

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 17215-AD18-0516-045

IN THE MATTER OF:)
)
George Leon Benjamin)
4804 Flame Way)
Indianapolis, IN 46254)
)
Applicant.)
)
Type of Agency Action: Enforcement)
)
Application ID: 650294)

FILED

NOV 09 2018

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On September 26, 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. The denial of Applicant's application for a resident producer's license is AFFIRMED.

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 9 day of November, 2018.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Copies to:

G. Leon Benjamin
4804 Flame Way
Indianapolis, IN 46254

Erica Dobbs, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

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IN THE MATTER OF:)

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SEP 26 2018

STATE OF INDIANA
DEPT. OF INSURANCE

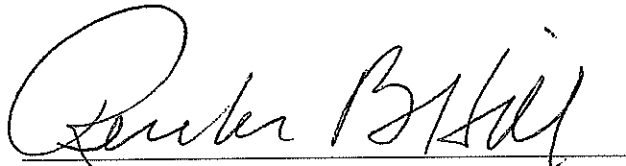
NOTICE OF FILING OF RECOMMENDED ORDER

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

To preserve an objection to this order for judicial review, the Parties must object to the order in a writing that: 1) Identifies the basis for the 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: _____

9/26/18



Reuben B. Hill
Administrative Law Judge

STATE OF INDIANA)
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COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

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SEP 26 2018

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 George Leon Benjamin (“Applicant”). This matter came on to be heard by the ALJ on August 15, 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. Testimony 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 testified that his true and correct name is G. Leon Benjamin, Jr.
2. Applicant submitted an Indiana Resident Producer License application on May 4, 2018.
(Department's Exhibit 1)
3. 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"?
4. 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".
5. Applicant has a conviction for Possession of Marijuana, a Class A Misdemeanor, from May 31, 2013. (Department's Exhibit 3)
6. Applicant testified that he did not know that conviction was on his record, because he thought it had been dismissed or reduced to a traffic citation. (Hearing Transcript p. 13)
7. Applicant pleaded guilty to the Misdemeanor and was sentenced to one (1) year of probation and thirty-two (32) hours of community service. (Department's Exhibit 4)
8. On his application, Applicant also answered "no" to the question that asks, "Have you ever been convicted of a Felony. . . or are you currently charged with committing a Felony?"

9. The application question regarding Felony convictions and charges does not have language excluding any certain offenses.
10. Applicant has a conviction for Operating a Vehicle While Intoxicated with a Prior Conviction, a Level 6 Felony, from October 20, 2014.
11. Applicant pleaded guilty and was sentenced to one (1) year to be executed on Community Corrections.
12. Applicant testified that he did not disclose his Felony conviction, because he was only charged with a Felony due to a Prior Misdemeanor Operating While Intoxicated conviction, and the application instructs applicants to exclude Misdemeanor Operating While Intoxicated convictions. Applicant argued, "If you exclude the Misdemeanor, then you've only got one DUI, which. . .wouldn't be a Felony. So without the Misdemeanor, there's no Felony ". (Hearing Transcript p. 20)
13. Applicant further stated that he "Assumed it would be okay to exclude the Felony conviction and then the Department actually looked it up". (Hearing Transcript p. 21)
14. Applicant did not admit any exhibits or call any witnesses to testify on his behalf.
15. Conclusions of Law that can be adopted as Findings of Fact are hereby incorporated herein as such.

