

OCT 06 2021

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE DENIAL OF
APPLICATION FOR LICENSE FOR
KASSIDY S. HURLBUTT

)
)
)
)
)
)

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

CAUSE NO. A-2270

This matter came on for hearing on September 21, 2021, before Thomas C. Green II, 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, Michael Anderson. Kassidy S. Hurlbutt (“Applicant”) appeared 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 August 21, 2020, in the District Court of Buffalo County, Nebraska, Case No. CR20-6, Applicant was sentenced to supervised probation for a period of four (4) years subsequent to a conviction for Theft by Deception (value \$1000 or more but not over \$5000), a Class IV Felony (Ex. 3, Attachment 1).

3. On August 30, 2021, the Applicant applied for a Nebraska resident producer’s license. Applicant disclosed her criminal conviction on her application. (Ex. 3, Attachment 1)

4. On or about August 13, 2021, the Department denied Applicant's application for licensure due to Applicant's felony criminal conviction, as provided by Neb. Rev. Stat. §44-4059(1)(f). (Ex. 3, Attachment 2)

5. On or about September 2, 2021, Applicant submitted a timely request for appeal. (Ex. 3, Attachment 3)

6. Applicant testified at the administrative hearing, explaining the circumstances of her criminal conviction. Applicant testified that she was the general manager for Sapp Bros., Inc. and had intentionally paid two different individuals, one of which was her own son, for hours that the individuals had not actually worked. Applicant testified that her actions were motivated by her belief that the two employees in question were wrongfully denied bonuses that she believed they should have received. Applicant supplied a letter from her counselor that attributed her poor decision making at the time to post-traumatic stress disorder (PTSD) arising from a house fire which occurred while Applicant was at work, but her children were at home. The Applicant's counselor believes that the Applicant's dissociative symptoms secondary to the PTSD have resolved. Applicant testified that she made full restitution of all of the amounts that she had been accused of misappropriating and presented a letter from the CFO of Sapp Bros., Inc. attesting to such restitution. (Testimony of Applicant; Exhibits 1 and 3)

7. Applicant has been compliant with all of the terms of her supervised probation to date but has not yet completed the entire court-ordered four (4) years of supervised probation (Testimony of Applicant; Exhibit 3, Attachment 1).

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. Pursuant to Neb. Rev. Stat. §§44-4059(1)(f), the director may suspend, revoke, or refuse to issue or renew an insurance producer's license for the conviction of a felony.
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 criminal conviction constitutes a sufficient statutory basis to deny her application as a Nebraska 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 show why a license should be granted.

The Applicant testified that her criminal conduct occurred during a period of time in which she was suffering from dissociative symptoms related to PTSD. Applicant's counselor believes that

the dissociative symptoms have been eliminated. Applicant has made restitution of the amounts improperly taken and offered evidence indicating that Sapp Bros., Inc. submitted a letter to prosecutors requesting that they not move forward with a criminal action against the Applicant. However, even after receiving that letter from Sapp Bros, the state proceeded with the prosecution, resulting in a conviction and corresponding sentence of four (4) years of supervised probation. While the Applicant has been compliant with the probation requirements so far, at the time of the hearing she only completed just over one year of the four-year probation period. Applicant is requesting to be provided a resident insurance producer's license, despite it being only a little over one year from the date of her conviction and having only completed roughly twenty-five percent of her court-ordered supervised probation. While the Department applauds the Applicant for her efforts so far, an application for licensure at this point in time is simply premature. Satisfactory completion of the court ordered probation would show that the Applicant not only successfully completed the punishment for her crime, but would also allow adequate time to for the Applicant to show that future work related stresses will not lead to either criminal activity or decision making that conflicts with the ethical standards required of an insurance producer.

Succinctly stated, the weight of the evidence presented by the Applicant does not sufficiently support a finding that the director's action in denying the Applicant's request for license was unreasonable.

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 SUSTAINED, and that Applicant's request for licensure as a resident insurance producer is denied.

Dated this 5th day of October, 2021.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE




Thomas C. Green II, #21001
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 Cassidy S. Hurlbutt, Cause No. A-2270.

Dated this 6th day of October, 2021.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Eric Dunning
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 1315 E. 33rd Drive, Kearney, NE 68847, via regular U.S. mail on this 6th day of October, 2021.

Sherry Stone