

08-1042
Motor Vehicle
Signed 08/26/2008

BEFORE THE UTAH STATE TAX COMMISSION

<p>PETITIONER, Petitioner, v. MOTOR VEHICLE ENFORCEMENT DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent.</p>	<p>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION</p> <p>Appeal No. 08-1042</p> <p>Tax Type: Salesperson License Tax Year: 2008</p> <p>Judge: Marshall</p>
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Presiding:

Marc B. Johnson, Commissioner
Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER REPRESENTATIVE 1, Esq.
PETITIONER
PETITIONER REPRESENTATIVE 2
For Respondent: RESPONDENT REPRESENTATIVE 1, Assistant Attorney General
RESPONDENT REPRESENTATIVE 2, Assistant Director of
MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for Formal Hearing on July 9, 2008. The Applicant waived the initial hearing, and is appealing the Motor Vehicle Enforcement Division's ("the Division") denial of his salesperson license to sell motor vehicles. Based on the testimony and evidence presented at the Formal Hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. On or about May 1, 2008, the Applicant submitted a Motor Vehicle Salesperson Application ("application") to the Motor Vehicle Enforcement Division ("MVED").
2. Question number three of the application asks, "During the past 10 years, have you been convicted of any misdemeanors or felonies in Utah or any other state?" Petitioner checked the box indicating "Yes", and in the space provided, wrote the following:

04-06-06 assault on corr officer/ 04-05-06 agg assault – damage comm. Device / 02-29-04 DUI Drugs / 02-16-04 simple assault / 07-17-01 escape / 08-09-01 obstruction false info / 05-16-01 theft / 01-09-01 concealed weapon / 10-17-00 poss of stolen vehicle

In addition, the Applicant attached a copy of his criminal history report to his Application.

3. The Applicant’s criminal history report shows the following convictions in the last then years:

<u>Date</u>	<u>Conviction</u>
10/12/2000	Theft by receiving stolen property (3 rd Degree Felony)
1/11/2001	Carrying Concealed Weapon (Class B Misdemeanor)
8/7/2001	2 Counts Interfere w/ Public Servant (Class B Misdemeanor)
9/13/2001	Escape from Official Custody (3 rd Degree Felony)
3/18/2004	Simple Assault (Class A Misdemeanor)
4/20/2006	Simple Assault (Class A Misdemeanor)
4/20/2006	Telephone Harassment (Class A Misdemeanor)
4/27/2006	Assault of Correctional Officer (3 rd Degree Felony)
4/27/2006	Interrupt Communication Device (3 rd Degree Felony)

4. Based on the number and nature of the convictions, the Division issued a letter dated May 12, 2008 denying the Applicant a salesperson license.
5. The Applicant currently works for COMPANY as a lot technician and tow-truck driver. He testified at the formal hearing that he believes sales would provide him the opportunity to earn a better living to provide for his family.
4. The Applicant was placed on parole April 1, 2008. He testified that he would remain on parole for a minimum of six more months, but that it could be up to three years before he is released. The Applicant indicated that as part of his parole he is required to maintain a job, attend therapy, and have clean drug-tests. He provided a letter from his parole officer that states the Applicant, “is in full compliance with the conditions of his parole. He has not had any violations as of the date of this report.”
5. At the Formal Hearing, the Applicant testified that his criminal history was a result of his addiction to meth. The Applicant participated in the (X) program for one year while incarcerated. He added that most of the (X) participants are ordered to attend the program, but that he requested to be allowed into the program. He attended classes that instructed him on how to live with others, addiction, and relapse. The Applicant testified

that he has been clean for more than two years and knows he is not “fixed.” He continues to attend weekly relapse prevention classes at (X).

6. PETITIONER REPRESENTATIVE 2, the Applicant’s ex-wife testified on his behalf. She stated that she and the applicant divorced two years ago, but have since reconciled and they currently live together. In addition, she was the victim in the Applicant’s assault convictions. She stated that in the past couple of years, she has seen a total change in the Applicant. He does not associate with the same people, he has greater patience with their children and in their relationship, he cares for the children, takes them to daycare, is home at night, and is involved in their extracurricular activities. She stated that while the Applicant was incarcerated, their son had to be enrolled in behavioral classes at (X), but now that the Applicant is involved in the kids’ lives, he is no longer in the classes. Upon questioning, PETITIONER REPRESENTATIVE 2 testified that she does not feel threatened at all by the Applicant, and that his aggressive behavior in the past was a result of his drug addiction.
7. The Applicant was upfront with his employer regarding his criminal past. The President of COMPANY, WITNESS submitted a letter on the Applicant’s behalf. The letter states that the Applicant has “always shown up for work on time ready to take care of business. He has always treated both customers and fellow employees with respect.” WITNESS encourages the Commission to approve the Applicant’s salesperson application, and believes he would be a “tremendous asset” to the industry.
8. It is the Division’s position that they were required by statute to deny the application because of the Applicant’s convictions, specifically possession of a stolen vehicle and the DUI involving drugs. In addition, the Division expressed concern about the Applicant’s violent past, and stated that sufficient time has not passed since his release from prison for the Applicant to demonstrate that he has changed his life.
9. The Applicant explained that the conviction for the possession of a stolen vehicle was a result of his trying to help a friend. A friend of the Applicant’s, who was in prison at the time, asked the Applicant to move a stolen bullet bike from his house to another location. The Applicant knew the bullet bike was stolen, but moved it to help his friend. He testified that he was struggling with his addiction at this time, and that he no longer associates with the friend who asked him to move the bike.

APPLICABLE LAW

The denial, suspension, and revocation of a salesperson license are governed by Utah Code Ann. §41-3-209(2) as follows:

- (a) If the administrator finds that there is 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, in relation to the applicant or license holder or any of its partners, officers, or directors:
 - (i) lack of a principal place of business;
 - (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and use Tax Act;
 - (iii) lack of a bond in effect as required by this chapter;
 - (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson license issued in another state;
 - (v) nonpayment of required fees;
 - (vi) making a false statement on any application of 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 involving 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 Ann. §41-3-209(2) (2007).

CONCLUSIONS OF LAW

The Division had reasonable cause to deny the Applicant a salesperson license under Utah Code Ann. §41-3-209. The Applicant has been convicted of crimes that involve motor

vehicles and violations of state law involving controlled substances, both of which constitute “reasonable cause” for the denial of a salesperson license. Although the Division had reasonable cause to deny the Applicant a salesperson license, the Commission may consider other factors. The Applicant appears to be making positive changes in his life; it has been more than two years since his most recent conviction, he does not owe restitution, he requested to participate in the (X) program, he continues to attend relapse prevention classes, he has reconciled with his ex-wife, and is taking an active role in the lives of his children. In the past, the Commission has used clearing parole or probation as a guideline to issue a salesperson license to individuals who have been convicted of the crimes identified in Utah Code Ann. §41-3-209. The Applicant has been on parole since April of 2008, and is expected to remain on parole for a period of at least six months. Under the circumstances, the Commission finds there is not reasonable cause to abate the Division’s denial of a salesperson license.

DECISION AND ORDER

Based on the foregoing the Commission sustains the Division’s denial of a salesperson license. It is so ordered.

DATED this _____ day of _____, 2008.

Jan Marshall
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

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 and §63-46b-13 et. seq.

JM/08-1042..fof

CONCURRENCE

I disagree with part of the conclusion. Given the Applicant's demonstrated change in behavior thus far, I would have specified that he be allowed to reapply once he was off probation.

Marc B. Johnson
Commissioner