

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE
COMMISSIONER OF
INSURANCE**

IN THE MATTER OF:

**THE LICENSURE OF
STEPHANIE B. CONNELL**

Petitioner.

**ORDER AND
FINAL AGENCY DECISION
Docket Number: 1885**

THIS MATTER was heard on Thursday, May 3, 2018 by the undersigned Hearing Officer, designated by the North Carolina Commissioner of Insurance (“Commissioner”) under N.C. Gen. Stat. § 58-2-55, pursuant to a Notice of Administrative Hearing that was duly issued and served on Petitioner Stephanie B. Connell (hereinafter, “Petitioner”).

Petitioner, proceeding pro se, testified on her own behalf at the hearing.

Respondent Agent Services Division (“ASD”) of the North Carolina Department of Insurance (“NCDOI”) was present at the hearing and was represented by Rebecca E. Lem, Assistant Attorney General. NCDOI employee Robert Cunningham, an ASD Licensing Supervisor, testified at the hearing.

The Respondent offered into evidence Respondent’s Exhibits 1 – 11, which were admitted into evidence. Petitioner offered an exhibit but it was not admitted.

BASED UPON careful consideration of the evidence and arguments presented, and based upon the entire record in the proceeding, the Hearing Officer hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Notice of Administrative Hearing was properly served on Petitioner pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. §58-2-69(d). The hearing was postponed due to inclement weather, and rescheduled to May 3, 2018 upon consent of both parties.

2. Petitioner applied to the Department for a resident agent license in November 2016 with an electronically signed application after completing the required pre-licensing education.

3. On the resident agent license application (hereinafter, "license application"), Petitioner answered "yes" to the application question which asked, "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?" Petitioner included a written statement explaining her misdemeanor conviction for larceny with her application.

4. Petitioner disclosed, and court documentation confirmed, that Petitioner had a 2014 conviction for larceny on or about December 20, 2014 in Forsyth County, NC.

5. Following receipt and review of Petitioner's license application, the Agent Services Division of the North Carolina Department of Insurance ("ASD") denied Petitioner's license application by letter dated May 18, 2017. The basis for the denial was N.C. Gen. Stat. § 58-33-46(a)(6) due to Petitioner's misdemeanor larceny conviction.

6. Petitioner thereafter requested a review of the denial of her license application, and a denial review was scheduled for May 30, 2017.

7. The license denial review meeting took place on May 30, 2017 with Robert Cunningham and Teresa Knowles in attendance on behalf of ASD, as well as Petitioner.

8. Following the denial review meeting, ASD upheld its denial of Petitioner's license application.

9. Petitioner timely requested a hearing to appeal the denial of her license application.

Testimony of Robert Cunningham

10. Robert Cunningham testified on behalf of ASD. Mr. Cunningham is the Licensing Supervisor for ASD and has been with the Department for approximately 15 years. Previously, he worked in private industry, including many years in the insurance business. Mr. Cunningham's duties include reviewing license applications where the applicant has previous criminal convictions. Mr. Cunningham has been involved with the matter of Petitioner's license application and subsequent denial.

11. Mr. Cunningham explained that ASD initially denied Petitioner's license due to the recency of her misdemeanor larceny conviction, given that it occurred within five (5) years of the date of her application. Mr. Cunningham explained that this was the standard practice of ASD regarding misdemeanor convictions that are less than five years old. Petitioner requested a denial review, and a denial review meeting was held with Mr. Cunningham, Teresa Knowles of ASD, and Petitioner in attendance.

12. Following the denial review meeting, ASD upheld its denial of Petitioner's license application due to the recency of Petitioner's misdemeanor larceny conviction, which is a misdemeanor involving dishonesty, a breach of trust, or moral turpitude.

