

**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. 78388
License of ZACHARY B. FREEMAN, SR.)	
NPN #19107072)	

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 June 28, 2019. Zachary B. Freeman, Sr. ("Applicant") appeared *pro se* and the Kansas Insurance Department (the "Department") appeared by and through its staff attorney, Steven M. Lehwald. Applicant did not dispute the facts alleged by the Department or the applicable law but appeared at the hearing to present mitigating evidence on disposition. Closing arguments were presented via telephone conference on Monday, July 1, 2019.

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 Wichita, Kansas, submitted an application for a Kansas resident individual insurance agent license on April 29, 2019.
2. By letter dated May 14, 2019, Department licensing staff notified Applicant that his application was denied pursuant to K.S.A. 40-4909(a)(1), based on Applicant's failure to provide correct information required by the Application, and K.S.A. 40-4909(a)(6), based a misdemeanor conviction.
3. Applicant filed a timely request for a hearing.

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. At the evidentiary hearing, Applicant stipulated to a January 25, 2008, Wichita Municipal Court, Case No. 07TM052085, Driving Without Liability Insurance (“DWLI”) misdemeanor conviction.
6. 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?
7. Applicant answered “no.”
8. Applicant submitted his application online.
9. As part of the online application, a pop-up notification appears before the applicant proceeds to background question. It states, in part:

“Please review the background question tab carefully and thoroughly. An incorrect or inaccurate response to a background question may result in delay in your application and/or ultimately a denial of license

Also note that convictions or pending charges of driving without required vehicle liability insurance are not “traffic offenses” which may be excluded from disclosure. Any convictions or pending charges of driving without required vehicle liability insurance are required to be disclosed. (Emphasis added.)
10. The pop-up notification requires the Applicant to affirmatively acknowledge reading the notification, which states:

“Click here to acknowledge that you read, understand and agree to the information on this page. Then click “continue.”
11. An Applicant is not able to proceed to the background questions until clicking on the acknowledgement box.

12. At the end of the application, the Applicant signed a Certification and Attestation which states, in part:

The Applicant must read the following very carefully:

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

13. Applicant apologized for his failure to disclose the violation. He testified that he did not intend to hide anything, but that he had been taking several online licensing examinations and was used to quickly moving through them. He indicated he may have similarly rushed through the application while completing it. He testified that he does not remember the pop up.
14. Applicant testified that he does not recall the DWLI conviction or its disposition, including the circumstances that gave rise to the violation. He explained that he has submitted to multiple job-related background checks in the intervening years but none had indicted the DWLI conviction, if it was identified in any of the various background checks, was problematic.
15. Applicant submitted into evidence nine letters of recommendation supporting his fitness to be a licensed insurance producer. Four were from people who knew the Applicant through activities such as church, coaching and other community activities, and two were from former employers. All spoke highly of the Applicant's work ethic, service to others and integrity. Two were from people involved in the insurance industry, both of whom opined the Applicant would be a competent insurance agent and recommended the approval of his license application.

16. Nancy Strasburg, the Director of Producer Licensing for the Department, testified that a concern is raised about an applicant's fitness to be licensed as an insurance agent when the pop-up box clearly cautions the Applicant to take care to answer background questions carefully and specifically notes that a conviction for DWLI must be disclosed. An applicant's failure to answer the questions with care, especially after being required to affirmatively indicate they have read and understand the information in the pop-up before they can proceed to the background questions, suggests an applicant may rush through an insurance application, which can be complex, and in such haste may harm an insured by not accurately providing accurate or necessary information.
17. Counsel for the Department staff asked the Presiding Officer to take into account that agents must provide precise and complete information in filling out applications for insurance coverage for prospective insured. Staff also emphasized that rushing through any application process is unacceptable when navigating complicated insurance matters with potential clients. Counsel also indicated that failing to disclose the DWLI conviction could indicate many things: (1) a lack of care in following specific instructions in completing the application, (2) an attempt to conceal the conviction, (3) an inability to complete applications or other paperwork accurately or completely under pressure, or (4) a failure to take care to determine he did not have any convictions which needed to be disclosed.

