

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of the Application for an
Insurance Producer's License
of Danielle Healy

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on September 6, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The OAH record closed at the conclusion of the hearing that day.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). Danielle Healy (Applicant) appeared on her own behalf without counsel.

STATEMENT OF ISSUES

1. Should the license application be denied because the Applicant has been convicted of crimes involving moral turpitude, as provided in Minn. Stat. § 60K.43, subd. 1(6) (2010)?¹
2. Should the license application be denied because the Applicant has demonstrated untrustworthiness, as provided in Minn. Stat. §§ 45.027, subd. 7?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Applicant, Danielle Healy, is 34 years of age and has two teenage children. She obtained a GED certificate at age 21. She took classes to become a dental assistant at Herzing University in Crystal, Minnesota, but did not complete the program. She has also taken some general education classes at Anoka-Hennepin Community College.²

¹ All references to Minnesota Statutes are to the 2010 edition.

² Testimony of Danielle Healy.

2. Ms. Healy has worked many temporary and short-term jobs. Most recently, she worked for four years as a manager of a Jimmy John's sandwich franchise. Her employment there ended in January 2011.³

3. Based upon her grandfather's experience as an insurance producer, Ms. Healy decided to explore this career. She enrolled in and completed a one-week course through Kaplan Financial Education to prepare for the licensure examination, which she took and passed in the spring of 2011.⁴

4. Ms. Healy applied for an insurance producer's license on April 21, 2011. On her application, she disclosed three misdemeanor convictions in Anoka County District Court. On March 20, 1997, she was convicted of theft for wrongfully obtaining approximately \$4,000 in public assistance.⁵ The documents submitted with regard to this conviction reflect that Ms. Healy submitted an application for benefits falsely stating that the father of her children lived elsewhere, when in truth the father of her children lived with her at the time the application was submitted and had been living with her for several months.⁶ On October 4, 1999, Ms. Healy was convicted of theft (shoplifting). The conviction was to be certified as a petty misdemeanor after one year.⁷ On June 23, 2009, she was again convicted of theft (shoplifting).⁸ It appears Ms. Healy complied with all conditions of probation and is not currently under supervision by Anoka County.

5. Ms. Healy included a statement in her application acknowledging the poor choices she had made in the past and stating that she had learned from her mistakes.⁹

6. The Department indicated its intent to deny the Applicant's license application and the Applicant requested a contested case hearing.

7. On July 29, 2011, the Department issued a Notice of and Order for Hearing, Order to Show Cause, and Statement of Charges in this matter. The contested case proceeding followed from that Order.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Applicant under Minn. Stat. §§ 14.50, 45.027, subd. 7(b), and 60K.43, subd. 2(a).

³ Test. of D. Healy.

⁴ *Id.*

⁵ Ex. 1 at 1, 5-11.

⁶ Ex. 1 at 7-8.

⁷ Ex. 1 at 5, 12-15.

⁸ Ex. 1 at 5, 18-21.

⁹ Ex. 1 at 6.

2. The Applicant received due, proper, and timely notice of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. The burden of proof in this proceeding is on the Applicant to show by a preponderance of the evidence that she should be granted a license.¹⁰

5. The Commissioner may restrict, censure, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty if the applicant or licensee pleads guilty or is convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct.¹¹

6. The Commissioner may deny a license of a person subject to the duties and responsibilities entrusted to the commissioner if the commissioner finds that the order is in the public interest and the person has engaged in an act or practice, whether or not the act or practice directly involves the business for which the person is authorized, which demonstrates that the applicant is untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under the authority or license granted by the commissioner.¹²

7. The crime of theft by wrongfully obtaining assistance occurs when a person obtains, by means of a willfully false statement or representation, assistance or the continued receipt of assistance to which the person is not entitled.¹³

8. The crime of theft occurs when a person intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property.¹⁴

9. The Applicant's 1997 theft conviction for wrongfully obtaining public assistance and the 2009 theft conviction are crimes involving moral turpitude within the meaning of Minn. Stat. § 60K.43, subd. 1(6) and demonstrate the Applicant is untrustworthy or otherwise unqualified to act under the authority granted to the commissioner.

10. The Applicant's 1999 shoplifting conviction was reduced to a petty misdemeanor, cannot serve as a basis for disqualification under Minn. Stat. § 60K.43,

¹⁰ Minn. R. 1400.7300, subp 5.

¹¹ Minn. Stat. § 60K.43, subd. 1(6).

¹² Minn. Stat. § 45.027, subd. 7(a)(4).

¹³ Minn. Stat. § 256.98, subd. 1(1).

¹⁴ Minn. Stat. § 609.52, subd. 2(1).

subd. 1(6), and does not demonstrate that the Applicant is untrustworthy or unqualified to act under the authority granted to the commissioner.

10. Denial of the Applicant's insurance producer's license application is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED: that the Commissioner of the Department of Commerce AFFIRM the denial of Danielle Healy's application for an insurance producer's license.

Dated: September 12, 2011.

s/Kathleen D. Sheehy
KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Digitally Recorded
No transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mike Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Department alleges that the Applicant is not entitled to an insurance producer's license because she was convicted of three misdemeanor theft crimes. The Department contends that these convictions disqualify the Applicant because they involve "moral turpitude." As noted above, Minn. Stat. § 60K.43, subd. 1(6), specifies that the Commissioner of Commerce may deny an application for an insurance producer's license if the Commissioner finds that it is in the public interest to do so and the applicant has pled guilty or been convicted of a felony, gross misdemeanor, or misdemeanor involving moral turpitude, including, but not limited to, assault or similar conduct.¹⁵

Moral turpitude is not defined in the statutes or rules governing licenses issued by the Commissioner of Commerce. Black's Law Dictionary defines "moral turpitude" as an "[a]ct of baseness, vileness or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rules of right and duty between man and man," and as an "[a]ct or behavior that gravely violates moral sentiment or accepted moral standards of (the) community."¹⁶ In *Jordan v. De George*, 341 U.S. 223 (1951), the Supreme Court held, in the context of the federal deportation statute, that crimes involving any type of fraudulent conduct demonstrate "moral turpitude."

The Administrative Law Judge concludes that the Applicant's misdemeanor theft convictions from 1997 and 2009 involved the type of fraudulent conduct that demonstrates moral turpitude within the meaning of the statute. The 1999 conviction, however, was reduced to a petty misdemeanor and should not be used as a basis for disqualification. In addition, the 1997 and 2009 convictions suggest that, despite the passage of many years since her initial troubles, the Applicant may have issues with trustworthiness that she has not yet addressed. Her explanation that the 2009 incident occurred because she tossed toothpaste into a shopping cart, and it inadvertently landed in her purse, is inconsistent with the guilty plea she entered, and the district court did not certify this conviction as a petty misdemeanor. The Administrative Law Judge cannot conclude the Applicant has met her burden to show the license should be granted.

K.D.S.

¹⁵ Minn. Stat. § 60K.43, subd. 1(6).

¹⁶ *Black's Law Dictionary* (6th ed. 1990), at 1008-09.

