

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 16134-AD17-0404-046

IN THE MATTER OF:)
)
INDEPENDENT ADJUSTER LICENSE)
APPLICATION OF:)
)
Mark D.Passmore)
13601 Bennettsville Rd.)
Memphis, IN 47143)
)
Applicant.)

FILED

JAN 05 2018

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On November 13, 2017, 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 on Respondent by mailing the same to his address of record and his counsel.

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 refusal to issue Applicant's resident independent adjuster license is affirmed.

2. Applicant shall not reapply for licensure for a period of one (1) year.

Under Ind. Code §4-21.5-5-5, Respondent 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 5th day of January, 2018.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

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NOTICE OF FILING OF RECOMMENDED ORDER

The parties of this action are hereby notified that the Administrative Law Judge's
Recommended Order is 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.

DATED:

Nov 13, 2017



Reuben B. Hill
Administrative Law Judge

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 16134-AD17-0404-046

FILED

NOV 13 2017

FINDINGS OF FACT, CONCLUSIONS OF LAW **STATE OF INDIANA**
AND RECOMMENDED ORDER **DEPT. OF INSURANCE**

The Enforcement Division of the Indiana Department of Insurance (“Department”) was represented by counsel, Cathleen Nine-Altevogt. Applicant was represented by counsel, Mark Edward Hervey. Evidence was heard and exhibits were received into evidence.

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

FINDINGS OF FACT

1. On April 1, 2016, the Department issued a Preliminary Administrative Order and Notice of License Denial regarding Applicant's Independent Adjuster License Application from March 3, 2016. (Exhibit 1)
2. Applicant did not appeal the denial of his license at that time. (Transcript at page 22, lines 24-25 and page 23, lines 1-5)
3. On March 26, 2017, Applicant submitted a Resident Independent Adjuster License Application to the Department. (Exhibit 2)
4. On June 9, 2017, the Department issued a Preliminary Administrative Order and Notice of License Denial regarding Applicant's Resident Independent Adjuster License. (Transcript of page 8, lines 7-13)
5. Applicant answered "no" to the question on his 2017 license application asking whether he had been involved as a party in an administrative proceeding regarding any professional license. The definition of "involved" in the application question includes having a license application denied. (Exhibit 2)
6. On his 2017 license application to the Department, Applicant disclosed his criminal history. (Exhibit 2)
7. On April 27, 2009, Applicant was convicted of Misdemeanor Possession of Marijuana in North Carolina. (Exhibit 3)

8. On October 11, 2010, Applicant was convicted of Misdemeanor Shoplifting Concealment of Goods in North Carolina. (Exhibit 4)
9. On October 21, 2011, Applicant was convicted of Misdemeanor Intoxicated and Disruptive in North Carolina. (Exhibit 5)
10. On February 9, 2016, Applicant was convicted of Misdemeanor Disorderly Conduct in New Hampshire. (Exhibit 6)
11. Applicant failed to pay his fine in the grace period for his 2010 Misdemeanor Shoplifting Concealment of Goods conviction. (Transcript at page 28, lines 4-6 and Exhibit 4)
12. Applicant characterized his failure to timely pay the fine as “a big misunderstanding”. (Transcript at page 29, lines 4-5)
13. Applicant contends the fine has since been paid but he did not provide any supporting documentation. (Transcript at page 28 lines 17-25 and page 29, lines 1-3)
14. Applicant also characterized his 2011 Misdemeanor Intoxicated and Disruptive conviction as a “misunderstanding”. (Transcript at page 30, lines 3-4)
15. Applicant admitted that one of his convictions involved the use of marijuana and two of his convictions involved the use of alcohol. (Transcript at page 30, lines 23-25 and page 31 lines, 1-3)
16. Applicant admitted he still uses marijuana. (Transcript at page 31, lines 8-9)
17. Applicant admitted that he last drank alcohol four (4) or five (5) months ago and does not believe he has drinking problem. (Transcript at page 31, lines 10-13)
18. Applicant admitted that he has not sought treatment for his alcohol use. (Transcript at page 31, lines 14-16)

