

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Application for a)
Kansas Resident Insurance Agent’s) **Docket No. 70398-L**
License of JAY L. FARLEY,)
NPN #18555622)

FINAL ORDER
(Pursuant to K.S.A. 40-4909 and K.S.A. 77-501 et seq.)

This matter came on for prehearing January 16, 2018. Jay L. Farley (“Applicant”) appeared *pro se* and the Kansas Insurance Department appeared by and through its staff attorney, Steven M. Lehwald. The parties waived prehearing and converted the matter to formal hearing. Applicant did not dispute the facts alleged by KID or the applicable law but appeared to present mitigating evidence on disposition.

Having reviewed Applicant’s application and having considered the arguments of the parties, the Commissioner finds the evidence supports KID’S denial of Applicant’s application and affirms the staff decision.

Findings of Fact

1. Applicant, a resident of Manhattan, Kansas, submitted an application for Kansas resident individual insurance agent license on October 17, 2017.
2. By letter dated November 30, 2017, KID licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(6), based on Applicant’s misdemeanor convictions.
3. Applicant timely requested a hearing as provided by the denial letter.
4. The Presiding Officer is the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head as provided in K.S.A. 77-547.

5. Background Question 3 of the Application asks:

Have you ever been convicted of or pled guilty or nolo contendere (no contest) to any misdemeanor or felony, or do you currently have any pending misdemeanor or felony charges filed against you?

6. Applicant answered “Yes.”

7. Applicant provided supporting documentation that showed the following cases with convictions or a legal equivalent:

- August 13, 2010, Geary County District Court, Case No. 10CR497, Violation of a Protective Order (misdemeanor); and
- March 31, 2016, Junction City Municipal Court, Case No. 1505045, Disorderly Conduct (misdemeanor).

8. Applicant testified that the 2010, violation of a protective order occurred when he called his own cell phone and his spouse answered the call. Applicant said that he was going through a messy divorce at the time and he was not aware that he was subject to a protective order. He said that he and his former wife are now cooperative in raising their daughter.

9. Applicant explained that the disorderly conduct charges arose from an incident in which he removed a roommate and another person from his home when he caught them smoking marijuana. He testified that he and the former roommate are now friendly.

10. Applicant is employed as a residential advisor in a Job Corp. center, as a maintenance technician at an elementary school, and as a disk jockey for an entertainment company.

11. Applicant testified that he has had no work issues. If he is granted a license, he will have a job as a bail bondsman.

12. Applicant presented a character witness who testified that Applicant was in charge of students at a Job Corps center. She said he was reliable and effective in resolving conflicts at the center.
13. Counsel for KID argued that the nature of the violations and the fact that one episode was as recent as 2015 raises a concern that Applicant could harm the public.

Applicable Law

14. Before granting an application for a Kansas resident insurance agent's license, the Commissioner has the statutory obligation to "determine that the applicant . . . has not committed any act that is grounds for denial pursuant to this section or suspension or revocation pursuant to K.S.A. 40-4909, and amendments thereto." K.S.A. 40-4905(b).
15. Pursuant to K.S.A. 40-4909(a), the Commissioner may revoke, suspend, or deny the license of a person who has "been convicted of a misdemeanor or felony," K.S.A. 40-4909(a)(6).
16. In exercising his discretion, the Commissioner should take guidance from the nonexclusive list of factors set out in K.S.A. 72-1397(b) to be considered by the Kansas State Board of Education. Those factors are:
 - a. The nature and seriousness of the offense or act;
 - b. The conduct of the person subsequent to commission of the offense or act;
 - c. The time elapsed since the commission of the offense or act;
 - d. The age of the person at the time of the offense or act;
 - e. Whether the offense or act was an isolated or recurring incident; and
 - f. Discharge from probation, pardon or expungement." K.S.A. 72-1397(c)(1)-(6).

The statutory factors are similar to the factors considered by licensing authorities such as for medicine and law. The Kansas Supreme Court held that the same factors applied in considering reinstatement to practice law were equally relevant to the practice of medicine. *Vakas v. Kansas Bd. of Healing Arts*, 248 Kan. 589, 600, 808 P.2d 1355, 1364 (1991).

The factors include: (1) the present moral fitness of the petitioner, (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought to the profession, (3) the extent of petitioner's rehabilitation, (4) the seriousness of the original misconduct, (5) conduct subsequent to discipline, (6) the time which has elapsed since the original discipline, (7) the petitioner's character, maturity, and experience at the time of the disbarment, and (8) the petitioner's present competence in legal skills." *Vakas*, 248 Kan. at 600, quoting *State v. Russo*, 230 Kan. 5, 12, 630 P.2d 711 (1981).

These same factors are relevant to guide the Commissioner in determining whether an applicant should be granted or denied a license after conviction of a crime.

17. Pursuant to K.S.A. 77-526(a), the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head, as provided in K.S.A. 77-547, is empowered to render a Final Order.

Conclusions of Law

18. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.

19. The Assistant Commissioner of Insurance is acting on behalf of the Commissioner of Insurance as the agency head and is empowered to render a Final Order.

20. The Commissioner has considered the *Vakas* factors most favorable to Applicant, specifically that Applicant has not had a work related issue, has not violated of the law after 2015, and the violations were misdemeanors.

21. The Commissioner has also considered the *Vakas* factors that weigh most heavily against Applicant, chiefly that the offenses involved confrontation and one of them was recent.

Policy Reasons

Before issuing an insurance agents license, the Commissioner must determine that the applicant is qualified and has not committed any act that would be grounds for denial, suspension, or revocation. K.S.A. 40-4905(b). Further, the Commissioner is charged with licensing, or continuing to license, persons or entities to sell, solicit, or negotiate insurance in the state of Kanas only if their conduct indicates they are both qualified and trustworthy.

Pursuant to K.S.A. 40-4909(a)(1), the Commissioner finds that Applicant's license should be denied because Applicant has been involved in the criminal justice system in 2010 and in 2015. Because one of the offences was as recent as 2015 and because of the nature of the offenses, the Commissioner has concluded that it is not in the interest of public safety to issue an agent license to Applicant.

THE COMMISSIONER OF INSURANCE THEREFORE ORDERS IT THAT:

1. Denial of Applicant's application for a Kansas resident insurance agent's is

AFFIRMED,


2. Pursuant to K.S.A. 77-415(b)(2)(A), this order is designated by KID as precedent.

IT IS SO ORDERED THIS 2nd DAY OF FEBRUARY 2018, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



Ken Selzer
Commissioner of Insurance

BY:



Clark Shultz
Assistant Commissioner
Hearing Officer

NOTICE

Pursuant to K.S.A. 77-601 *et seq.*, Applicant is entitled to judicial review of this Final Order. The petition for judicial review must be filed within thirty (30) days of service of this Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Applicant files a petition for judicial review pursuant to K.S.A. 77-613(e), the Agency Officer to be served on behalf of the Kansas Insurance Department is:

Diane Minear, General Counsel
Kansas Insurance Department
420 SW 9th Street
Topeka, KS 66612

CERTIFICATE OF SERVICE

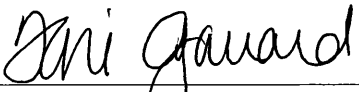
I hereby certify that I served a true and correct copy of the above-and foregoing Final Order upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 2nd day of February 2018, addressed to the following:

Jay L. Farley
4440 Tuttle Creek Blvd, Lot 20
Manhattan, KS 66502-8818
Applicant

and hand-delivered to the following:

Steven M. Lehwald
Staff Attorney
Kansas Insurance Department

420 S.W. 9th Street
Topeka, KS 66612-1678



Toni Garrard
Administrative Assistant