

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

BRENNA MICHELLE SMITH,
Petitioner,

v.

GEORGIA DEPARTMENT OF
INSURANCE,
Respondent.

Docket No.: 1833442
1833442-OSAH-INS-DEN-22-Schroer



MAY 21 2018

Kevin Westray, Legal Assistant

INITIAL DECISION

I. INTRODUCTION

Petitioner Brenna Michelle Smith requested a hearing after Respondent Georgia Department of Insurance (hereinafter “Respondent” or “the Department”) denied her application for a resident agent license. An evidentiary hearing was held before the undersigned administrative law judge on April 20, 2018. Petitioner represented herself in this matter, and G. Stephen Parker, Esq., represented the Department. For the reasons indicated below, the Department’s action is **AFFIRMED**.

II. FINDINGS OF FACT

1. Petitioner is not currently licensed in any capacity with the Department. (Exhibit R-1).
2. Petitioner sat for a Georgia Property & Casualty Agent examination on December 20, 2018. The test was administered by Pearson VUE, a Department contractor, at a testing center in Georgia. After Petitioner finished the test and before she left the center, Pearson VUE gave her a printout of her test results. Pearson VUE also sent the test results electronically to a database called SIRCON, which is accessible by the Department. (Exhibit R-1; Testimony of Courtney Faust, Director, Agent Licensing Division; Testimony of Andrea Radwanski, Program Manager, Pearson VUE).

3. As of the date of the December 20 examination, Petitioner had twice before taken and failed the Property & Casualty Agent examination. Under Department regulations, a person who takes a pre-licensing course from an independent provider and then fails the examination three times must retake the course from a different provider.¹ (Testimony of Faust.)

4. On or about December 27, 2017, Petitioner submitted a resident agent license application to the Department. P.S.I., a Department contractor, conducted the initial review of Petitioner's application. (Exhibit R-1; Testimony of Faust).

5. On or about December 29, 2017, in response to requests for additional information, Petitioner submitted to the Department a document that purported to be a copy of the printout of the results from the December 20 examination. According to this document, Petitioner obtained a passing score of 58, or 71%, on the examination.² The document also included a diagnostic bar graph and the following instructions on re-taking the examination:

Georgia Code requires a candidate score 70% to pass an examination.

To register to retake your examination, call Pearson VUE at 1-800-274-0488. Reservations must be made at least three business days in advance. Have this score report in front of you when you call. The state of Georgia requires you to wait at least two weeks before retaking your examination.

If you are taking an examination requiring education, Georgia regulations require that if you have failed the same examination three times, you may not retake that examination until you have retaken the required pre-licensing education course.

¹ . The Department regulations provide that “[a]ny person taking an examination for licensing and not receiving a passing grade shall not be entitled to retake the examination until two (2) weeks have elapsed, and will be required to pay the appropriate fee. A person who completes a Prelicensing course through an independent provider who fails to pass an examination after taking it three (3) times must take a prelicensing course from a different provider prior to retaking the exam. A person who took a prelicensing course taught via a virtual classroom who fails to pass an examination after taking it three (3) times must take an in-classroom prelicensing course prior to retaking the exam.” Ga. Comp. R. & Regs. 120-2-3-.09(3).

² A score of 56, or 70%, was required to pass the examination. Ga. Comp. R. & Regs. 120-2-3-.09(2). Specifically, the Property & Casualty Agent examination has 100 total questions, but only 80 of them are scored. Accordingly, 70% of 80 questions is 56. In addition to other red flags on the printout provided to the Department by Petitioner, the percentage of correct answers listed is not correct. 58 correct answers out of 80 questions results in a score of 72.5%, not 71% as listed on the printout Petitioner submitted. (Exhibit R-1).

(Exhibit R-1; Testimony of Faust, Petitioner).

6. Because the document submitted by Petitioner contradicted information provided to the Department by Pearson VUE, the Department initiated an internal review. As part of this review, the Department sought verification of the test results from Pearson VUE. Pearson VUE later provided the Department with a printout of Petitioner's scores from the December 20 examination. This printout is identical in form to the one Petitioner supplied to the Department, but indicates that Petitioner failed the December 20 examination with a score of 53, or 66%. The printout supplied by Pearson VUE also includes the instructions on re-taking the examination and the bar graph that was on the document submitted by Petitioner. (Testimony of Faust, Radwanski; Exhibit R-2).

7. Pearson VUE also submitted to the Department a sample copy of the document provided to examinees who obtain passing scores on the Property & Casualty Agent examination. This document is significantly different from the one Petitioner provided to the Department in a number of respects. First, the pass report does not include a breakdown of scores or a diagnostic bar graph. Rather, it contains only the message "Congratulations on passing your examination!" In addition, unlike Petitioner's purported passing score report, the passing score report supplied by Pearson VUE also includes the following information on submitting an application for licensure:

A passing score report is NOT a license to transact insurance business.

You may apply online at www.sircon.com/georgia or you may complete form GID 103. The fee for the license is \$115. You must also submit a copy of your score report, prelicensing certificate or appropriate waiver and Citizen Affidavit and photo ID. Forms and information regarding procedures can be found on the Department's website www.oci.ga.gov.

Finally, for obvious reasons, the passing score report does not include instructions on re-taking the examination. (Exhibits R-3, R-4; Testimony of Faust, Radwanski).

8. The Department considered the above information and concluded that Petitioner had (1) misrepresented a material fact in her application for a license, (2) attempted to obtain a license by misrepresentation, concealment, or other fraud, and (3) failed to pass an examination required for a license. Consequently, the Department issued an Order of License Refusal to Petitioner on February 21, 2018. (Exhibit R-5).

9. In her testimony, Petitioner attributed the discrepancy in the documentation of the December 20 examination to an error on the part of Pearson VUE and denied falsifying the purported documentation of her test scores. Petitioner also admitted that she called Pearson VUE shortly after she received her results and inquired about retaking the test. (Testimony of Brenna Smith, Radwanski).

III. CONCLUSIONS OF LAW

1. Because this case concerns the Department's denial of Petitioner's application for a resident agent license, Petitioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(c). The standard of proof is a preponderance of the evidence. Ga. Comp. R & Regs. 616-1-2-.21(4).

2. The Department may refuse an application for a license if it finds that the applicant:

(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; [or]

...

(7) Has failed to pass an examination . . . or cheated on any examination required for a license

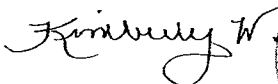
O.C.G.A. § 33-23-21(2), (3), (7).

3. Based on the evidence presented, the undersigned concludes that Petitioner failed the December 20 Property & Casualty Agent examination, altered a printout of her test results to falsely indicate a passing score on the examination, and thereafter submitted it to the Department in an effort to obtain a license. Petitioner's testimony to the effect that the discrepancies in the reports were attributable to Pearson VUE's error was not credible. Accordingly, the Department's denial of Petitioner's application was appropriate. See O.C.G.A. § 33-23-21.

IV. DECISION

Based on the foregoing findings of fact and conclusions of law, the decision of the Department to deny Petitioner's application for a resident agent license is **AFFIRMED**.

SO ORDERED, this 21st day of May, 2018.


Kimberly W. Schroer
Administrative Law Judge

