

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 16815-AD18-0122-010

IN THE MATTER OF:)

INSURANCE PRODUCER LICENSE)
APPLICATION OF:)

Daniel W. Eubanks)
1426 East Edwards Avenue)
Indianapolis, IN 46227)

Applicant.)

Type of Agency Action: Enforcement)

Application ID: 624763)

FILED

MAY 29 2018

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On April 5, 2018, 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.

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. Applicant's application for an Indiana resident insurance producer license is DENIED.

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 29 day of May, 2018.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

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Erica Dobbs, Attorney
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**STATE OF INDIANA
DEPT. OF INSURANCE**

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

Administrative Law Judge Reuben B. Hill ("ALJ"), having heard, reviewed and considered all of the evidence, will now render a decision concerning the matter of Daniel Eubanks ("Applicant"). This matter came on to be heard by the ALJ on February 27, 2018 at 10:00 a.m. at the Indiana Department of Insurance at 311 West Washington Street, Indianapolis, Indiana.

The Enforcement Division of the Indiana Department of Insurance ("Department") was represented by counsel, Erica J. Dobbs. Applicant appeared in person and without counsel. 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. Applicant submitted an Indiana Resident Producer License application on December 18, 2017 (Department's Exhibit 1).
2. Applicant answered "No" to the question on the application that asks "Have you ever been convicted of a misdemeanor...or are you currently charged with committing a misdemeanor?"
3. The application question regarding misdemeanor convictions further states "you may exclude the following misdemeanor convictions or pending misdemeanor charges: traffic citations, driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license."
4. Applicant also answered "No" to the question on the application that asks "Have you ever been convicted of a felony. . .or are you currently charged with committing a felony?"
5. The application question regarding felony convictions and charges does not have language excluding any certain offenses.
6. Applicant has the following prior misdemeanor convictions:
 - a. Possession of Marijuana, a Class A Misdemeanor, from July 27, 2009 (Department's Exhibit 4); and

b. Resisting Law Enforcement, a Class A Misdemeanor, from August 2, 2010

(Department's Exhibit 5).

7. Applicant first testified that he did not disclose the misdemeanor convictions on his application because he forgot about them, then testified that he did not think to disclose them because he believed they were not the kinds of crimes that would lead to a license denial.
8. At the time the Applicant submitted his application for licensure, he had a pending charge of Operating a Vehicle While Intoxicated, a Level 6 Felony, which was filed against him on November 13, 2016 (Department's Exhibit 2).
9. Applicant testified that, at the time he prepared his application, he believed he was going to be offered a plea agreement that would cause the felony charges to be reduced to misdemeanor convictions and, therefore, since the application indicated that misdemeanor Operating While Intoxicated convictions need not be disclosed, he believed he did not need to disclose the pending felony charges.
10. Applicant entered a plea agreement and pleaded guilty to Operating a Vehicle While Intoxicated, a Level 6 Felony, on January 8, 2018 (Department's Exhibit 3).
11. Applicant was sentenced to Seven Hundred Thirty (730) days to be executed on Home Detention. Applicant testified he is currently executing this sentence.
12. Applicant admitted Four (4) exhibits on his own behalf.
13. Applicant's Exhibits A-C are recommendation letters.
14. Applicant's Exhibit D is a list of Twenty-Three (23) past Enforcement cases compiled by Applicant from the Department's website and admitted over department's objection.

CONCLUSIONS OF LAW

1. The Commissioner 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. Indiana Code 27-1-15.6-12(b) states that the Commissioner may refuse to issue an Insurance Producer License, due to a number of factors.
4. Specifically, Indiana Code 27-1-15.6-12(b)(1) allows the Commissioner to deny an Insurance Producer's License for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
5. Further, Indiana Code 27-1-15.6-12(b)(6) allows the Commissioner to deny an Insurance Producer's License for having been convicted of a felony.
6. Applicant's failure to disclose his July 27, 2009 Class A Misdemeanor Possession of Marijuana conviction, his August 2, 2010 Class A Misdemeanor Resisting Law Enforcement conviction, and his then-pending Level 6 Felony Operating While Intoxicated charge, is evidence that he provided incorrect, misleading, incomplete, or materially untrue information in a license application.
7. Applicant's January 8, 2018 conviction for Operating While Intoxicated, a Level 6 Felony, is evidence that he has been convicted of a felony.
8. Indiana Code 4-21.5-3-27(c) states, in part, that Conclusions of Law must consider prior final orders (other than negotiated orders) of the ultimate authority under the same or similar circumstances if those prior final orders are raised on the record in writing by a

party and must state the reasons for deviating from those prior orders. In other words, to serve as precedent, past Department actions must be appropriately raised, have resulted in Final Orders as opposed to preliminary orders, and not have been resolved by Agreed Entry.

9. Applicant appropriately raised past Department actions by presenting them in writing and on the record.
10. However, Twenty-One (21) of the past Department actions Applicant relies on were either resolved by Agreed Entry or did not result in a final order of the ultimate authority and, thus, need not be considered.
11. Applicant raised only Two (2) prior Final Orders, other than negotiated orders, of the Commissioner on the record in writing.
12. Those Two (2) Final Orders were not made under the same or similar circumstances as the Commissioner's decision in this matter. Both of those cases are distinguishable from Applicant's case, in that the applicants involved had each disclosed their prior criminal history on their applications, where Applicant here did not.
13. Failing to disclose his prior conviction, and being on probation for a recent conviction, are aggravating factors in this instant case.
14. 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 him a Resident Producer License and, therefore, bears the burden.
15. Pursuant to Indiana Code 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Applicant failed to meet his burden of proving the Commissioner's decision was unreasonable.

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

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED:

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 Applicant's application for an Indiana Resident Producer's license be **DENIED**.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the

Commissioner of Insurance this 5th day of April, 2018



Reuben B. Hill, Esq.
Administrative Law Judge

Distribution:

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JAN 26 2018

**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, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to Daniel W. Eubanks ("Applicant") of the following Administrative Order:

1. Applicant filed an application for nonresident licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on October 23, 2017, which was approved.
2. Applicant voluntarily surrendered his nonresident license on December 21, 2017.
3. Applicant filed an application for resident licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on December 18, 2017.
4. 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.
5. Indiana Code § 27-1-15.6-12(b)(6) provides, in part, that the Commissioner may refuse to issue an insurance producer license for having been convicted of a felony.

6. Indiana Code § 27-1-15.6-12(b)(1) provides, in part, that the Commissioner may refuse to issue an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
7. Following a review of materials submitted by Applicant in support of his application, the Commissioner being fully advised, now hereby notifies Applicant of the following:
 - a. That he has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(6) due to his January 08, 2018 conviction for Operating a Vehicle While Intoxicated, a Level 6 Felony; and
 - b. That he has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(1) due to his failure to disclose the following criminal history on his October 23, 2017 and December 18, 2017 applications for licensure: 1) a July 27, 2009 conviction for Possession of Marijuana, a Class A Misdemeanor; 2) an August, 02, 2010 conviction for Resisting Law Enforcement, a Class A Misdemeanor; and 3) a November 13, 2016 charge for Operating a Vehicle While Intoxicated, a Level 6 Felony, that was pending at the time application was made.
9. Indiana Code § 27-1-15.6-12(d) provides that the applicant may, not more than sixty-three (63) days after notice of denial of the application 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)(6), due to his felony conviction, and § 27-1-15.6-12(b)(1), due to his failure to disclose his criminal history on two (2) applications for licensure.

1-26-2018

Date Signed



Stephen W. Robertson, Commissioner
Indiana Department of Insurance

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