

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:12263-AD13-0606-017

IN THE MATTER OF:)

Insurance Agent License)
Application of:)

Derek A. Humphrey)
2250 N. Rangeline Road)
Huntington, IN 46750.)

FILED

DEC 13 2013

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On November 19, 2013, the appointed Administrative Law Judge, Holly Williams, filed her 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 June 18, 2013 is overturned, granting Applicant's insurance producer license application subject to a probationary period of two (2) years from the date of this Final Order.

2. During the probationary period, it shall be Applicant's responsibility to ensure that Karen Cogdell, general manager of Matthews Insurance Agency, submits written reports to Department Investigator Kim Green every three (3) months from the date of the Commissioner's Final Order. Each report shall contain:

- a. A description of the progress Applicant has made as an insurance producer and any training he has received.
- b. Disclosure of any disciplinary problems the agency has experienced with Applicant, especially any connected to alcohol or drug abuse.

3. If Ms. Cogdell is no longer Applicant's supervisor or if Applicant's employment with Matthews Insurance Agency ends and he remains employed in the insurance industry, he is required to ensure that his new supervisor submits the reports described above.

ALL OF WHICH IS Ordered by the Commissioner this 13th day of December, 2013.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Derek A. Humphrey
2250 N. Rangeline Road
Huntington, IN 46750

Robert L. Hummel, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER:12263-AD13-0606-017

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

Derek Humphrey)
2250 North Rangeline Road)
Huntington, IN 46750)
)

FILED

JUN 18 2013

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance ("Department"), pursuant to the Indiana Administrative Orders and Procedures Act, Ind. Code § 4-21.5-1 *et seq.*, and Ind. Code § 27-1-15.6-12, hereby gives notice to **Derek Humphrey** ("Applicant") of the following Administrative Order:

1. Applicant filed an application for licensure with the Department on or around April 26, 2013. Following a review of materials submitted by Applicant in support of his application, the Commissioner of the Department ("Commissioner"), being fully advised, now hereby notifies Applicant that he has not fully met the requirements of licensure as stated by Ind. Code § 27-1-15.6-12(b); specifically, Applicant has been convicted of a felony.

2. Ind. Code § 27-1-15.6-12(d) provides, in part, as follows:


If the Commissioner refuses to renew a license or denies an application for a license, the Commissioner shall notify the applicant or licensee and advise the applicant or licensee, in a writing sent through regular first class mail, of the reason for the denial of the applicant's application or the non renewal of the licensee's license.

3. Applicant may, not more than sixty-three (63) days after this notice is mailed, make a written demand to the Commissioner for a hearing to determine the reasonableness of the

Commissioner's action. The hearing will be held not more than thirty (30) days after Applicant's demand and will be conducted under Ind. Code 4-21.

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

6/18/13
Date Signed


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Derek Humphrey
2250 North Rangeline Road
Huntington, IN 46750

Kim Green
Jr. Insurance Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 300
Indianapolis, IN 46204

Certified Receipt: 9214 8901 0661 5400 0016 0322 44

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

BEFORE THE INDIANA

COMMISSIONER OF INSURANCE

CAUSE NUMBER:12263-AD13-0606-017

IN THE MATTER OF:

Insurance Agent License
Application of:

Derek A. Humphrey
2250 N. Rangeline Road
Huntington, IN 46750

FILED

NOV 19 2013

**STATE OF INDIANA
DEPT. OF INSURANCE**

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

Administrative Law Judge, Holly Williams, having considered and reviewed all of the evidence, will now render a decision in the matter of Applicant Derek A. Humphrey ("Applicant") under Cause No. **12263-AD13-0606-017**. This matter came to be heard on August 19, 2013, 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 attended the hearing and was not represented by counsel. 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 0017 1855 74.
2. The Department received Applicant's property and casualty insurance producer license application on April 26, 2013. *Exhibit 1.*
3. On June 18, 2013, Applicant's license application was denied because Applicant has a felony conviction. *Preliminary Administrative Order and Notice of License Denial.*
4. On June 21, 2013, Applicant requested a hearing to reconsider the initial denial of his producer license application. *Exhibit 3.*
5. Applicant was charged with Driving While Intoxicated, Minor in Possession of Alcohol, and Driving Left of Center in September 2007 and was convicted of a Class C misdemeanor. In December 2007, Applicant was charged with Minor in Possession of Alcohol and convicted of a Class C misdemeanor. In June 2009, Applicant was charged with Operating While Intoxicated with a Prior Conviction. This offense was within five (5) years of Applicant's previous convictions; therefore, this offense resulted in a Class D felony. *Exhibits 4, 6, & 7.*
6. Applicant testified that he violated his probation from the 2007 case. *Transcript pgs. 55, 70.*
7. For the felony conviction, Applicant was sentenced to eighteen (18) months in prison with all but sixty (60) days suspended and eighteen (18) months to be served on probation. In addition, Applicant's driver's license was suspended for one (1) year. *Exhibits 5 and 6.*

