

No. 2024-8807

**Official Order
of the
Texas Commissioner of Insurance**

Date: 9/5/2024

Subject Considered:

Texas Department of Insurance

v.

Marvette Skinner

SOAH Docket No. 454-24-09749.C

General Remarks and Official Action Taken:

The subject of this order is Marvette Skinner's application for a general lines agent license with a life, accident, health, and health maintenance organization qualification. This order denies Ms. Skinner's application.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the Texas Department of Insurance deny Ms. Skinner's application. A copy of the proposal for decision is attached as Exhibit A.

Findings of Fact

The findings of fact contained in Exhibit A are adopted and incorporated by reference into this order.

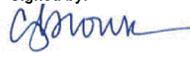
Conclusions of Law

The conclusions of law contained in Exhibit A are adopted and incorporated by reference into this order.

COMMISSIONER'S ORDER
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Order

It is ordered that Marvette Skinner's application for a general lines agent license with a life, accident, health, and health maintenance organization qualification be denied.

Signed by:

FC5D7EDDFFBB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

Signed by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

Signed by:

5026FD92CD734A7... _____
Nash Noal, Attorney

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**MARVETTE SKINNER,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Marvette Skinner (Respondent) for a general lines agent license based on her criminal history and prior fraudulent or dishonest activity. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Respondent's license application.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

The hearing in this case was held via Zoom videoconference on April 30, 2024, before ALJ Amy Davis at the State Office of Administrative Hearings (SOAH). Staff

was represented by staff attorney Sydney Moore. Respondent appeared and represented herself. The hearing concluded that day, and the record closed on May 13, 2024, when the court reporter's transcript was filed with SOAH. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. APPLICABLE LAW¹

The Texas Insurance Code authorizes the Department to regulate the business of insurance in this state and to take disciplinary action against agents who violate the laws or rules related to insurance.² Staff alleges that Respondent's application should be denied because of her felony conviction and because she engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation and for which fraud, dishonesty, or deceit is an essential element.³

The Department considers it very important that license holders be honest, trustworthy, and reliable.⁴ The Department may deny a license if the license holder has engaged in fraudulent or dishonest activity that directly relates to the duties and

¹ The Department's rules were amended effective September 26, 2023. In this Proposal for Decision, the ALJ cites to the Department's rules prior to the 2023 amendments because Respondent applied for the license in in January 2023.

² Tex. Ins. Code §§ 31.002(1), (3); 4005.102.

³ Tex. Ins. Code § 4005.101(b)(5), (8); 28 Tex. Admin. Code § 1.502(d), (e)(1).

⁴ 28 Tex. Admin. Code § 1.502(c).

responsibilities of the licensed occupation, has committed a felony, or has committed any offense for which fraud, dishonesty, or deceit is an essential element.⁵

The Department is required to issue guidelines that state the reasons a particular crime is considered to relate to a particular license and any other criterion that affects the decisions of the licensing authority.⁶ In accordance with this requirement, the Department has developed guidelines relating to the matters which the Department will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction.⁷ Those crimes which the Department considers to be of such serious nature that they are of prime importance in determining fitness for licensure or authorization include, but are not limited to, any offense for which fraud, dishonesty, or deceit is an essential element.⁸ The Department has determined that the crimes it considers to be of prime importance are directly related to the occupations it licenses.⁹

In determining whether to deny a license based on a person's criminal history, the Department considers the factors specified in Texas Occupations Code sections 53.022 and 53.023.¹⁰ Section 53.022 requires that, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed

⁵ Tex. Ins. Code § 4005.101(b)(5), (8); 28 Tex. Admin. Code § 1.502(d), (e)(1).

⁶ Tex. Occ. Code § 53.025(a).

⁷ 28 Tex. Admin. Code § 1.502(e).

⁸ 28 Tex. Admin. Code § 1.502(e)(1).

⁹ 28 Tex. Admin. Code § 1.502(e).

¹⁰ 28 Tex. Admin. Code § 1.502(h).

occupation, a licensing authority, such as the Department, consider the following factors:

1. the nature and seriousness of the crime;
2. the relationships of the crime to the purposes for requiring a licensee to engage in the occupation;
3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
4. the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
5. any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.¹¹

To guide its decision-making when considering a license holder's criminal history, the Department has identified certain crimes it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure; these crimes include any offense for which fraud, dishonesty, or deceit is an essential element or an offense of theft.¹² The Department has determined that the crimes it considers to be of prime importance are directly related to the occupations it licenses.¹³

¹¹ Tex. Occ. Code § 53.022; *see also* 28 Tex. Admin. Code § 1.502(h)(1).

¹² 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

¹³ Tex. Occ. Code § 53.023(a).

If the Department determines that an offense directly relates to the duties and responsibilities of the licensed occupation, it then considers the following factors under Texas Occupations Code section 53.023 in determining what disciplinary action, if any, to take:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;
3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person before and after the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. other evidence of the person's fitness, including letters of recommendation.¹⁴

It is an applicant's responsibility, to the extent possible, to obtain and provide to the Department the information regarding factors in Texas Occupations Code section 53.023.¹⁵ Additionally, an applicant must furnish proof to the Department that the license holder has: (1) maintained a record of steady employment; (2) supported the license holder's dependents, where applicable; (3) otherwise maintained a record of good conduct; and (4) paid all outstanding court costs,

¹⁴ Tex. Occ. Code § 53.023(a). *see also* 28 Tex. Admin. Code § 1.502(h)(2) (requiring the Department to consider the same factors in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has committed a crime).

¹⁵ 28 Tex. Admin. Code § 1.502(h)(3); Tex. Occ. Code § 53.023(b).

supervision fees, fines, and restitution ordered in any criminal case in which the license holder has been convicted.¹⁶ The Department shall not issue a license if an applicant has committed a felony or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless, when viewed in light of the occupation being licensed, the factors listed above outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed.¹⁷

Staff has the burden of proving grounds for denying Respondent's license application, while Respondent has the burden to present any favorable evidence of her fitness to be licensed despite her criminal history.¹⁸ The standard of proof is by a preponderance of the evidence.¹⁹

III. EVIDENCE

At the hearing, Staff had three exhibits admitted into evidence²⁰ and presented testimony from Lewis Wright, the liaison between the Department's agent, adjuster licensing office, and the Department's Enforcement Division. Respondent offered no exhibits and testified on her own behalf.

¹⁶ 28 Tex. Admin. Code § 1.502(h)(2)(G).

¹⁷ 28 Tex. Admin. Code § 1.502(f).

¹⁸ 1 Tex. Admin. Code § 155.427.

¹⁹ See *Granek v. Tex. St. Bd. Of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

²⁰ Staff Exhibit (Ex.) 1 (Notice of Hearing); Staff Ex. 2 (Certified Copy of Application with AAL); Staff Ex. 3 (Certified Copy of Respondent's Sircon Record).

A. BACKGROUND INFORMATION

On January 4, 2023, Respondent applied to the Department for a general lines license with life, accident, health, and health maintenance organization (HMO) qualification.²¹ On January 27, 2023, the Department proposed to deny Respondent's application based on her criminal history.²² Respondent timely appealed that decision and made a written request for a hearing on February 24, 2023.²³

On October 4, 2022, Respondent pleaded guilty to and was convicted of the felony offense of Wire Fraud in Case No. 1:22-CR-30-TCB filed in the United States District Court, Northern District of Georgia, Atlanta Division.²⁴ Respondent was sentenced to probation for a term of three years with the first ten months to be served while on home confinement.²⁵ Respondent was also ordered to pay restitution in the amount of \$162,571 as a condition of her probation.²⁶ Respondent's probation does not end until October 2025.²⁷

²¹ Staff Ex. 2.

²² Staff Ex. 2 at TDI 023.

²³ Staff Ex. 2 at TDI 018.

²⁴ Staff Ex. 2 at TDI 024-32.

²⁵ Staff Ex. 2 at TDI 025.

²⁶ Staff Ex. 2 at TDI 028.

²⁷ Staff Ex. 2 at TDI 025.

B. MR. WRIGHT’S TESTIMONY

Mr. Wright explained that the insurance license application is designed to protect Texas consumers, which is a part of the Department’s duty.²⁸ He explained that the Department’s Administrative Review section reviews license applications of concern that are received or where a background check has revealed a criminal history that will need to be considered.²⁹ Mr. Wright testified that the Department’s intent is to protect consumers by ensuring that anyone granted a license is honest, trustworthy, and reliable.³⁰ He emphasized that, due to the complexity of insurance transactions, there are opportunities for misconduct, which is why these traits are so important for insurance agents.³¹

Mr. Wright explained that the recency, severity, and nature of Respondent’s crime were key factors in the Department’s decision to deny her application.³² Mr. Wright stated that Respondent’s crime was a scheme to fraudulently obtain travel vouchers and resell them to individuals for personal gain.³³ Mr. Wright testified that he reviewed the court documents and it appeared that Respondent utilized her access as an employee to defraud her employer of money over a two-year period (from October 2017 to February 2019), and the financial loss was

²⁸ Transcript (Tr.) at 17.

²⁹ Tr. at 14.

