

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:11992-AD13-0304-009

IN THE MATTER OF:)

Insurance Agent License)
Application of:)

Andrew M. Bailor)
6989 Willow Pond Dr.)
Noblesville, IN 46062)

FILED

OCT 01 2013

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On September 5, 2013, the appointed Administrative Law Judge, Wade D. Fulford, 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 of Recommended Order on Applicant by mailing the same to his home address.

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

3. Applicant has not filed an objection with the Commissioner regarding the Administrative Law Judge's 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:

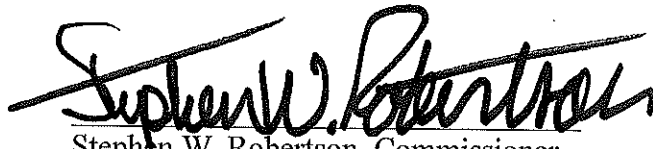
IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Preliminary Administrative Order and Notice of License Denial of March 13, 2013 is reversed, granting Applicant's insurance producer license application on a probationary basis.

2. Applicant's insurance producer license is subject to a probationary period of two (2) years from the date of issuance.

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 1st day of October, 2013.



Stephen W. Robertson, Commissioner
Indiana Department of Insurance

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

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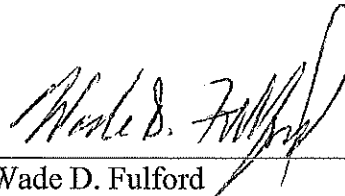
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STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF FILING OF RECOMMENDED ORDER

The parties of this action are hereby notified that the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order are deemed filed as of this date.

To preserve an objection to this order for judicial review, you must object to the order in a writing that: 1) identifies the basis for your objection with reasonable particularity; and 2) is filed with the ultimate authority for the Final Order, the Commissioner of the Department of Insurance within eighteen (18) days from the date of this Order.



Wade D. Fulford
Administrative Law Judge

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: 11992-AD13-0304-009

IN THE MATTER OF:)
)
INSURANCE AGENT LICENSE)
APPLICATION OF:)
)

Andrew M. Bailor)
6989 Willow Pond Dr.)
Noblesville, IN 46062)

FILED

SEP 05 2013

STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge, Wade D. Fulford ("ALJ Fulford"), having considered and reviewed all of the evidence, will now render a decision in the matter of Applicant Andrew M. Bailor ("Applicant") under Cause No. **11992-AD13-0304-009**. This matter came to be heard on June 6, 2013, before ALJ Fulford at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana.

The Indiana Department of Insurance ("Department") was represented at the hearing by counsel, Robert Hummel. Applicant, Andrew M. Bailor, attended the hearing and was represented *pro se* in this matter. At the hearing, witnesses testified under oath, evidence was heard, and exhibits were received into evidence.

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

FINDINGS OF FACT

1. Applicant was properly notified of the above referenced hearing date and time by U.S. Certified Mail, #9214 8901 0661 5400 0015 1304 46.
2. The Department received Applicant's property and casualty insurance producer license application on February 22, 2013. *Exhibit 1.*
3. In a letter dated February 13, 2013, Applicant disclosed details concerning his arrest in August 1998 for Possession of Marijuana and Minor Consumption of Alcohol (misdemeanors, charges later dismissed), his arrest in February 1999 for Possession of Marijuana and Minor Consumption of Alcohol (misdemeanors), his arrest in July 2006 for Possession of Marijuana (misdemeanor), his arrest in November 2006 for Operating a Vehicle while Intoxicated (misdemeanor), his arrest in January 2007 for Prior Operating a Vehicle while Intoxicated within 5 Years (charged as a felony but conviction entered as a misdemeanor), and his arrest in May 2009 for Operating a Vehicle while Intoxicated Causing Serious Bodily Injury (felony) and Prior Operating a Vehicle while Intoxicated within 5 years (felony). *Exhibit 2.*
4. Applicant's insurance producer license application was denied on March 13, 2013 by order of the Commissioner due to Applicant's Operating a Vehicle while Intoxicated felonies and for failing to notify the Department of his criminal prosecution while he held an insurance producer license.
5. On May 7, 2013, Applicant requested a hearing to reconsider the preliminary denial of his insurance producer license application. *Exhibit 4.*

