

STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

DOI CAUSE NO: 20506-AD21-0726-113
ADMINISTRATIVE CAUSE NO.: DOI-0821-001771

IN THE MATTER OF:)

Kevin Garcia)
360 E. Market Street, Apt. 2612)
Greenwood, IN 46143)

Petitioner.)

License Application #: 845693)

Type of Agency Action: Enforcement)

FILED

JAN 18 2022

STATE OF INDIANA
DEPT. OF INSURANCE

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

1. On November 19, 2021, the Administrative Law Judge, Ann Pagonis, filed her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

2. Counsel for the Department timely filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order.

3. The ultimate authority shall issue a final order affirming, modifying, or dissolving the administrative law judge's order under Ind. Code § 4-21.5-3-29.

Therefore, the Commissioner of Insurance, being fully advised, now hereby issues the following Findings of Fact, Conclusions of Law and Final Order:

FINDINGS OF FACT

1. Paragraphs 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 14, and 15 of the "Findings of Fact" section in the Recommended Order are adopted in full and incorporated herein.

2. Paragraph 4 of the "Findings of Fact" section in the Recommended Order is modified to state that, "Petitioner's two misdemeanor convictions stemmed from one incident

that occurred in October of 2018. The incident occurred in the retail department store, Macy's, which is a place where the business of selling and purchasing goods occurs. Petitioner testified that he had been drinking and wanted to prank a Macy's loss prevention officer by removing a lock on store items and replacing it with a new lock so that it could not be unlocked. Petitioner began the process of executing his prank, but left Macy's before he changed the lock. Petitioner testified that he didn't try to take any items from the store. He was arrested for the incident three weeks later."

3. Paragraph 11 of the "Findings of Fact" section in the Recommended Order is modified to state that, "The Consent Order, while not explicitly stating that it was an administrative action, was executed pursuant to administrative agency law in Pennsylvania. The Consent Order states that Petitioner waived his right to a formal administrative hearing in the matter. The application for an Indiana resident producer license required Petitioner to disclose whether he had 'ever been named or involved as a party in an administrative proceeding . . . regarding any professional or occupational license.'"

CONCLUSIONS OF LAW

1. Paragraphs 1, 2, 3, 4, 10, 11, 12, and 13 of the "Conclusions of Law" section in the Recommended Order are adopted in full and incorporated herein.

2. Paragraph 5 of the "Conclusions of Law" section in the Recommended Order is modified to state that, "Indiana Code 27-1-15.6-12(b)(1) does not make an exception for unintentionally providing incorrect or incomplete information on a license application. Petitioner disclosed the misdemeanor charges from which the Pennsylvania administrative action arose. Regardless, Petitioner's failure to disclose the Pennsylvania administrative action on his license application is a violation of Indiana Code 27-1-15.6-12(b)(1)."

3. Paragraphs 6 and 7 of the "Conclusions of Law" section in the Recommended Order are stricken in their entireties.

4. Paragraph 8 of the "Conclusions of Law" section in the Recommended Order is modified to state that, "Merriam-Webster dictionary defines conduct as 'a mode or standard of personal behavior especially as based on moral principles.' Because the incident giving rise to the misdemeanor convictions occurred in a Macy's retail department store, they occurred in the conduct of business. Petitioner demonstrated untrustworthiness in the conduct of business in Indiana in violation of Indiana Code 27-1-15.6-12(b)(8).

5. Paragraph 9 of the "Conclusions of Law" section in the Recommended Order is stricken in its entirety.

FINAL ORDER

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The preliminary denial of Applicant's Indiana resident insurance producer's license is reversed.
2. Petitioner's application for an Indiana resident insurance producer's license is hereby GRANTED, and it shall be placed on probation for a period of two (2) years, beginning the date of this Final Order.
3. During the probationary period, Petitioner will be required to submit a current list of appointments by U.S. Postal service every six (6) months from the date of this Final Order.
4. During the probationary period, any violations of Title 27 of the Indiana Code will result in the Department seeking immediate revocation of Petitioner's license.

5. Petitioner shall pay a fine of two hundred fifty dollars (\$250.00) within sixty (60) days of the date of this Final Order.

Under Ind. Code §4-21.5-5-5, Petitioner 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 18 day of January, 2022.

A handwritten signature in cursive script, reading "Amy L. Beard", written over a horizontal line.

Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Amber K. Boyd
Counsel for Petitioner, Kevin Garcia
amber@amberboydlaw.com

Victoria Hastings
Counsel for Respondent, Indiana Department of Insurance
vhastings@idoi.in.gov

RECOMMENDED ORDER

Pursuant to IC 4-21.5 this Recommended Order is not final and shall be presented to the ultimate authority for issuance of a final order.



FILED: November 19,
2021

**STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

Administrative Cause No.: DOI-0821-001771
Underlying/State Agency Action No.: 20506-AD21-0726-113

Final Agency Authority: Commissioner of the Department of Insurance

Kevin Garcia
Petitioner,

v.

Indiana Department of Insurance
Respondent.

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

An evidentiary hearing was held on this matter on September 23, 2021, at 10:00 am EST via audio conferencing. Administrative Law Judge Ann Pagonis ("ALJ"), having heard, reviewed, and considered all of the evidence, now renders a decision concerning the matter of Kevin Garcia ("Petitioner").

Petitioner appeared telephonically, and without counsel. The Enforcement Division of the Indiana Department of Insurance ("Respondent") was represented by counsel, Victoria Hastings. After the evidentiary hearing, Petitioner hired counsel.

Petitioner testified on his own behalf in a narrative style and offered five (5) exhibits, identified as Petitioner's Exhibits (PX) A through E, all of which were admitted into the record without objection.

- PX A is a one (1) page copy of Petitioner's Pennsylvania License Clearance.
- PX B is a three (3) page letter that Petitioner wrote on his own behalf explaining the circumstances surrounding the misdemeanor convictions.
- PX C is a one (1) page letter regarding the retail theft program that Petitioner was required to participate in as part of the sentence for the misdemeanors.
- PX D, is a one (1) page sentencing order for one (1) of the misdemeanors, Possession of an Instrument of Crime with Intent.
- PX E is a one (1) page special conditions order that describes conditions of supervision as sentencing for the misdemeanors.

Respondent called Calla Dain as a witness and offered seven (7) exhibits that were admitted into the record without objection and identified as Respondent's Exhibits (RX) 1 through 7.

- RX 1 is the Petitioner's three (3) page application for a Resident Insurance Producer License (license).

- RX 2 is an eight (8) page copy of the Consent Order signed by Petitioner relating to a Pennsylvania administrative action.
- RX 3 is a one (1) page preliminary hearing notice regarding the misdemeanor charges.
- RX 4, consisting of one (1) page, is the sentencing order regarding the misdemeanor charge of Criminal Attempt: Retail Theft.
- RX 5 is the same as Petitioner's Exhibit D.
- RX 6 is the same as Petitioner's Exhibit E.
- RX 7, consisting of three (3) pages, is the preliminary administrative order and notice of license denial issued by the Respondent to the Petitioner which the Petitioner appealed, giving rise to the present matter.

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

FINDINGS OF FACT

1. In February of 2021, Petitioner applied for an Indiana Resident Insurance Producer License (license). (RX 1.)
2. The Commissioner denied Petitioner's application for license on two (2) grounds: 1) Petitioner incorrectly stated on his application that he had never been named as a party in an administrative proceeding, and 2) Petitioner's a criminal history included two misdemeanor convictions from February of 2019. (RX 7 and RX 1.)
3. On February 4, 2019, in Lehigh County, Pennsylvania, Petitioner was convicted of Criminal Attempt – Retail Theft, a Level 1 Misdemeanor, and Possession of an

Instrument of Crime with Intent, a Level 1 Misdemeanor. (RX 4 and 5; PX B and D; Transcript pages 37-38.)

4. Petitioner's two misdemeanor convictions stemmed from one incident that occurred in October of 2018. The incident did not occur in the conduct of Petitioner's business. (PX B and Transcript pages 38-39, 41.)
5. As a sentence for the misdemeanors, Petitioner was ordered to be placed on probation for twelve (12) months, to stay away from Macy's for the duration of probation, to attend and satisfactorily complete a retail theft program, and to pay the costs of prosecution. (RX 6, PX E and C, Transcript pages 44- 46.)
6. Petitioner successfully completed the ordered probation. (Transcript page 46.)
7. Petitioner correctly stated on his license application that he has been convicted of a misdemeanor and submitted documents regarding this matter to Respondent with his application. (RX 1 and PX B.)
8. Petitioner signed a Consent Order, issued on August 28, 2019, regarding his failure to report his 2019 misdemeanor convictions to the Insurance Commissioner of the Commonwealth of Pennsylvania in a timely manner. (RX 2.)
9. The Consent Order states in part that the Pennsylvania Department of Insurance, "may enforce the provisions of this Order in an administrative action..." (RX 2 at page 6.)
10. The Consent Order further states "[Petitioner's] license may be immediately suspended by the [Pennsylvania Department of Insurance] following its investigation and determination that (i) any terms of this Order have not been complied with, or (ii) any

confirmed complaint against [Petitioner] is accurate and a statute or regulation has been violated.” (RX 2, page 5.)

11. The Consent Order does not state that the Order is pursuant to a current Pennsylvania administrative action, and it does not state that the Petitioner is on probation. (RX 2.)
12. The Petitioner did not know that the Consent Order was part of a Pennsylvania administrative proceeding. (Transcript pages 18-21, 32-34, 36.) Petitioner’s omission on his license application concerning the administrative action before the Pennsylvania Department of Insurance was an honest mistake.
13. The Petitioner knew that the Pennsylvania Order meant the Petitioner should stay out of trouble for five (5) years. (Transcript page 36.)
14. The Petitioner is remorseful and has sought treatment and therapy on his own volition. (PX B.)
15. Conclusions of Law that can be adopted as Findings of Fact are incorporated as such.

