

MAY 06 2016

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF)	FINDINGS OF FACT, CONCLUSIONS
APPLICATION FOR LICENSE FOR)	OF LAW, RECOMMENDED ORDER
TODD J. MILLER)	AND ORDER
)	
)	CAUSE NO. A-2037
)	

This matter came for hearing on the 4th day of May, 2016, before Matthew Holman, 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. Todd J. Miller (“Applicant”) was present and was not represented by counsel. The proceedings were recorded by Brandis Courser, a licensed Notary Public. Evidence was received, testimony was adduced 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 applied to become a resident licensed insurance producer with the State of Nebraska. Applicant’s application for said license was submitted to the Department on or about March 24, 2016. Within the Uniform Application for Individual Producer License (“Application”), Applicant answered question 1a in the affirmative indicating that he has been convicted of a misdemeanor, had a judgment withheld or deferred, or is currently charged with committing a misdemeanor. Within that same application, Applicant answered question 1b in

the negative indicating that he has never been convicted of a felony, had a judgment withheld or deferred, and is not currently charged with committing a felony. (Ex. 2)

2. On or about March 25, 2016, the Department of Insurance requested additional information from Applicant regarding his affirmative response to question 1a. (Ex. 2)

3. On or about March 28, 2016, Applicant submitted a handwritten note to the Department indicating that he answered background question 1a incorrectly and that question 1a should have been answered in the negative. (Ex. 2)

4. On or about April 1, 2016, after reviewing Applicants criminal history, Kevin Schlautman (“Schlautman”), licensing administrator for the Nebraska Department of Insurance, denied Applicant’s producer license application on the grounds that Applicant provided incorrect, misleading, incomplete, or materially untrue information in the license application and on grounds of having been convicted of a felony or a Class I, II, or III misdemeanor. (Ex. 2)

5. On or about April 1, 2016, Schlautman provided written notice of said denial to Applicant at the address listed in his license application via certified mail. (Ex. 2)

6. On or about April 8, 2016, the Department received written correspondence from Applicant, pursuant to Neb. Rev. Stat. § 44-4059(2), requesting an administrative hearing regarding the denial of his insurance producer license application. (Ex. 2)

7. On or about April 11, 2016, a Notice of Hearing in this matter was submitted to Applicant at 16562 Pine Street, Omaha, NE 68130 via certified mail, return receipt requested, and by regular United States mail. On or about April 18, 2016, the Domestic Return Receipt attached to the certified letter was returned to the Department by the United States Postal Service confirming delivery. (Ex. 1)

8. Since 2001, Applicant has been convicted on multiple criminal counts, including among others, a Class 3 misdemeanor in the County Court of Douglas County, Case Number CR 01-23038; a Class 3A felony DUI in the District Court of Douglas County, Case Number CR 10-9065301; and a Class 4 felony for criminal mischief in the District Court of Douglas County, Case Number CR 10-9040197. At the time of filing his Application, Applicant had pending charges in the County Court of Lancaster County, Case Number CR 14-16823 for misdemeanor distributing the peace and misdemeanor failure to appear in court. (Ex. 2)

9. At the hearing, Applicant testified that on April 9, 2016 he was charged with a second offense DUI misdemeanor. He also testified that he is going to be enrolling in an alcohol abuse program in Omaha.

10. Applicant testified that he is currently working for American Income Life, an insurance agency, and that he was training to be a field agent pending the outcome of this licensing hearing. Applicant testified that he has had some troubles in the past and that he is looking to move forward in his life. He is looking for a career change to better himself and expand his potential.

11. At the hearing, Applicant testified that he initially answered question 1a in the affirmative because he did not want to lie or withhold anything. Applicant testified that he initially answered question 1b in the negative because he was not aware of any felonies on his record because they “should have been dropped to misdemeanors.” He testified that once the Department asked for additional information, his employer instructed him that he should have answered question 1a in the negative because DUIs do not need to be reported. Applicant testified he was trying to be honest through the application and followed the directions of his employer.

DISCUSSION

Applicant's previous misdemeanor and felony convictions, as well as his failure to report these convictions on his licensing application, constitute sufficient basis for the denial of Applicant's insurance producer license; however, such denial is discretionary, not mandatory. Pursuant to Neb. Rev. Stat. § 44-4059(2), the purpose of the license denial hearing is to determine the reasonableness of the denial. The Department has statutory authority to deny an applicant's license if the applicant has been convicted of a Class I, II, or III misdemeanor or a felony pursuant to Neb. Rev. Stat. § 44-4059(1)(f). The Department also has statutory authority to deny an applicant's license if the applicant has provided incorrect, misleading, incomplete, or materially untrue information in the license application pursuant to Neb. Rev. Stat. § 44-4059(1)(a). As such, the initial denial of the application was proper. In the context of a proper denial, the license denial hearing procedure gives applicants an opportunity to explain circumstances and show why a license should be granted.

In this instance, Applicant's convictions are problematic, not because of the nature of any individual conviction, but because his convictions are indicative of a long-running pattern of criminal behavior and alcohol abuse. This pattern of behavior continues, as Applicant was charged with another DUI conviction as recently as April 2016. While Applicant's convictions are for crimes which are not directly related to the sale of insurance, the overall criminal history does not indicate that Applicant would be a responsible producer.

Even more concerning than Applicant's actual convictions is his failure to properly report them on his license application. The application clearly requires applicants to indicate whether they have been convicted, or are currently charged with, a misdemeanor or felony. The only exclusion to this is for misdemeanor convictions involving traffic citations or driving under the

influence. While Applicant's employer may have instructed him to answer question 1a in the negative, as DUI charges are not required to be reported, that does not alleviate Applicant from reading and understanding the questions on the Application. While some of Applicant's misdemeanor convictions are DUI related and did not need to be reported, there is no question that applicant had multiple misdemeanor and felony convictions that should have been reported on the application. Further, Applicant was, at the time of application, being charged with another non-traffic related misdemeanor which was also not reported. Failure to report any of these convictions on the Application indicates a lack of trustworthiness or a lack of respect for the regulatory process which is unacceptable for a licensed insurance producer.

Applicant has not provided any evidence to show that the denial of this license is unreasonable in the circumstances. Applicant has not provided any character or employment references and has asked no one to testify on his behalf. In the face of a statutorily authorized denial, an applicant must show the denial was unreasonable. The Department has shown that the denial of Applicant's license was proper. The Applicant has not shown that the denial was unreasonable.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion 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. The Director may deny the issuance of an insurance producer license on the basis of Applicant's previous conviction of a Class I, II, or III misdemeanor or a felony pursuant to Neb. Rev. Stat. § 44-4059(1)(f).

4. The Director may deny the issuance of an insurance producer license on the basis of the Applicant providing incorrect, misleading, incomplete, or materially untrue information in the license application pursuant to Neb. Rev. Stat. § 44-4059(1)(a).

RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that the denial of Applicant's insurance producer license be upheld. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter.

Dated this 6th day of May, 2016.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


MATTHEW HOLMAN
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 the Department in the matter of the Denial of Application for License for Todd J. Miller, Cause No. A-2037.

Dated this 6 day of May, 2016.

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 Applicant, Todd J. Miller, by mailing a copy to him at 16562 Pine Street, Omaha, NE 68130, via certified mail, return receipt requested and by regular United States mail on this 6 day of May, 2016.


