

Before the
Administrative Hearing Commission
State of Missouri



RAYMOND JOY,

Petitioner,

vs.

DIRECTOR OF DEPARTMENT OF
INSURANCE, FINANCIAL INSTITUTIONS
AND PROFESSIONAL REGISTRATION,

Respondent.

No. 13-2048 DI

DECISION

The Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration (the “Director” and the “Department,” respectively) had cause to deny Raymond Joy’s application to add additional lines to his pre-existing individual insurance producer license because he failed to comply with an administrative order and a court order imposing a child support obligation.

Procedure

On November 27, 2013, Joy filed a complaint to appeal the Director’s November 7, 2013 decision refusing his application to add lines to his individual insurance producer license. The Director filed an answer to the complaint on December 27, 2013. On April 28, 2014, the Director filed a motion for summary decision and suggestions in support. We gave Joy until May 13, 2014 to respond to the motion, but he did not do so.

Regulation 1 CSR 15-3.446(6)¹ provides that we may decide this case without a hearing if the Director establishes facts that Joy does not dispute and that entitle the Director to a favorable decision. Facts may be established through admissible evidence. 1 CSR 15-3.446(6)(B). Joy does not dispute the evidence the Director submitted in support of his motion, which includes the Director’s authenticated business records. Therefore, we make our findings of fact from the uncontroverted admissible evidence submitted by the Director in support of his motion.

Findings of Fact

1. On July 5, 2011, the Department received a Uniform Application for Individual Producer License/Registration (“2011 Application”) from Joy.

2. Background Question 7 of the 2011 Application asks:

Do you have a child support obligation in arrearage?

If you answer yes,

- a) by how many months are you in arrearage?
- b) are you currently subject to and in compliance with any repayment agreement?
- c) are you the subject of a child support related subpoena/warrant?
(If you answered yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate child support agency.)

3. Joy answered “Yes” to Question 7 on his 2011 Application. In response to Question 7a), Joy indicated he was sixty months in arrears on his child support payments. But Joy also answered “Yes” to Question 7b) of his 2011 Application, asserting that he was subject to and in compliance with a repayment agreement.

4. In response to the documentation required by Question 7, Joy submitted a letter to the Department explaining he was behind in child support payments because he had been

¹All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

unemployed for several years, but was going to pay \$500 per month for the next eighteen months in order to get current. Joy also submitted documentation from the Missouri Department of Social Services, Family Support Division, from July 6, 2011, showing his child support payment history and arrearages. As of July 6, 2011, Joy owed \$9103.16 in child support arrearages.

5. Joy certified, under penalty of perjury, that “all of the information submitted in this application and attachments is true and complete.”²

6. Based on Joy’s responses in his 2011 Application and attachments, on July 8, 2011, the Department issued a license to Joy for the life line of insurance.

7. On July 12, 2013, the Department received a Uniform Application for Individual Producer License Renewal/Continuation from Joy (the “Renewal Application”). The Department renewed Joy’s life license on July 16, 2013; it expires on July 8, 2015.

8. On August 1, 2013, the Department received a Uniform Application for Individual Producer License/Registration (“2013 Application”) from Joy, who applied to add accident and health lines to his pre-existing producer license.

9. Background Question No. 7 of the 2013 Application asks:

Do you have a child support obligation in arrearage?

If you answer yes,

- a) by how many months are you in arrearage?
- b) are you currently subject to and in compliance with any repayment agreement?
- c) are you the subject of a child support related subpoena/warrant?

(If you answered yes, provide documentation showing proof of current payments or an approved repayment plan from the appropriate state child support agency.)

10. Joy answered “Yes” to Question 7 on the 2013 Application, and in response to Question 7a, stated he was 58 months in arrears on his child support. He answered the remaining subparts of Question 7 in the negative.

² Respondent’s Exhibits 1A and 1B.

11. Joy did not initially provide the documentation required as part of Question 7.

12. After the Department's licensing section requested that Joy supplement his application with the documentation required under Question 7, Joy provided a letter where he indicated that if he were granted additional lines and permitted to sell health insurance as well as life insurance, he would be able to get current on his child support.

13. Joy also provided with his documentation a copy of a document from the Missouri Department of Social Services, Family Support Division, dated August 6, 2013, showing his child support balances. As of August 6, 2013, Joy owed \$12,593.10 in child support arrearages.

14. Upon receipt of Joy's completed 2013 Application seeking to add additional lines, the Department's Consumer Affairs Division ("Division") reviewed Joy's 2011 Application.

15. Following its review of Joy's 2011 Application as compared to his 2013 Application, the Division requested that Joy provide documentation showing his payment history. Joy provided a letter and a payment history dated August 6, 2013.

16. Between July 2011, when he obtained his life license, and August 2013, Joy paid a total of \$110.06 in child support. As of August 6, 2013, Joy owed \$12,593.10 in back child support.

17. Contrary to the affirmative statement in Joy's 2011 Application that he would pay \$500 per month for eighteen months in order to get current on his child support obligations, between July 2011 when he applied for and received his life license, and August 2013 when he applied to add additional lines, Joy did not pay \$500 per month in any month for child support.

18. The Division's further investigation regarding Joy's child support obligations revealed the following:

- a. On January 17, 2002, the Missouri Department of Social Services' Division of Child Support Enforcement filed an administrative order regarding child support with the

Circuit Court of the City of St. Louis (“Order”), *Williams v. Joy*, Case No. 22027-00230. That Order provided that Joy owed \$105.00 per month for support of his minor child, T.J.W., born on July 26, 2000.

- b. On December 3, 2008, the Department of Social Services’ Family Support Division filed an administrative order modifying Joy’s Order (the “Modification”). The Modification provided that Joy owed \$144.00 per month for support of his minor child.

19. On November 7, 2013, the Director issued an order refusing Joy’s 2013 Application, thereby refusing to issue the additional lines of accident and health to Joy’s pre-existing license.

20. As part of its continuing and ongoing investigation, the Department obtained a certified copy of Joy’s payment history and arrearages from the Department of Social Services’ Family support Division, current as of December 23, 2013. As of that date, Joy owed \$13,313.10 in child support arrearages.

Conclusions of Law

We have jurisdiction over the case. Section 621.045.³ When deciding a motion for summary decision, we view the facts and the inferences from those facts in the light most favorable to the non-moving party. The burden is on the movant to establish both the absence of a genuine issue of material fact and that he is entitled to a favorable determination as a matter of law. *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 376 (Mo. banc 1993).

³ Statutory references are to RSMo Supp. 2013, unless otherwise noted.

The Director maintains he may refuse to issue Joy an insurance producer license for the additional lines of authority of accident and health under § 375.141.1, which provides in pertinent part:

1. The director may suspend, revoke, refuse to issue, or refuse to renew an insurance producer license for any one or more of the following causes:

(1) Intentionally providing materially incorrect, misleading, incomplete or untrue information in the license application;

* * *

(3) Obtaining or attempting to obtain a license through material misrepresentation or fraud;

* * *

(13) Failing to comply with an administrative or court order imposing a child support obligation[.]

7. Within thirty days of the initial pretrial hearing date, a producer shall report to the director any criminal prosecution for a felony or a crime involving moral turpitude of the producer taken in any jurisdiction. The report shall include a copy of the indictment or information filed, the order resulting from the hearing and any other relevant legal documents.

Section 375.141.1(1) – Intentionally Providing Materially Incorrect, Misleading, or Incomplete Information on License Application

The Director first asserts that Joy falsely stated in his 2011 Application that he was subject to and in compliance with a repayment agreement regarding his child support payments, and that such material misstatement is grounds to refuse Joy’s 2013 Application under § 375.141.1(1). We disagree.

In response to Question 7, Joy fully disclosed the extent of his child support arrearage, and provided documentation of his payment history from the Department of Social Services, Family Support Division showing that, as of July, 2011, he owed \$9203.16. Joy also indicated he was subject to and in compliance with a repayment agreement, but failed to attach a copy of the “approved repayment plan from the appropriate state child support agency” as required by

Question 7. It is this statement and omission that the Director contends was materially incorrect, misleading, and incomplete.

The dictionary defines “material” as “having real importance or great consequences.”⁴ A “misleading” statement is one which “lead[s] in the wrong direction or into a mistaken action or belief, often by deliberate deceit.”⁵ We find that, while Joy clearly failed to submit a copy of an approved repayment plan with his 2011 Application, his statement was not misleading or material. Joy did submit a letter to further supplement his response to Question 7, in which he explained to the Department that his child support obligation was in arrears because he had been unemployed for several years, and stated, “I also plan on getting current within the next 18 months by paying \$500 month (*sic*).”⁶ While this certainly is not an “approved repayment plan from the appropriate state child support agency” as Question 7 requires, Joy’s letter states the terms of a repayment plan, albeit a self-imposed one. His 2011 Application accurately reflects all aspects of the information sought in Question 7, including his payment history and current status of his child support obligation.

Moreover, Joy’s disclosures and statement regarding his repayment plan are consistent with his attestation, wherein he certified that “under penalty of perjury, a) I have no child support obligation, b) I have a child support obligation and I am currently in compliance with that obligation, *or* c) I have identified my child support obligation arrearage on this application.”⁷ (Emphasis added.) We find no grounds for refusal of Joy’s 2013 Application under § 375.141.1.

⁴ Merriam-Webster’s Collegiate Dictionary 765 (11th ed. 2004).

⁵ *Id.* at 794.

⁶ Respondent’s Exhibit 1C.

⁷ Respondent’s Exhibit 1A.

Section 375.141.1(3) – Obtaining License
through Material Misrepresentation or Fraud

The Director further asserts that Joy made material misrepresentations on his 2011 Application in order to gain licensure by claiming he was subject to and in compliance with a repayment plan, and by stating he planned to bring his delinquent child support current by paying \$500 over eighteen months, but failed to do so. A misrepresentation is a “false or misleading representation, usually with an intent to deceive or be unfair[.]”⁸ Fraud is “deceit; trickery; intentional perversion of truth in order to induce another to part with something of value or surrender a legal right.”⁹

Certainly, Joy’s statement regarding his plans to address his delinquent child support was made in order to obtain a license; that was his purpose in submitting the 2011 Application. But as we noted above, the Director failed to establish that, in claiming he was subject to and in compliance with a repayment plan, Joy made a misrepresentation. Question 7 required Joy to produce a copy of a state agency-approved repayment plan, and he did not do so. Instead, he attached a letter describing his own repayment plan. While this did not satisfy the requirement of Question 7, we infer from Joy’s response no intent to deceive or misrepresent the nature of his repayment plan because he fully disclosed the extent and current status of his child support arrearage.

Nor are we persuaded that Joy misrepresented his intention about curing the delinquency in his child support payment. We have no evidence that on the date he described his plan for bringing his child support arrearages current with a self-imposed payment plan, he never intended to comply with it. Of course, Joy’s subsequent payment history shows he failed to

⁸ Merriam-Webster’s Collegiate Dictionary 794 (11th ed. 2004).

⁹ *Id.* at 498.

make good on his commitment; yet as of the date of his 2011 Application, he may well have intended otherwise. Joy's intent to deceive must have been manifest at the time he made the statement in order to support a finding that it was false or misleading; that hindsight reveals his statement to have been unfulfilled is insufficient.

Without more, we cannot conclude that Joy's assertion as to his future intentions to meet his child support obligations was false or fraudulent at the time he made it; thus, we find no grounds for refusal of Joy's 2013 Application under § 375.141.1(3).

Section 375.141.1(13) – Failure to Comply with an
Administrative or Court Order Imposing a Child Support Obligation

Lastly, the Director contends he had cause to deny Joy's application because Joy failed to comply with court orders imposing and modifying his child support obligation. The record reflects Joy was ordered by the Circuit Court of the City of St. Louis to pay \$105 per month in child support in 2002. In 2008, that amount was increased to \$144 per month by an administrative order.

By Joy's own admission, his arrearage exceeded \$9,000 at the time of his 2011 Application, and as of August 6, 2013, Joy still owed \$12,593 in child support. These arrearages evidence Joy's continued failure to comply with the court's order imposing a child support obligation, and with the administrative order modifying that order. We find the Director had grounds to refuse Joy's 2013 Application under § 375.141.1(13).

Director's Discretion to Deny License under § 374.051

We have found the Director had cause to refuse Joy's 2013 Application under § 375.141.1(13). Section 374.051.1 provides, in relevant part:

Any applicant refused a license or the renewal of a license by order of the director under sections 374.755, 374.787, and 375.141 may file a petition with the administrative hearing commission alleging that the director has refused the license. The administrative hearing

commission shall conduct hearings and make findings of fact and conclusions of law in determining whether the applicant may be disqualified by statute. **Notwithstanding section 621.120, the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.**

(Emphasis added.) Accordingly, we must uphold the Director's order.

Summary

The Director had cause to deny Joy's application for an insurance producer license for additional lines of authority pursuant to § 375.141.1(13). Accordingly, we grant the Director's motion for summary decision. Because we defer to the Director's order refusing Joy's application, this fully disposes of Joy's appeal. We cancel the hearing.

SO ORDERED on May 30, 2014.

\s\ Mary E. Nelson

MARY E. NELSON
Commissioner