for denial of an insurance producer license. However, such denial is discretionary, not mandatory.
6. Applicant's conduct over the past four years and the letters from Applicant's supervisors and coworkers attesting to her professionalism, character, and work ethic are sufficient to establish that Applicant's criminal history should not prevent her from becoming a licensed insurance producer.

7. Applicant's conviction for ongoing criminal conduct in Case No. FECR042379 (E3 at A5) is a felony conviction involving dishonesty or breach of trust and therefore, pursuant to the federal Violent Crime Control and Law Enforcement Act, 18 U.S.C. § 1033, Applicant must obtain the written consent of the Director of the Department of Insurance in order to be issued an insurance producer license.

8. The evidence is sufficient to justify written consent for the issuance of an insurance producer license from the Director under 18 U.S.C. § 1033.

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Karen Driscoll have her insurance producer's license application approved.

Dated this 2nd day of July, 2014.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


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 of Karen Driscoll, Cause No. A-2003.

Dated this 2 day of July, 2014.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



BRUCE R. RAMGE
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 Applicant at her new address provided at the June 28, 2014 hearing: 14218 S. 30th Avenue, Bellevue, NE 68123, by certified mail, return receipt requested, on this 2nd day of July, 2014.


