

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE
CAUSE NUMBER: 14535-AD15-0909-031

IN THE MATTER OF:)
)
)
Kelsey Thornton)
1604 S. O'Hare Blvd.)
Yorktown, IN 47396)

FILED

JAN 29 2016

STATE OF INDIANA
DEPT. OF INSURANCE

Type of Agency Action: Enforcement

FINAL ORDER

On January 5, 2016, the Administrative Law Judge, Reuben B. Hill, filed his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended Order and Notice of Filing Recommended Order on Applicant by mailing the same to her home address of record.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The denial of Applicant's Indiana Producer License application is affirmed.

Under Ind. Code §4-21.5-5-5, Applicant has the right to appeal this Final Order by filing a petition for Judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED by the Commissioner this 29 day of January, 2016.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

Kelsey Thornton
1604 S. O'Hare Blvd.
Yorktown, IN 47396

Joshua Harrison, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

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Applicant)
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STATE OF INDIANA
DEPT. OF INSURANCE

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

The Enforcement Division of the Indiana Department of Insurance (the "Department") timely submitted its Proposed Findings of Fact, Conclusions of Law, and Recommended Order for the license denial hearing which was held on October 15, 2015.

A license denial hearing in reference to the application of Kelsey Thornton ("Applicant") came to be heard by Administrative Law Judge Ruben Hill at the Indiana Department of Insurance, 311 W. Washington St, Indianapolis IN. The Administrative Law Judge, having considered and reviewed all of the evidence, will now render a decision in the matter.

The Department was represented by counsel, Joshua Harrison. Applicant appeared in person and without legal counsel. Evidence was heard and exhibits were received into evidence.

Based upon the evidence presented at said hearing, the Administrative Law Judge now makes the following Findings of Fact, Conclusions of Law, and issues the Recommended Order.

FINDINGS OF FACT

1. Applicant submitted an application for an Indiana Producer's License on August 31, 2015.

2. On September 11, 2015, the Department filed its "Preliminary Administrative Order and Notice of License Denial" ("the Order").

3. The Order indicated that during the licensing examination, the Applicant had used reference materials to complete the license examination.

4. Citing Indiana Code § 27-1-15.6-12(b), the application was denied due to improperly using notes or any other reference material to complete an examination for insurance license.

5. The Order further notified the Applicant that should she wish for a review of this decision, she must notify the Department within sixty-three (63) days.

6. The Applicant notified the Department that she wished to have a hearing on the matter.

7. A hearing was conducted on October 15, 2015 with the Applicant present in person without counsel and the Department represented by attorney Josh Harrison.

8. During the hearing, the Department called Lisa Smalley, an associate proctor for the testing lab at the IVY Tech location in Muncie, Indiana, as a witness to the Applicant's license examination.

9. Smalley was the proctor assigned to the Applicant's test.

10. Smalley testified as to the testing procedure employed at the IVY Tech testing lab, which included reading a set of written instructions. A copy of those written instructions was entered into evidence as Department exhibit 1.

11. Included in those instructions was a prohibition of possession of books, notebooks, and reading materials. The instructions state that “[p]ossession of these items will result in immediate failure of the test.” (Exhibit 1)

12. Those instructions were read to Applicant prior to beginning her examination.

13. During the examination, Applicant approached Smalley and requested to use the restroom. Smalley gave permission, and Applicant left the testing area for the restroom. Applicant returned approximately six (6) minutes later. Smalley assisted Applicant return to the testing area due to the length of the break taken.

14. After Applicant returned to the testing area, Smalley became concerned with the delay. She went into the women’s restroom and recovered an insurance study book on the tank in the handicap stall.

15. Smalley contacted the test vendor for guidance on the appropriate response. Smalley was told to let Applicant finish but then check her out as “incomplete”.

16. After Applicant finished the examination, Applicant asked if anyone had recovered her book. Smalley indicated that she had recovered the book, but would need to keep it pursuant to instructions from the test vendor.

