

No. **2021-6760**

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

Date: 04/01/2021

Subject Considered:

Texas Department of Insurance

v.

Harry E. Bundy, Jr.

SOAH Docket No. 454-21-0122.C

General remarks and official action taken:

The subject of this order is Harry E. Bundy, Jr.'s application for a general lines life, accident and health agent license.

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 department grant Mr. Bundy's application for a license. 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 by the Texas Department of Insurance (TDI) and incorporated by reference into this order.

Conclusions of Law

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

On August 3, 2018, Mr. Bundy applied for a General Lines Life, Accident, and Health agent license with the Department. On September 11, 2018, the Department proposed to deny his application based on his prior criminal record and allegations that Mr. Bundy made a false representation on his application by indicating that Mr. Bundy had received a Preparer Tax Identification Number (PTIN) from the IRS despite his criminal history.¹ Mr. Bundy timely requested a hearing.²

B. Applicable Law

The Department may deny a license application if the Department determines that the license holder has intentionally made a material misstatement in the license application.³

The Department may also deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices.⁴ The Department, in accordance with Texas Occupations Code § 53.025, 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. The Department considers any offense for which fraud, dishonesty, or deceit is an essential element to be of such a serious nature that it is of prime importance in determining an applicant's fitness for licensure.⁵

Unless the Department finds the factors set out in 28 Texas Administrative Code § 1.502(h)(2) outweigh the seriousness of the criminal offense, the Department must deny a license application if the Department determines that the applicant has committed a felony or

¹ Staff Ex. A at 11.

² Staff Ex. A at 5.

³ Tex. Ins. Code § 4005.101(b)(2).

⁴ Tex. Ins. Code § 4005.101(b)(5).

⁵ 28 Tex. Admin. Code § 1.502(e)(1).

misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.⁶ The factors include:

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; and
6. other evidence of the person's present fitness, including letters of recommendation from:
 - a. prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - b. the sheriff or chief of police in the community where the person resides; and
 - c. any other persons in contact with the convicted person; and
7. proof furnished by the applicant that the applicant has:
 - a. maintained a record of steady employment;
 - b. supported the applicant's dependents;
 - c. maintained a record of good conduct; and
 - d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.⁷

⁶ 28 Tex. Admin. Code § 1.502(f).

⁷ Tex. Occ. Code § 53.023. The Department has adopted these factors in its guidelines. 28 Tex. Admin. Code § 1.502(h)(2).

Staff has the burden of producing evidence to show that Mr. Bundy's application should be denied because he has a criminal history that supports denial of the registration.⁸ Once Staff produces such evidence, the burden of production shifts to Mr. Bundy to show that he is fit for registration despite his criminal history.⁹

C. Evidence

Staff offered one exhibit, which was admitted. Staff's exhibit included Mr. Bundy's application, along with information he provided about his convictions and letters of recommendation. Staff also called Lewis Wright, the Administrative Review Liaison for the Department. Mr. Bundy offered 13 exhibits into evidence, 6 of which were admitted. Mr. Bundy also called witnesses William Daniels and Dr. Keith Gavin and testified on his own behalf. Both parties called witnesses from the IRS, who also testified.

Mr. Bundy testified that although he committed the crimes he listed on his application, he takes responsibility for his crimes and acknowledges his past mistakes. He testified that since his crimes he has maintained steady employment and a record of good conduct. After his convictions he furthered his education by earning a Master's of Business Administration degree and was promoted to a managerial position at his present job. Mr. Bundy argued that his application showed his rehabilitated character since committing the offenses.

Mr. Bundy also testified that he holds a PTIN from the IRS giving him the authority to prepare federal tax returns and included this information on his application. Staff disputed Mr. Bundy's assertion that he holds a PTIN and argued that Mr. Bundy's material misstatement is a separate basis on which his application should be denied. Although Mr. Bundy's name was not listed on the IRS list of PTIN holders in Texas, which is published on the IRS website, it was established that Mr. Bundy does, in fact, hold a PTIN. Kayla Terry, an IRS return preparer in the PTIN division, testified that it is possible that someone holds a PTIN, but is not included on the

⁸ 1 Tex. Admin. Code § 155.427.

⁹ 28 Tex. Admin. Code § 1.502(h)(3).

list published on the IRS website. Madison Walker, an IRS Consumer Service Representative, testified that Mr. Bundy first received a PTIN in November of 2012, that his PTIN has been renewed for 2020, and that it is currently active. Mr. Bundy argued that the fact that the IRS issued a PTIN that has been renewed and is currently in effect shows that he satisfied the IRS's rigorous standards for fitness, and should be considered by the Department.

Mr. Wright testified that he has worked at the Department for 13 years and evaluates applications for licenses as part of his job duties. Mr. Wright testified that Mr. Bundy answered the criminal history portion of the application with a "yes" and submitted additional information such as court documents, letters of recommendation, and a work history or resume. Mr. Wright testified that the crimes committed by Mr. Bundy were serious.

