No. **2024-9010**

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

Date: 12/10/2024

Subject Considered:

Texas Department of Insurance
v.
Shannon Lawrence

SOAH Docket No. 454-24-16159.C

General Remarks and Official Action Taken:

The subject of this order is Shannon Lawrence's application for an insurance adjuster license. This order denies Ms. Lawrence'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 (TDI) deny Ms. Lawrence's application.

TDI adopts the administrative law judge's proposed findings of fact and conclusions of law.

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.

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Order

It is ordered that Shannon Lawrence's application for an insurance adjuster license is denied.

Signed by:

_____

Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

Signed by:

Jessica Barta

Jessica Barta, General Counsel

Signed by:

Justin Beam

Justin Beam, Chief Clerk

Before the
State Office of Administrative
Hearings

Texas Department of Insurance,
Petitioner

v.

Shannon Lawrence,
Respondent

Proposal for Decision

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny Shannon Lawrence's application for an insurance adjuster license based on her criminal history. After considering the evidence and applicable law, the Administrative Law Judge (ALJ) recommends that the Department deny Ms. Lawrence's application.

I.   NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Jurisdiction and notice were not contested, so those matters are addressed solely in the findings and fact and conclusions of law.

The hearing on the merits was held via Zoom videoconference on July 29, 2024, before ALJ Rebecca Smith. Attorney Jeannie Ricketts appeared and represented Staff. Ms. Lawrence appeared and represented herself. The hearing concluded that day, and the record closed on August 13, 2024, when the court reporter's transcript was filed with the State Office of Administrative Hearings.

II.   APPLICABLE LAW

Ms. Lawrence applied for an adjuster license on September 4, 2023. The Department's rule relating to licensure of people with criminal backgrounds, found at 28 Texas Administrative Code section 1.502, was amended effective September 26, 2023. This Proposal for Decision will refer to the rule in place at the time the application was filed.

The Department considers it very important that license holders and applicants be honest, trustworthy, and reliable,[1] and will evaluate an applicant's criminal history and other conduct to determine whether the applicant possesses those qualities. The Department may deny a license application if the applicant has

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[1] 28 Tex. Admin. Code § 1.502(c).

been convicted of a felony[2] or has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.[3]

In determining whether to deny an application based on a person's criminal history, the Department considers the factors specified in Texas Occupations Code sections 53.022 and 53.023.[4] Texas Occupations Code section 53.022 lists the following factors, which address whether a criminal conviction directly relates to the duties and responsibilities of the licensed occupation:

1. the nature and seriousness of the crime;

2. the relationship of the crime to the purposes for requiring a license 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.

To guide its decision-making when considering an applicant's criminal history, the Department has identified certain crimes, enumerated in its substantive rules, it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include ones for which fraud,

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[2] Tex. Ins. Code § 4005.101(b)(8).

[3] Tex. Occ. Code § 53.021(a)(1); *see also* 28 Tex. Admin. Code § 1.502(d).

[4] 28 Tex. Admin. Code § 1.502(h).

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dishonesty, or deceit is an essential element.[5] The Department has determined that the crimes it considers to be of prime importance are directly related to the occupations it licenses.[6]

After determining that a criminal offense directly relates to the occupation, the Department considers the additional factors set out in Texas Occupations Code section 53.023(a):

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.[7]

It is the applicant's responsibility, to the extent possible, to obtain and provide to the Department the applicant's evidence of fitness discussed above.[8] Additionally, an applicant must furnish proof to the Department that the applicant has: (1)

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[5] 28 Tex. Admin. Code § 1.502(e)(1).

[6] 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

[7] *See also* 28 Tex. Admin. Code § 1.502(h)(2).

[8] Tex. Occ. Code § 53.023(b).

maintained a record of steady employment; (2) supported the applicant's dependents, where applicable; (3) otherwise maintained a record of good conduct; and (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.[9] The Department will not issue a license unless, when viewed in light of the occupation being licensed, the mitigating factors outweigh the serious nature of the criminal offense or the fraudulent or dishonest conduct.[10]

When making a licensing determination, the Department may consider a deferred adjudication to be a conviction if the person completed the period of supervision fewer than five years before the application date, and if, after considering the factors in Texas Occupations Code sections 53.022 and 53.023(a), the Department determines that the person may pose a continued threat to public safety or that employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.[11] If the Department determines that a deferred adjudication can be treated as a conviction for licensing purposes, then the same factors are weighed in determining whether the applicant is fit to perform the duties and discharge the responsibilities of the licensed occupation despite the criminal offense.[12]

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[9] 28 Tex. Admin. Code § 1.502(h)(2)(G).

