

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA



OCT 30 2012

TIFFANY M. HALL,)
)
 Petitioner,)
)
 v.)
)
 GEORGIA DEPARTMENT OF)
 INSURANCE,)
)
 Respondent.)

K. Westray
Kevin Westray, Legal Assistant

DOCKET NO.
OSAH-INS-DEN-1311108-33-WALKER

INITIAL DECISION

I. INTRODUCTION

Petitioner Tiffany M. Hall appeals Respondent’s denial of her application for a Resident Insurance License. A hearing was held on October 24, 2012 before the Office of State Administrative Hearings. For the reasons set forth below, the undersigned recommends Respondent **GRANT** Petitioner’s appeal.

II. FINDINGS OF FACT

1.

Petitioner currently is not licensed in any capacity with the Georgia Department of Insurance. *Exhibits R-1 and R-2.*

2.

On or about April 5, 2012, Petitioner submitted a Resident Insurance Agent License Application (“Application”) to the Licensing Division of the Georgia Department of Insurance. *Exhibit R-1.*

3.

Petitioner answered “No” to the following question on the Application: “Have you ever been convicted of or are you currently charged with the commission of any crime or pled nolo

contendere in a criminal proceeding or have you received first offender treatment or had adjudication of guilt withheld in a criminal proceeding, other than a minor traffic offense?"

Exhibit R-1; Testimony of Petitioner.

4.

On or about May 22, 2006, Petitioner pled guilty in the Superior Court of Cobb County to two felony counts of Violation of the Georgia Controlled Substances Act for possessing methamphetamine. She was sentenced under the First Offender Act to three years of probation and a \$1000 fine. As special conditions of probation, the Superior Court required Petitioner to submit to random drug screens, evaluation, treatment, and counseling for drugs and alcohol. The Petitioner successfully completed the terms of her first offender probation and was discharged without an adjudication of guilt on August 4, 2009. *Exhibit R-4.*

5.

Upon reviewing Petitioner's Application, Respondent discovered, by means of a criminal background check, that Petitioner had, contrary to her assertion on her Application, pled guilty to the above charges and received first offender treatment. *Testimony of Patti Farha.*

6.

Based on Petitioner's apparent concealment of her first offender status and the recency of her discharge, the Commissioner of Insurance of the State of Georgia, acting through the Chief Deputy Commissioner of Insurance, entered an Order of License Refusal. *Exhibit R-2.*

7.

Petitioner subsequently requested an appeal of this decision. *Exhibit R-3.*

8.

Petitioner testified at the appeal, explaining both the circumstances surrounding her first offender plea and her answers on the Application. At the time of her arrest, Petitioner acknowledged that she was addicted to methamphetamine. She voluntarily entered a drug treatment program,

Mothers Making a Change, administered through the Cobb County Juvenile Court. The program had two phases, the first of which required her to live in a residential facility, and the second of which allowed her to return to the community. From the time she entered the program in June of 2006, she has remained sober and drug-free. Moreover, Petitioner testified that she believes recovery is a continuing, lifelong process, requiring constant vigilance. Accordingly, she continues to attend at least three Alcoholics Anonymous meetings a week. In addition, Petitioner actively assists other recovering addicts in the community. She acts as a sponsor to women in Mothers Making a Change and openly shares the history of her addiction and recovery.

Testimony of Petitioner.

9.

During her recovery, Petitioner has also worked steadily to support herself and her family. In October of 2007, while still in residential drug treatment, Petitioner began employment with Gabriel's Desserts, Inc., a bakery and restaurant in Marietta, Georgia. During the almost five years that Petitioner worked at Gabriel's, she was promoted from a customer service position to the front-of-the-house manager, a position of trust that required Petitioner to handle money, deposits, and make employee retention decisions. Johnnie Gabriel, owner of the bakery, praised Petitioner as a "responsible" and "extremely smart and adaptable young lady" who has "passed some of life's hardest tests and been successful." *Testimony of Petitioner; Exhibit P-1.*

10.

Deciding to make a career change, Petitioner joined Linda Rodriguez State Farm Insurance in April of 2012, and applied for the insurance license at issue in this appeal. Petitioner hopes to support her family by working as an insurance agent. *Testimony of Petitioner.*

11.

Petitioner's uncle, Jerry Wayne Hall, also testified on her behalf. Mr. Hall is the owner of a hearing and air conditioning business with seventeen employees and knows Petitioner well. At the time of Petitioner's arrest, he had been very upset with Petitioner for using drugs and endangering the welfare of her children. Mr. Hall cared for Petitioner's children at the time that

she entered residential drug treatment; after a few months Petitioner reassumed custody of her children. He has witnessed her develop into a responsible and self-sufficient adult, to the extent that she has never even “asked [him] for a dollar.” *Testimony of Jerry Wayne Hall.*

12.

Petitioner has not sought to hide her criminal history. She always been very open about her first offender status, so much so that she voluntarily gave an interview regarding her drug addiction and recovery to the Marietta Daily Journal, published on January 15, 2010. She acknowledges that her recovery is an ongoing process. *Testimony of Petitioner; Exhibit P-4.*

13.