Dr. Keith Gavin, who wrote a letter of recommendation on Mr. Bundy's behalf, testified as to Mr. Bundy's character. Dr. Gavin testified that Mr. Bundy is a member of his church and serves on the financial committee for the church. After being placed on the financial committee, the church's finances have remained in order and all monies have been accounted for. He described Mr. Bundy as having made a difference in the church because prior financial committee members had actually taken money from the church. He described Mr. Bundy as very trustworthy and accountable. Dr. Gavin testified that he is aware of Mr. Bundy's criminal history and that he feels that Mr. Bundy has redeemed himself.

William Berry Daniels, Jr. also wrote a letter of recommendation and testified on Mr. Bundy's behalf. Mr. Daniels first met Mr. Bundy because Mr. Daniels purchased supplies from Mr. Bundy's company for use in Mr. Daniels's business. Mr. Daniels then hired him to work in one of his offices. Mr. Bundy was the only person who worked in that particular office and was responsible for handling money, confidential information, and credit card information from customers. Mr. Daniels described Mr. Bundy as a reliable employee and a "good, hard worker." He testified that he was aware of Mr. Bundy's past convictions. Mr. Daniels also stated that he was aware that Mr. Bundy had a PTIN from the IRS and that such a number was required for Mr. Bundy to perform his job duties.

D. Analysis

Under Texas Insurance Code § 4005.101(b)(5), the Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. It is undisputed that in 1995 and 2002, Mr. Bundy engaged in fraudulent or dishonest acts or practices when he made false statements on tax returns and tampered with a government document when he wrote a note into the margin of a child support order that he signed.¹⁰ Pursuant to 28 Texas Administrative Code § 1.502(h), the Department must consider the factors listed in Texas Occupations Code § 53.023, set out above, in determining whether to grant Mr. Bundy's license application.

Regarding these factors, the evidence established that Mr. Bundy pleaded guilty to making false statements to the IRS and tampering with a government records, which are serious offenses. Mr. Bundy was 29 and 36 years old when his crimes were committed.¹¹ More than 18 years have elapsed since he committed his last offense. There is no evidence of any additional criminal activity by Mr. Bundy since the 2002 crime other than a traffic ticket. He has established a good record of conduct, has worked consistently since being released, and has furthered his education by earning a Master's of Business Administration degree. He also has positive recommendations from members of his community, including his church pastor and a prior employer. Mr. Bundy was forthright in his testimony, accepted responsibility for his past mistakes, and expressed remorse. He presented himself as a person with integrity who is committed to his career and to his further rehabilitation. Additionally, Mr. Bundy proved that he is in possession of a PTIN from the IRS, such that Staff failed to prove that Mr. Bundy made a misstatement on his application. Given all the circumstances, at this point, Mr. Bundy has shown his fitness for licensure.

Accordingly, the ALJ concludes that Mr. Bundy's application for a General Lines Life, Accident, and Health agent license should be granted. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

¹⁰ Staff Ex. A at 54.

¹¹ Staff Ex. A at 54.

III. FINDINGS OF FACT

1. On August 3, 2018, Harry E. Bundy, Jr. applied for a General Lines Life, Accident, and Health agent license with the Texas Department of Insurance (Department).
2. On September 11, 2018, the Department proposed to deny his application based on his criminal history and allegations that he made a material misstatement on his application.
3. Mr. Bundy timely requested a hearing to challenge the denial.
4. On September 15, 2020, the Department issued a notice of hearing on the denial of his application.
5. On October 12, 2020, the Administrative Law Judge (ALJ) issued Order No. 1 converting the in-person hearing to a hearing via the Zoom Videoconferencing Application (Zoom).
6. The notice of hearing and Order No. 1 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.
7. The hearing in this case was held via Zoom on October 29, 2020, before ALJ Holly Vandrovec of the State Office of Administrative Hearings. The staff (Staff) of the Department was represented by staff attorney Casey Seeboth. Mr. Bundy represented himself. The hearing concluded and the record closed the same day.
8. In June 1995, Mr. Bundy pleaded guilty to filing false, fictitious, or fraudulent claims with the United States Internal Revenue Service (IRS), a felony. He was sentenced to 18 months' imprisonment and ordered to pay a fine. Mr. Bundy was also convicted of tampering with a government record, a class A misdemeanor, in February 2005.
9. Mr. Bundy was 29 and 36 years old when he committed the offenses.
10. Over 18 years have passed since Mr. Bundy committed his last offense. He has not had any other criminal violations other than a traffic ticket since that time.
11. Mr. Bundy has earned a Master's of Business Administration degree and had a consistent work history since the commission of his offenses.
12. Mr. Bundy has earned respect and trust from his colleagues and acquaintances.

13. Mr. Bundy first obtained a Preparer Tax Identification Number (PTIN) from IRS in November of 2012 and that PTIN authorization was current as of the date his application was filed with the Department.
14. Mr. Bundy did not make a material misstatement on his application filed with the Department.
15. Mr. Bundy is rehabilitated and is a better person today than when he committed his offenses.
16. The preponderance of the evidence demonstrates Mr. Bundy's current fitness to hold a license.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
2. The State Office of Administrative Hearings 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. Mr. Bundy received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license application if the Department determines that the license holder has intentionally made a material misstatement in the license application. Tex. Ins. Code § 4005.101(b)(2).
5. The Department may deny a license if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
6. Mr. Bundy has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2).
7. The Department should approve Mr. Bundy's application for a license.

SIGNED December 22, 2020.



HOLLY VANDROVEC
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS