

09-1588  
MOTOR VEHICLE  
SIGNED 09-29-09

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BEFORE THE UTAH STATE TAX COMMISSION

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PETITIONER,

Petitioner,

v.

MOTOR VEHICLE ENFORCEMENT  
DIVISION OF THE UTAH STATE TAX  
COMMISSION,

Respondent.

**INITIAL HEARING ORDER**

Appeal No. 09-1588

Tax Type: Salesperson License

Tax Year: 2009

Judge: Marshall

**Presiding:**

Jan Marshall, Administrative Law Judge

**Appearances:**

For Petitioner: PETITIONER, *Pro Se*  
PETITIONER REP 1, Manager  
PETITIONER REP 2, Supervisor

For Respondent: RESPONDENT REP, Assistant Director, MVED

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for an Initial Hearing pursuant to the provisions of Utah Code Ann. §59-1-502.5 on May 14, 2009. Petitioner (“Applicant”) is appealing the Respondent’s (“Division’s”) denial of his salesperson license to sell motor vehicles.

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) (2008).

#### DISCUSSION

The Applicant submitted a Motor Vehicle Salesperson Application to the Division. The Division issued a letter dated April 8, 2009 that denied the application based on the Applicant's criminal convictions. In response to question number three on the application asking if the Applicant had been convicted of any misdemeanors or felonies in Utah or any other state within the past 10 years, he checked the box indicating "Yes." In the space provided, the Applicant wrote,

2007 Possession of Marijuana  
2007 Possession of a controlled substance, possession of marijuana, possession of weapon [*sic*]  
I have successfully completed the Drug Court Program and above said charges will be dismissed.

A copy of Applicant's criminal history report was obtained; and lists the following violations within the past ten years:

<u>DATE</u>	<u>VIOLATION</u>
8/8/2007	Illegal Possession/Use of Controlled Substance (Class B Misdemeanor)
12/12/2007	Possession of a Controlled Substance (Class A Misdemeanor)

The Applicant testified that he has been clean for two years. He is currently in Drug Court, and submitted a letter from JUDGE from the Fifth District. JUDGE's letter indicates that the Applicant entered Drug Court on February 6, 2008, has undergone regular testing, and has been drug free. The Applicant is currently in Phase IV of the Drug Court program, and is in good standing.

The Applicant entered into a plea in abeyance on the Class A Misdemeanor conviction on December 12, 2007. He testified that once he completes Drug Court, the charges will be dismissed. He estimated that he would complete Drug Court in July or August of 2009.

RES REP 2 testified on the Applicant's behalf. He stated that he has been in the auto industry for thirty years and has worked with hundreds of salespeople. RES REP 2 is the commercial/fleet manager for the dealership, and testified that the Applicant has been working as his assistant. He supports the Applicant being issued a salesperson license, as he has observed him go through drug court and with his family.

RES REP 1 also testified on behalf of the Applicant. He stated that he knew about the Applicant's drug convictions, and almost did not hire him because of it. However, he testified that the Applicant is one of the best employees he's ever had. He testified that the Applicant has never missed a day, he comes in early and stays late, and is a phenomenal employee. RES REP 1 stated that he would do anything necessary to keep the Applicant as an employee.

The Division's representative stated that the Division received two applications from the Applicant. The first application was sent back with a request for additional information. In March of 2009, the Applicant submitted the application at issue which the Division denied because of his convictions for possession of a controlled substance. The Division's representative stated that under Utah Code Ann. §41-3-209, they were required to deny the application. Further, the Division's representative noted that while it appears the Drug Court program has been successful for the Applicant, the Division does have concerns that it has been a little over a year since the most recent conviction.

Utah Code Ann. §41-3-209 mandates that a license "shall" be denied, revoked, or suspended for reasonable cause, and has identified a violation of any state or federal law

involving a controlled substance as “reasonable cause.” The Applicant has entered a guilty plea, which is being held in abeyance by the Court pending completion of the Drug Court program. The question is whether the plea in abeyance establishes a violation of law that constitutes “reasonable cause” for the denial of a salesperson license.

The Court in ( *X* ) v. *Dept. of Workforce Services*, 2005 UT 399, provides guidance on whether a plea in abeyance is a “violation” of law. In ( *X* ), the Petitioner, an employee of the Utah State Development Center, was charged with abuse of a vulnerable adult and attempted witness tampering. The abuse charge was based on allegations that the Petitioner had used an improper technique to move a non-compliant disabled adult across the carpet. The tampering charge was based on allegations that the Petitioner contacted the medical director of the Utah State Development Center and asked him to make a statement that it was medically necessary for her to drag the patient in order to stop the police investigation. The Petitioner pled no contest to both charges, and the court held the pleas in abeyance. The Petitioner was later allowed to withdraw her pleas, and have the criminal charges dismissed. At issue in ( *X* ) is whether under the circumstances, PERSON A was eligible for unemployment benefits.

The statute at issue in ( *X* ) was Utah Code Ann. §35A-4-405(2)(b):

For the week in which the claimant was discharged for dishonesty constituting a crime or any felony of class A misdemeanor in connection with the claimant’s work as shown by the facts, together with the claimant’s admission, or as shown by the claimant’s conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.

The Court in ( *X* ), concluded:

Finally, Petitioner argues that Respondent unreasonably concluded that the class A misdemeanor was “[a]dmitted or established by a conviction in a court of law,” Utah Admin. Code R994-405-210(1)(c), because a plea in abeyance that ultimately results in a dismissal does not constitute an admission to or a conviction of a crime. We disagree, and conclude that entering into a plea in abeyance for a class A misdemeanor constitutes an admission, if not a conviction, to that crime for the purposes of section 35A-4-405(2)(b).

The Commission finds that the Applicant’s guilty plea, though being held in abeyance by the court, is an admission the Applicant violated a state or federal law involving a controlled substance. His plea establishes a violation and constitutes reasonable cause to deny the application for a license to sell motor vehicles. Although the Division had reasonable cause to suspend the Petitioner’s license, the Commission has discretion to consider other factors, such as the passage of time since the most recent violation, completion of probation or parole, and

payment of all fines and restitution. In the past, the Commission has used clearing parole or probation to allow salesperson licenses to individuals who have been convicted of the crimes enumerated in Utah Code Ann. §41-3-209. While the Applicant was not formally placed on probation, the Commission believes the two-year abeyance period is akin to probation, as the Applicant must meet certain requirements of the Drug Court and could be sentenced for the guilty plea in the event he fails to meet the requirements of the Drug Court program. Under the circumstances, the Commission finds there is not good cause to abate the Division's denial of a motor vehicle salesperson license to the Applicant.

DECISION AND ORDER

Based on the foregoing, the Commission upholds the Division's denial of the motor vehicle salesperson 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 either party to this case files a written request within thirty (30) days of the date of this decision to proceed to a formal decision. Such 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 \_\_\_\_\_, 2009.

\_\_\_\_\_  
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 \_\_\_\_\_, 2009.

Pam Hendrickson  
Commission Chair

R. Bruce Johnson  
Commissioner

Marc B. Johnson  
Commissioner

D'Arcy Dixon Pignanelli  
Commissioner

Appeal No. 09-1588

*JM/09-1588.int*