13. Mr. Cunningham noted upon review of the certified criminal records from Forsyth County during the hearing that Petitioner had not previously specifically mentioned her 2016 probation violation for failure to pay a probation supervision fee and an admission of marijuana use. Mr. Cunningham noted that in her written statement submitted with her license application, Petitioner had noted that her drug abuse led to her larceny conviction but that she was now sober. The probation violation report was dated a few weeks after Petitioner's insurance agent license application and her written, but over a year prior to the denial review meeting that Petitioner attended with Mr. Cunningham and Ms. Knowles. Mr. Cunningham noted that Petitioner asserted that she had maintained her sobriety during the denial review meeting in May 2017.

14. Mr. Cunningham stated that ASD maintains its position that Petitioner's license application should be denied due to the fact that her 2014 misdemeanor larceny conviction is recent.

15. Mr. Cunningham explained, upon questioning by the Petitioner, that if her license is denied that she may re-apply at any time, however she would be more likely to be granted a license if more time passes so that her criminal convictions are not as recent.

Testimony of Stephanie Connell, Petitioner

16. Petitioner is a resident of Pleasant Garden, North Carolina.

17. Petitioner attended college classes at Greensboro College but did not complete her degree due to the expense of attendance. Petitioner's mother is an insurance agent and encouraged her to become licensed. Petitioner became a licensed property and casualty insurance agent and worked for BB&T insurance services beginning in 2009 and ending in around 2012.

18. Petitioner never had any administrative action against her insurance agent license. She let her license lapse when she lost her job with BB&T due to absences caused by a medical condition.

19. Petitioner explained that several years ago, she experienced health problems that remained undiagnosed for some time. Her symptoms included rapid heart rate, anxiety, and fainting. Petitioner would experience these symptoms even in a seated position, causing her to miss a lot of work. Eventually she ran out of Family and Medical Leave Act ("FMLA") leave, and BB&T terminated her employment for unavailability with a two month severance payment.

20. At some point in 2010, Petitioner visited an urgent care facility for her symptoms. She was prescribed Xanax. Around this time she also began seeing a psychiatrist, who prescribed her benzodiazapines such as Klonopin for anxiety. Petitioner developed a dependency on prescription medication that led to a drug abuse problem.

21. Once Petitioner's employment ended at BB&T, she was basically unemployed for two years. She did assist with a D.J. business that her now-husband worked with for a while, as is listed on her insurance license application. In 2014, Petitioner began employment with an Adam and Eve store in retail and remains employed there as of the time of this hearing. Petitioner brought a statement from her boss there concerning Petitioner's trustworthiness, however it was an unsworn statement and Petitioner's boss was not present to testify so this statement was not admitted into evidence.

22. Petitioner initially noted that her larceny conviction stemmed from food that she stole from Harris Teeter. Review of the court records, however, show that Petitioner had 2012 charges in Forsyth County for larceny from Harris Teeter as well as misdemeanor drug related charges, but these were disposed of by a deferred prosecution. Court records indicate that Petitioner met the terms of the deferred prosecution, including drug evaluation through TASC and community service, and she was not ultimately not convicted pursuant to the 2012 charges.

23. Court records indicated that Petitioner's misdemeanor larceny conviction instead was in Guilford County, and was related to an incident at a Belk store whereby Petitioner attempted to remove an anti-theft device from a \$38 pair of pants at Belk. Petitioner pled guilty to the misdemeanor larceny charge in 2014 and was placed on probation. As a condition of probation, Petitioner had to pay a \$2500 fine, as well as restitution and other court fees. Court records indicate that the \$2500 fine, restitution and court costs have been paid.

24. Petitioner stated that her previous criminal charges stemmed from her poor judgment and bad decision making due to her drug use. She stated that the drugs made Petitioner feel like she was invincible and could do anything. She stated that she had seen a pair of pants at Belk that she wanted and just decided she would take them due to her poor judgment from her drug use. Petitioner stated that she got help for her drug abuse problem and is better now.

