

No. **2020-6476**

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

Date: 09/24/2020

Subject Considered:

Texas Department of Insurance

v.

Brandy Nicole Cline

SOAH Docket No. 454-20-3069.C

General remarks and official action taken:

The subject of this order is the application of Brandy Nicole Cline for an adjuster-all lines 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 Ms. Cline's application for an adjuster-all lines license. A copy of the proposal for decision is attached as Exhibit A.

Discussion of Applicable Law

The administrative law judge correctly notes that Texas Occupations Code § 53.022 applies in determining the fitness a person who has been convicted of a crime to perform the duties and responsibilities of a licensed occupation. However, Occupations Code § 53.022 was amended by House Bill 1342, 86th Legislature, Regular Session, effective September 1, 2019, and the administrative law judge does not address whether the version of the law as it existed prior to or after the effective date of HB 1342 is applicable to Ms. Cline's application.

COMMISSIONER'S ORDER
TDI v. Brandy Nicole Cline
SOAH Docket No. 454-20-3069.C
Page 2 of 4

Section 14 of HB 1342 states:

The changes in law made by this Act apply only to an application for a license submitted on or after the effective date of this Act. An application for a license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

Ms. Cline submitted her application on August 30, 2018, therefore Occupations Code §53.022 as it existed prior to HB 1342 is applicable. But in listing the factors to be considered under Occupations Code § 53.022, the administrative law judge appears to merge the different versions of the law. The discussion in the proposal for decision states that the factors to be considered are:

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 the license might offer the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
4. Any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

The first two listed factors reflect the applicable version of Occupations Code § 53.022. However, the third listed factor merges the text of Occupations Code § 53.022(3) and (4) as amended by HB 1342 (but leaving out relevant parts of the text of each factor). Similarly, the fourth listed factor is from Occupations Code § 53.022(5), which was added by HB 1342. Because Ms. Cline's application is subject to the pre-HB 1342 version of Occupations Code § 53.022, the third and fourth factors that should be considered are:

COMMISSIONER'S ORDER
TDI v. Brandy Nicole Cline
SOAH Docket No. 454-20-3069.C
Page 3 of 4

3. The extent to which the 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; and
4. The relationship of the crime to the ability capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

Nevertheless, the administrative law judge's misstatement of the factors to be considered under Occupations Code § 53.022 does not impact any findings of fact or conclusions of law or the resolution suggested by the administrative law judge, so this order does not change those findings or conclusions, and it adopts the administrative law judge's recommendation.

Findings of Fact

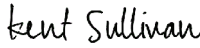
The findings of fact contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Conclusions of Law

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

Order

It is ordered that Brandy Nicole Cline's application for an adjuster-all lines license be granted.

DocuSigned by:

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Kent C. Sullivan
Commissioner of Insurance

COMMISSIONER'S ORDER
TDI v. Brandy Nicole Cline
SOAH Docket No. 454-20-3069.C
Page 4 of 4

Recommended and reviewed by:

DocuSigned by:
James Person
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James Person, General Counsel

DocuSigned by:
Justin Beam
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Justin Beam, Assistant General Counsel



SOAH DOCKET NO. 454-20-3069.C

TEXAS DEPARTMENT OF INSURANCE	§	BEFORE THE STATE OFFICE
v.	§	
	§	OF
	§	
BRANDY NICOLE CLINE,	§	
Applicant	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Brandy Nicole Cline for an adjuster-all lines license based on her criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department approve Ms. Cline’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held telephonically on April 30, 2020, before ALJ Rachelle White at the State Office of Administrative Hearings. Staff was represented by staff attorney Patrick Quigley. Ms. Cline represented herself. The hearing concluded and the record closed the same day. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Background

On January 4, 2013, Ms. Cline pleaded guilty to theft of property \$1,500-\$20,000, a state jail felony, in Case No. 1287762D, in Criminal District Court No. 1 in Tarrant County, Texas.¹ Adjudication was deferred, and Ms. Cline was placed on community supervision for 2 years. She was ordered to pay a \$200 fine, \$1,851 restitution, court costs, and comply with the terms and

¹ Staff Ex. 5 at 55-56. The offense occurred on or about April 5, 2012.

conditions of community supervision.² Ms. Cline was discharged from community supervision on May 1, 2015.³

On November 10, 2015, Ms. Cline pleaded guilty to debit card abuse, in Case No. 1425157D, a state jail felony, in Criminal District Court No. 1 in Tarrant County, Texas.⁴ As an alternative to incarceration, adjudication was deferred, and Ms. Cline was placed on community supervision for 3 years. She was ordered to pay a \$300 fine, court costs, and comply with the terms of conditions of community supervision.⁵ Ms. Cline was discharged from community supervision on November 5, 2018.⁶

On August 30, 2018, Ms. Cline applied for an adjuster-all lines license with the Department. On February 7, 2019, the Department proposed to deny her application based on her prior criminal record. Ms. Cline timely requested a hearing.⁷

B. Applicable Law

In accordance with Texas Occupations Code § 53.025, the Department has developed guidelines relating to the matters it will consider in determining whether to grant, deny, suspend, or revoke any license or authorization under its jurisdiction. Those guidelines apply if an applicant has been convicted of a crime.