Applicable Law

18. 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.

19. 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).
20. 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), but it has listed the factors to be considered in determining whether a former attorney should be readmitted to the practice of law. They are:
 - (1) the present moral fitness of the petitioner; (2) the demonstrated consciousness of the wrongful conduct and disrepute which the conduct has brought the profession; (3) the extent of petitioner's rehabilitation; (4) the seriousness of the original misconduct; (5) conduct subsequent to discipline; (6) the time elapsed since the original discipline; (7) the petitioner's character, maturity and experience at the time of the original discipline; and (8) the petitioner's present competence in legal skills. *State v. Russo*, 210 Kan. 5, 6, 630 P.2d 711 (1981).
21. 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 Commissioner considers the direction given on the exercise of discretion in granting legal and medical licenses to be applicable in considering an application for an insurance agent license.
22. 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

23. The Commissioner has jurisdiction over Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
24. 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.
25. The Commissioner finds that the driving without liability insurance conviction should have been disclosed.
26. The Commissioner has considered the factors most favorable to Applicant, specifically that even though he maintains he does not have any recollection of the DWLI conviction he takes responsibility for his failure to disclose the violation, the violation took place eleven years ago, Applicant has had no subsequent violation of the law, and the Applicant provided many letters from people who spoke favorably about his character and integrity.
27. The Commissioner has considered the factors that weigh most heavily against Applicant, chiefly that Applicant failed to exercise care in completing the application or intended to conceal the driving without liability insurance conviction. Applicant had specific notice from the online pop up that care should be taken in completion of the background questions, and that disclosure of a conviction for driving without liability insurance was required. Further, Applicant certified under penalty of perjury that all of the information submitted in his application was true and complete.

Policy Reasons

28. Before issuing an insurance agent 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 Kansas only if their conduct indicates they are both qualified and trustworthy.

29. Because the Department was faced with increasing incidences of license applicants failing to disclose all prior misdemeanor and felony convictions, it implemented changes to the online application process specifically designed to alert applicants of the need to exercise care in completing the background questions. Further, because a large number of applicants seemingly did not understand the need to disclose convictions for driving without liability insurance, as required by Kansas law, the pop-up specifically addresses this. Failure to give proper attention to the guidance and warnings in the pop-up has a direct bearing, in the opinion of the Department, on whether an applicant can or will exercise the necessary care in completing applications for insurance clients, which could result in harm to such clients.
30. The Applicant argued during closing arguments that he was human and all humans make mistakes. In illustration, he pointed to the fact that the hearing had concluded on June 28, 2019, without the Presiding Officer asking the parties to make closing arguments. This was corrected July 1, 2019, during a telephone conference with the Applicant. While at first blush this argument may seem to have merit, it overlooks the specific procedures put in place by the Department as described in the preceding paragraph to specifically bring to an applicant's attention certain issues which by every indication were ignored by the Applicant.

Finding and Order

Pursuant to K.S.A. 40-4909(a)(6), the Commissioner finds that Applicant's license should be denied because Applicant failed to disclose his conviction for driving without liability insurance. The Presiding Officer did not find the Applicant's testimony that he had no recollection of the DWLI conviction to be credible. As importantly, the Applicant failed to demonstrate an ability to accurately read and follow instructions in the application or that he understood the seriousness of attesting under penalty of perjury. Had Applicant disclosed the violation, as clearly required by specific instructions in the application, it is likely the license would have been granted. The Commissioner has concluded that it is not in the interest of 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 9th DAY OF JULY 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
420 SW 9th Street
Topeka, KS 66612

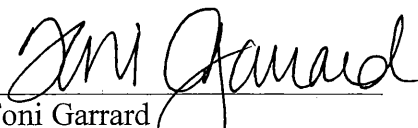
CERTIFICATE OF SERVICE

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 9th day of July 2019, addressed to the following:

Zachary B. Freeman, Sr.
[REDACTED]
Wichita, KS [REDACTED]
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
Senior Administrative Assistant