

No. 2024-8776

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

Date: 8/13/2024

Subject Considered:

Texas Department of Insurance v.
Terodsah Frenshal Baker

SOAH Docket No. 454-24-11575.C

General Remarks and Official Action Taken:

The subject of this order is Terodsah Frenshal Baker's application for an adjuster all lines license. This order denies Ms. Baker'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. Baker'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.

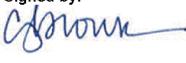
Conclusions of Law

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

COMMISSIONER'S ORDER
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Order

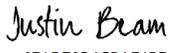
It is ordered that Terodsah Frenshal Baker's application for an adjuster all lines license is denied.

Signed by:

FC5D7EDDFFB84F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

Signed by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

Signed by:

27ADF3DA5BAF4B7... _____
Justin Beam, Chief Clerk

SOAH Docket No. 454-24-11575

Suffix: C

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER
v.
TERODSAH FRENESHAL BAKER,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Terodsah Frenshal Baker (Respondent) 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 deny Respondent's license application at this time.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

The hearing in this case was held via Zoom videoconference on April 11, 2024, before ALJ Holly Vandrovec at the State Office of Administrative Hearings (SOAH).

Staff was represented by staff attorney Whitney Fraser. Respondent appeared and represented herself. The hearing concluded that day, and the record closed on April 29, 2024, when the court reporter's transcript and record exhibits were 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, to take disciplinary action against agents who violate the laws or rules related to insurance, and to deny applications for licenses, among other activities.² Staff alleges that Respondent's application should be denied because of her felony conviction and because she engaged in an offense that directly relates to the duties and responsibilities of the licensed occupation.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 dishonest or untrustworthy activity that directly relates to the duties and responsibilities of the licensed occupation, has committed a felony, or has committed a theft offense, as described by Chapter 31 of the Texas Penal Code.⁵

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 August 2022.

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)(4)(F).

⁴ 28 Tex. Admin. Code § 1.502(c).

⁵ Tex. Ins. Code § 4005.101(b)(5), (8); 28 Tex. Admin. Code § 1.502(d), (e)(4)(F).

The Department may consider a deferred adjudication to be a conviction for licensing purposes if: (1) the person has not yet completed the supervision period; and (2) after considering the factors in Texas Occupations Code sections 53.022 and .023, 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.⁶

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.⁷ 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.⁸ 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.⁹ Those crimes of prime importance include any theft offense described by Chapter 31 of the Texas

⁶ Tex. Occ. Code § 53.021(d).

⁷ Tex. Occ. Code § 53.025(a).

⁸ 28 Tex. Admin. Code § 1.502(e).

⁹ 28 Tex. Admin. Code § 1.502(e).

Penal Code.¹⁰ The Department has determined that the crimes it considers to be of prime importance are directly related to the occupations it licenses.¹¹

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 53.023.¹² Section 53.022 requires that, in determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, a licensing authority, such as the Department, consider the following factors:

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.¹³

¹⁰ 28 Tex. Admin. Code § 1.502(e)(4)(F). The ALJ notes that Staff cited to subsection (e)(4)(K) in the First Amended Petition, which is not the correct citation for theft crimes listed in Chapter 31 of the Penal Code, including unauthorized use of a vehicle (Tex. Penal Code § 31.07).

¹¹ 28 Tex. Admin. Code § 1.502(e); Tex. Occ. Code § 53.022.

¹² 28 Tex. Admin. Code § 1.502(h).

¹³ Tex. Occ. Code § 53.022; *see also* 28 Tex. Admin. Code § 1.502(h)(1).

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 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 one exhibit 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.²¹

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 (Certified Copy of the Agent and Adjuster License Application Packet).

²¹ Letters of recommendation submitted by Respondent to the Department are included in Staff Ex. 1.

A. BACKGROUND

On August 1, 2022, Respondent applied to the Department for an Adjuster—All Lines license. On September 30, 2022, the Department proposed to deny Respondent’s application based on her criminal history.²² Respondent appealed that decision and made a written request for a hearing. This matter was referred to SOAH on February 14, 2024.

On November 11, 2021, Respondent pleaded guilty to the state jail felony offense of unauthorized use of a motor vehicle in Case No. F-2022238-J filed in the Criminal District Court No. 3, Dallas County, Texas. Respondent was sentenced to three years deferred probation. Respondent was also ordered to pay a fine in the amount of \$800 and court costs of \$315. Additionally, she was ordered to pay supervision fees of \$60 per month, submit to drug testing, perform 120 hours of community service, and comply with numerous other conditions of her probation. Respondent’s probation does not end until November 2024.²³

B. MR. WRIGHT’S TESTIMONY

Mr. Wright testified that the insurance license application is designed to protect Texas consumers, which is a part of the Department’s duty.²⁴ He explained that the Department’s Administrative Review section reviews license applications of concern or where a background check has revealed a criminal history that will need

²² Staff Ex. 1.