25. Court records indicate that Petitioner violated probation in November 2016 by failing to pay her probation supervision fee and by admitting to using marijuana during the past three weeks. Petitioner's probation was terminated on March 17, 2017. Petitioner stated that she never served any time incarcerated and it was her understanding that the judge "gave her a pass" for the probation violations. There are no further court records following March 17, 2017 where Petitioner's probation was terminated, therefore it appears that her probation was terminated without further conditions or incarceration despite the probation violations.

26. Petitioner admitted that she did use marijuana in 2016 as stated in her probation violation report. Petitioner stated that she still uses marijuana on occasion as self-medication for anxiety or pain, as she does not want to take any prescription medications because of her prior dependency problems with them. Petitioner stated that she would not use marijuana anymore if that was required to be part of a profession.

27. Petitioner has been married since 2016, and she has a son who is three years old. Petitioner's son was one year old when she applied for her insurance license. Petitioner stated that she wants her insurance license to better help support her family.

CONCLUSIONS OF LAW

1. This matter is properly before the Commissioner, and the Commissioner has jurisdiction over the parties and the subject matter pursuant to N. C. Gen. Stat. §§ 58-2-55, 58-33-46, 150B-38 and 150-40, as well as 11 N.C.A.C. 10401 *et seq.* and other applicable statutes and regulations.

2. Petitioner was properly served with the Notice of Hearing in this matter.

3. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(6), the Commissioner may deny issuance of an agent license for conviction of a misdemeanor involving dishonesty, breach of trust or moral turpitude. Petitioner's criminal conviction for misdemeanor larceny is a misdemeanor involving dishonesty, breach of trust or moral turpitude.

4. Petitioner truthfully answered the question regarding her prior criminal convictions on her license application.

5. Petitioner has explained how her problems with prescription medications led to her 2014 misdemeanor larceny conviction, and that Petitioner initially became dependent on these medications due to an undiagnosed medical condition that was being improperly treated as anxiety. Petitioner has stated that she no longer has a problem with drug dependency or abuse. However, the recency of Petitioner's misdemeanor larceny conviction remains a cause for concern, as Petitioner may still be at risk for poor judgment or other misconduct in the insurance industry.

Based on the foregoing Finding of Facts and Conclusions of Law, the Hearing Officer enters the following:

ORDER

It is ORDERED that the Agent Services Division denial of Petitioner's application for an insurance agent license be AFFIRMED, and that NO LICENSE shall be issued to her.

APPEAL RIGHTS

This is a Final Agency Decision issued under the authority of N.C. Gen. Stat. § 150B, Article 3A.

Under the provisions of N.C. Gen. Stat. § 150B-45, any party wishing to appeal a final decision of the North Carolina Department of Insurance must file a Petition for Judicial Review in the Superior Court of the County where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. The appealing party must file the petition within 30 days after being served with a written copy of the Order and Final Agency Decision. In conformity with the 11 NCAC 01 .0413 and N.C. Gen. Stat. § 1A-1, Rule 5, this Order and Final Agency Decision was served on the parties on the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Order and Final Agency Decision. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition, including explicitly stating what exceptions are taken to the decision or procedure and what relief the petitioner seeks, and requires service of the Petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. The mailing address to be used for service on the Department of Insurance is: A. John Hoomani, General Counsel, 1201 Mail Service Center, Raleigh, NC 27699-1201.

This the 8th day of May, 2018



A. John Hoomani, Hearing Officer

A handwritten blue circle drawn around the letter 'A' in the signature line.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing **ORDER AND FINAL AGENCY DECISION** by mailing a copy of the same via certified U.S. Mail, return receipt requested, in a first-class mail, postage prepaid envelope, and via State Courier, addressed as follows:

Rebecca E. Lem
Assistant Attorney General
N.C. Department of Justice – Insurance Section
P.O. Box 629
Raleigh, NC 27602

Attorney for Respondent

Ms. Stephanie B. Connell
2704 Minden Road
Pleasant Garden, NC 27313

Pro Se Petitioner

This the 8th day of May, 2018.



Mary Faulkner
Paralegal
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201