

NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA

STATE OF NORTH CAROLINA) COUNTY OF WAKE)) IN THE MATTER OF:)) THE LICENSURE OF) CHAD ANDERSON CARTER) (NPN 13342974))) Applicant.))	BEFORE THE COMMISSIONER OF INSURANCE ORDER AND FINAL AGENCY DECISION Docket Number: 1967
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THIS MATTER was heard on Thursday, November 7, 2019, 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 Hearing that was duly served and issued.

The administrative hearing was held in the Albemarle Building, located at 325 North Salisbury Street, Raleigh, Wake County, North Carolina. Assistant Attorney General Rebecca E. Lem represented the North Carolina Department of Insurance, Agent Services Division (hereinafter “Petitioner”). Applicant Chad Anderson Carter (hereinafter, “Applicant”) did not appear.

Before the presentation of evidence, Petitioner moved to amend numbered paragraph 1 of section I of the Petition to change the date of the application from March 19, 2018 to August 9, 2018 to conform with the evidence presented. Petitioner’s motion was granted.

At the hearing, Robert Cunningham, a Licensing Supervisor with the Agent Services Division (“ASD”) of the Department testified for the Petitioner.

The Petitioner offered into evidence Petitioner’s Exhibits 1, 2, 3, 4, 5a through 5d, and 6, which were admitted into evidence. Exhibits 1 and 2 were admitted for administrative purposes only.

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

FINDINGS OF FACT

1. The North Carolina Department of Insurance is a state agency responsible for the enforcement of the insurance laws of North Carolina and for regulating and licensing insurance agents and business entities in accordance with Chapter 58 of the North Carolina General Statutes.

2. Pursuant to N.C. Gen. Stat. § 58-2-69, Applicant has informed the Petitioner of his residential address. On August 29, 2019 the Notice of Administrative Hearing was mailed to the Applicant at his residential address then on file with the Petitioner by First Class U.S. Mail and certified First-Class U.S. Mail, return receipt requested.

3. The copy of the Notice of Administrative Hearing that was sent to Applicant by certified mail was returned as "Unclaimed/Being Returned to Sender." However, the copy of the Notice of Administrative Hearing served on Applicant by First Class U.S. Mail was not returned.

4. Applicant applied to the Department for a resident insurance producer license with a Life line of authority in August 2018 with an electronically signed application after completing the required pre-licensing education.

5. On the resident insurance producer license application (hereinafter, "license application"), Applicant answered "yes" to the application questions 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?" and "Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony?"

6. Applicant disclosed, and certified court documentation subsequently confirmed, that Applicant had three felony convictions in Robeson County, all of which related to an incident that occurred on July 18, 2010 and were resolved by Alford plea on May 2, 2012. These convictions are:

- a. Felony Robbery with a Dangerous Weapon (10 CRS 055140);
- b. Felony Conspiracy to commit Robbery with a Dangerous Weapon (10 CRS 055142); and
- c. Felony Discharging a Weapon into an Occupied Property/ Motor Vehicle (11 CRS 004438).

7. Applicant also submitted a signed application for a waiver pursuant to 18 U.S.C. § 1033 (hereinafter, “§ 1033 Waiver Application”) which included a written statement from Applicant with information related to Applicant’s employment and educational background, copies of court records related to Applicant’s convictions, and information about Applicant’s credit score and other financial information.

8. Applicant did not submit all of the documentation required to complete the § 1033 Waiver Application. Most notably, Applicant did not submit any character references, although the application required submission of 5 (five) character references relating to the applicant’s honesty, trustworthiness, and financial responsibility.

9. In his written statement, Applicant said that he had been the driver for two acquaintances who had robbed a salesman. Applicant explained that he knew his two acquaintances were “not necessarily the best company,” but explained that “the girls thought they were cool, so I thought I would be cool by proxy.” Applicant drove his acquaintances to meet the salesman. Applicant waited in the car while his acquaintances got out to meet the salesman. Applicant heard a gunshot and the acquaintances got back in his car. Applicant drove off in a panic with his acquaintances. The salesman got into his own vehicle and was ramming it into Applicant’s vehicle, and one of Applicant’s acquaintances fired a gun at the truck. Ultimately, the salesman jack-knifed Applicant’s car into an out of control spin at high speeds.