²³ Staff Ex. 1; Transcript (Tr.) at 19.

²⁴ Tr. at 16.

to be considered.²⁵ Mr. Wright testified that the Department's intent is to protect consumers by ensuring that anyone granted a license is honest, and that they will perform their duties with integrity.²⁶ To this end, the Department evaluates an applicant's criminal history under the guidelines provided by the Legislature when considering the application for licensure.²⁷

Mr. Wright explained that Respondent's crime is specifically listed in the Department's rules as being related to the duties and responsibilities for the licensed occupation. The crime is both a felony-level crime and a theft crime. Because an adjuster's duties include the handling of money and an adjuster's license grants a fiduciary responsibility to the license holder, theft crimes are considered of prime importance.²⁸ In this regard, Respondent's personal statement indicates that she did not follow through with reasonable safeguards in purchasing a vehicle and that the motivation was to avoid having to make monthly payments. Therefore, the Department considered the motivation to be financial in nature and was particularly concerned with her disregard of safeguards and required channels (such as obtaining a vehicle title or doing a title check) necessary to effect a legitimate purchase of a vehicle.²⁹

²⁵ Tr. at 16.

²⁶ Tr. at 17.

²⁷ Tr. at 16.

²⁸ Tr. at 19-20.

²⁹ Tr. at 24.

Mr. Wright indicated that the Department considers the recentness of Respondent’s crime as a negative factor, as well as the fact that she remains on community supervision. He testified that the Department does not believe that they have received enough rehabilitative evidence in this case (including the information in the letters of recommendation submitted by Respondent) to outweigh the concern regarding how recently the crime was committed and the nature of the crime itself.³⁰

Further, because Respondent was 34 years of age at the time the crime was committed, Mr. Wright concluded that it was not a youthful indiscretion, and that Respondent should have known better.³¹

Mr. Wright testified that the Department concluded that, considering the relevant factors, it was not appropriate to approve Respondent’s application for licensure at this time.³²

C. RESPONDENT’S TESTIMONY

Respondent testified that she bought a “cash car” rather than a vehicle that she would have to make payments on because she could not afford to purchase a vehicle with financing at the time. She indicated that she paid money for the car and had the keys to it, she did not break into the car or steal it from someone else. When she was pulled over, she had had the vehicle for several months and was trying to get

³⁰ Tr. at 20-21; 27.

³¹ Tr. at 22.

³² Tr. at 28.

the tags for the car, but she was unable to reach the seller. She later understood that she should have received the paperwork up front.³³

Respondent indicated that she has completed her community service, attended all required meetings, and has only to pay off her fine in order to satisfy the conditions of her community supervision.³⁴

Respondent testified that she currently works for a finance company as a collections representative and that she has been steadily employed both before and after the crime. She does not have dependents to support.³⁵

D. RESPONDENT'S LETTERS OF RECOMMENDATION

The Department's exhibit contains three letters of recommendation provided by Respondent:³⁶

- JoCenta Grady, owner of Aumbiance Hair & Skin, has known Respondent for five years and describes her as being intelligent, a great communicator and team player, having a strong work ethic and positive attitude, and being able to meet short deadlines.
- Danyelle Yarber, a friend and former co-worker of Respondent, has known her for eight years and describes her as loyal, punctual, trustworthy, and having a positive attitude.

³³ Tr. at 30-31.

³⁴ Tr. at 31-33.

³⁵ Tr. at 33-34.

³⁶ Staff Ex. 1.

- Miranda Smith, a friend of Respondent, has known Respondent for over nine years and describes her as reliable, motivated, and making positive changes in her life.

IV. ANALYSIS

Staff contends that Respondent’s criminal history shows that she lacks the honesty and trustworthiness required to hold an insurance adjuster license. Respondent argues that the circumstances surrounding the crime at issue and other mitigating factors demonstrate her honesty and trustworthiness and that her application for licensure should be granted.

As an initial matter, the ALJ notes that, because Respondent has not completed the period of supervision, the Department may consider Respondent to have been convicted of the crime of unauthorized use of a vehicle, if after consideration of the factors in Texas Occupations Code sections 53.022 and .023(a), Respondent may pose a continued threat to public safety or her employment as an adjuster would give her opportunities to repeat the criminal conduct.³⁷ Additionally, Respondent pleaded guilty to a felony offense, specifically a theft offense described by Chapter 31 of the Texas Penal Code, which is specifically enumerated in the Department’s rules as an offense directly related to the occupational license at issue.³⁸

³⁷ Tex. Occ. Code § 53.021(d).

³⁸ 28 Tex. Admin. Code § 1.502(d), (e)(4)(F).

After considering the statutory and regulatory factors, the ALJ finds that the applicable mitigating factors do not outweigh the seriousness of the criminal offense and that the license should not be issued at this time. Namely, Respondent's crime is a serious crime that is considered a form of theft. Respondent was not diligent in her purchase of the vehicle and did not go through the necessary channels to ensure that the vehicle being sold had a clear title. Her reasons for taking the "shortcuts" were financial in nature, which underscores how this crime relates to the occupation of an insurance adjuster, who acts as the intermediary between an insurance company and the insured and determines the amount of compensation to be provided to the insured. Respondent's licensure as an adjuster would tend to place her in settings that would create risk or opportunity that a similar offense could happen again. Respondent was 34 years old at the time of the crime, so it may not be considered a youthful indiscretion. Only three years have passed since Respondent's offense. Respondent has completed her community service; however, she has not completed her period of supervision and has not finished paying off the court costs and fines associated with her probation. Although her work history and the character letters provided show that she is a hard-working individual who is on the right track, the ALJ cannot conclude that these mitigating factors are sufficient to overcome her criminal history and show that she is currently fit for licensure. The Department should deny Respondent's application at this time. In support of this recommendation, the ALJ makes the following Findings of Fact and Conclusions of Law.

V. FINDINGS OF FACT

1. On November 11, 2021, Terodsah Frenshal Baker (Respondent) pleaded guilty to the state jail felony offense of unauthorized use of a motor vehicle in Case No. F-2022238-J filed in the Criminal District Court No. 3, Dallas County, Texas.
2. Respondent was sentenced to three years deferred probation and was ordered to pay a fine in the amount of \$800 and court costs of \$315. Additionally, she was ordered to pay supervision fees of \$60 per month, submit to drug testing, perform 120 hours of community service, and comply with numerous other conditions of her probation.
3. Respondent's probation does not end until November 2024.
4. It has been three years since Respondent's criminal activity.
5. Respondent's criminal offense was committed when she was 34 years old; therefore, it was not a youthful indiscretion.
6. Respondent has a steady work history before and after her criminal offense.
7. Respondent provided three letters of recommendation that spoke very highly of her work ethic and character.
8. Respondent's offense is serious, but she has no other criminal history.
9. Respondent has completed her community service, but she has not paid all court costs and fees assessed as a condition of her probation.
10. Respondent's crime was financial in nature, which relates to the duties and responsibilities of the occupation of adjuster.
11. Respondent may pose a continued threat to public safety given the nature and severity of her offense.
12. Respondent is not fit for licensure by the Texas Department of Insurance (Department) at this time.

13. On August 1, 2022, Respondent applied to the Department for an adjuster all lines license.
14. On September 30, 2022, 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. This matter was referred to the State Office of Administrative Hearings (SOAH) on February 14, 2024.
17. On February 20, 2024, Staff issued a notice of hearing on the denial of Respondent's application.
18. 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.
19. The hearing was held via Zoom videoconference on April 30, 2024, before Administrative Law Judge Holly Vandrovec of SOAH. Attorney Whitney Fraser represented Staff. Respondent appeared and represented herself. The hearing concluded that day, and the record closed on April 29, 2024, when the court reporter's transcript was filed with SOAH.

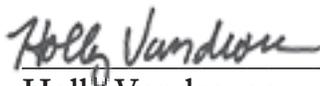
VI. CONCLUSIONS OF LAW

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. 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 theft offense described in Chapter 31 of the Texas Penal Code. 28 Tex. Admin. Code § 1.502(e)(4)(F).
6. Unauthorized use of a vehicle is described in Texas Penal Code Section 31.07.
7. The Department may consider Respondent to have been convicted of the charge of unauthorized use of a vehicle because she has not completed her period of supervision and because she may pose a continued threat to public safety; or her employment in the licensed occupation would create a situation in which she has an opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).
8. 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).
9. 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).
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), (e)(4)(F).
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 committed a crime that directly relates to the duties and responsibilities of the licensed occupation unless, when viewed in light of the occupation being licensed, the mitigating factors outweigh the serious nature of the criminal offense. 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 26, 2024



Holly Vandrovec
Administrative Law Judge