³⁰ Tr. at 16.

³¹ Tr. at 16.

³² Tr. at 22, 30.

³³ Tr. at 24.

approximately \$192,000, of which \$162,000 is to be paid in restitution.³⁴ At the time of the crime, Respondent was ages 24 through 26.³⁵ Mr. Wright testified that Respondent's offense occurred fairly recently.³⁶

Mr. Wright explained that wire fraud is considered a crime of prime importance by the Department and is a more severe type of crime.³⁷ He testified that it is directly related to the occupation because it consists of a financial transaction and an act of dishonesty or deceit.³⁸ Insurance agents are granted authority to act on behalf of a carrier during an insurance transaction, so any crime involving misuse related to a financial transaction would be of prime importance to the Department.³⁹

Mr. Wright described Respondent's rehabilitative efforts as failing to outweigh the Department's concern with the nature and severity of her crime.⁴⁰ He testified that Respondent did not appear to accept responsibility for the crime and instead blamed a third-party.⁴¹ The reference letters Respondent provided, while positive, did not directly address her criminal history.⁴² Mr. Wright also testified

³⁴ Tr. at 24.

³⁵ Tr. at 24.

³⁶ Tr. at 24.

³⁷ Tr. at 25.

³⁸ Tr. at 25.

³⁹ Tr. at 26.

⁴⁰ Tr. at 30.

⁴¹ Tr. at 29.

⁴² Tr. at 29.

that, when Respondent had been previously licensed by the Department, she failed to maintain her continuing education requirements.⁴³ In summary, Mr. Wright did not find Respondent’s rehabilitative evidence to outweigh the severity of her criminal history.⁴⁴

C. RESPONDENT’S TESTIMONY

Respondent testified that, by pleading guilty to wire fraud, she did admit to the crime and accepted responsibility for it.⁴⁵ She testified that at the time, she was in a “very bad place” and associating with the “wrong people at the wrong time.”⁴⁶ Respondent explained that she is in the process of trying to improve her situation and pay back major restitution. She has already completed one year of counseling and has maintained a steady work history before and after her criminal offense.⁴⁷ She testified she has not yet completed all 120 hours of community service, but she is working two jobs—at a Whataburger and Amazon.⁴⁸

D. RESPONDENT’S LETTERS OF RECOMMENDATION

The Department’s exhibits contain two letters of recommendation provided by Respondent:

⁴³ Tr. at 19-20.

⁴⁴ Tr. at 30.

⁴⁵ Tr. at 33.

⁴⁶ Tr. at 33-34.

⁴⁷ Tr. at 34.

⁴⁸ Tr. at 36.

- Laynette Collins, a dental hygienist, described Respondent as having good character and ambition. She commended Respondent’s discipline, adaptability, and leadership potential. She recommended Respondent for an insurance position.
- Emily Schackleford, a supervisor at Kings III Emergency Communications who worked for two years with Respondent, praised Respondent’s work ethic and skills. She described Respondent as a top performer and a team player.⁴⁹

IV. ANALYSIS

Staff contends that Respondent’s criminal history shows that she lacks the honesty and trustworthiness required to hold an insurance agent license. It is undisputed that Respondent pleaded guilty to and was convicted of the felony offense of wire fraud in October 2022. Pursuant to Texas Insurance Code section 4005.101(b)(8), the Department may deny Respondent’s license application because she has been convicted of a felony. Moreover, because the Department determined that any offense for which fraud, dishonesty, or deceit is an essential element is of such serious nature that it is of prime importance in determining fitness for licensure and directly relates to the duties and responsibilities of the licensed occupation, the Department may deny Respondent’s license application pursuant to Texas Insurance Code section 4005.101(b)(5) and 28 Tex. Admin. Code sections 1.502(d) and (e)(1).

The next analytical step is to consider whether Respondent should be denied a license pursuant to Texas Occupations Code section 53.023(a). The evidence shows that Respondent pled guilty to and was convicted of the felony offense of wire

⁴⁹ Staff Ex. 2 at TDI 037 and TDI 040.

fraud, which she committed when she was between 24 to 26 years old. Her offense cannot be considered a youthful indiscretion. It has been five years since Respondent's offense. Thus, little time has elapsed since Respondent's crime. Given the nature and severity of her crime, this is not an extensive amount of time. Further, Respondent will be on probation until October 2025. However, mitigating factors are Respondent's work history before and after the criminal offense, her compliance with the terms of her probation, and the two letters of recommendation, which speak highly of her work ethic and character. However, the letters Respondent provided did not directly address her criminal history. There is also no evidence of any other criminal activity but the wire fraud.