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. Indiana Code 27-1-15.6-12(b)(1) allows the Commissioner to deny an Insurance Producer License for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
5. Applicant failed to disclose two (2) criminal convictions on his application for licensure: a May 31, 2013 conviction for Possession of Marijuana, a Class A Misdemeanor, and an October 20, 2014 conviction for Operating a Vehicle While Intoxicated with a Prior Conviction, a Level 6 Felony.
6. Applicant argues that the Fact that the application allows applicants to exclude Misdemeanor Operating While Intoxicated convictions eliminates Felony convictions that rely on the excluded Misdemeanors as predicate offenses.
7. The applicant's lack of reporting requirement for Misdemeanor Operating While Intoxicated convictions is not akin to expungement and does nothing to alter the actual convictions on an Applicant's criminal record.
8. Indiana Code 27-1-15.6-12(b)(6) allows the Commissioner to deny an Insurance Producer License for having been convicted of a Felony.
9. Applicant was convicted of Operating a Vehicle While Intoxicated with a Prior Conviction, a Level 6 Felony, on October 20, 2014.
10. It is reasonable for the Commissioner to take an applicant's criminal history and lack of candor on the application into account when determining whether to issue an Insurance Producer License.

11. 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.
12. 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.
13. 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:

That the **DENIAL** of Applicant's application for Resident Producer License be affirmed.

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

Commissioner of Insurance this 26th day of Sept, 2018



Reuben B. Hill, Esq.
Administrative Law Judge

Distribution:

G. Leon Benjamin
4804 Flame Way
Indianapolis, Indiana 46254

Erica J. Dobbs, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, Indiana 46204

STATE OF INDIANA)
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Applicant.)
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Application ID: 650294)

FILED

SEP 13 2018

STATE OF INDIANA
DEPT. OF INSURANCE

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

Administrative Law Judge (“ALJ”) Reuben Hill, having considered and reviewed all of the evidence, will now render a decision in the matter of George Leon Benjamin (“Applicant”). This matter came to be heard by the ALJ on August 15, 2018 at 10:00 a.m. at the Indiana Department of Insurance, 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. Testimony 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 his Recommended Order.

FINDINGS OF FACT

1. Applicant testified that his true and correct name is G. Leon Benjamin, Jr.
2. Applicant submitted an Indiana resident producer license application on May 4, 2018 (Department’s Exhibit 1).

3. 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?”

4. 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.”

5. Applicant has a conviction for Possession of Marijuana, a Class A Misdemeanor, from May 31, 2013. (Department’s Exhibit 3)

6. Applicant testified that he did not know that conviction was on his record because he thought it had been dismissed or reduced to a traffic citation. (Hearing Transcript p. 13)

7. Applicant plead guilty to the misdemeanor and was sentenced to one (1) year of probation and thirty two (32) hours of community service. (Department’s Exhibit 4)

8. On his application, Applicant also answered “no” to the question that asks “Have you ever been convicted of a felony...or are you currently charged with committing a felony?”

9. The application question regarding felony convictions and charges does not have language excluding any certain offenses.

10. Applicant has a conviction for Operating a Vehicle While Intoxicated with a Prior Conviction, a Level 6 Felony, from October 20, 2014.

11. Applicant pled guilty and was sentenced to one (1) year to be executed on Community Corrections.

12. Applicant testified that he did not disclose his felony conviction because he was only charged with a felony due to a prior misdemeanor Operating While Intoxicated conviction,

6. Applicant argues that the fact that the application allows applicants to exclude misdemeanor Operating While Intoxicated convictions eliminates felony convictions that rely on the excluded misdemeanors as predicate offenses.

7. The application's lack of reporting requirement for misdemeanor Operating While Intoxicated convictions is not akin to expungement and does nothing to alter the actual convictions on an Applicant's criminal record.

8. 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.

9. Applicant was convicted of Operating a Vehicle While Intoxicated with a Prior Conviction, a Level 6 Felony, on October 20, 2014.

10. It is reasonable for the Commissioner to take an applicant's criminal history and candor on the application into account when determining whether to issue an insurance producer's license.

11. 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. Here, Applicant is requesting that the Department issue him a resident producer license and, therefore, bears the burden.

12. 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.

13. Findings of Fact that can be adopted as Conclusions 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 the following:

1. That the denial of Applicant's application for a resident producer's license be
AFFIRMED.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner this _____ day of _____, 2018.