[10] 28 Tex. Admin. Code § 1.502(f).

[11] Tex. Occ. Code § 53.021(d).

[12] *See* Tex. Occ. Code §§ 53.022-.023(a).

In this proceeding, Staff has the burden of proving its grounds for denying Ms. Lawrence's license application, while Ms. Lawrence has the burden to prove her fitness to be licensed despite her criminal history or fraudulent or dishonest conduct.[13] The standard of proof is by a preponderance of the evidence.[14]

III. EVIDENCE

At the hearing, Staff introduced two exhibits into evidence[15] and presented the testimony of Tenika Young. Ms. Lawrence testified on her behalf but did not offer any exhibits.

A. MS. LAWRENCE'S CRIMINAL HISTORY

On February 7, 2020, Ms. Lawrence pleaded guilty to tampering with a government record with intent to defraud or harm, a second-degree felony.[16] According to the indictment, Ms. Lawrence had made, possessed, or used a fake driver's license.[17] Adjudication was deferred, and Ms. Lawrence was placed on community supervision for three years, assessed a $300 fine, and ordered to pay

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[13] 1 Tex. Admin. Code § 155.427.

[14] *Granek v. Tex. St. Bd. of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

[15] Staff Ex. 1 (jurisdictional and notice documents) and Staff Ex. 2 (Ms. Lawrence's application file). The ALJ took official notice of the statutes and rules marked as Staff Ex. 3.

[16] Staff Ex. 2 at TDI 036. Ms. Lawrence's criminal case was Case 1615476D in the 371st District Court, Tarrant County, Texas.

[17] Staff Ex. 2 at TDI 045.

$300 in court costs.[18] She was discharged from deferred adjudication on February 8, 2023.[19]

B. STAFF'S EVIDENCE

Tenika Young, the manager for the Department's administrative review department, testified that a license conveys to the public that the Department has determined that the license holder is honest, trustworthy, and reliable. She added that, given the complicated nature of insurance, the public needs to be able to trust agents and adjustors.[20] She also described how applications submitted by someone with a criminal history are reviewed by the administrative review department. In recognition that each case is different, the applications are reviewed on a case-by-case basis. [21]

Ms. Young described her review of Ms. Lawrence's application, and how she examined the relevant factors. Ms. Young particularly emphasized that Ms. Lawrence's criminal conduct involved fraud—creating a fake paper driver's license. She noted that Ms. Lawrence was 31 years old at the time of the offense and that, while four years have passed since the event, Ms. Lawrence was only released from probation one and a half years before the hearing. She agreed that Ms. Lawrence

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[18] Staff Ex. 2 at TDI 040-041.

[19] Staff Ex. 2 at TDI 043.

[20] Transcript (Tr.) at 13.

[21] Tr. at 12.

has maintained steady employment since April 2011 with the same employer.[22] According to Ms. Young, Ms. Lawrence did not provide much information about her rehabilitative efforts, instead indicating that this was her only offense and that she regrets it. Although Ms. Lawrence provided letters of recommendation, the authors of those letters did not show that they knew about her criminal history. In sum, Ms. Young testified that she believed that insufficient time has passed and that there is not enough evidence of rehabilitation to outweigh the nature of the offense.[23]

C.   MS. LAWRENCE'S EVIDENCE

In her statement to the Department, Ms. Lawrence explained that at the time of the offense, her driver's license had expired and she could not renew it because she could not pay the parking violations that had accumulated when she worked downtown. She obtained a fake temporary paper driver's license from an online source and was arrested after she tried to use the fake license to rent a car.[24]

Ms. Lawrence testified that the offense was her only crime and that she would never do anything like it again. She learned her lesson in 2019 when the offense happened. She testified that she has been working at a specialty pharmacy in Houston for twelve years, where she has access to customers' information, and has never misused it.

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[22] Tr. at 20.

[23] Tr. at 19-22.

[24] Staff Ex. 2 at TDI 049.

Ms. Lawrence attended claims adjuster classes after a family friend told her about them. She wants to be given a chance to try something different so that she could flourish and level up in life.

Ms. Lawrence presented three reference letters to the Department.[25] Those letters speak highly of Ms. Lawrence and indicate that she is reliable, professional, and dependable. They do not indicate that they were aware of her criminal history.

