

JAN 09 2017

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
MATTHEW B. BASKE)	AND ORDER
)	
)	CAUSE NO. A-2053
)	

This matter came for hearing on the 4th day of January, 2017, 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. Matthew B. Baske (“Applicant”) was present via telephone 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 and the evidence submitted, the hearing officer makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. Applicant applied to become a non-resident licensed insurance producer with the State of Nebraska. Applicant’s application for said license was submitted to the Department on or about November 7, 2016. Within the Uniform Application for Individual Producer License, Applicant answered question 1b in the affirmative, indicating that he has been convicted of a felony. (Ex. 2)
2. On or about November 15, 2015, Applicant was sentenced for two counts of Serious Injury by Vehicle, a felony, one count of Driving Under the Influence Less Safe Alcohol, a

misdemeanor, and one count of Reckless Driving, a misdemeanor. Mr. Baske received a sentence of ten years probation, a fine of \$300, and is required to complete 500 hours of community service.

(Ex. 2)

3. On or about November 4th, 2016, Applicant entered into a consent order with the Georgia Commissioner of Insurance under which he was issued a Georgia resident agent license on a probationary status. (Ex. 7)

4. On or about November 16, 2016, Kevin Schlautman (“Schlautman”), Licensing Administrator for the Nebraska Department of Insurance, denied Applicant’s producer license application on the grounds that Applicant had been convicted of a felony and notified Applicant of such decision. (Ex. 2)

5. On or about December 12, 2016, Schlautman 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)

6. On or about December 15, 2016, a Notice of Hearing in this matter was submitted to Applicant at 5156 Apple Grove Road, Buford, GA 30519, via certified mail, return receipt requested, and by regular United States mail. The Notice of Hearing was also served on Applicant via e-mail at Matthew.Baske@ADP.com. (Ex. 1)

7. Evidence offered by Applicant and accepted into the record includes: an explanatory letter outlining the details underlying Applicant’s felony conviction (Ex. 3); a letter of recommendation from Applicant’s current probation officer (Ex. 4); three letters of recommendation from colleagues at Automatic Data Processing Insurance Agency, Inc. (Ex. 5); a copy of a receipt showing the payment of court fines (Ex. 6); and the above reference signed consent order with the Georgia Insurance Commissioner (Ex. 7).

8. At the hearing, Applicant testified that he has been licensed as an insurance producer in ten states and that he has been denied licenses in four states. Further, he testified that he has entered a deferred offender program and is currently meeting all requirements of his ten-year probation.

DISCUSSION

While Applicant's previous felony conviction is a sufficient basis for the denial of Applicant's insurance producer license, 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 felony pursuant to Neb. Rev. Stat. § 44-4059(1)(f). 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.

No evidence was presented at the hearing that Applicant's felony conviction was part of a long-term pattern of substance abuse or criminal activity. However, the underlying offense was significant and warranted a ten-year probation period. Further, the conviction was very recent. Applicant has only held a provisional insurance producer license in his resident state for approximately two months. Applicant provided recommendation letters from colleagues and his current probation officer, but again these relationships are only months old. While it appears Applicant is currently in compliance with the terms of his probation, the evidence presented is insufficient to show that the denial of Applicant's license should be overturned. Should Applicant continue to comply with the terms of his probation and the terms of the consent order under which

he holds his probationary insurance license in Georgia, he is welcome to reapply for a Nebraska producer license in the future.

As discussed above, 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 felony pursuant to Neb. Rev. Stat. § 44-4059(1)(f).

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 9th day of January, 2017.

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 Matthew B. Baske, Cause No. A-2053.

Dated this 9 day of January, 2017.

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, Matthew B. Baske, by mailing a copy to him at 5156 Apple Grove Road, Buford, GA 30519, via certified mail, return receipt requested and by regular United States mail on this 9 day of January, 2017.


