

SEP 21 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  
JACOB R. HOLLAND ) AND ORDER  
)  
)  
) CAUSE NO. A-2044  
)

This matter came for hearing on the 20th day of September, 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, Robert Bell. Jacob R. Holland (“Applicant”) was present and was not represented by counsel. The proceedings were digitally 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. On or about August 18, 2016, Applicant submitted a Uniform Application for Individual Insurance Producer License to the Department in order to obtain a Nebraska resident insurance producer license. (See Ex. 2)
2. On his application, Applicant answered “no” to question 1a, indicating he has never been convicted of a misdemeanor. Applicant answered “yes” to question 1b indicating he

has been convicted of a felony. Applicant also answered “yes” to question 1c, indicating he has been convicted of a military offense. (See Ex. 5)

3. In 2005, Applicant was convicted of a military offense for failure of a drug screen urinalysis, two counts. Applicant was sentenced via court-martial to four months of confinement, two thirds loss of pay, and loss of rank. Upon successful completion of the sentence, Applicant was discharged from service. This conviction was reported on the August 18, 2016 uniform application. (See Ex. 5)

4. On or about January 30, 2006, Respondent was convicted of a class I misdemeanor for first offense carrying of a concealed weapon. This conviction was not reported on the August 18, 2016 uniform application. (See Ex.5)

5. On or about September 28, 2006, Respondent was convicted of a class IV felony, possession of a controlled substance. This conviction was reported on the August 18, 2016 uniform application. (See Ex. 5 and 6)

6. Respondent has been convicted of various additional misdemeanor traffic violations. These violations were not, and were not required to be, reported on the uniform application. (See Ex. 5 and 6)

7. On or about August 29, 2016, Kevin Schlautman (“Schlautman”), licensing administrator for the Nebraska Department of Insurance, denied Applicant’s producer license application pursuant to Neb. Rev. Stat. §§ 44-4059(1)(a) and 44-4059(1)(f) on the grounds that Applicant had provided incorrect, misleading, incomplete, or materially untrue information in this license application and for having been convicted of a felony or class I, II, or III misdemeanor. (See Ex. 5)

8. On or about August 29, 2016, Schlautman provided written notice of said denial to Applicant via certified mail. (See Ex. 5)

9. On or about September 2, 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. (See Ex. 5)

10. On or about September 6, 2016, a Notice of Hearing in this matter was submitted to Applicant via certified mail, return receipt requested. On or about September 12, 2016, the Domestic Return Receipt attached to the certified letter was returned to the Department by the United States Postal Service confirming delivery of the Notice of Hearing to Applicant on September 9, 2016. (See Ex. 4)

11. At the hearing, Applicant testified that since his 2006 convictions, he has successfully completed a rehabilitation program and been released from probation. Applicant further testified that he attended Southeast Community College, received a degree in non-destructive testing, and has successfully worked in the field of non-destructive testing since 2009.

12. At the hearing, Applicant testified that he did not report his 2006 concealed weapons misdemeanor conviction on the uniform application because he had forgotten about it. He further testified that he was unable to provide additional documentation regarding his court-martial because, although he had requested the documentation, he was as of yet unable to obtain it.

13. At the hearing, Applicant submitted two letters of reference, one from a friend and one from his recent employer, attesting to his professionalism, work ethic, and indicating

that he has overcome his previous drug problems and is a law-abiding and positive community member. (See Ex. 1 and 2)

### DISCUSSION

While Applicant's previous felony and misdemeanor convictions, as well as Applicant's omission of his misdemeanor conviction on the uniform application, are a sufficient basis for the denial of Applicant's insurance producer license, such denial is discretionary, not mandatory. Applicant's 2005 and 2006 convictions show that Applicant was having significant drug-related problems, and Applicant testified that he was a drug addict. All of Applicant's underlying convictions stem from a relatively short time period in 2005 and 2006. Since the conviction, Applicant has significantly turned his life around. He has completed rehabilitation and probation, earned a college degree, and has successfully worked in his chosen field since approximately 2009. Applicant testified that he has had not used drugs since May 2006 and that he has had no further legal trouble since 2006. Applicant's references help support the proposition that he has made great strides since 2006.

In addition to the convictions, Applicant's license was denied for providing materially untrue information made on the uniform application. Applicant failed to disclose his 2006 misdemeanor conviction for carrying a concealed weapon. Further, he failed to provide required documentation related to his 2005 court-martial conviction. Taking the documentation issue first, Applicant did e-mail the licensing division of the Department of Insurance on April 19, 2016 and outlined the details of his felony conviction and the military conviction. He stated specifically that he was providing these details because he did not have legal documentation in his possession and could not produce the information in a timely manner. While it is Applicant's

responsibility to provide legal documentation regarding the conviction, Applicant was candid with the Department, provided the details, and requested to be contacted if the Department needed additional information. Applicant's actions were reasonable in light of the situation, and his failure to provide the necessary documentation at this time should not be a bar to his receiving a producer license.

The most significant issue at present is Respondent's failure to identify his 2006 misdemeanor conviction by indicating in the Uniform Application that he has never been convicted of a misdemeanor. Misrepresentation or providing materially untrue information on the application is grounds for denial, and generally indicative of an individual's willingness to deceive the Department. However, in this case the evidence supports Applicant's assertion that failure to report the misdemeanor was an honest oversight. Applicant testified that he simply forgot about the misdemeanor conviction. Given the series of 2006 legal troubles which involved multiple charges being consolidated, forgetting the misdemeanor is a reasonable explanation. Further, Applicant reported in detail his felony and court-martial convictions. Attempting to hide a misdemeanor which occurred at approximately the same time period does not seem to make sense. In light of Applicant's testimony and the surrounding circumstances, it appears the omission was an honest mistake. Providing full and accurate information to the Department is always required of Applicants and producers, however, an honest mistake should not be an automatic bar to an individual receiving a producer license.

Finally, Applicant testified that he has an appointment with Banker's Life and that he will report to a supervisor and receive additional training if he is granted a license. Applicant's criminal history and his failure to report the misdemeanor on his application are cause for concern. However, his crimes were not related to his insurance business, and it appears that

Applicant has made significant steps to take responsibility for his past actions and move his life forward in a positive and responsible manner. Given Applicant's post-conviction achievements, and his support network, it appears that Applicant can successfully function as an insurance producer. As such, it is my recommendation that the denial of Applicant's application for a renewal of his insurance producer license be overturned.

#### 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.

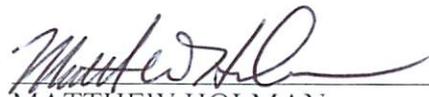
3. The Director may deny the issuance of an insurance producer license on the basis of Applicant's previous convictions of a felony or Class I, II, or III misdemeanor pursuant to Neb. Rev. Stat. § 44-4059(1)(f), and his providing materially untrue information on his licensing application pursuant to Neb. Rev. Stat. § 44-4059(1)(a).

RECOMMENDED ORDER

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

Dated this \_\_\_\_ day of September, 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 Jacob R. Holland, Cause No. A-2044.

Dated this 21 day of September, 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, Jacob R. Holland, by mailing a copy to him at 10860 Potter Street, Omaha, NE 68142, via certified mail, return receipt requested and by regular United States mail on this 21 day of September, 2016.

Brandis J. Couser