Before denying a license based on a person's criminal history, the Department will first consider whether the factors specified in Texas Occupations Code sections 53.022 and 53.023 outweigh the serious nature of the conduct when viewed in light of the occupation being licensed.

These factors are the same ones that were considered above when evaluating Ms. Skinner's fraud offense. As Mr. Wright testified, Respondent's crime was based on a scheme to defraud her employer at the time—Respondent had access to sensitive financial information and abused it for financial gain. The ALJ concludes Respondent's conviction for wire fraud directly relates to the duties and responsibilities of an insurance agent. While Respondent appears to be making significant strides toward rehabilitation, the ALJ finds that insufficient time has passed to demonstrate that she is reformed. Accordingly, the ALJ concludes that the mitigating factors do not outweigh the seriousness of the criminal offense, and

Respondent has not shown her fitness for licensure. Therefore, the Department should not issue Respondent a general lines agent license with a life, accident, health, and HMO qualification at this time.⁵⁰ In support of this recommendation, the ALJ makes the following Findings of Fact and Conclusions of Law.

V. FINDINGS OF FACT

1. On October 4, 2022, Marvette Skinner (Respondent) pleaded guilty to and was convicted of the felony offense of Wire Fraud in Case No. 1:22-CR-30-TCB filed in the United States District Court, Northern District of Georgia, Atlanta Division.
2. Respondent was sentenced to probation for three years with the first 10 months to be served while on home confinement.
3. Respondent was also ordered to pay restitution in the amount of \$162,571 as a condition of her probation.
4. Respondent's probation does not end until October 2025.⁵¹
5. Respondent may pose a continued threat to public safety given the nature and severity of her offense.
6. Respondent's criminal offense was committed when she was between the ages of 24 to 26 and was not a youthful indiscretion.
7. Respondent has a steady work history before and after her criminal offense.
8. Respondent provided two letters of recommendation that spoke very highly of her work ethic and character.
9. Respondent's offense is serious, but she has no other criminal history.

⁵⁰ 28 Tex. Admin. Code § 1.502(f).

⁵¹ Staff Ex. 2 at TDI 025.

10. It has been five years since Respondent's criminal activity.
11. Respondent has completed one year of counseling per the terms of her probation.
12. Respondent is not fit for licensure by the Department at this time.
13. On January 4, 2023, Respondent applied to the Texas Department of Insurance (Department) for a general lines license with life, accident, health, and health maintenance organization (HMO) qualification.
14. On January 27, 2023, the staff (Staff) of the Department proposed to deny Respondent's application based on her criminal history.
15. Respondent timely requested a hearing to challenge the denial.
16. On January 23, 2024, Staff issued a notice of hearing on the denial of Respondent's application.
17. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
18. The hearing was held via Zoom videoconference on April 30, 2024, before Administrative Law Judge Amy Davis of the State Office of Administrative Hearings (SOAH). Attorney Sydney Moore represented Staff. Respondent represented herself. The hearing concluded that day, and the record closed on May 13, 2024, when the court reporter's transcript was filed with SOAH.

VI. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.

2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Respondent received timely and sufficient notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. Staff had the burden of proving its basis for denying Respondent's license application, while Respondent had the burden to prove her fitness to be licensed despite the criminal history or fraudulent or dishonest conduct. The standard of proof is by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427; *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).
5. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include any offense for which fraud, dishonesty, or deceit is an essential element. 28 Tex. Admin. Code § 1.502(e)(1).
6. The Department may deny licensure to an applicant who has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin Code § 1.502(d).
7. The Department may deny Respondent's application because she has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8); 28 Tex. Admin Code § 1.502(d).
8. The Department may deny licensure to an applicant who committed an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1); 28 Tex. Admin Code § 1.502(d).
9. Respondent's offense is the type that the Department considers to be of such a serious nature that it is of prime importance in determining fitness for licensure. 28 Tex. Admin Code § 1.502(e)(1).
10. The Department may deny Respondent's application because she has committed an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1); 28 Tex. Admin Code § 1.502(d).

11. The Department will consider the factors listed in Texas Occupations Code sections 53.022 and 53.023 in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. 28 Tex. Admin. Code § 1.502(h).
12. The Department shall not issue a license if an applicant has committed a felony or has engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation unless, when viewed in light of the occupation being licensed, the factors listed above outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed. 28 Tex. Admin Code § 1.502(f).
13. The mitigating factors do not outweigh the seriousness of Respondent's criminal offense, and she has not shown her fitness for licensure despite her criminal history. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(f).
14. The Department should deny Respondent's application for a license at this time.

Signed June 24, 2024



AMY DAVIS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS