

07-0263
MOTOR VEHICLE
SIGNED 05-15-07

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,)		
)	ORDER	
Petitioner,)		
)	Appeal No.	07-0263
v.)		
)	Tax Type:	Motor Vehicle
MOTOR VEHICLE ENFORCEMENT)		Salesperson License
DIVISION, UTAH STATE TAX)		
COMMISSION,)	Judge:	Robinson
)		
Respondent.)		

Presiding:

R. Spencer Robinson, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REP, Attorney at Law
 PETITIONER

For Respondent: RESPONDENT REP, from the Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Sec. 59-1-502.5, on April 17, 2007.

The Petitioner filed an application for a motor vehicle salesperson license on February 5, 2007, which the Division denied in a letter dated February 5, 2007. The Petitioner appealed the denial on February 7, 2007. The Division sent a second letter, dated March 21, 2007, providing additional information relative to its denial of Petitioner's application.

APPLICABLE LAW

Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson licenses, as follows in pertinent part:

(1) If the administrator finds that an applicant is not qualified to receive a license, a license may not be granted.

(2) (a) If the administrator finds that there is a reasonable cause to deny, suspend, or revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the license.

(b) Reasonable cause for denial, suspension, or revocation of a license includes

.....
(viii) a violation of any state or federal law involving controlled substances;
.....

DISCUSSION

The Division denied the Petitioner's application because of the crimes for which he acknowledged he had been convicted within the last ten years. Petitioner listed convictions for felony possession on July 28, 1996; felony possession on May 23, 1998; assault, a misdemeanor, on June 20, 1998; felony possession on November 24, 2003; and possession and distribution felonies on November 24, 2003. Petitioner is currently on parole. Based on the convictions listed by Petitioner, the Division denied his application.

The Division submitted a copy of Petitioner's criminal history. Petitioner's first drug related conviction within the ten year period considered by the Division is a third-degree felony for illegal use or possession of a controlled substance on July 14, 1998. The next is a second-degree felony for illegal use or possession of a controlled substance on September 10, 2002. On January 5, 2004, Petitioner entered guilty pleas to two second-degree felonies. One was for distributing, offering, or arranging to distribute a controlled substance. The other was for possession with intent to distribute.

Section 41-3-209(2)(b)(vii) provides that a violation of a state or federal law involving motor vehicles is reasonable cause to deny an application for a salesperson's license. Accordingly, the Division's denial complies with Utah law.

Petitioner's parole officer, Agent (X) of Adult Probation and Parole, wrote a letter dated January 20, 2007, regarding Petitioner's case. Agent (X) said Petitioner is currently being closely supervised on parole. He noted no violations of Petitioner's parole agreement. Agent (X) said, "Your consideration for issuing his salesperson license would likely benefit his recovery and continued success on parole."

Petitioner also submitted a letter from (X), LSAC, CSW. (X) is affiliated with the Supportive Treatment Options Program (STOP). He said the program is an intensive six-month to one-year program based on a cognitive restructuring model. Due to its intensity, it has a high dropout rate. It also has an Aftercare program that Petitioner completed over a year ago. He continues to participate by sharing his life experience with those still in the program. Of the 48 graduates of the STOP Aftercare Program, only three have returned to prison on new charges.

Petitioner was the subject of an earlier appeal. In 05-1515, the Commission sustained the Division's decision to deny Petitioner a salesperson license. In that decision, the Commission said it was not its practice to issue licenses to persons on probation or parole, though it sometimes exercised discretion to do so, assessing each case on its merits. It said if Petitioner were to reapply, termination of his parole would weigh heavily. It also said successful completion of a substance abuse program would be considered, and that more information about the program would be helpful.

Petitioner remains on parole. He said he can be submitted for early termination of parole in August of this year. However, Agent (X)'s letter makes no mention of an intention on his part to ask the Board of Pardons and Parole for an early termination. Agent (X) is supportive of the issuance of a salesperson's license to Petitioner, notwithstanding Petitioner's status as a parolee.

Petitioner has completed his substance abuse treatment program, and is participating now as a role model and mentor. The program's success rate is ninety-four percent. At the time it denied Petitioner's

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application, the Division had no information regarding Petitioner's substance abuse program. Notwithstanding Petitioner's successful completion, the Division would have been required to deny his application.

Petitioner is employed by DEALERSHIP as its Internet manager. He receives a base salary. He is not on commission. Petitioner has talked to EMPLOYEE, employed by the Division, about what he is allowed to do as the Internet manager.

The Commission has a duty to oversee the issuance of motor vehicle salesperson licenses. Petitioner's convictions support the decision of the Administrator. His successful completion of his substance abuse treatment program, and his continued participation as an example and mentor, coupled with the support of his parole Agent, support a favorable exercise of discretion.

After careful consideration of the information provided at the Initial Hearing, the Commission finds a favorable exercise of discretion is appropriate.

DECISION AND ORDER

Based on the foregoing, the Commission reverses the decision of the Administrator denying Petitioner his Utah motor vehicle salesperson license. Petitioner may receive a license. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2007.

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R. Spencer Robinson
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION.

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this _____ day of _____, 2007.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

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