

checks. This includes those which may have been expunged or for which a diversion was received.” [Emphasis added.]

4. 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.”

5. The Applicant is not able to proceed to the background questions until clicking on the acknowledgement box.

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?”

Applicant answered “no.”

7. At the end of the application, the Applicant signed the Applicant’s Certification and Attestation portion of the application 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 [Emphasis added.]

8. As part of the application process an applicant must be fingerprinted for purposes of a background check and sign a fingerprint waiver agreement.

9. The application requires that a written statement explaining the circumstances of any misdemeanor or felony conviction, along with the charging document and an official document showing the resolution of the charges, be included with the application.

10. The Department notified Applicant by letter dated September 24, 2019, that the application was missing documents and not complete.

11. Applicant provided the necessary documents on September 25, 2019, which showed the following conviction:

October 17, 2018, Hutchinson Municipal Court, Case No. 18MO695, Disorderly Conduct (Misdemeanor).

12. The document from the Hutchinson Municipal Court indicates the Applicant was initially charged with “Battery, Knowingly Causing Physical Contact” This charge was amended to the Disorderly Conduct charge to which she pled “no contest.”

13. Applicant and her mother sent letters to the Department dated September 25, 2019. In Applicant’s letter she advised that at the time of the incident that gave rise to the disorderly conduct conviction, she was the caregiver [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Applicant reported that she got into a verbal dispute with her [REDACTED] which led to a physical altercation.

14. Applicant stated in her letter that she was told by her attorney that the disorderly conduct charge would not affect her in the future so she did not believe that she needed to document this on her application.

15. By letter dated September 26, 2019, Department licensing staff notified Applicant that her application was denied pursuant to K.S.A. 40-4909(a)(1), based on Applicant’s failure to provide complete and accurate information required by the Application, and K.S.A. 40-4909(a)(6) based on Applicant’s conviction.

16. Applicant filed a timely request for a hearing.

17. At the evidentiary hearing Applicant explained that she retained an attorney to defend her in the charges resulting from the altercation with her [REDACTED]. Applicant stated that the attorney did not explain to her that a disorderly conduct charge was a misdemeanor and that she did not understand that she needed to mark “yes” on question 1a under item 38 of her application. On cross-examination, Applicant reported that she did not consult with her attorney prior to filling out the application. However, Applicant reported that she contacted her attorney after receiving an email from the Department requesting additional documents because she did not know how to get the court documents.

18. Applicant’s mother testified that she wrote the letter to the Department to explain the circumstances surrounding Applicant’s disorderly conduct charge. However, Applicant’s mother stated that she was not at the [REDACTED] home when the incident occurred. She also testified that Applicant called her to ask how to answer question 1a under item 38, but she did not know how the Applicant should answer the question.

19. The Applicant has worked at KSFA Insurance Agency (“KFSa”) since July 2019 as a customer service representative. Mr. Lee Gleason, Vice President of Sales at KFSa, testified by phone regarding Applicant’s character and job performance. Mr. Gleason stated that Applicant has a positive attitude and that there are no concerns regarding Applicant’s honesty or the manner in which she works with other people. He described her as polite and professional. He did not have concerns about her being violent. On cross-examination, Mr. Gleason advised that he is not Applicant’s direct supervisor, but is part of the senior management team.

20. Letters were provided on the Applicant’s behalf by KFSa’s Director of Operations and its Operations Manager attesting to the Applicant’s good character, work ethic and professionalism.

21. Counsel for the Department asked the Presiding Officer to take into account that the Department requires candor and truthfulness when applicants complete licensing applications. In addition, the Department expects applicants to demonstrate that they have the ability to be precise and accurate in filling out applications for insurance coverage on behalf of consumers. The failure to accurately and truthfully complete a licensing application creates a concern that the Applicant may not be accurate, precise and truthful in completing insurance applications for clients. Counsel stated that K.S.A. 40-4909 gives the Commissioner the discretion to deny applications based on the various reasons set forth in statute. Applicant marked “no” on her application despite her October 17, 2018, misdemeanor conviction. Applicant had notice that she needed to read and review the background questions carefully. Applicant asked her mother how to answer the question, rather than contact her attorney or the Producer Licensing Division for clarification.