Although she had pleaded guilty under the First Offender Act in 2006, Petitioner had a good faith belief that she had successfully expunged her record. *Testimony of Petitioner; Exhibits P-2; P-3.* Working with an attorney affiliated with the Superior Court, Petitioner had submitted a Request to Expunge Arrest Record. Based upon this attorney’s explanation, she understood that the Request to Expunge Arrest Record had been granted, and that it was as if her arrest and first offender treatment had “never happened.” To confirm that her understanding was correct, Petitioner checked her criminal record at the Marietta City Jail, which revealed no arrest information, and consulted with Superior Court Judge Juanita Stedman of the Reconnecting Families Program. When Petitioner inquired as to the appropriate response to the Application question at issue, Judge Stedman told her to answer “no.” *Testimony of Petitioner.* The undersigned finds Petitioner to have been a credible witness, and believes she did not intend to deceive the Commission by answering falsely.

III. CONCLUSIONS OF LAW

1.

Because Petitioner is an applicant for a license, she bears the burden of proof in this matter. Ga. Comp. R. & Regs. r. 616-1-2-.7(1)(c). The standard of proof is the preponderance of the evidence. Ga. Comp. R. & Regs. r. 616-1-2-.21(4).

2.

Georgia Code Section 33-23-21 sets forth the criteria for granting licenses. Pertinent to this case, Respondent may refuse a license if it finds that the applicant has:

* * *

(2) Has misrepresented or concealed any material fact in any application for a license or on any form filed with the Commissioner;

* * *

(3) Has obtained or attempted to obtain the license by misrepresentation, concealment, or other fraud;

* * *

(5) Has committed fraudulent or dishonest practices;

* * *

(11) Has shown lack of trustworthiness or lack of competence to act as a licensee under this chapter;

* * *

(16) Has been arrested, charged, and sentenced for the commission of any felony, or any crime involving moral turpitude, where:

(A) First Offender treatment without adjudication of guilt pursuant to the charge was granted;

* * *

The order entered pursuant to the provisions of Article 3 of Chapter 8 of Title 42, relating to probation of first offenders, or other first offender treatment shall be conclusive evidence of arrest and sentencing for such crime.

...

O.C.G.A. § 33-23-21 (2005).

3.

Finding Petitioner had misrepresented or concealed the material fact of her first offender status, Respondent denied her application. At the hearing, Petitioner presented substantive evidence

that she did not purposefully mislead the Commission. Petitioner genuinely believed her record to have been expunged. Not content to rely on her own judgment, Petitioner consulted with a legal expert—her sentencing judge—to determine how she should answer the question. Given that Petitioner has openly shared her personal history with other recovering addicts, employers, and even the Marietta Daily Journal, the undersigned credits her testimony that she believed she was answering the questions in the Application honestly.¹

4.

Respondent also denied Petitioner's Application based on her first offender treatment. Rather than mandating a particular outcome, the legislature chose to give the Commissioner discretion to grant or deny a license to an applicant with a criminal history. The legislature recognized that even in circumstances where an individual has committed a felony, Respondent may grant that person a license.

5.

Petitioner has undergone intensive drug rehabilitation, successfully completed first offender probation, and maintained employment with significant responsibilities and requiring a high level of honesty. Considering Petitioner's work history, persuasive testimony regarding her ongoing treatment and sobriety, and generous community service, the undersigned recommends that Respondent grant Petitioner a probationary insurance license pursuant to O.C.G.A. § 33-23-14. Probationary licenses may be issued for a period of not less than three months but not longer than twelve months. The Commissioner has the discretion to prescribe the terms of probation, and may revoke a probationary license "for cause at any time without a hearing" O.C.G.A. § 33-23-14(b), (c).

¹ At the hearing, Respondent maintained that even if Petitioner's misrepresentation was unintentional, Respondent was authorized to deny her Application. *But see Connor v. Branch*, 185 Ga. App. 565 (1988) (the element of intention to deceive is as necessary in an action based on concealment as one based on willful misrepresentation.) Nonetheless, regardless of whether Respondent is authorized to deny Petitioner's application on this ground, given the unusual circumstances of this case Respondent should exercise its discretion in Petitioner's favor.

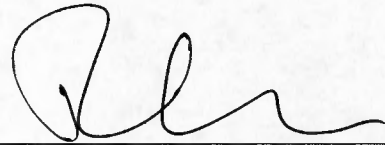
6.

Based on the above considerations, the undersigned is persuaded Petitioner should be granted a probationary license for twelve months with the following terms: (1) Petitioner must continue to attend Alcoholics Anonymous or other drug treatment program during the duration of her probationary license; (2) Petitioner must submit, at her own expense, to drug screens as required by the Commission.

IV. DECISION

Based on the Findings of Fact and Conclusions of Law, the undersigned recommends Respondent **GRANT** Petitioner's appeal in accordance with the aforementioned terms.

SO ORDERED this 30th day of October, 2012.



RONIT WALKER

Administrative Law Judge