² Staff Ex. 5 at 55-59.

³ Staff Ex. 5 at 60.

⁴ Staff Ex. 6 at 70-71. The offense occurred on or about July 12, 2015.

⁵ Staff Ex. 6 at 74-75.

⁶ Staff Ex. 6 at 80.

⁷ Staff Ex. 2.

The Department may deny a license to an applicant who has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.⁸ The factors to be considered in determining whether a conviction directly relates to the occupation are:

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 the license might offer the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
4. any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.⁹

In determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority must also consider the following factors:

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 prior to and following the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following 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;

⁸ Tex. Occ. Code § 53.021(a)(1).

⁹ Tex. Occ. Code § 533.022.

- 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.¹⁰

The crimes that the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure include any offense for which fraud, dishonesty, or deceit is an essential element and a theft offense, as described by Chapter 31 of the Texas Penal Code.¹¹ 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 misdemeanor, or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation.¹²

Staff has the burden of producing evidence to support its bases for the proposed denial of the application.¹³ Thereafter, the burden shifts to Ms. Cline to establish her fitness for licensure despite her criminal history.¹⁴

¹⁰ Tex. Occ. Code § 53.023. The Department has adopted these factors in its guidelines. 28 Tex. Admin. Code § 1.502(h).

¹¹ 28 Tex. Admin. Code § 1.502(e)(1),(4)(F).

¹² 28 Tex. Admin. Code § 1.502(f).

¹³ 1 Tex. Admin. Code § 155.427.

¹⁴ 28 Tex. Admin. Code § 1.502(h)(3).

C. Evidence

Staff offered six exhibits, which were admitted. The exhibits included Ms. Cline's application, along with documents she provided related to her fitness for licensure. Staff also offered the testimony of Lewis Weldon Wright, IV, an Administrative Review Liaison for the Department. Ms. Cline called Kelli Lara as a witness, and Ms. Cline testified on her own behalf.

1. Testimony of Mr. Wright

Mr. Wright testified that Ms. Cline submitted an application for licensure as an adjuster-all lines, which the Department characterized as a non-standard application due to her criminal background and past involvement in criminal activity. According to Mr. Wright, Ms. Cline met the initial qualifications for an adjuster-all lines license, but her application indicated that she had been the subject of felony-level crimes for which she had received deferred adjudication. Mr. Wright further stated that criminal history is a reason for which an application can be denied pursuant to section 4005.101 of the Texas Insurance Code and section 1.502 of the Texas Administrative Code.

Mr. Wright confirmed that one of Ms. Cline's criminal proceedings involved theft, which he stated is an offense of prime importance in determining fitness for licensure. Mr. Wright said that he functioned as the Department's liaison between the enforcement division, the administrative review section, the adjuster licensing office, and the legal division during the evaluation process. According to Mr. Wright, the Department evaluated Ms. Cline's application in conjunction with the supporting documents she provided, such as criminal disposition records, personal and professional reference letters, and a résumé. Mr. Wright testified that the Department applied the statutory framework to Ms. Cline's criminal offenses, and the Department ultimately proposed to deny Ms. Cline's application.

2. Testimony of Ms. Lara

Ms. Lara testified that she is Ms. Cline's mother, and she pressed charges against Ms. Cline for the 2015 offense of debit card abuse. Ms. Lara said Ms. Cline took and used her debit card without her permission; she reported Ms. Cline's unauthorized use of her debit card in order to save Ms. Cline's life. According to Ms. Lara, Ms. Cline had become addicted to pain pills due to a surgery, and she expected that Ms. Cline would get clean and stop stealing if she went to jail. Ms. Lara opined that Ms. Cline's addiction to prescription medication contributed to her involvement in the earlier offense of theft that occurred while she was in charge of loss prevention at Wal-Mart. Ms. Lara stated that Ms. Cline took ownership and completed an extensive rehabilitation program, known as RISE.¹⁵ Ms. Lara also expressed that her confidence in Ms. Cline has been restored, and she believes Ms. Cline is completely rehabilitated.

3. Testimony of Ms. Cline

During her testimony, Ms. Cline stated that she does not dispute the criminal incidents. In reference to the theft offense, Ms. Cline stated that she did not personally steal from Wal-Mart but admitted that, during the investigation, she had not been honest about her acquaintance with a suspect. Ms. Cline testified that she had become addicted to prescription pain medication in 2007 after she underwent the first of three surgeries. After the second offense involving Ms. Lara, Ms. Cline said she agreed to complete a three-year, court-approved treatment and recovery program. According to Ms. Cline, the program helped her overcome her addiction to pain pills and she has not used Hydrocodone or any other painkillers since June 20, 2016.

