

MAR 9 2020

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR

)
) FINDINGS OF FACT, CONCLUSIONS
) OF LAW, RECOMMENDED ORDER
) AND ORDER

VELIKA SHANTEL BENDER

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)
) CAUSE NO. A-2208

This matter came on for hearing on March 5, 2020, before Robert E. Harkins, 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, Tracy Burns. Velika Shantel Bender (“Applicant”) appeared via telephonic conference call 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. On or about June 1, 2009, in the Superior Court of Colquitt County Georgia, Applicant pled guilty to one felony count of Forgery in the First Degree. Applicant was placed on probation for a period of five (5) years, fined \$1,500.00, and ordered to pay restitution of \$1,423.14. Applicant

successfully completed her probationary term, and was discharged from probation on June 17, 2014.

(Ex. 1, Ex. 2, testimony of Applicant)

3. On or about December 13, 2019, the Georgia Commissioner of Insurance issued Applicant a probationary insurance producer's license. (Ex. 1)

4. On or about January 27, 2020, the Applicant applied for a Nebraska non-resident producer's license. Applicant properly disclosed her felony conviction on her application. (Ex. 3, Attachment 1)

5. On or about January 30, 2020, the Department denied Applicant's application for licensure due to Applicant's felony conviction and for having her insurance producer's license placed on probation, as provided by Neb. Rev. Stat. §§44-4059(1)(f) and 44-4059(1)(i). (Ex. 3, Attachment 4)

6. On or about February 6, 2020, Applicant submitted a timely request for appeal. (Ex. 3, Attachment 5)

7. Applicant testified at the administrative hearing, explaining the circumstances of her criminal conviction. Applicant stated she forged the signature of a check payee and subsequently cashed the check (payable in the amount of approximately \$1,400.00) at a local package store. Applicant testified she negotiated the check at the request of two acquaintances, who paid Applicant \$200.00 of the check proceeds. Applicant cooperated with authorities after her arrest, and further testified she had no other criminal convictions before or since this incident. Applicant stated that at the time of her criminal conduct, she was in the midst of a personal crisis. Appellant is currently employed by State Farm Insurance Companies, and was recently promoted. Finally, Applicant testified she is a veteran of the U.S. Army, and was honorably discharged after serving for four years. (Testimony of Applicant)

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 Respondent.
3. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy an administrative fine in accordance with subsection (4) of this section, or any combination of actions, including having been convicted of a felony or a Class I, II, or III misdemeanor, or having an insurance producer license placed on probation in any other state, pursuant to Neb. Rev. Stat. §§44-4059(1)(f) and 44-4059(1)(i).
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 felony conviction and the probationary status of her Georgia producer's license constitute a sufficient statutory basis to deny her application as a Nebraska non-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 explain underlying circumstances and show why a license should be granted. The Applicant has successfully met this burden.

The evidence established Applicant's criminal conviction was a one-time aberration. Applicant has no other criminal violations, and the incident leading to her conviction took place over ten years ago. Since that time, Applicant has been successful in her employment with State Farm, and wishes to further her career by seeking non-resident licensure. It is noteworthy that State Farm has reported no issues with Applicant's job performance, and Applicant has received a promotion to her current position. Finally, Department counsel has recommended approval of Applicant's request for licensure.

In short, the weight of the evidence presented favors overturning the Department's initial denial.

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 REVERSED, and that Applicant's request for licensure as a non-resident insurance producer be approved forthwith.

Dated this 9th day of March, 2020.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Robert E. Harkins
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 Velika Shantel Bender, Cause No. A-2208.

Dated this 9 day of March, 2020.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Bruce R. Range
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 2001 Godby Road, Apartment C4, College Park GA 30349, via certified mail, return receipt requested and via regular U.S. mail on this 9th day of March, 2020.


