



FILED

OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

2013 DEC 11 P 12:36

Fax: (360) 664-2782

Patricia D. Petersen
Chief Presiding Officer
(360) 725-7105

Hearings Unit, DIC
Patricia D. Petersen
Chief Presiding Officer
Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0119
)	
MILLIE DEE COSTAGE,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Applicant.)	AND FINAL ORDER
_____)	

TO: Millie Dee Costage
632 75th Street SE #1
Everett, WA 98203

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
AnnaLisa Gellermann, Esq., Deputy Commissioner, Legal Affairs Division
Alan Michael Singer, Staff Attorney, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 10:00 a.m. on September 18, 2013. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Alan Michael Singer, Esq., Staff Attorney in his Legal Affairs Division. Millie Dee Costage failed to appear.



NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's decision to deny the application of Millie Dee Costage for a Washington resident insurance producer's license should be upheld. According to the Insurance Commissioner's letter to Ms. Costage dated March 15, 2013, the OIC based its denial on the fact that Ms. Costage had fairly recently been convicted of a felony, citing RCW 48.17.530(1)(f) which gives the Insurance Commissioner authority to deny a license if the applicant has been convicted of a felony. On April 1, 2013, Ms. Costage filed a Demand for Hearing to contest the OIC's denial of her license application.

FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04, Title 34 RCW, and regulations pursuant thereto.
2. Millie Dee Costage is an approximately 35 year old resident of Everett, Washington. On March 15, 2013 Ms. Costage applied to the Washington State Insurance Commissioner ("OIC") for a Washington resident insurance property/casualty/disability insurance producer's license. [OIC Ex. 3, License Application.] Prior to that time, on March 12, 2013, Ms. Costage submitted a letter and documentation concerning her March 12, 2012 conviction for vehicular assault, a felony which had occurred on July 24, 2011. [OIC Ex. 1, Costage explanation and court documentation.] On March 15, 2013 the OIC denied Ms. Costage's License Application "*due to the recentness of your felony conviction,*" citing RCW 48.17.530(1)(f) which gives the OIC authority to deny a license if the applicant has been convicted of a felony. [OIC Ex. 4, OIC denial of license application.] On April 1, 2013 Ms. Costage filed a Demand for Hearing to contest the OIC's denial of her application for a producer's license. [Hearing Ex. 1; OIC Ex. 8, Demand for Hearing dated March 26, 2013 and filed April 1, 2013.] In her Demand, Ms. Costage states that she was hired in December 2012 at the Sexton Agency Farmers Insurance Group and would like to become licensed and work there as an insurance producer. She also argues that she understood that, with her felony conviction, she would likely receive her producer's license but be on probationary status for four years. [Hearing Ex. 1; OIC Ex. 8.]
3. Ms. Costage failed to appear at the adjudicative proceeding held in this matter. The process is detailed in Finding of Fact Nos. 4 through 11 below.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

13-0119

Page - 3

4. On April 24, 2013, the undersigned held a first prehearing conference in this matter by telephone, which included all parties. The OIC was represented by Alan Michael Singer, Esq., Staff Attorney in the OIC's Legal Affairs Division. Ms. Costage appeared pro se. At the prehearing conference the undersigned reviewed procedure to be expected before and during the hearing, addressed all questions and concerns of the parties, and both Ms. Costage and the OIC agreed that the hearing should be held on June 4, 2013.

5. On June 3, 2013 the day before the scheduled hearing, Ms. Costage emailed OIC attorney Mr. Singer and the Hearings Unit advising that she was unable to attend the June 4 hearing because she had obtained a new job and could not take time off work, and she asked that the hearing be rescheduled. Ms. Costage's request was granted. Based upon Ms. Costage's request that the hearing be scheduled for a Wednesday, which is her day off work, the hearing was continued to Wednesday, July 17, 2013 at 10:00 a.m. Ms. Costage was so informed and made no objection to this hearing date.