19. Applicant is currently employed by PDR Linx and travels throughout the country writing estimates for hail damage on vehicles. (Transcript at page 10, lines 11-24 and page 11, lines 9-11)
20. Applicant is seeking licensure because an Indiana Resident Independent Adjuster License is reciprocal to the other states that his company is asking him to get licensed in. (Transcript at page 11, lines 22-25, and page 12, line 1)
21. Applicant introduced a letter of recommendation from his supervisor at PDR Linx attesting to his honesty and work ethic. (Exhibit A)
22. Applicant argued that the majority of the issues he faced were while he was young and that he should be given leniency. (Transcript at page 6, lines 16-22)

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 Indiana Code 4-21.5 et seq.
3. Indiana Code 27-1-28-18(a) provides that the Commissioner may refuse to issue an independent adjuster license due to a number of causes.
4. Specifically, Indiana Code 27-1-28-18(b)(1) provides that the Commissioner may deny an applicant for failing to accurately answer questions on a license application.
5. Applicant, who had a 2016 Independent Adjuster License Application in Indiana denied, violated Indiana Code 27-1-28-18(b)(1) by answering "no" to a question on

his June 9, 2017 application regarding whether he had ever been involved in an administrative action.

6. Specifically, Indiana Code 27-1-28-18(b)(8) provides that the Commissioner may deny an applicant for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
7. Applicant violated Indiana Code 27-1-15.6-12(b)(8) as evidenced by his multiple misdemeanor convictions calling into question his competence and trustworthiness, including a 2010 shoplifting conviction and a 2016 Disorderly Conduct conviction involving alcohol use.
8. Indiana Code 4-21-5-3-14(c) states that the person requesting an agency take action has the burden of persuasion and the burden of going forward. Applicant is requesting that the Department issue his Resident Independent Adjuster License and, therefore, bears the burden.
9. Applicant disclosed all of his misdemeanor convictions on his license application And his supervisor attested to his trustworthiness, which are factors in mitigation.
10. Applicant's history of misdemeanor convictions from 2009 to 2016, stemming primarily from alcohol use which has not been addressed, are factors in aggravation.
11. Despite the factors in mitigation, Applicant has failed to meet his burden to show that the Commissioner's denial of his license was unreasonable.
12. Findings of Fact that can be adopted as a Conclusion of Law are hereby incorporated herein as such.

RECOMMENDED ORDER

In consideration of the foregoing 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 refusal to issue Applicant's Resident Independent Adjuster License be affirmed.
2. Applicant shall not reapply for licensure for a period of one year from the issuance of the Final Order in this matter.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the **Commissioner of Insurance** this 13th day of November, 2017.



Reuben B. Hill, Esq.
Administrative Law Judge

Distribution:

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STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance, pursuant to the Indiana Administrative Orders and Procedures Act §4-21.5*et seq.* and Indiana Code §27-1-28-18, hereby gives notice to Mark D. Passmore ("Applicant") of the following Administrative Order:

1. Applicant filed an application for licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on March 26, 2017.
2. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code §27-1-28-12 and Indiana Code §27-1-28-18.
3. Indiana Code §27-1-28-18(b) provides, in part, that the Commissioner may refuse to issue an independent adjusters license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of insurance business, and for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
4. Following a review of materials submitted by Applicant in support of his application, the Commissioner being fully advised, now hereby notifies Applicant that he has not fully

met the requirements of licensure as stated by Indiana Code §27-1-28-18(b)(8) due to his April 27, 2009 North Carolina conviction of Possession of Marijuana, a Class 3 Misdemeanor; his October 10, 2010 North Carolina conviction of Shoplifting, a Class 3 Misdemeanor; his October 21, 2011 North Carolina conviction of intoxicated and disruptive, a Class 3 Misdemeanor; and his February 09, 2016 New Hampshire conviction of Disorderly Conduct, a Class B Misdemeanor. Furthermore, Applicant failed to disclose on his application for licensure his April 01, 2016 license denial by the Indiana Department of Insurance, in violation of Indiana Code §27-1-28-18(b)(1).

6. Indiana Code §27-1-28-18(c) provides that the applicant or licensee may, not more than thirty (30) days after receiving the Commissioner's notice of refusal, make written demand upon the commissioner for a hearing to determine the reasonableness of the refusal.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby DENIED pursuant to Indiana Codes §27-1-28-18(b)(8) and §27-1-28-18(b)(1) due to his misdemeanor convictions and his failure to disclose a license denial.

6-9-17
Date Signed


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

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