22. Counsel for Applicant acknowledged that Applicant violated the statute when she answered “no” to question 1a. Counsel argued that Applicant made an honest mistake because she did not understand that the disorderly conduct charge was a misdemeanor. She should not be considered a dishonest person nor a threat to the public.

Applicable Law

23. 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.

24. 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.

25. Pursuant to K.S.A. 40-4909(a)(1), the Commissioner may deny, suspend, revoke or refuse renewal of the license of a person who has provided incorrect, misleading, incomplete or untrue information in the license application.

26. 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.

27. 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 denial of an application for a real estate license by the Kansas Real Estate Commission. See *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 granted or 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 of 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.

28. The Commissioner considers the direction given 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.

Findings of Fact and Conclusions of Law

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

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

31. The Commissioner has considered the factors most favorable to Applicant. Specifically that Applicant testified that she did not know that her disorderly conduct conviction was a misdemeanor, Applicant promptly provided the requested documentation regarding the misdemeanor after being notified by the Department, and Applicant is well-regarded in her workplace.

32. There are two separate and distinct actions by the Applicant which must be reviewed by the Commissioner in considering the factors that weigh most heavily against the Applicant. One is the disorderly conduct charge, and the other is the Applicant's failure to honestly and accurately complete the background section of the application.

33. With regard to the disorderly conduct charge, the factors that weigh against the Applicant include that she was ■ years old at the time of her plea of no contest to the charge, the plea of no contest was less than one year prior to the date of her application, and insufficient time has passed to render assurance that such conduct would not occur again. The conduct was of such a serious nature that the Applicant was initially charged with battery. While the physical altercation was with a family member, there is insufficient evidence to determine that the Applicant would not act in a similar fashion if engaged in a contentious argument or dispute with a non-family member.

34. The misconduct which is of most concern is the Applicant's failure to disclose the misdemeanor conviction on her application. Such nondisclosure is taken very seriously by the Commissioner. The 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 misdemeanor conviction is required.

35. Applicant's testimony that she did not understand the disorderly conduct constituted a misdemeanor is not credible. She was originally charged with battery and considered it a serious enough matter to retain an attorney to assist in her defense. It required her to be adjudicated before a municipal court judge. She was given a suspended sentence of 365 days. It cannot be equated with something less than a misdemeanor, such as a parking ticket or traffic citation. The fact that her attorney advised her that the charge "would not affect [her] in the future" does not mean it was not a misdemeanor or that she would not have to disclose it for certain purposes.

36. Applicants are specifically directed in the pop-up to contact the Producer Licensing Division if they have questions about answering background questions. Instead, she asked her mother whether she should disclose the charge, which in itself indicates the Applicant had a concern that it possibly needed to be disclosed. Finally, the Applicant certified under penalty of perjury that all of the information submitted in her application was true and complete.

37. Because the Department has been faced with increasing incidences of license applicants failing to disclose 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. Failure to give proper attention to the guidance and warnings in the pop-up has a direct bearing, in the opinion of the Commissioner, 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.

Finding and Order

Pursuant to K.S.A. 40-4909(a), the Commissioner finds that the factors favorable to the Applicant are outweighed by the factors unfavorable to the Applicant. Most importantly, the evidence indicates the Applicant did not exercise care in completing the application, did not disclose a recent misdemeanor conviction which was required, and did not understand the seriousness of certifying under penalty of perjury to the truth of statements that were not true. Therefore, 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 6th DAY OF FEBRUARY 2020, 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 Rd.
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 16th day of February 2020, addressed to the following:

Brooke N. Hiebert



Applicant

AND

Michael E. Francis
434 SW Topeka Blvd.
Topeka, KS 66603
Attorney for Applicant

and hand-delivered to the following:

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

Toni Garrard
Senior Administrative Assistant