10. The Applicant’s statement did not address the specific property stolen in the robbery that led to Applicant’s felony convictions. However, the indictment against the Applicant for the charge of Robbery with a Dangerous Weapon states that he stole 500 pieces of jewelry, 3 pairs of tennis shoes, and eight handbags valuing \$900.00 from the victim by means of assault, consisting of having in possession and threatening the use of a 380 Colt government model handgun.

11. The Judgment against the Applicant indicates that he received a sentence of 51 to 71 months incarceration with credit for 39 days spent in pre-trial confinement and was required to pay restitution in the amount of \$10,435.02.

12. Applicant was 20 years old at the time of his conviction and 18 years old on the date of offense for his felony convictions.

13. Based on Applicant’s May 2, 2012 conviction date and his minimum sentence of 51 months with 39 days of credit (49 months and 21 days) the earliest release date for the applicant would have been June 21, 2016.

14. Applicant's statement noted that he had, while incarcerated, earned his General Equivalency Diploma (GED), and earned 24 credits towards an Associate Degree in Business Administration through Buncombe Technical College, as well as 6 credits from UNC Chapel Hill for secondary education and trade courses. He indicated that he was currently a junior at the University of North Carolina at Pembroke (UNCP) with a double major in Business Administration and Spanish. He noted that he was recently employed in the UNCP library and also peer tutored.

15. Applicant's statement indicated that he wanted to become a life insurance agent because of the flexible work schedule so he could pursue his PhD. He also noted that "insurance commissions are a method to creative [sic] passive income while also supplying a service that is fulfilling to provide because families have already lost a love [sic] one (insured), so including financial hard [sic] is devastating." Applicant expressed his desire to help families that think that they cannot afford life insurance and noted that he had turned his life around.

16. Following receipt and review of Applicant's license application and incomplete § 1033 Waiver Application, the Agent Services Division of the North Carolina Department of Insurance ("ASD") denied Applicant's license application by letter dated September 18, 2018. The basis for the denial was N.C. Gen. Stat. § 58-33-46(a)(6) due to Applicant's felony convictions.

17. Applicant thereafter requested a review of the denial of his license application, and a denial review occurred on November 13, 2018, with Robert Cunningham in attendance on behalf of ASD, as well as Applicant. In the denial review meeting, Applicant had further opportunity to explain the circumstances involving his criminal convictions, as well as why he thought he should be granted his insurance agent license.

18. Following the denial review meeting, ASD upheld its denial of Applicant's license application and notified Applicant of this decision by letter dated April 5, 2019.

19. Applicant timely requested a hearing to appeal the denial of his license application.

20. Testifying for the Petitioner, Licensing Supervisor Robert Cunningham noted that because it was incomplete, Applicant's § 1033 Waiver Application was not forwarded to the Commissioner of Insurance for his consideration.

21. Mr. Cunningham also testified that there is a nexus between Applicant's criminal conduct and the duties of an insurance agent. He said that insurance agents are in positions of trust and that, in particular, insurance agents handle sensitive personal and financial information of their clients. Insurance agents also have the opportunity to steal from both their clients as well as the agencies and insurance companies they work for. Mr. Cunningham noted that ASD has seen many cases where insurance agents have stolen money from clients or companies, although he is not often involved in those cases because he works primarily with the initial licensing of applicants.

22. Certified court records show that after the date of his application, on June 11, 2019, Applicant was charged with being intoxicated and disruptive in Robeson County file number 19 CR 053084.

23. Mr. Cunningham stated that this charge, or a conviction of this charge, if one occurs, is not by itself cause for denial of Applicant's license, it weighs against granting Applicant a license because it shows that he continues to have difficulties with the law.

24. The certified copy of Applicant's criminal record search introduced by Petitioner also shows that, after the date of his application, Applicant was convicted of Driving While Impaired on June 5, 2019 in Robeson County file number 19 CR 050360.

