

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

**In the Matter of the Application for a  
Kansas Resident Insurance Agent's  
License of BEAU CHARBONNEAU  
NPN #8236231**

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**Docket No. 79530**

**FINAL ORDER**

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

The Presiding Officer called this matter for hearing on October 30, 2019. Beau Charbonneau (“Applicant”) appeared *pro se* and the Kansas Insurance Department (the “Department”) appeared by and through its General Counsel, Justin L. McFarland. Applicant did not dispute the facts alleged by the Department or the applicable law but appeared to present mitigating evidence for consideration by the Presiding Officer.

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

**Findings of Fact**

1. Applicant, a resident of Lenexa, Kansas, submitted an application for a Kansas resident individual insurance agent license on July 8, 2019.
2. Background question 1a under item 38 of the application asks:

Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?
3. For each conviction, the application requires copies of charging and sentencing documents and a written statement regarding the circumstances of the incident.
4. Applicant answered “yes” to question 1a under item 38.
5. Applicant provided documentation showing the following convictions:

December 16, 2016, Johnson County District Court, Case No. 16CR02755, Possession of a firearm while under the influence of alcohol or drugs (Misdemeanor).

May 16, 2019, Johnson County District Court, Case No. 19DV191, Disorderly Conduct (Misdemeanor).

6. In Applicant's written statement regarding the 2016 possession of a firearm while under the influence of alcohol conviction, Applicant stated that he was outside of his home and was startled by a man in the street. Applicant reported that he asked the man repeatedly to leave, but the man refused. Applicant advised that he went inside his home and retrieved a weapon. Applicant called the police after the encounter and the man reported to the police that Applicant pointed the weapon at him. Applicant denied pointing the weapon at the man. Applicant reported that he was originally charged with felony aggravated assault, but the charge was amended to a misdemeanor. Applicant plead guilty to the misdemeanor charge and was sentenced to twelve (12) months of probation. Applicant reported that his probation was terminated early due to good behavior and compliance with the probationary agreement.
7. In Applicant's written statement regarding the 2019 disorderly conduct conviction, Applicant stated that he went to his home to retrieve personal belongings per a protection order. Applicant reported that he voluntarily agreed to the protection order for the safety of his wife and children as his medication was being adjusted. Applicant reported that his brother was permitted to accompany him to his home, but his brother was not at the home when Applicant arrived. Applicant reported that he was arrested for violation of the protection order. The Applicant pled guilty to a reduced charge of disorderly conduct. Applicant spent two days in jail and was fined.

8. By letter dated July 30, 2019, Department licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a), based on the nature and recentness of the misdemeanor convictions.
9. Applicant filed a timely request for a hearing.
10. At the Hearing, with regard to the 2016 conviction, Applicant testified that he believed he was protecting his family from the man outside his home and believed that it was legal for him to do so. Applicant initially stated that he was not drinking the night of the incident. He further claimed that the police report for that incident did not indicate alcohol was involved. On cross-examination the Applicant varied his statement by saying that he has not had a drink since the night of the incident in 2016.
11. In regards to the 2019 conviction, Applicant testified that he thought he was following the protection order when he went to his home to collect his belongings. He intended to wait for his brother to arrive before approaching the house. On cross-examination, Applicant stated a family member called the police when he showed up at his home to collect his belongings without being accompanied by the brother specified in the protection order.
12. Applicant did not dispute that he pled guilty to two misdemeanors in the past three years.
13. Counsel for the Department staff asked the Presiding Officer to consider the nature of the convictions. He further asked the Presiding Officer to consider the reasoning of the Kansas Supreme Court in its decision for *In re Gates*, 273 Kan. 1025 (2002).
14. The Applicant asked the Presiding Officer to consider that in the 2016 incident his actions arose out of a situation in which he believed he was protecting his family. With regard to the 2019 conviction, he did not agree with the characterization of the Department that

violating the court order was “troublesome” as indicated in the letter denying his application. He also asked that consideration be given to his transparency in disclosing the convictions, taking responsibility for his actions, and the fact that his probation on the 2016 conviction was terminated early by the court.

#### **Applicable Law**

15. 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.
16. Before approving 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.
17. Pursuant to K.S.A. 40-4909(a)(6), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has “been convicted of a misdemeanor or felony.”
18. The Kansas Supreme Court has not had occasion to discuss the factors the Commissioner should consider when exercising his or her discretion under K.S.A. 40-4909(a)(6). However, the Court has reviewed the Real Estate Commission’s denial of an application for a real estate license. *In re Gates*, 273 Kan. 1025 (2002). The court noted that the rules adopted by the Kansas Supreme Court for the admission of attorneys are akin to the determination of whether a real estate license application should be denied. The factors to be considered are:
  1. The applicant’s age at the time of the conduct;
  2. The recency of the conduct;

3. The reliability of the information concerning the conduct;
  4. The seriousness of the conduct;
  5. The factors underlying the conduct;
  6. The cumulative effect of the conduct or information;
  7. Evidence of rehabilitation;
  8. The applicant's social contributions since the conduct;
  9. Candor in the admissions process; and
  10. Materiality of any omissions or misrepresentations.
19. The Commissioner considers the direction given in *Gates* on the exercise of discretion in determining whether a real estate license should be granted or denied to be applicable in the consideration of granting insurance agent licenses.