6. Applicant previously held an Indiana life, accident, and health insurance producer license issued in February 2007 which expired in February 2011. *Exhibit 6.*
7. Applicant previously held an Indiana property and casualty insurance producer license issued in January 2009 which expired in February 2011. *Exhibit 6.*
8. Applicant submitted an undated letter of recommendation from Ronald K. Capler, his supervisor for the past two (2) years at Safeco/Liberty Mutual Insurance. Applicant testified the letter was written on May 30, 2013. *Exhibit A, Transcript pp. 12-13.*
9. Applicant submitted a letter of recommendation dated May 30, 2013 from Clark G. Rehme, a judge in the Marion County Small Claims Court, Lawrence Township Division. Applicant testified that he has known Judge Rehme for approximately four (4) years. Judge Rehme represented him in his criminal proceedings as well as the child custody case where Applicant was awarded custody of his son. *Exhibit B, Transcript pp. 13-14.*
10. Applicant held a life, accident, and health license during the time he was being prosecuted for the felonies committed in May 2009 but he admitted that he failed to notify the Department of that prosecution as required by law. *Exhibits 6, 11, and 12, Transcript pp. 22, 121-122.*
11. Although Applicant previously held both a life, accident, and health and a property and casualty license, he testified that if he obtains a property and casualty license again, he does not intend to apply for a life, accident, and health license. *Transcript p. 27.*
12. Applicant currently works for Liberty Mutual Insurance Company at their office located at 310 East 96th Street, Indianapolis, Indiana. *Exhibit 1, Transcript pp. 26-27.*
13. Applicant's duties at Liberty Mutual as an agent customer service representative include helping agents market Liberty Mutual products to the general public and guiding

agents through the use of the company's quoting software. He testified that he does not talk to customers and is not counseling anyone on coverage. *Transcript pp. 59-60.*

14. Applicant testified that he has had delinquent state tax liabilities in the past but they have all been paid. *Transcript p. 40.*

15. Applicant testified that he was given the opportunity to abate child support for the duration of his prison sentence.. He built up a child support arrearage of \$55 a week while in prison. However, he paid the arrearage in full several months after release. *Transcript pp. 40-41.*

16. Applicant testified that he started drinking alcohol with friends when he was seventeen (17) years old. *Transcript p. 43.*

17. Applicant testified that he had drug and alcohol treatment in all correctional facilities he was sent to by the court, at the work release center, and even while on home detention. Additionally, Applicant testified that he voluntarily attended drug and alcohol counseling at Fairbanks from May of 2009 to December of 2009. *Transcript pp. 33-34.*

18. Applicant testified that he is not currently receiving counseling specifically for alcohol abuse. Applicant acknowledged that he is an alcoholic. However, he has not consumed an alcoholic beverage since May 2009. Additionally, he attends ongoing counseling sessions at his church and frequently discusses alcoholism and related issues. *Transcript, p. 35; p. 128.*

19. Applicant testified that spending time in prison was the best thing to happen to him because he was able to reflect on the effects of his past actions on others and to become more spiritual. He stated that he learned from his mistakes by building meaningful

relationships and studying lessons from the Bible. The overall experience changed him for the better. *Transcript pp. 32-33.*

20. Applicant's first arrest for Possession of Marijuana was in Hendricks County in August 1998 but that charge was dismissed. *Exhibit 2, Transcript pp. 63-64.*

21. In February 1999, Applicant was arrested in Hamilton County and charged with Possession of Marijuana (Class A misdemeanor), Possession of Paraphernalia (Class A misdemeanor), Illegal Consumption / Possession (Class C misdemeanor) and violation of a local ordinance (Class C infraction). Applicant pled guilty to the Possession of Marijuana charge and was sentenced to one (1) year in the Hamilton County Jail with all but two (2) days suspended (probation), and a one hundred and eighty (180) day suspension of his driver's license and auto registration. *Exhibit 7.*

22. Applicant testified that he had no probation violations relating to his Possession of Marijuana conviction in Hamilton County in 1999. He was discharged from probation in September 2000. *Exhibit 7, Transcript pp. 66-67.*

23. In July 2006, Applicant was arrested in Marion County and charged with Possession of Marijuana (Class A misdemeanor). Applicant pled guilty and was sentenced to one (1) year in jail with all but four (4) days suspended (probation). *Exhibit 8.*

24. Applicant testified that he had been using marijuana but not drinking alcohol when he was arrested in July 2006. *Exhibit 8, Transcript pp. 71-74.*

25. In November 2006, Applicant was arrested in Marion County and charged with Operating a Vehicle while Intoxicated (Class A misdemeanor), Operating a Vehicle with a Blood Alcohol of .08 to .15% (Class C misdemeanor), and Public Intoxication (Class B misdemeanor). Applicant pled guilty to the Operating a Vehicle while Intoxicated charge

and was sentenced to one (1) year in jail with all but two (2) days suspended (probation).

Exhibit 9.