Reuben Hill
Administrative Law Judge

Distribution:

G. Leon Benjamin
4804 Flame Way
Indianapolis, IN 46254

Erica J. Dobbs, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204

STATE OF INDIANA)
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Type of Agency Action: Enforcement)

FILED

AUG 01 2018

STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF HEARING

Notice is hereby given, pursuant to Indiana Code § 4-21.5-3 *et seq.*, that an evidentiary hearing will be held on August 15, 2018, at 10:00 Eastern Time at 311 West Washington Street, Suite 103, Indianapolis, Indiana 46204-2787, to determine whether to grant the Applicant's request for approval of his resident producer's license.

The hearing will be conducted in accordance with the provisions of the Administrative Orders and Procedures Act, codified at Indiana Code § 4-21.5-3 *et seq.* The Commissioner's authority regarding agent licensing is contained in Indiana Code § 27-1-15.6-12(b).

The issues to be resolved at the hearing are those described in the Preliminary Administrative Order and Notice of License Denial filed on May 17, 2018.

The Indiana Department of Insurance asserts that Respondent has violated Indiana Code §§ 27-1-15.6-12(b)(6) and 27-1-15.6-12(b)(1), by having been convicted of a felony and providing incorrect, misleading, incomplete, or materially untrue information in a license application.

In accordance with Indiana Code § 27-1-15.6-34, the Administrative Law Judge in this

matter is:

Reuben B. Hill

Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787
Telephone: (317) 232-2387

The Department of Insurance will be represented by its counsel, Erica J. Dobbs, who can be reached at:

Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787
Telephone: (317) 234-5887

A party who fails to attend or participate in a pre-hearing conference, hearing or other later stage of the proceeding, may be held in default or have a proceeding dismissed under Indiana Code Section 4-21.5-3-24.

Dated: 8-1-18

Reuben B. Hill

Administrative Law Judge
Indiana Department of Insurance

Distribution:

Erica J. Dobbs, Attorney
ATTN: Melissa Higgins, Sr. Insurance Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204-2787

George Leon Benjamin
4804 Flame Way
Indianapolis, IN 46254

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FILED

MAY 17 2018

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

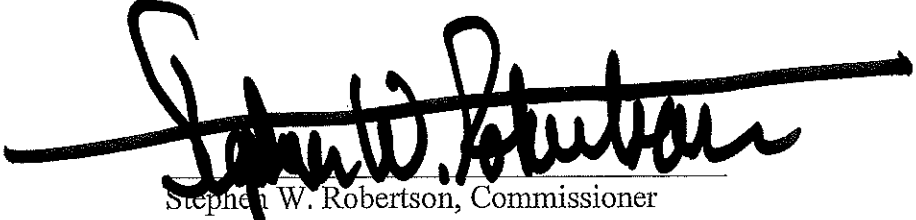
The Indiana Department of Insurance, pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to George Leon Benjamin (“Applicant”) of the following Administrative Order:

1. Applicant submitted an application for licensure with the Commissioner of the Indiana Department of Insurance (“Commissioner”) on May 4, 2018.
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)(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.
4. 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.

5. The Commissioner, being fully advised, now hereby notifies Applicant that he has not fully met the requirements of licensure, as stated by Indiana Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(6), due to Applicant's conviction for Operating a Vehicle While Intoxicated, a Level 6 Felony, on May 15, 2015, and failure to disclose said conviction, as well as a conviction for Possession of Marijuana/Hash/Cannabinoid, a Class A Misdemeanor, on May 31, 2013, in his application for licensure.
6. 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 applicant's 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 Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(6), due to having a felony conviction and failing to disclose two criminal convictions on an application for licensure.

May 17, 2018
Date Signed


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

George Leon Benjamin
4804 Flame Way
Indianapolis, IN 46254

Erica J. Dobbs, Attorney
ATTN: Melissa Higgins, Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
317 234-8687, fax 317 234-2103