25. On October 31, 2019, Mr. Cunningham sent an email to Applicant asking if he was attending the Nov. 7, 2019 hearing and if he needed parking information. Further, Mr. Cunningham noted that he understood that Applicant may be living in Florida and asked what address any order resulting from the hearing should be sent to. Mr. Carter responded to this email by providing a Florida mailing address.

CONCLUSIONS OF LAW

1. This matter is properly before the North Carolina Commissioner of Insurance (hereinafter "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. Applicant was properly served with the Notice of Hearing and Petition in this matter.

3. Pursuant to N.C. Gen. Stat. §§ 58-33-30 and 38-33-31, the Commissioner may deny an application for a resident insurance producer license for any reason for which a license may be suspended or revoked or not renewed under N.C. Gen. Stat. § 58-33-46.

4. Pursuant to N.C. Gen. Stat. § 58-33-46(a)(6), the Commissioner may place on probation, suspend, revoke, or refuse to renew any license issued under Chapter 58, Article 33 of the General Statutes (hereinafter “Article 33”) for having been convicted of a felony.

5. Applicant’s convictions for Robbery with a Dangerous Weapon, Conspiracy to commit Robbery with a Dangerous Weapon, and Discharging a Weapon into an Occupied Property/Motor Vehicle are felony convictions.

6. Session Law 2019-91, which took effect on October 1, 2019, makes state agency licensing boards, including the Department of Insurance with respect to licenses issued under Article 33, subject to the requirements of N.C. Gen. Stat. § 93B-8.1. Pursuant to Section 6 of S.L. 2019-91, the act applies to applications for licensure submitted on or after October 1, 2019.

7. While the requirements N.C. Gen. Stat. § 93B-8.1, as amended by S.L. 2019-91, do not apply to this application, they are still useful in evaluating whether to grant or deny the application because of Applicant’s felony convictions.

8. N.C. Gen. Stat. § 93B-8.1(b), as amended by S.L. 2019-91, states that:

Unless federal law governing a particular board provides otherwise, a board may deny an applicant on the basis of a conviction of a crime only if the board finds that the applicant’s criminal conviction history is directly related to the duties and responsibilities for the licensed occupation or the conviction is for a crime that is violent or sexual in nature. . . .

9. 18 U.S.C. § 1033(e), requires individuals who have been convicted of any criminal felony involving dishonesty or a breach of trust to obtain the written consent of an insurance regulatory official before they can engage in or participate in the business of insurance.

10. “Robbery is a crime of dishonesty because it involves taking someone’s property.” *State v. Lynch*, 337 N.C. 415, 420, 445 S.E.2d 581, 583 (1994).

11. Armed robbery is also a crime of violence. *See State v. Alexander*, 279 N.C. 527, 533, 184 S.E.2d 274, 279 (1971).

12. Applicant's convictions of Robbery with a Dangerous Weapon and Conspiracy to commit Robbery with a Dangerous Weapon are felonies involving dishonesty for which he must be granted a waiver pursuant to 18 USC § 1033 in order to lawfully engage in the business of insurance.

13. Applicant's conviction of Robbery with a Dangerous Weapon, Conspiracy to commit Robbery with a Dangerous Weapon and Discharging a Weapon into an Occupied Property/Motor Vehicle are also crimes of violence.

14. Pursuant to N.C. Gen. Stat. § 93B-8.1(b), as amended by S.L. 2019-91, Applicant's application may be denied based on his convictions of Robbery with a Dangerous Weapon, Conspiracy to commit Robbery with a Dangerous Weapon and Discharging a Weapon into an Occupied Property/Motor Vehicle.

15. Pursuant to N.C. Gen. Stat. § 93B-8.1(b1), as amended by S.L. 2019-91, before a board may deny an application due to a criminal conviction, it must specifically consider all of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (6a) The completion of, or active participation in, rehabilitative drug or alcohol treatment.
- (6b) A Certificate of Relief granted pursuant to G.S. 15A-173.2.
- (7) The subsequent commission of a crime by the applicant.
- (8) Any affidavits or other written documents, including character references.

16. Considering those factors in the present case:

- (1) Applicant's convictions for Robbery with a Dangerous Weapon and Discharging a Weapon into an Occupied Dwelling/Motor Vehicle are both Class D felonies and Conspiracy to commit Robbery with a Dangerous Weapon is a Class E felony.