### **Discussion**

20. The Presiding Officer believes it will be beneficial to address each of the *Gates* factors.
21. First: "the applicant's age at the time of the conduct." The Applicant was 41 and 44 years old at the times of the incidences giving rise to the convictions. He was a mature adult, capable of making prudent decisions.
22. Second: "the recency of the conduct." One conviction occurred in 2016 and the second in 2019. While three years have passed since the first conviction, not even a year has passed since the second. The Presiding Officer considers both to be recent enough to give rise to a legitimate concern whether the Applicant has a pattern of behavior involving aggressive behavior or disregarding court orders.
23. Third: "the reliability of the information concerning the conduct." The Applicant acknowledged his involvement in both misdemeanors. He did not dispute the convictions, although he claimed the police report on the 2016 conviction did not indicate he was under the influence of alcohol or had been drinking alcohol. He claimed only to have pled guilty to the reduced charge of using a firearm while under the influence of

alcohol to avoid the risk of a trial. The Presiding Officer did not find this explanation credible. The Applicant referenced information purportedly contained in a report that was not presented at the hearing. In addition, the Applicant pled guilty, and thus admitted, to the charge of using a firearm while under the influence of alcohol. It is not credible for a person to claim he or she did not commit the crime to which they pled guilty.

The information provided by the Applicant with regard to the 2019 conviction appeared consistent with information in the court documents presented.

24. Fourth: “the seriousness of the conduct.” The Applicant’s conduct underlying the two misdemeanor charges involved reckless conduct with potential violence against other persons. The first involved pointing a loaded firearm at an individual while under the influence of alcohol. The second involved violating a protection order issued by a court of law. While there was no evidence of aggressive or violent behavior by the Applicant in the second situation, the Applicant’s disregard of a court order, and the fact that a family member was concerned enough about Applicant’s violation of the order that the police were called, give rise to a legitimate concern about the Applicant’s ability to exercise good judgment.
25. Fifth: “the factors underlying the conduct.” The Applicant disputed the involvement of alcohol in the incident leading to the 2016 conviction. This is discussed in detail under the third factor, above. The Applicant provided some information about the conduct which led to the protection from abuse order which was at issue in the 2019 conviction. However, what is material is that the Applicant disregarded the order, and was sentenced to two days in jail and payment of fines.

26. Sixth: “the cumulative effect of the conduct or information.” The actions giving rise to the two misdemeanor convictions occurred in 2016 and 2019. Both involved aggressive behavior by the Applicant toward others.
27. Seventh: “evidence of rehabilitation.” Sufficient time has not elapsed to provide the Commissioner with a basis to believe the Applicant would not engage in similar conduct in the future.
28. Eighth: “the applicant’s social contributions since the conduct.” There was no evidence provided of Applicant’s social contributions since either the 2016 or 2019 events. However, Applicant indicated he quit drinking while on probation for the 2016 conviction and that he was released early from probation. In addition, he indicated his desire to find meaningful employment, which is why he sought to obtain an insurance agents license.
29. Ninth: “candor in the admissions process.” Applicant disclosed the two misdemeanors on his application.
30. Tenth: “materiality of any omissions or misrepresentations.” The Presiding Officer does not consider this factor applicable.

#### **Findings of Fact and Conclusions of Law**

31. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
32. 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.
33. The Commissioner has considered the factors most favorable to Applicant, specifically that he disclosed his convictions on his application, that he completed probation early for

the 2016 conviction, that he takes responsibility for his actions, and reported that he no longer drinks alcohol.

34. The Commissioner has considered the factors that weigh most heavily against Applicant. These include that Applicant plead guilty to two serious misdemeanor convictions in the last three years, that Applicant provided conflicting testimony regarding whether he was drinking alcohol during the incident leading up to the conviction for possession of a firearm while under the influence of alcohol, that the Applicant disregarded a protection order which lead to the disorderly conduct conviction, that the most recent conviction occurred in May 2019 (when Applicant was 44 years old), and that given the recentness of the two convictions insufficient time has passed for a determination whether the Applicant is likely to commit similar offenses in the future.

#### **Finding and Order**

Pursuant to K.S.A. 40-4909(a)(6), the Commissioner finds that Applicant's license should be denied for the reasons set forth above. Under the *Gates* factors, including Applicant's age at the time of the convictions, the recency of the conduct, the seriousness of the convictions, and Applicant's conflicting testimony regarding the 2019 conviction, the Commissioner has concluded that it is not in the interest of the public to issue an agent license to Applicant at this time.

#### **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 the Department as precedent.**

IT IS SO ORDERED THIS 25<sup>th</sup> DAY OF NOVEMBER 2019, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT  
COMMISSIONER OF INSURANCE

BY: Barbara W. Rankin

Barbara W. Rankin  
Assistant Commissioner  
Presiding 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:

Justin L. McFarland, General Counsel  
Kansas Insurance Department  
1300 SW Arrowhead Road  
Topeka, KS 66604

### 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 25<sup>th</sup> day of November 2019, addressed to the following:

Beau Charbonneau

[REDACTED]

Lenexa, KS [REDACTED]

*Applicant*

and hand-delivered to the following:

Justin L. McFarland  
General Counsel  
Kansas Insurance Department  
1300 SW Arrowhead Road  
Topeka, KS 66604

Toni Garrard  
Toni Garrard  
Senior Administrative Assistant