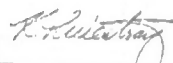




BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS FILED
STATE OF GEORGIA OSAH

JUN 12 2013

KIMBERLY RICHARDSON,)
)
 Petitioner,)
)
 v.)
)
 GEORGIA DEPARTMENT OF)
 INSURANCE,)
)
 Respondent.)


Kevin Westray, Legal Assistant

DOCKET NO.
OSAH-INS-DEN-1338309-44-WALKER

INITIAL DECISION

I. INTRODUCTION

Petitioner, Kimberly Richardson, appeals Respondent's Order of License Refusal. A hearing was held on June 11, 2013 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. *Exhibit R-1.*

2.

On or about January 3, 2013, Petitioner submitted an Insurance Agent License Application ("Application") to the Licensing Division of the Georgia Department of Insurance. *Exhibit R-1.*

3.

Petitioner answered "Yes" to the following question on the Application: "Have you ever

been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? Petitioner also answered "Yes" to the question: "Have you ever been convicted 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 February 16, 2009, Petitioner pled guilty in the Superior Court of Bulloch County to one felony count of Theft by Shoplifting. She was sentenced under the First Offender Act to five years of probation and to pay a \$1350.00 fine. After Petitioner had paid her fine, she was ordered to pay a \$32.00 monthly Probation fee and to perform 80 hours of community service. *State v. Kimberly Elizabeth Richardson, Case No. 1B08CR396, Superior Court of Bulloch County, Georgia; Exhibit R-2.*

5.

Petitioner paid her fine, made her monthly Probation fee payments, and completed 80 hours of community service by picking up roadside trash. On September 19, 2012, at Petitioner's Probation Officer's recommendation for an early termination of Probation, the Superior Court of Bulloch County terminated Petitioner's Probationary term, and discharged her under the provisions of the First Offender Act. *Exhibit R-3*

6.

Thereafter, Petitioner submitted her Application to the Licensing Division of the Georgia Department of Insurance. Finding that Petitioner had been arrested, charged and sentenced for the commission of a felony and a crime involving moral turpitude, even where first offender

treatment without adjudication of guilt was granted, the Commissioner of Insurance of the State of Georgia, acting through the Chief Deputy Commissioner of Insurance, entered an Order of License Refusal. *Exhibit ALJ-1*. Petitioner subsequently requested an appeal of this decision. *Exhibit ALJ-2*.

7.

At the hearing, Petitioner admitted that she had shoplifted several items of clothing. She offered no excuses, and appeared sincerely remorseful of her conduct. She acknowledged that she had made a terrible mistake. *Testimony of Petitioner*.

8.

Petitioner has a college degree from Georgia Southern University. Following her conviction, Petitioner has worked steadily as a sales associate, customer service representative and unit marketing director. In these capacities, she has had access to money and clients' personal information, but has never disclosed or misused confidential information. She always told her employers about her criminal history, but nonetheless was able to secure employment. She has not been terminated by any of these employers, but left of her own accord to pursue better opportunities. *Testimony of Petitioner*.

9.

Most recently, Petitioner worked for Hanover Insurance. Hanover sought to hire her as an insurance agent, but due to her license refusal has terminated her employment. Should Petitioner obtain her license, Hanover Insurance is willing to offer her a position. *Testimony of Petitioner; Testimony of William Beane*.

10.

William Beane was Petitioner's supervisor at Hanover Insurance. He testified that Petitioner was forthcoming about her criminal history, even though she was hired after her

conviction was discharged under the First Offender Act. He had no qualms about her honesty. According to Mr. Beane, Petitioner also was an excellent employee. She exhibited a positive attitude, was dedicated to her work, and was able to grasp insurance concepts easily. *Testimony of William Beane.*

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:

* * *

(5) Has committed fraudulent or dishonest practices.... [or]

(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....

O.C.G.A. § 33-23-21.

3.

Finding Petitioner had violated these two provisions of O.C.G.A. § 33-23-21, Respondent denied Petitioner's Application. The undersigned concurs with the Commissioner's view that Petitioner's prior conduct violated O.C.G.A. § 33-23-21. She was charged with and pled guilty under the First Offender Act to the felony offense of Theft by Shoplifting. As she admitted, her actions were dishonest. *See Commissioner of Insurance v. Stryker*, 218 Ga. App. 716 (1995).


5.

In this case, the legislature has chosen to give the Commissioner discretion to grant or deny a license to an applicant with a criminal history. During the hearing, Petitioner impressed the undersigned with her straightforward acknowledgement of her criminal conduct and with her sincere remorse. She was terminated early from her Probationary term by the Superior Court. The undersigned is cognizant of the fact that Petitioner's Probationary term was terminated less than a year ago. However, it appears that the criminal act at issue was the result of a thoughtless and impulsive act, rather than a deliberate scheme to defraud. Further weighing in Petitioner's favor is that she has maintained steady employment since her conviction under the First Offender Act. The undersigned also considers the fact that Petitioner admitted her criminal history to all of her employers, even after her discharge, and was forthcoming in her application and during the hearing. Given these circumstances, 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).

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 13 day of June, 2013.



RONIT WALKER
Administrative Law Judge