- (2) The crimes were committed in July 2010, less than 10 years ago.
- (3) Applicant was 18 when he committed the crimes.
- (4) The robbery involved a handgun. By Applicant's own account, his accomplices fired the handgun when initially taking the victim's property and again when being chased by the victim. The chase itself also involved driving at high speeds before ending in a crash.
- (5) Applicant's criminal conduct is directly related to the duties of an insurance agent because insurance agents are in positions of trust, they handle sensitive personal and financial information of their clients. They also have the opportunity to steal from their clients, the agencies they work for and the insurance companies they work for.
- (6) The earliest Applicant could have been released from prison was June 21, 2016. While in jail, Applicant appears to have spent his time improving himself by working and taking classes. It further appears that he initially has continued on that path since being released, however the period of time since he has been released is currently too short to establish a sufficient post-release employment record.
- (6a) There is no information as to whether Applicant has completed or participated in any rehabilitative drug or alcohol treatment.
- (6b) There is no information as to whether Applicant has had a Certificate of Relief granted pursuant to N.C. Gen. Stat. § 15A-173.2.
- (7) Applicant has recently been convicted of Driving While Impaired and has an Intoxicated and Disruptive charge pending. While neither charge, standing alone and without any aggravating circumstances, would likely disqualify any applicant from obtaining a license, they do show that Applicant has continued to be charged with crimes since being released from prison.
- (8) The information provided by Applicant in his license application and incomplete § 1033 Waiver have been considered.

17. Having considered all of the factors in N.C. Gen. Stat. § 93B-8.1(b1), as amended by S.L. 2019-91, the seriousness of the felonies committed, the recency of the felonies committed, the fact that the felonies are violent crimes, the fact that the specific circumstances of the crimes show the dangerous conduct of discharging a handgun into an occupied vehicle and high-speed driving support denying Applicant's

application for a license. The fact that Applicant was only recently released also supports denying Applicant's application for a license.

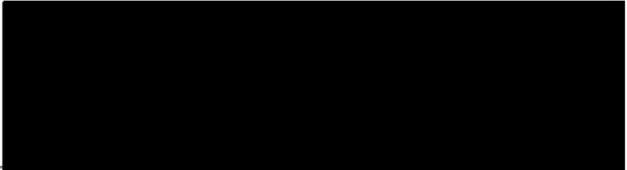
18. After consideration of all testimonial and documentary evidence in this case, Applicant's license application should be denied pursuant to N.C. Gen. Stat. § 58-33-46(a)(6) for having been convicted of a felony.

19. Because the Applicant never completed a § 1033 Waiver Application, and because a decision was never made on whether to grant or deny an application for a § 1033 Waiver cannot be considered by the undersigned.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Agent Services Division's denial of Applicant's application for a resident insurance producer license with a Life line of authority is upheld and that the application is DENIED, and that no license shall be issued to him.

This the 3rd day of December, 2019.



Robert D. Croom, Hearing Officer
N.C. Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

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 1.0413 and N.C.G.S. § 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 and requires service of the Petition on all parties. 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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing ORDER AND FINAL AGENCY DECISION by mailing a copy of the same via certified U.S. mail, return receipt requested; via first class U.S. mail to the licensee at the address provided to the Commissioner pursuant to N.C. Gen. Stat. § 58-2-69(b); and via State Courier to Attorney for Petitioner, addressed as follows:

Chad Anderson Carter
7946 Highway 72 West
Pembroke, NC 28372

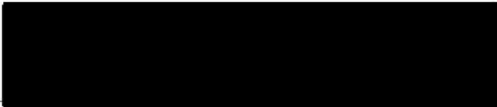
Certified Mail Tracking Number: 70191120000089734206

Chad Anderson Carter
13321 US HWY 1
Juno Beach, FL 33408

Certified Mail Tracking Number: 70191120000089734978

Rebecca E. Lem
Assistant Attorney General
N.C. Department of Justice
Insurance Section
9001 Mail Service Center
Raleigh, NC 27699-9001
(Attorney for Petitioner)

This the 3rd day of December, 2019.


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