IV. ANALYSIS

Ms. Lawrence successfully completed her period of deferred adjudication. Nevertheless, her deferred adjudication may be considered a conviction because fewer than five years have passed since she completed her community supervision and her employment in the licensed occupation would create a situation in which she would have the opportunity to repeat the prohibited conduct.[26]

Turning to the relevant factors, Ms. Lawrence's crime—obtaining and using a fake driver's license—was serious. Although it was her only crime, she was 31 years old at the time it was committed, so it was not a youthful crime. Approximately five years have passed since her criminal activity. She maintained employment both before and after the crime. She has not presented significant evidence of rehabilitation, only her statements that she will not commit a crime again, and her

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[25] Staff Ex. 2 at TDI 046-48.

[26] Tex. Occ. Code § 53.021(d). *See also* Tr. at 13 (agents "can falsify documents, they could commit fraudulent acts").

evidence that she has not mishandled any of the sensitive information she works with.

Given the evidence, the ALJ recommends that Ms. Lawrence's application be denied at this time. Although Ms. Lawrence only committed one criminal offense, the nature of the offense—knowingly using a fake driver's license—raises significant concerns, particularly given that she has applied for an adjuster license. Additionally, the brief period of time since her release from community supervision weighs against licensure. Her work history is admirable and her recommendations are positive. But, given the lack of other mitigating evidence, not enough time has passed for her to show sufficient fitness to alleviate the concerns based on her criminal history.

Based on the foregoing, the ALJ concludes that Ms. Lawrence's application for an adjuster license should be denied. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V.   FINDINGS OF FACT

1.   On September 4, 2023, Shannon Lawrence applied for an insurance adjuster license from the Texas Department of Insurance (Department).

2.   On February 5, 2020, in Case No. 1615476D, in the 371st District Court of Tarrant County, Texas, Shannon Lawrence pleaded guilty to tampering with a government instrument, a second-degree felony. Adjudication was deferred, and Ms. Lawrence was placed on community supervision for three years and assessed a $300 fine and ordered to pay $300 in court costs.

3.   Ms. Lawrence had obtained a fake driver's license in 2019, and her attempt to use that license in renting a car was the basis for her indictment.

4.   Ms. Lawrence was discharged from deferred adjudication on February 8, 2023.

5.   Ms. Lawrence's employment as an adjuster would create a situation in which she has the opportunity to repeat the prohibited conduct.

6.   The conduct to which she pleaded guilty is Ms. Lawrence's only criminal conduct.

7.   Ms. Lawrence was 31 years old at the time of her criminal conduct, meaning it was not a youthful offense.

8.   Five years have elapsed since Ms. Lawrence's criminal activity.

9.   Ms. Lawrence has a steady work history with the same employer both before and after her criminal offense.

10.   Ms. Lawrence presented three positive letters of recommendation stating that she is reliable, professional, and dedicated.

11.   On October 2, 2023, the Department proposed to deny Ms. Lawrence's application.

12.   Ms. Lawrence timely requested a hearing.

13.   The hearing on the merits was held via Zoom videoconference on July 29, 2024, before ALJ Rebecca Smith. Attorney Jeannie Ricketts appeared and represented Staff. Ms. Lawrence appeared and represented herself. The hearing concluded that day, and the record closed on August 13, 2024, when the court reporter's transcript was filed with the State Office of Administrative Hearings.

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. Ms. Lawrence 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 Ms. Lawrence's license application, while Ms. Lawrence 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 crimes for which fraud, dishonesty, or deceit is an essential element, as described by Texas Penal Code chapter 31. 28 Tex. Admin. Code § 1.502(e)(1)(since amended).

6. The Department may consider Ms. Lawrence's deferred adjudication to be a conviction for purposes of making a licensing determination. Tex. Occ. Code § 53.021(d).

7. The Department may deny Ms. Lawrence's license application because she is considered to have been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).

8. The Department considers the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to issue a license to an applicant despite a criminal offense. and will not issue a license unless the mitigating factors outweigh the serious nature of the criminal offense or fraudulent or dishonest conduct when viewed in the light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(g)-(h)(since amended).

9. The mitigating factors do not outweigh the seriousness of Ms. Lawrence's criminal offense, and she has not shown her fitness for licensure. Tex. Occ. Code §§ 53.022-.023; 28 Tex. Admin. Code § 1.502(g)-(h).

10.   The Department should deny Ms. Lawrence's application for an adjuster license.

Signed September 25, 2024.

ALJ Signature:

Rebecca Smith

Presiding Administrative Law Judge