6. On July 10, 2013, the OIC filed a Request for Continuance and Motion to Compel ("OIC Motion"), asking that the July 17, 2013 hearing be continued, citing the OIC's difficulty in obtaining exhibits and witness disclosure from Ms. Costage and responses to OIC informal discovery requests. Ms. Costage did not respond to the OIC Motion.

7. On July 15, 2013, the undersigned granted the OIC's Request for Continuance, ordered the July 17, 2013 hearing be continued and scheduled a second prehearing conference to be held on July 17, 2013 at 10:00 a.m. at the same time and on the same date the hearing had been scheduled. Kelly Cairns, Paralegal to the undersigned, informed Ms. Costage of the OIC's Motion and the scheduled second prehearing conference a total of at least three times by telephone message left at her telephone number on file, as well as at least two times by email. [Hearing Ex. 1, hearing file notes.] In addition, as set forth in the OIC's Request for Continuance and Declaration of Alan Michael Singer in support thereof filed July 10, 2013, the OIC attempted to contact Ms. Costage as well with no result. [Declaration of Singer.]

8. Thereafter, on July 17, 2013 at 10:00 a.m., the date properly scheduled for the second prehearing teleconference herein - which did not require her to be present in Olympia - despite several telephone messages and emails left with her, Ms. Costage failed to appear at the second prehearing teleconference. After allowing twenty minutes for her to appear, the undersigned commenced the prehearing conference at 10:20 a.m. with Mr. Singer appearing on behalf of the OIC. It was agreed that the hearing of this matter should be held on September 18, 2013.

9. A new Notice of Hearing was filed on July 17, 2013 and mailed to Ms. Costage at the address she had provided to the OIC. In addition, the undersigned's paralegal sent an email to Ms. Costage informing her of the new hearing date of September 18, 2013, advising her of the potential consequences if she failed to participate in the hearing, and requesting that she submit a

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

13-0119

Page - 4

letter withdrawing her Demand for Hearing if she no longer wished to pursue the matter. [Hearing Ex. 1, Notice of Hearing filed July 17 and email to Costage.]

10. On September 5, 2013, the OIC filed a Motion to Compel, seeking an order compelling Ms. Costage to respond to the OIC's discovery requests. In the Motion to Compel, the OIC chronicled the various attempts OIC counsel had made to contact and obtain information from Ms. Costage. [Ex. 1, OIC Motion to Compel and accompanying Second Declaration of Alan Michael Singer.] The undersigned entered Order Granting OIC's Motion to Compel on September 10, 2013.

11. On September 18, 2013, at approximate 10:07 a.m., Pacific Daylight Time, as properly scheduled, the hearing in this matter commenced. Ms. Costage failed to appear. As Ms. Costage had been previously advised should she fail to appear, the OIC presented its argument and evidence to support its denial of Ms. Costage's license application. The OIC's evidence is the basis for the facts found below.

12. On March 12, 2013, Ms. Costage contacted Cheryl Penn, Compliance Supervisor with the OIC Licensing Division, concerning the effect her criminal record would have on an application for a Washington resident producer's license. Ms. Costage emailed Ms. Penn documentation regarding a vehicular assault felony conviction she received one year earlier, on March 12, 2012, for an accident Ms. Costage caused on July 23, 2011 when she was driving under the influence of alcohol. In a letter, Ms. Costage explained that she was sentenced to a one-year prison term but was released after eight months for good behavior. [OIC Ex. 1.] On March 13, 2013, Ms. Penn responded to Ms. Costage informing her that the OIC would not approve a license application which included a felony conviction which was so recent, and cited RCW 48.17.530(1)(f), which gives the Insurance Commissioner the authority to deny a license if the applicant has been convicted of a felony. [OIC Ex. 2, OIC email letter to Costage.]

13. As found in Finding of Fact No. 2 above, on March 15, 2013, Ms. Costage submitted an application for a Washington resident producer's license. Question 1 on the Application asks "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" Ms. Costage answered this question "Yes." On that same day, after reviewing the Application, Ms. Penn sent an email to Ms. Costage informing her that the OIC denied her license application *due to the recent felony conviction*. [Testimony of Cheryl Penn, Compliance Supervisor with the OIC Licensing Division.]

