

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

IN THE MATTER OF:)
)
Kimberly Evans)
2501 Schofield Ave)
Indianapolis, IN 46205)
)
Applicant.)
)
Type of Agency Action: Enforcement)
)
License Application #: 1012323)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 21943-AD22-1031-111

FILED
DEC 07 2022
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, Indiana Code § 4-21.5-1 *et seq.* and Indiana Code § 27-1-15.6-12, hereby gives notice to Kimberly Evans (“Applicant”) of the following Administrative Order:

1. Applicant filed an application for a resident producer license with the Commissioner of the Indiana Department of Insurance (“Commissioner”) on October 21, 2022.
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’s license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

4. Following a review of public records and the 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 § 27-1-15.6-12(b)(1) due to Applicant's failure to disclose her August 30, 1994 conviction for Criminal Conversion, a Class A Misdemeanor, and her October 19, 2005 conviction for Battery, a Class A Misdemeanor, in the State of Indiana.
5. 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.
6. This is considered an administrative action by the Indiana Department of Insurance. If you choose to appeal this administrative action, please follow the aforementioned instructions. Subsequently, after the Department has received your written request for a hearing, the State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and you will receive more information from OALP to begin the administrative process

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby **DENIED** pursuant to Indiana Code § 27-1-15.6-12(b)(1) due to Applicant's failure to disclose her criminal convictions on her application. Applicant may reapply for licensure not less than one (1) year from the date of this order.

12.07.2022
Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution to:

Kimberly Evans
2501 Schofield Ave
Indianapolis, IN 46205

Samantha Aldridge, Attorney
ATTN: Sara Tolliver, Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
317-232-7138, fax 317 234-2103

Indiana Department of Insurance – CONFIDENTIAL AND PRIVILEGED
Enforcement Division

To: Ronda Ankney, Chief Deputy Commissioner
Cc: Samantha Aldridge, Attorney
From: Sara Tolliver, Enforcement Investigator
Date: December 7, 2022

Re: Kimberly Evans (“Applicant”)
Cause No.: 21943-AD22-1031-111

Purpose:

The purpose of this memo is to request the Commissioner approve the attached Preliminary Administrative Order and Notice of License Denial denying a resident producer Applicant due to Applicant failing to disclose her criminal history.

Issue:

Whether a resident producer applicant, who failed to disclose her criminal history, should be denied licensure.

Facts:

Applicant applied for an Indiana nonresident producer license on October 21, 2022.

Applicant failed to disclose on her application that she was convicted of Criminal Conversion, a Class A Misdemeanor, on August 30, 1994, in the State of Indiana. She also failed to disclose she was convicted of Battery, a Class A Misdemeanor, on October 19, 2005, in the State of Indiana.

Applicant has no other criminal convictions.

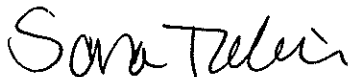
Analysis:

Indiana Code § 27-1-15.6-12(b)(1) authorizes the Commissioner to refuse to issue an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

The Enforcement Division believes denial of Applicant’s license is appropriate due to Applicant failing to report her criminal history on her application.

Recommendation

We recommend that the Commissioner approve the Preliminary Administrative Order and Notice of License Denial, which denies a resident producer’s application due to Applicant’s failing to disclose her criminal history on her application.



Sara Tolliver, Enforcement Investigator

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 21943-AD22-1031-111
ADMINISTRATIVE CAUSE NO.: DOI-2212-000011

IN THE MATTER OF:)
)
Kimberly Evans)
2501 Schofield Ave.)
Indianapolis, IN 46205)
)
Petitioner.)
)
Type of Agency Action: Enforcement)
)
License Number: 1012323)

FILED
AUG 01 2023
STATE OF INDIANA
DEPT. OF INSURANCE

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND FINAL ORDER

An evidentiary hearing was held on this matter on March 7, 2023, at 9:00 AM EST via audio conferencing at the Indiana Department of Insurance, 311 West Washington Street, Indianapolis, Indiana. Administrative Law Judge (“ALJ”) Brian Hahn presided over the hearing. Prior to rendering Findings of Fact, Conclusions of Law, and a Nonfinal Order in this matter, ALJ Hahn became unavailable to serve as the ALJ in this matter. The Office of Administrative Law Proceedings (OALP) Director reassigned this matter to ALJ Carrie Ingram to issue Findings of Fact, Conclusions of Law, and a Non-Final Order pursuant to Indiana Code § 4-21.5-3-27(e). On May 31, 2023, ALJ Ingram filed Findings of Fact, Conclusions of Law, and a Non-Final Order (“Recommended Order”) in the above-captioned matter under Indiana Code § 4-21.5-3-27.

1. Petitioner timely filed an objection on June 12, 2023.
2. The ultimate authority shall issue a final order affirming, modifying, or dissolving the administrative law judge’s order under Indiana Code § 4-21.5-3-29.

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

FINDINGS OF FACT

1. On October 21, 2022, Petitioner applied for a resident producer license (“license”) with the Commissioner of the Indiana Department of Insurance. (Department’s Exhibit 1 and Testimony of Petitioner)

2. The application Petitioner submitted for a resident producer license has a section entitled, “Background Questions” that contains Question 1A, which asks the following:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? 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. You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court.)

(Department’s Exhibit 1)

3. Petitioner answered “No” to Question 1A. (Department’s Exhibit 1 and Testimony of Petitioner)

4. Regarding the application that Petitioner submitted for a resident producer license, Petitioner attested to the following:

I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete.

I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

(Department's Exhibit 1)

5. Despite Petitioner's answer, Petitioner had two misdemeanor convictions.

(Department's Exhibits 2 and 3)

6. On August 30, 1994, Petitioner was convicted of a Class A misdemeanor for criminal conversion in case number 49F14-9312-CM-168489. (Department's Exhibit 2)

7. On October 19, 2005, Petitioner was convicted of a Class A misdemeanor for battery on a child in case number 49G16-0508-FD-148061. (Department's Exhibit 3)

8. Petitioner thought these two convictions were no longer on her record when she submitted her application.

9. On June 15, 2023, Petitioner's convictions were expunged in Marion Superior Court 9 pursuant to IC § 35-38-9-2. (Findings and Order Granting Petition for Expungement and Sealing of Acquittals Convictions Pursuant to IC 35-38-9-2, Docket 49D17-2305-XP-019243)

10. Respondent initially denied Petitioner's license application due to Petitioner's failure to report her misdemeanor conviction. (Testimony of Investigator Tolliver)

11. Respondent did not admit exhibits at the hearing.

12. The Department admitted three (3) exhibits at the hearing. Department's Exhibit 1 is a three (3) page document entitled NIPR National Insurance Producer Registry pertaining to

Petitioner. Department's Exhibit 2 is a three (3) page document entitled Chronological Case Summary for Case No.: 49F14-9312-CM-168489 out of the Marion Superior Court – Criminal Division 14. Department's Exhibit 3 is a three (3) page document entitled Chronological Case Summary for Case No.: 49G16-0508-FD-148061 out of the Marion Superior Court – Criminal Division 16.

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

CONCLUSIONS OF LAW

1. The Office of Administrative Law Proceedings ("OALP") has jurisdiction over both the subject matter and the parties to this action and the Commissioner of the Department of Insurance has final authority. Ind. Code § 27-1-15.6-12(d); Ind. Code § 4-15-10.5-12; Ind. Code § 4-15-10.5-13.

2. The hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code. Ind. Code § 4-21.5-2; Ind. Code § 27-1-15.6-12(d).

3. Petitioner appeals Respondent's decision to deny Petitioner a license because of her failure to report two misdemeanor convictions.

4. The person requesting an agency act has the burden of persuasion and the burden of going forward. Ind. Code § 4-21.5-3-14(c). Petitioner requests that the Department issue a license, therefore Petitioner bears the burden of proof.

5. Indiana Code § 27-1-15.6-12(b) states, in part, that the Commissioner may refuse to issue or renew an insurance producer's license due to a number of factors.

6. The Commissioner may refuse to issue a license to an individual who has provided “. . . incorrect, misleading, incomplete, or materially untrue information in a license application.” Ind. Code § 27-1-15.6-12(b)(1).

7. Although Petitioner thought that her misdemeanor convictions were no longer on her record, she is ultimately responsible for ensuring that the information on her application is true and correct. *See* Ind. Code § 27-1-15.6-6. The information Petitioner provided about her misdemeanor convictions was not correct.

8. Petitioner’s failure to disclose her misdemeanor convictions of battery on a child and criminal conversion is sufficient reason for the Commissioner to deny her a license.

9. However, after the issuance of ALJ Ingram’s Recommended Order, Petitioner’s convictions in cases 49F14-9312-CM-168489 and 49G16-0508-FD-148061 have been expunged by order of Marion Superior Court 9 on June 15, 2023.

10. Pursuant to Ind. Code § 35-38-9-10(e), “A person whose record is expunged shall be treated as if the person had never been convicted of the offense.”

11. Furthermore, pursuant to Ind. Code § 35-38-9-10(b)(5), “It is unlawful discrimination for any person to . . . refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession . . . [to] any person because of a conviction or arrest record expunged or sealed under this chapter.” As a result, the Commissioner may no longer deny Petitioner’s resident producer license on the basis of the relevant convictions now that the expungement order has been granted.

12. This administrative proceeding is a “collateral action” under the meaning of Ind. Code § 35-38-9-0.5.

13. Pursuant to Ind. Code § 35-38-9-6(b)(2), “. . . if a petition to expunge conviction records, including any records relating to the conviction and any records, including . . . any records concerning a collateral action, is granted under sections 2 through 3 of this chapter, the records of . . . a court that conducted a collateral action . . . concerning the person shall be permanently sealed.” As records of a collateral action, the records to this proceeding shall be permanently sealed, including: the Preliminary Administrative Order and Notice of License Denial, the Recommended Order, and this Final Order.

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

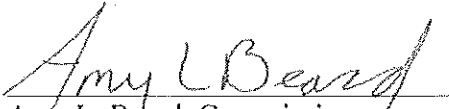
FINAL ORDER

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Petitioner’s resident producer license application is APPROVED.
2. All records associated with this proceeding will be permanently sealed pursuant to

Ind. Code § 35-38-9-6(b)(2).

ALL OF WHICH IS ORDERED by the Commissioner this 1 day of August, 2023.


Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution:

Indiana Department of Insurance, Samantha Aldridge, Attorney at saldridge@idoi.in.gov

Kimberly Evans, Petitioner, served via email at kimevans@geico.com

Carrie Ingram, Office of Administrative Law Proceedings at oalp@oalp.in.gov

NONFINAL ORDER

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



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

Ultimate Authority: Commissioner of the Department of Insurance

FILED: May 31, 2023

**Kimberly Evans
Petitioner**

**Administrative Case No.: DOI-2212-000011
Underlying Agency No.: 21943-AD22-1031-111**

v.

**Department of Insurance
Respondent**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NONFINAL ORDER

An evidentiary hearing was held on this matter on March 7, 2023, at 9:00 AM via telephonic conference. Administrative Law Judge (ALJ) Brian Hahn presided over the hearing. Prior to rendering Findings of Fact, Conclusions of Law, and a Nonfinal Order in this matter, ALJ Hahn became unavailable to serve as the ALJ in this matter. The Office of Administrative Law Proceedings (OALP) Director reassigned this matter to ALJ Carrie Ingram to issue Findings of Fact, Conclusions of Law, and a Nonfinal Order pursuant to Indiana Code 4-21.5-3-27(e).

At the evidentiary hearing on March 7, 2023, Petitioner Kimberly Evans appeared telephonically, and without counsel. Petitioner testified on her own behalf in the narrative style and offered no exhibits. The Indiana Department of Insurance ("Respondent") was represented by counsel, Samantha Aldridge. Respondent called Sara Tolliver, Investigator for the Indiana Department of Insurance (DOI), as a witness and offered three proposed exhibits identified as Respondent's Exhibits 1-3.

1. Exhibit 1 is a three (3) page document entitled NIPR National Insurance Producer Registry pertaining to Petitioner. (Admitted without objection)
2. Exhibit 2 is a three (3) page document entitled Chronological Case Summary for Case No.: 49F14-9312-CM-168489 out of the Marion Superior Court-Criminal Division 14. (Admitted without objection)

3. Exhibit 3 is a three (3) page document entitled Chronological Case Summary for Case No.: 49G16-0508-FD-148061 out of the Marion Superior Court-Criminal Division 16. (Admitted without objection)

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

FINDINGS OF FACT¹

1. On October 21, 2022, Petitioner applied for a resident producer license (“license”) with the Commissioner of the Indiana Department of Insurance. (Exhibit 1 and Testimony of Petitioner)
2. The application Petitioner submitted for a resident producer license has a section entitled, “Background Questions” that contains Question 1A, which asks the following:
Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? 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. You may also exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court.)
(Exhibit 1)
3. Petitioner answered “No” to Question 1A. (Exhibit 1, and Testimony of Petitioner.)
4. Regarding the application that Petitioner submitted for a resident produced license, Petitioner attested to the following:
I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.
(Exhibit 1)

¹ Findings of fact that may be construed as conclusions of law and conclusions of law that may be construed as findings of fact are so deemed.

5. Despite Petitioner's answer, Petitioner has two misdemeanor convictions. (Exhibits 2 and 3).
6. On August 30, 1994, Petitioner was convicted of a Class A misdemeanor for criminal conversion. (Exhibit 2)
7. On October 19, 2005, Petitioner was convicted of a Class A misdemeanor for battery on a child in case number 49G16-0508-FD-148061. (Exhibit 3)
8. Petitioner thought that these two convictions were no longer on her record when she submitted her application.
9. Petitioner has not filed a petition to expunge either conviction.
10. Respondent ultimately denied Petitioner's license application due to Petitioner's failure to report her misdemeanor conviction. (Testimony of Investigator Tolliver)

CONCLUSIONS OF LAW

1. OALP has jurisdiction over both the subject matter and the parties to this action and the Commissioner is the ultimate authority. Ind. Code § 27-1-15.6-12(d); Ind. Code §§ 4-15-10.5-12 and 13.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, Ind. Code § 4-21.5-3. Ind. Code § 27-1-15.6-12(d).
3. Petitioner appeals Respondent's decision to deny Petitioner a license because of her failure to report her two misdemeanor convictions.
4. The person requesting an agency act has the burden of persuasion and the burden of going forward. Indiana Code 4-21.5-3-14(c). Petitioner requests that the Department issue a license, therefore Petitioner bears the burden of proof.
5. Proceedings held before an ALJ are *de novo*, which means the ALJ does not—and may not—defer to an agency's initial determination. Indiana Code § 4-21.5-3-14(d); *Ind. Dep't of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as factfinder, the ALJ must independently weigh the evidence in the record and may base findings and conclusions only upon that record. *Id.* At a minimum, the ALJ's findings "...must be based upon the kind of evidence that is substantial and reliable." Indiana Code § 4-21.5-3-27(d). "[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision..." *St. Charles Tower, Inc. v. Bd. of Zoning Appeals*, 873 N.E.2d 598, 601 (Ind. 2007).
6. Despite the *de novo* review, Indiana Code 27-1-15.6-12(d) limits the ALJ's review to a determination of whether the Commissioner's actions were reasonable.

7. The Commissioner may refuse to issue a license to an individual who has provided "...incorrect, misleading, incomplete, or materially untrue information in a license application." Ind. Code § 27-1-15.6-12(b)(1).
8. Although Petitioner thought that her misdemeanor convictions were no longer on her record, she is ultimately responsible for ensuring that the information on her application is true and correct. See Ind. Code § 27-1-15.6-6. The information that Petitioner provided about her misdemeanor convictions was not correct.
9. Petitioner's failure to disclose her misdemeanor convictions of battery on a child and criminal conversion is sufficient reason for the Commissioner to deny her a license.
10. Petitioner has not met her burden of proving that the Commissioner's decision not to issue a resident producer license was unreasonable.

NONFINAL 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 the Department of Insurance that the denial of Petitioner, Kimberly Evans's application for a resident producer license shall be **AFFIRMED**.

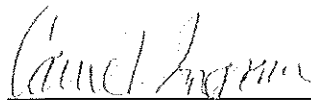
ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of the Department of Insurance on May 31, 2023. **This order is not final.**

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

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the 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. Indiana Code 4-21.5-3-29. For provisions on how to compute days see Ind. Code § 4-21.5-3-2.

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

So Ordered: May 31, 2023.



Carrie T. Ingram
Administrative Law Judge
Indiana Office of Administrative Law Proceedings

Distribution:

Kimberly Evans – Petitioner, served via email at kimevans@geico.com

Indiana Department of Insurance – Respondent, served by Counsel Samantha Aldridge by E-Mail at saldrige@idoi.in.gov

IDOI Commissioner – Ultimate Authority and served by Dawn Bopp at DBopp@idoi.in.gov