8. Applicant stated that his 2009 felony conviction resulted from Applicant driving under the influence to help a friend who was involved in a traffic accident near his home. *Transcript pgs. 9-10.*

9. Applicant remained in the Huntington County jail for thirty (30) days before his mother posted a cash bond for his release. *Transcript pgs. 50-51.*

10. Applicant attended ten (10) weeks of counseling for alcohol abuse with Marty Burns, who was appointed by the Huntington County court. *Transcript pgs. 55-57.*

11. Applicant currently works for the Matthews Insurance Agency in Huntington, Indiana answering phones, taking down information for insurance quotes, and completing miscellaneous computer work. Applicant began working at Matthews Insurance Agency in February 2013. *Exhibit 1; Transcript pgs. 17, 36.*

12. If granted a producer license, Applicant would continue working for the Matthews Insurance Agency. *Transcript pg. 27.*

13. Randy Matthews ("Mr. Matthews"), owner of the Matthews Insurance Agency, testified that he met Applicant when Applicant was selling vacuum cleaners door-to-door. *Transcript pgs. 18-19.*

14. Mr. Matthews remarked that Applicant is an outstanding young man. He stated that Applicant is punctual, does not leave work early, does not call in sick, and in general, among his age group, is one of the better employees Mr. Matthews has hired. *Transcript pgs. 12-13.*

15. Mr. Matthews was aware of Applicant's criminal history when he interviewed Applicant for a position with his agency. *Transcript pg. 14.*

16. Mr. Matthews testified that he plans to move to Arizona in the near future and that his sister, Karen Cogdell ("Ms. Cogdell"), is the general manager of Matthews Insurance Agency. Ms. Cogdell will supervise Applicant. *Transcript pgs. 81-83.*

17. Applicant's employment history includes a position at Burger King when he was sixteen (16) years old. By the time Applicant was seventeen (17), Applicant was the kitchen manager and dealt with the nightly deposits. *Transcript pg. 34.*

18. Applicant's focus when beginning a new job is to move up within the company. *Transcript pg. 34.*

19. Applicant graduated from Huntington High School in 2006 and has since taken classes at both ITT Tech and Ivy Tech. *Transcript pg. 38.*

20. Applicant's father, who had drinking problems himself, was disappointed in him for being arrested for Driving While Intoxicated. Applicant said his father has been a good influence in trying to keep Applicant away from an alcoholic lifestyle. *Transcript pg. 76.*

21. Applicant has not had any convictions since his felony conviction. *Transcript pgs. 10, 42.*

22. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

CONCLUSIONS OF LAW

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

24. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code and all procedures and rules set forth by such Act have been followed in this matter.

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

26. 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.

27. Applicant has a felony conviction and two (2) misdemeanor convictions where alcohol abuse was a contributing factor.

28. Applicant set forth several mitigating factors. These include the fact that Applicant has not been involved in any criminal activity since his arrest in 2009 as well as Applicant's good work record with Matthews Insurance Agency. In addition, Applicant has and will continue to receive direct supervision and mentoring at Matthews Insurance agency.

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

30. 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:

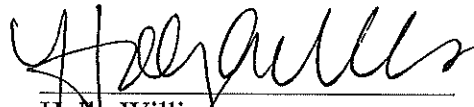
31. The Preliminary Administrative Order and Notice of License Denial of June 18, 2013, should be overturned, granting Applicant's insurance producer license application subject to a probationary period of two (2) years from the date of the Commissioner's Final Order.

32. During the probationary period, it should be Applicant's responsibility to ensure that Karen Cogdell, general manager of Matthews Insurance Agency, submits written reports to Department Investigator Kim Green every three (3) months from the date of the Commissioner's Final Order. Each report should contain:

- a. A description of the progress Applicant has made as an insurance producer and any training he has received.
- b. Disclosure of any disciplinary problems the agency has experienced with Applicant, especially any connected to alcohol or drug abuse.

33. If Ms. Cogdell is no longer Applicant's supervisor or if Applicant's employment with Matthews Insurance Agency ends and he remains employed in the insurance industry, he should be required to ensure that his new supervisor submits the reports described above.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and
recommended to the Commissioner this 19th day of November, 2013.


Holly Williams
Administrative Law Judge

Distribution:

Derek A. Humphrey
2250 N. Rangeline Road
Huntington, IN 46750

Robert L. Hummel, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204