14. As above, in her Demand Ms. Costage stated that she advised the OIC of her felony conviction and was told she would likely receive her producer's license but it would be a probationary license for four years. She further argues that, relying on that information from the OIC, she proceeded to take the licensing class, take the test and get fingerprinted, however the OIC instead denied her a producer's licenser. In fact, there is no evidence to support Ms. Costage's statements in her Demand. Even if there had been evidence of this information being given by the OIC to Ms. Costage, the OIC is not bound by these statements. Indeed, at the time

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

13-0119

Page - 5

Ms. Costage alleged these representations occurred, Ms. Costage had not yet even provided the OIC with information about her felony conviction and other relevant criminal history.

15. At the hearing, the OIC submitted arrest records for the July 23, 2011 vehicular assault incident, as well as a rap sheet from the Federal Bureau of Investigations, a criminal background report from the Washington State Patrol, and an arrest record from the El Monte Police Department. [OIC Exs. 9-12.] These records show that, briefly, Ms. Costage was arrested, charged and convicted of Disorderly Conduct in 2003; and Driving Under the Influence and Driving with License Suspended or Revoked in both April and May 2008. On July 24, 2011, she was arrested for "Vehicular Assault by Being Under the Influence of Intoxicating Liquor or any Drug, or By the Operation or Driving of a Vehicle in a Reckless Manner," a felony, along with Driving with License Suspended or Revoked and Ignition Interlocks Violation and on March 12, 2012 she was convicted of this felony. Even after this arrest, in which Ms. Costage injured a 19 year old young man [OIC Ex. 1], Ms. Costage was again arrested in both August and September 2011 for Driving under the Influence. [OIC Ex. 10.] Although a DUI itself is considered a traffic violation and does not need to be reported on the OIC's Application for an Insurance Producer's License [Testimony of Cheryl Penn], the OIC argues that Ms. Costage's repeated failure to comply with the law, combined with her lack of taking responsibility with respect to this proceeding, i.e., her failure to respond to emails, phone calls and discovery requests, provide a second basis for upholding the denial of her License Application under RCW 48.17.530(1)(h).

16. Cheryl Penn, Compliance Supervisor in the Licensing section of the Consumer Protection Division of the OIC, appeared as a witness on behalf of the OIC. Ms. Penn presented her testimony in a detailed and credible manner and presented no apparent biases.

17. Based upon the above Findings, it is reasonable that the OIC's denial of Ms. Costage's Application for a Washington Resident Insurance Producer's License be upheld.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, it is hereby concluded:

1. The adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

2. Pursuant to RCW 48.17.530(1)(f), the OIC may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, when a licensee or an applicant has been convicted of a felony.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

13-0119

Page - 6

3. Pursuant to RCW 48.17.530(1)(h), the OIC may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, when a licensee or an applicant demonstrates incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere.

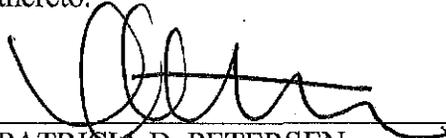
4. Based upon the above Findings of Facts and Conclusions of Law, and pursuant to Title 48 RCW, the Insurance Code and particularly RCW 48.17.530(1)(f) and (h), it is hereby concluded that the OIC's decision to deny Millie Costage's application for a Washington resident insurance producer's insurance producer's license is reasonable and should be upheld.

ORDER.

On the basis of the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's denial of the Washington resident insurance producer's license application submitted by Millie Dee Costage on March 15, 2013 is upheld. This written decision confirms the oral ruling upholding the OIC's denial made at the conclusion of the adjudicative proceeding in this matter on September 18, 2013.

ENTERED AT TUMWATER, WASHINGTON, this 17th day of December, 2013, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER

13-0119

Page - 7

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Millie Costage, Mike Kreidler, James T. Odiorne, John F. Hamje, AnnaLisa Gellermann, Esq., and Alan Michael Singer, Esq.

DATED this 17th day of December, 2013.


KELLY A. CAIRNS