26. Applicant testified that the criminal justice system has worked against his favor by giving him numerous opportunities to correct his behavior. Applicant testified that if he had been sent to prison as a teenager, he would have been “scared straight” and changed his behavior in the future. *Transcript p. 84-85.*

27. In January 2007, Applicant was arrested in Hendricks County and charged with Operating a Vehicle while Intoxicated Prior Conviction within 5 Years (Class D felony), Prior Operating a Vehicle while Intoxicated Per Se Blood Alcohol .10% (Class D felony), Driving while Suspended (Class A infraction), and Driving Left of Center (Class C infraction). Applicant pled guilty to the Operating a Vehicle while Intoxicated charge but the court entered judgment as a Class A misdemeanor instead of a felony. Applicant was sentenced to one (1) year in jail with all but sixty-five (65) days suspended (probation), sixty (60) days of home detention, thirty (30) hours of community service, and one (1) year suspension of his driver’s license. *Exhibit 10.*

28. In May 2009, Applicant was arrested in Marion County and charged with two (2) counts of Operating a Vehicle while Intoxicated Causing Serious Bodily Injury (Class D felonies) and two (2) counts of Operating a Vehicle while Intoxicated Causing Serious Bodily Injury with a Prior Conviction (Class C felonies). Applicant pled guilty to one count of Operating a Vehicle while Intoxicated Causing Serious Bodily Injury and one count of Operating a Vehicle while Intoxicated Causing Serious Bodily Injury with a Prior Conviction. Applicant was sentenced to three (3) years in prison, one (1) year in community corrections work release, and two (2) years probation. *Exhibit 12.*

29. Applicant was arrested in the May 2009 incident after driving approximately eighty (80) miles per hour the wrong way on North Illinois Street in Indianapolis and striking another vehicle head-on causing severe injuries to the other driver, Sherry Richardson, and to himself. *Exhibit 11.*

30. Applicant testified that Ms. Richardson sued the bar where Applicant had become intoxicated. Additionally, in owning up to his mistakes and providing indemnity for previous injuries, Applicant made statements and was deposed in that case to assist Ms. Richardson in recovering damages. *Transcript pp. 99-101.*

31. Applicant testified that he had no probation violations after his conviction in the May 2009 incident. *Transcript p. 106.*

32. Applicant's credit report shows a credit score of 656 and an outstanding civil judgment of four thousand eight hundred and nine dollars (\$4,809.00) owed to the Newton Becker Pendoski law firm. Applicant testified that the debt had been paid. *Exhibit 14, Transcript pp. 111-112.*

33. Administrative Law Judge Fulford allowed Applicant fifteen (15) days after the hearing to provide the Department with proof that he has paid the debt to Newton Becker Pendoski. *Transcript p. 117.*

34. On June 13, 2013, Applicant submitted proof in the form of a copy of a signed and file-stamped Satisfaction of Judgment document from the Marion County Washington Township Small Claims Court that the debt to Newton Becker Pendoski has been paid.

35. Applicant testified that he is half-way through a Bachelor of Science degree in organizational leadership and supervision at IUPUI. Applicant stated that he plans to complete his degree in May of 2015. *Transcript pp. 114-115.*

36. At the conclusion of the administrative law proceedings on June 6, 2013, attorney Robert L. Hummel, representing the Enforcement Division of the Department of Insurance, recommended granting the Applicant's property and casualty insurance license subject to a two (2) year probationary period.

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, codified at Ind. Code § 4-21.5 et seq. All procedures and rules set forth by such Act have been followed in this matter.

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

4. Ind. Code §27-1-15.6-12(b)(6) states that the Commissioner may refuse to issue an insurance producer license if the applicant has been convicted of a felony.

5. Applicant voluntarily disclosed the 2009 felony convictions when submitting his initial application to the Indiana Department of Insurance. Rather than mislead the Department, Applicant provided supplemental documentation explaining his criminal background. *Exhibit 1-2.*

6. Ind. Code §27-1-15.6-12(b)(2)(A) states that the Commissioner may refuse to issue an insurance producer license if the applicant has violated an insurance law.

7. Applicant has taken positive steps in the process of change. In March of 2012, Applicant was awarded custody of his son, he is working towards a bachelor of science in organizational leadership and supervision at IUPUI, is currently employed full time at Liberty Mutual, and he regularly attends church counseling sessions. Additionally, Applicant showed sincere regret for prior mistakes and decisions made in the past. *Transcript p. 114 & p. 128*

8. Applicant has met his burden of proof to show that the Commissioner's decision to deny the insurance producer license application should be reversed.

9. 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. The Preliminary Administrative Order and Notice of License Denial of March 13, 2013 should be reversed, granting Applicant's insurance producer license application on a probationary basis.

2. Applicant's insurance producer license should be subject to a probationary period of two (2) years from the date of issuance.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this 5th day of September, 2013.



Wade D. Fulford

Administrative Law Judge

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