17. Applicant indicated to Smalley that she wanted her book back and that she was unaware that she couldn’t take the book into the restroom.

18. The Department then entered into evidence as Exhibit 2 the Incident Report notes that were generated at the time of the incident on the Pan Proctor Console.

19. The Department further entered into evidence as Exhibit 3 a series of still photographs taken in the locker area of the testing center. The photos show Applicant removing the book from underneath the lockers and proceeding to the restroom with the book. The photos further show Applicant returning from the restroom without the book.

20. Applicant stated that she was sorry for the incident and suggested that it was not representative of her character.

CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over both the subject matter and the parties to this action.

2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code.

3. Service of process was completed via the United States Mail in compliance with the statute and due process requirements.

4. Indiana Code § 27-1-15.6-12(b) states that the Commissioner may deny a license application due to a number of factors.

5. Specifically Indiana Code § 27-1-15.6-12(b)(11) lists that improperly using notes or any other reference material to complete an examination for an insurance license as one of the factors that the Commissioner may use in denying an application for producer's license.

6. Indiana Code § 4-21.5-5-14(a) places the burden of demonstrating the invalidity of the agency action upon the party requesting the judicial review.

7. Indiana Code § 4-21.5-5-14(d)(1) requires that the party seeking judicial review must show the agency action was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

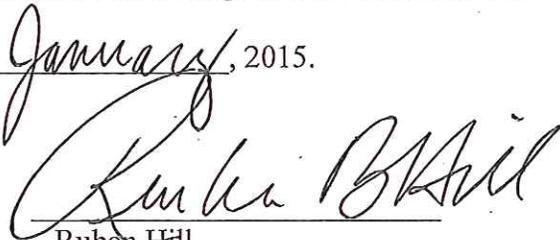
8. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

RECOMMENDED ORDER

With the Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the Commissioner of Insurance the following:

1. That the denial of Applicant's Indiana Producer License application be affirmed.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 5th day of January, 2015.



Ruben Hill
Administrative Law Judge

Distribution:

Kelsey Thornton
1604 S. O'Hare Blvd
Yorktown, IN 47396

Joshua Harrison, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
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BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

Cause No.: 14535-AD15-0909-031

IN THE MATTER OF:)
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INSURANCE PRODUCER LICENSE)
APPLICATION OF:)
)
Kelsey K. Thornton,)
1604 S. O'Hare Blvd)
Yorktown, IN 47396)

FILED

SEP 11 2015

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance, pursuant to the Indiana Administrative Act, Indiana Code §4-21.5-1 et seq. and Indiana Code §27-1-15.6-12, hereby gives notice to Kelsey K. Thornton ("Applicant") of the following Administrative Order:

1. Applicant filed an application for licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on August 31, 2015.
2. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code §27-1-15.6-6 and Indiana Code §27-1-15.6-12.
3. Indiana Code §27-1-15.6-12(b) provides, in part, that the Commissioner may refuse to issue or renew an insurance producer license for improperly using notes or any other reference material to complete an examination for an insurance license.
4. Following a review of materials submitted by Applicant in support of her application, the Commissioner being fully advised, now hereby notifies Applicant that she has not fully met the requirements of licensure as stated by Indiana Code §27-1-15.6-12 due improper use of reference material to complete an examination for an insurance license.

6. Indiana Code §27-1-15.6-12(d) provides that the applicant or licensee may, not more than sixty-three (63) days after notice of denial of the applicant's application or non renewal of the licensee's license is mailed, make written demand to the commissioner for a hearing before the commissioner to determine the reasonableness of the commissioner's action.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby DENIED pursuant to Indiana Code §27-1-15.6-12 (b).

9/11/15
Date Signed


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Kelsey K. Thornton
1604 S. O'Hare Blvd
Yorktown, IN 47396

Calla Dain, Insurance Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
317 234-8687, fax 317 234-2103

Certified Mail Receipt: 91 7190 0005 2720 0048 7428