

08-0940
MOTOR VEHICLE
SIGNED 12-24-08

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION, UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL DECISION</p> <p>Appeal No. 08-0940</p> <p>Tax Type: Salesperson License</p> <p>Judge: Jensen</p>
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Presiding:

Marc Johnson, Commissioner
Clinton Jensen, Administrative Law Judge

Appearances:

For Petitioner:
For Respondent: RESPONDENT REP 1, Assistant Attorney General
 RESPONDENT REP 2, Assistant Director, Motor Vehicle Enforcement Division

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on September 18, 2008. On the basis of the evidence and testimony presented at the hearing, the Tax Commission makes its:

FINDINGS OF FACT

1. Petitioner is appealing a decision by the Motor Vehicle Enforcement Division of the Utah Tax Commission (the "Division") to deny his application for a Motor Vehicle Sales Person license.
2. Petitioner completed an Application for Motor Vehicle Salesperson, which he signed and dated on April 23, 2008 (the "Application"). A representative for the prospective employer also signed the Application form on April 23, 2008.
3. In response to question 3 on the Application, which asks about prior criminal history, Petitioner disclosed "August 2006, possession of c/s, June 1999 Possession c/s, 1998 Theft, 1994 Possession of c/s, 1996 Battery, August 2006, Paraphernalia, [19]98 Att. Theft, [19]98 Retail Theft, [19]98 Assault and Several Traffic Violations."

4. On the basis of Petitioner's criminal history, the Division denied a license to Petitioner. The Division notified Petitioner and his prospective employer of its decision by a letter dated April 29, 2008.

5. Petitioner timely appealed the Division's decision to suspend the license and the matter proceeded to the Formal Hearing.

6. Following Petitioner's appeal but before the Formal Hearing, Petitioner completed a second application for a salesperson's license. Because the second application was merely requesting a change to another dealership, the parties agree that a determination on the second application would follow from and be the same as any determination on the first Application.

7. Petitioner served time in jail from February 2007 to August 2007. He was released to a drug program, which he has now completed. He was also given probation, which he has not completed.

8. At hearing, Petitioner presented letters of support from his probation officer and from a previous employer. He submitted proof of the successful completion of a substance abuse program. Petitioner testified, and the evidence he submitted corroborated, that he was likely to receive early termination of his probation. Petitioner's probation officer indicated that Petitioner has successfully completed all conditions of probation with the exception of the payment of court fees and fines. Petitioner was making payments on those amounts and was likely to receive early termination of probation when those amounts were paid in full.

9. Petitioner had not been released from probation as of the date of the Formal Hearing.

10. Petitioner's criminal history includes convictions of state or federal law regarding controlled substances.

APPLICABLE LAW

(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 . . . (vi) making a false statement on any application for a license under this chapter or for special license plates; (vii) a violation of any state or federal law involving motor vehicles; (viii) a violation of any state or federal law regarding controlled substances; (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any court of competent jurisdiction for a violation of any state or federal law involving motor vehicles; (x) a violation of any state or federal law involving fraud; or (xi) a violation of any state or federal law involving a registerable sex offense under Section 77-27-21.5. (Utah Code Sec. 41-3-209(2)).

CONCLUSIONS OF LAW

1. The Commission generally gives deference to the criminal justice system's determination to release someone from parole or probation.

2. Although Petitioner's steps to overcome drug addiction and to make positive steps in his life may support licensure at some point in the future, Petitioner remained on probation as of the date of the Formal Hearing in this matter. The Commission declines Petitioner's request to grant a license due to Petitioner's criminal violations involving controlled substances and his not having completed probation.

DECISION AND ORDER

On the basis of the foregoing, the Commission sustains the Division's actions in denying a salesperson license to Petitioner. It is so ordered.

DATED this ____ day of _____, 2008.

Clinton Jensen, 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 _____, 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 Sec. 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 Sec. 59-1-601 et seq. and Sec. 63-46b-13 et seq.

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