CONCLUSIONS OF LAW

1. The Commissioner of the Indiana Department of Insurance (“Commissioner”) has jurisdiction over both the subject matter and the parties to this action. IC 27-1-15.6-12(d); IC 4-15-10.5-12; IC 4-15-10.5-13.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, IC 4-21.5-3. IC 27-1-15.6-12(d)

3. Indiana Code 27-1-15.6-12(b) states, in part, that the Commissioner may refuse to issue a license due to several factors. The Respondent cites two of those factors as reasons for denying the Petitioner's application for license.

Factor 1: The Commissioner may refuse to issue a producer license for providing incorrect, misleading, incomplete, or untrue information in a licensing application under Indiana Code 27-1-15.6-12(b)(1).

Factor 2: The Commissioner may refuse to issue a producer's license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere under Indiana Code 27-1-15.6-12(b)(8).

Factor One

4. Petitioner's failure to disclose the Pennsylvania administrative action on his application falls under Indiana Code 27-1-15.6-12(b)(1) as a potential reason for license denial.

5. Indiana Code 27-1-15.6-12(b)(1) does not make an exception for unintentionally providing incorrect or incomplete information. However, this ALJ notes that Petitioner disclosed the misdemeanor charges from which the administrative action arose, so he had nothing to gain from withholding information regarding the Pennsylvania administrative action.

6. Indiana Code 27-1-15.6-12(b) states that the Commissioner may refuse to issue a license for the reasons listed, not that the Commissioner shall refuse to issue a license if any of the listed reasons apply. The language of the statute leaves room for discretion.

7. An applicant may be allowed a license on a probationary basis even when one of the reasons for denying a license under Indiana Code 27-1-15.6-12(b) applies. (Daniel H. Adams v. Department of Insurance, 15969-AD17-0125-016)

Factor Two

8. The singular incident from which the two misdemeanor charges sprung was not in the conduct of business and therefore does not violate Indiana Code 27-1-15.6-12(b)(8).

9. Furthermore, the misdemeanor convictions arose from a single incident and therefore do not indicate "practices." Indiana Code 27-1-15.6-12(b)(8)

10. Indiana Code 27-1-15.6-12(b) lists many reasons for denying a license, including felony convictions. Importantly, the applicant having been convicted of a misdemeanor is not one of the listed permissible reasons to deny a license application. The legislature had an opportunity to add misdemeanor convictions as a reason a license may be denied and did not.

11. Indiana Code 4-21.5-3-14(c) states that the person requesting an agency act has the burden of persuasion and the burden of going forward. Petitioner is requesting that the Department grant him a license and, therefore, he 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. Petitioner met his burden.

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** that Kevin Garcia be granted his Indiana resident producer license on a probationary basis for a period of two (2) years.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the **Commissioner of Insurance** on November 19, 2021. **This recommended order is not final.**

This matter is now before the ultimate authority, the Commissioner of Insurance who has the final authority over this matter and shall review this recommended order then issue a final order to all parties.

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, the Commissioner of the Department of Insurance, within fifteen (15) days from the date of this Order. IC 4-21.5-3-29

Any questions regarding this matter should now be directed to Dawn Bopp at dbopp@idoi.in.gov.



Ann Pagonis
Administrative Law Judge

Distributed to Parties:

Indiana Department of Insurance – Respondent, served by Counsel Victoria Hastings by E-Mail at vhastings@idoi.in.gov

Kevin Garcia – Petitioner, served by counsel Amber K. Boyd by E-Mail at amber@amberboydlaw.com

Additional Distribution to Non-Party:

Dawn Bopp – Non-Party, Administrator for the Indiana Department of Insurance served by E-Mail at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 20506-AD21-0726-113

IN THE MATTER OF:)

Kevin Garcia)
160 E. Market St., Apt. 2612,)
Greenwood, IN 46143)

Applicant.)

Type of Agency Action: Enforcement)

License Application #: 845693)

FILED

AUG 03 2021

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 Kevin Garcia ("Applicant") of the following Administrative Order:

1. Applicant filed an application for resident producer licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on February 16, 2021.
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)(8) provides, in part, that the Commissioner may refuse to issue an insurance producer's license for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.

4. Indiana Code § 27-1-15.6-12(b)(1) provides, in part, that the Commissioner may refuse to issue an insurance producer's license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
5. Following a review of public records, and a review of documents 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 § 27-1-15.6-12(b)(8) due to his February 4, 2019 convictions for Criminal Attempt – Retail Theft, a Misdemeanor, and Possession of an Instrument of Crime w/ Intent, a Misdemeanor, out of the State of Pennsylvania.
6. Following a review of public records, and a review of documents 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 Codes § 27-1-15.6-12(b)(1) due to his failure to disclose his August 28, 2019 License Supervision issued by the Pennsylvania Insurance Department.
7. 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.
8. This is considered an agency action. This action has been initiated by the aforementioned authority. If you choose to appeal this agency action, the State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and subsequently you will be contacted by the OALP with more information to begin the administrative process.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby DENIED pursuant to Indiana Codes §§ 27-1-15.6-12(b)(8) and 27-1-15.6-12(b)(1) due to Applicant's criminal history and failure to disclose an administrative action on his application. Applicant may reapply for licensure not less than one (1) year from the date of this order.

8/3/21

Date Signed

Amy L. Beard

Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution to:

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