Ms. Cline testified that she currently sells roofs, which requires her to go into residences, handle checks, and access a safe at work. Ms. Cline indicated that her past addiction caused her

¹⁵ Staff Ex. 3 at 46-47. RISE (Reaching Independence through Self-Empowerment) is a Tarrant County court-approved intervention program that seeks to identify women who have a history of experiencing significant trauma in their past which contributed to their involvement in the criminal justice system. The program offers offenders an individual treatment program that is monitored by a case manager and is designed to divert participants from criminal activity and into a safe, healthy, and self-sufficient lifestyle.

to become involved in criminal activity, but she has worked hard to prove that she is a different person who is fit for licensure by the Department.¹⁶

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. The Department may also deny a license application if the applicant has been convicted of a felony, as contemplated by Texas Insurance Code § 4005.101(b)(8). It is undisputed that Ms. Cline engaged in fraudulent or dishonest acts or practices when she committed the felony offenses of theft and debit card abuse in 2012 and 2015, respectively.

Pursuant to 28 Texas Administrative Code § 1.502(h), the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Ms. Cline's license application. Regarding these factors, the evidence established that Ms. Cline pleaded guilty to two serious offenses for which fraud, dishonesty, or deceit is an essential element. Approximately 3 years and 10 months have elapsed since Ms. Cline's last offense, and there is no evidence of any additional criminal activity by Ms. Cline. The same company has employed Ms. Cline since she completed community supervision in 2018.¹⁷ She also has eight positive letters of recommendations from members of the community who have known her over wide-ranging periods and in different capacities.¹⁸ Ms. Cline's personal and professional references are aware of her criminal history, yet enumerated ways in which Ms. Cline has manifested trustworthiness and demonstrated other qualities demonstrative of her fitness for licensure. Ms. Cline also presented Staff with evidence of her rehabilitative work, which included her personal statement and reference letters from her Tarrant County Community Supervision Officer and RISE Program Advocate.

¹⁶ Staff Ex. 3 at 35. On February 6, 2018, Ms. Cline successfully completed the 40-hour pre-licensing course for adjuster-all lines.

¹⁷ Staff Ex. 3 at 32-33, 49-50.

¹⁸ Staff Ex. 3 at 28-30, 44-45, 48-50.

At the hearing, Ms. Cline was forthright in her testimony, accepted responsibility for her past mistakes, expressed remorse, and offered persuasive evidence of her rehabilitation. After reviewing all of the factors, at this time, the ALJ finds that Ms. Cline has shown her fitness for licensure.

Accordingly, the ALJ concludes that Ms. Cline's application for an adjuster-all lines license should be granted. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On August 30, 2018, Brandy Nicole Cline applied for an adjuster-all lines license with the Texas Department of Insurance (Department).
2. On February 7, 2019, the Department proposed to deny her application based on her criminal history
3. Ms. Cline requested a hearing to challenge the denial.
4. On March 16, 2020, the Department issued a notice of hearing on the denial of her application.
5. 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.
6. The hearing in this case was held telephonically on April 30, 2020, before Administrative Law Judge Rachelle White at the State Office of Administrative Hearings. The staff (Staff) of the Department was represented by staff attorney Patrick Quigley. Ms. Cline represented herself. The hearing concluded and the record closed the same day.
7. On January 4, 2013, Ms. Cline pleaded guilty to theft of property \$1,500-\$20,000, a state jail felony, in Case No. 1287762D, in Criminal District Court No. 1 in Tarrant County, Texas. Adjudication was deferred, and Ms. Cline was placed on community supervision for 2 years. She was ordered to pay a \$200 fine, \$1,851 restitution, court costs, and comply with the terms and conditions of community supervision. Ms. Cline was discharged from community supervision on May 1, 2015.

8. On November 10, 2015, Ms. Cline pleaded guilty to debit card abuse, in Case No. 1425157D, a state jail felony, in Criminal District Court No. 1 in Tarrant County, Texas. As an alternative to incarceration, adjudication was deferred, and Ms. Cline was placed on community supervision for 3 years. She was ordered to pay a \$300 fine, court costs, and comply with the terms of conditions of community supervision. Ms. Cline was discharged from community supervision on November 5, 2018.
9. Approximately 3 years and 10 months have elapsed since Ms. Cline's last offense, and there is no evidence of any additional criminal activity by Ms. Cline.
10. Ms. Cline successfully completed the prerequisite training course for licensure as an adjuster, and she has had a consistent work history since she completed community supervision.
11. Ms. Cline has earned respect and trust from her colleagues and acquaintances.
12. Ms. Cline is rehabilitated and is a better person today than when she committed her offenses.
13. The preponderance of the evidence demonstrates Ms. Cline'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. 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. Cline 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 if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(5).
5. Ms. Cline 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).

6. The Department should approve Ms. Cline's application for a license.

SIGNED May 27, 2020.



RACHELLE WHITE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS