
BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT
DIVISION OF THE UTAH STATE
TAX COMMISSION,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL DECISION**

Appeal No. 08-0394

Tax Type: Motor Vehicle Salesperson's
License

Judge: Chapman

Presiding:

D'Arcy Dixon Pignanelli, Commissioner
Kerry R. Chapman, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, from MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on April 30, 2008. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. PETITIONER submitted an application to receive a motor vehicle salesperson's license ("application") on or about February 20, 2008 (Exhibit R-1).
2. The Motor Vehicle Enforcement Division ("Division") denied PETITIONER'S application in a letter dated February 27, 2008 (Exhibit R-3). In the letter, the Division explained that it was denying PETITIONER'S application based on the criminal convictions he listed.

3. The Division submitted PETITIONER'S Criminal History Report dated March 31, 2008 (Exhibit R-2). The report shows that PETITIONER has been convicted of the following crimes within the past ten years:

2002	Felony - Possession or Use of Bad Check
2002	Felony - 2 nd Degree Burglary
2004	Felony - Receiving Stolen Property
2005	Felony - Possession of Stolen Vehicle
2006	Felony - Petty Theft
2006	Felony - Possession of Controlled Substance

4. PETITIONER explained that the burglary and bad check charges in 2002 stemmed from knowingly writing a bad check at a retail establishment. PETITIONER also stated that the conviction for possession of a stolen vehicle stemmed from an incident where he was at a house at which a stolen vehicle was parked in the driveway.

5. PETITIONER testified that he is currently and will most probably remain on probation until January 2009, although there is a possibility that his probation could be terminated in July 2008. PETITIONER testified that he has paid all restitution required to complete probation, a requirement that allowed him to move to Utah.

6. PETITIONER testified that he has a history of selling motor vehicles. PETITIONER stated that he obtained a salesperson's license in STATE and that he was a successful car salesman who also worked in management. PETITIONER has recently been working at various temporary jobs in Utah in hopes that he may soon accept a salesperson's position that he has been offered at COMPANY A in CITY 1, Utah.

7. PETITIONER testified that until recently, he had abused drugs, specifically methamphetamine, for many years. PETITIONER also testified that he was recently released from prison on December 2, 2007. He further added that on December 3, 2007, the day after his release from prison, he

voluntarily enrolled in and completed a 60-day program at the (X) in CITY 2, STATE. He stated that this was the first time he had entered a recovery program and that he did so because he had relapsed in the past when attempting recovery on his own.

8. After completing the (X) program on January 31, 2008, PETITIONER moved to Utah, where he is active in both (X) (“(X)”) and (X) (“(X)”). PETITIONER testified that he recently began to participate on (X) and (X) panels, speaking to and warning groups about his life experiences as a drug addict. PETITIONER testified that he has a strong support group of family, friends, his sponsor, and other members of (X) and (X). PETITIONER testified that he has been clean and sober for the past 17 months and that he believes he now has the support, skills, and desire to lead a different life. He submitted for the Commission’s review paperwork that he has completed in association the twelve-step program he began after his release from prison (Exhibit P-2).

9. PETITIONER moved from STATE to Utah in part because he had relatives in Utah and in part to disassociate himself from a state in which he had experienced lapses in his prior attempts at recovery. PETITIONER’S mother and uncle live in CITY 3, Utah, where PETITIONER is currently making his home with his fiancée. Based on the positive steps he has taken since his release from prison, he asks the Commission to grant him a salesperson’s license.

10. PETITIONER submitted several letters (Exhibit P-1) from employers, family, and friends in support of his application for a salesperson license, including:

a. An undated letter from WITNESS 1, Sales Manager of COMPANY A in CITY 1, Utah. WITNESS 1 wrote that he would hire PETITIONER immediately should the Commission grant him a salesperson’s license.

b. A letter dated April 21, 2008 from WITNESS 2, a STATE parole agent who supervised PETITIONER after his most recent release from prison. WITNESS 2 wrote that

“[i]t would appear that PETITIONER is at this time serious about his recovery and becoming a productive member of the community.”

c. A letter dated April 18, 2008 from WITNESS 3, a STATE parole agent who wrote that in 2006, PETITIONER was released from a prior probation associated with his 2002 convictions for burglary and fraud involving passing checks.

d. A letter dated March 18, 2008 from WITNESS 4, who has managed PETITIONER in his performance of odd jobs at COMPANY B, a facility owned by PETITIONER’S mother. WITNESS 4 wrote that she has witnessed PETITIONER’S growth within the last few years and that he was an excellent worker with positive work ethics and moral values.

e. A letter dated March 11, 2008 from WITNESS 5, PETITIONER’S mother, who wrote that she has seen remarkable changes in her son since his release from prison in December 2007.

f. A letter dated March 8, 2008 from WITNESS 6, who wrote that she and PETITIONER are engaged and expecting a child and that PETITIONER has demonstrated a strong commitment to creating a new and positive life.

g. A letter dated March 7, 2008 from WITNESS 7, CFO of the (X). WITNESS 7 wrote that PETITIONER was admitted to the center on December 3, 2007 and that he completed treatment and was discharged on January 31, 2008.

h. A letter dated March 5, 2008 from WITNESS 8, who is PETITIONER’S sister. WITNESS 8 wrote that for the first time, her brother has taken steps to improve his life and that his “new attitude” assures her that he will continue to do well.

11. For the Division, RESPONDENT REPRESENTATIVE 2 testified that the Division denied PETITIONER’S application because of the convictions he identified on his application.

RESPONDENT REPRESENTATIVE 2 stated that it is the Division's position that due to the nature of the convictions, specifically possession of a stolen vehicle, fraud, and possession of a controlled substance, the Division had no choice but to deny PETITIONER'S application under Utah Code Ann. §41-3-209. In addition, the Division asserted that it is concerned about issuing a license to PETITIONER because he has only been out of prison for five months.

APPLICABLE LAW

1. Utah Code Ann. §41-3-209 provides statutory guidance concerning the issuance of motor vehicle salesperson's 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
 - • •
 - (vii) a violation of any state or federal law involving motor vehicles;
 - (viii) a violation of any state or federal law involving controlled substances;
 - • • •
 - (x) a violation of any state or federal law involving fraud.

CONCLUSIONS OF LAW

1. Section 41-3-209(2)(b)(vii), (viii), and (x) provide that a violation of a law involving motor vehicles, controlled substances or fraud is reasonable cause to deny a license. PETITIONER'S felony convictions within the past ten years involve motor vehicles, controlled substances and fraud. Accordingly, the Commission finds that the Division had reasonable cause to deny PETITIONER'S application for a motor vehicle salesperson's license.

2. Although the Division had reasonable cause to deny PETITIONER'S application, the Commission may consider all circumstances before deciding whether to grant or revoke a license. It is the

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Commission's general policy not to issue a license to a person still on probation. In this case, the Commission is also concerned that PETITIONER'S release from prison occurred less than five months ago and that insignificant time has passed to show that he is recovered from his addiction. For these reasons, the Commission declines to grant the PETITIONER a license at this time. Once PETITIONER'S probation is terminated, he may reapply for a license, at which time a decision will be made based on the circumstances present at that time.

DECISION AND ORDER

Based upon the forgoing, the Commission denies PETITIONER'S appeal and sustains the Division's denial of PETITIONER'S application. It is so ordered.

DATED this ____ day of _____, 2008.

Kerry R. Chapman
Administrative Law Judge

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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 _____, 2008.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63-46b-13 et seq.

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