



State of Missouri

DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

IN RE:

DANIEL JOSEPH FLOOD, II,

Applicant.

Case No. 140429433C

ORDER REFUSING TO ISSUE MOTOR VEHICLE EXTENDED SERVICE CONTRACT PRODUCER LICENSE

On May 30, 2014, the Consumer Affairs Division submitted a Petition to the Director alleging cause for refusing to issue a motor vehicle extended service contract producer license to Daniel Joseph Flood, II. After reviewing the Petition, the Investigative Report, and the entirety of the file, the Director issues the following findings of fact, conclusions of law, and order:

FINDINGS OF FACT

1. Daniel Joseph Flood, II ("Flood") is a Texas resident with a residential address of record of 2424 Gabriel Drive, McKinney, Texas 75071.
2. On or about January 19, 2012, the Department of Insurance, Financial Institutions and Professional Registration ("Department") received Flood's Application for Motor Vehicle Extended Service Contract Producer License ("Initial Application").
3. The "Applicant's Certification and Attestation" section of the Initial Application states in pertinent part:

I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

4. Flood accepted the "Applicant's Certification and Attestation" section of the Initial Application by his signature dated December 8, 2011.
5. Flood answered "No" to Background Information Question Number 1 of the Initial Application which reads:

Have you ever been convicted of a crime, had a judgement withheld or deferred, or are you currently charged with committing a crime?

"Crime" includes a misdemeanor, felony, or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

"Had a judgement withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt was made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence – sometimes called an "SIS" or "SES").

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a copy of the charging document, and
- c) a copy of the official document which demonstrates the resolution of the charges or any final judgement.

6. Relying on Flood's representations in his Initial Application, on January 19, 2012, the Department issued Flood a motor vehicle extended service contract ("MVESC") producer license. It expired January 19, 2014.
7. On January 22, 2014, the Department received Flood's Application for Motor Vehicle Extended Service Contract Producer License Renewal ("Renewal Application").
8. The "Applicant's Certification and Attestation" section of the Renewal Application states in pertinent part:

I hereby certify, under penalty of perjury, that all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.

9. Flood accepted the "Applicant's Certification and Attestation" section of the Renewal Application by his signature dated January 13, 2014.
10. Flood answered "No" to Background Information Question Number 1 of the Renewal Application which reads:

Have you ever been convicted of a crime, had a judgment withheld or deferred, received a suspended imposition of sentence ("SIS") or suspended execution of sentence ("SES"), or are you currently charged with committing a crime, which has not been previously reported to this insurance department?

"Crime" includes a misdemeanor, felony, or a military offense. You may exclude any of the following if they are/were misdemeanor traffic citations or misdemeanors: driving under the influence (DUI), driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license. You may also exclude misdemeanor juvenile convictions.

"Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having entered an Alford Plea, or having been given probation, a suspended sentence, or a fine.

"Had a judgment withheld or deferred" includes circumstances in which a guilty plea was entered and/or a finding of guilt was made, but imposition or execution of the sentence was suspended (for instance, the defendant was given a suspended imposition of sentence or a suspended execution of sentence – sometimes called an "SIS" or "SES").

Unless excluded by the language above, you must disclose convictions that have been expunged.

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a certified copy of the charging document, and
- c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

11. Contrary to Flood's representations in his Initial Application and Renewal Application, on August 25, 2004, Flood pled guilty to Assault in the Third Degree, a Class A Misdemeanor, in violation of § 565.070. The court sentenced Flood to six months of incarceration, but suspended the execution of sentence and placed Flood on two years of supervised probation and ordered Flood to complete five days of shock time, behavioral therapy and anger management, and twenty hours of community service. *State v. Daniel Joseph Flood II*, St. Charles Co. Cir. Ct., Case No. 04CR124157.
12. After reviewing Flood's Renewal Application, Special Investigator Andrew P. Engler ("Special Investigator Engler") mailed an inquiry letter by first class mail to Flood dated January 29, 2014. The letter requested additional documentation and information about Flood's conviction. The letter further requested a response by February 18, 2014, and warned that "[f]ailure to respond could result in a refusal to issue [Flood's] MVESC license."

13. The January 29, 2014 inquiry letter was mailed to the address Flood provided on the Renewal Application, which is the same address specified in paragraph 1 herein. The United States Postal Service did not return the inquiry letter to the Division as undeliverable. Therefore, it is presumed delivered.
14. Flood failed to provide a response to the Division's January 29, 2014 inquiry letter by February 18, 2014, and failed to demonstrate a reasonable justification for the delay.
15. Special Investigator Engler mailed a follow-up inquiry letter by first class mail to Flood dated February 18, 2014. The follow-up inquiry letter contained substantially the same information as the January 29, 2014 inquiry letter, but additionally made reference to the January 29, 2014 inquiry letter and the response time specified therein. The February 18, 2014 follow-up inquiry letter requested a reply by March 10, 2014 and warned that "[f]ailure to respond could result in a refusal to issue [Flood's] MVEESC license."
16. The February 18, 2014 follow-up inquiry letter was mailed to the address Flood provided on the Renewal Application, which is the same address specified in paragraph 1 herein. The United States Postal Service did not return the follow-up inquiry letter to the Division as undeliverable. Therefore, it is presumed delivered.
17. Flood failed to provide a response to the Division's February 18, 2014 follow-up inquiry letter by March 10, 2014, and failed to demonstrate a reasonable justification for the delay.
18. It is inferable that Flood failed to disclose his criminal history in his Initial Application in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve the chances that the Director would approve his Initial Application and issue him a MVEESC producer license.
19. It is inferable that Flood failed to disclose his criminal history in his Renewal Application in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve the chances that the Director would approve his Renewal Application and issue him a MVEESC producer license.

CONCLUSIONS OF LAW

20. Section 385.209 RSMo. (Supp. 2013)¹ provides in pertinent part:

1. The director may suspend, revoke, refuse to issue, or refuse to renew a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant or licensee or the applicant's or licensee's subsidiaries or affiliated entities acting on behalf of the applicant or licensee in connection with the applicant's or licensee's motor vehicle extended service contract program has:

¹ All statutory references are to RSMo. (2000) as updated by RSMo. (Supp. 2013) unless otherwise noted.

(1) Filed an application for license in this state within the previous ten years, which, as of the effective date of the license, was incomplete in any material respect or contained incorrect, misleading, or untrue information;

(2) Violated any provision in sections 385.200 to 385.220, or violated any rule, subpoena, or order of the director;

(3) Obtained or attempted to obtain a license through material misrepresentation or fraud[.]

21. Title 20 CSR 100-4.100(2)(A) provides in pertinent part:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

22. "[I]f not returned, the sender [of a letter may] presume that it was received where there is no question about the correctness of the address." *Schlereth v. Hardy*, 280 S.W.3d 47, 51 (Mo. banc 2009).
23. Just as the principal purpose of § 375.141, the insurance producer disciplinary statute, is not to punish licensees or applicants, but to protect the public, *Ballew v. Ainsworth*, 670 S.W.2d 94, 100 (Mo. App. E.D. 1984), the purpose of § 385.209 is not to punish applicants for a MVESC producer license, but to protect the public.
24. The Director may refuse to issue a MVESC producer license to Flood under § 385.209.1(1) because Flood's Initial Application was both untrue and incomplete in material respects. It was untrue because Flood responded "No" to Background Information Question Number 1 when he previously had been convicted of assault, and it was incomplete because Flood did not attach or include the documents requested of applicants with prior criminal histories referenced by Background Information Question Number 1.
25. The Director may refuse to issue a MVESC producer license to Flood under § 385.209.1(2) because Flood failed to respond to two inquiry letters from the Division and failed to provide reasonable justification for the delays, thereby violating 20 CSR 100-4.100(2)(A), a Department regulation.
26. Each instance in which Flood failed to respond to an inquiry letter is a violation of 20 CSR 100-4.100(2)(A) and each violation of a Department regulation constitutes a separate and sufficient cause for refusal under § 385.209.1(2).

27. The Director may refuse to issue a MVESC producer license to Flood under § 385.209.1(3) because Flood obtained a MVESC producer license through material misrepresentation or fraud. Flood falsely answered "No" to Background Information Question Number 1 of the Initial Application and failed to disclose his assault conviction in order to misrepresent to the Director that he had no criminal history.
28. The Director may refuse to issue a MVESC producer license to Flood under § 385.209.1(3) because Flood attempted to obtain a MVESC producer license through material misrepresentation or fraud. Flood falsely answered "No" to Background Information Question Number 1 of the Renewal Application and failed to disclose his assault conviction in order to misrepresent to the Director that he had no criminal history and, accordingly, in order to improve his chances that the Director would approve his Renewal Application and issue a MVESC producer license to Flood.
29. Each instance in which Flood falsely answered "No" to Background Information Question Number 1 constitutes a separate and sufficient cause for refusal under § 385.209.1(3).
30. The Director has considered Flood's history and all of the circumstances surrounding Flood's Renewal Application. Granting Flood a MVESC producer license would not be in the interest of the public. Accordingly, the Director exercises his discretion and refuses to issue a MVESC producer license to Flood.
31. This order is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the motor vehicle extended service contract producer license application of **Daniel Joseph Flood, II** is hereby **REFUSED**.

SO ORDERED.

WITNESS MY HAND THIS 30TH DAY OF MAY, 2014.




JOHN M. HUFF
DIRECTOR

NOTICE

TO: Applicant and any unnamed persons aggrieved by this Order:

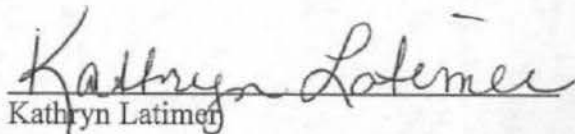
You may request a hearing in this matter. You may do so by filing a complaint with the Administrative Hearing Commission of Missouri, P.O. Box 1557, Jefferson City, Missouri, within 30 days after the mailing of this notice pursuant to Section 621.120, RSMo. Pursuant to 1 CSR 15-3.290, unless you send your complaint by registered or certified mail, it will not be considered filed until the Administrative Hearing Commission receives it.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of June, 2014, a copy of the foregoing Order and Notice was served upon the Applicant in this matter by UPS, signature required, at the following address:

Daniel Joseph Flood, II
13114 Brendan Wood Drive
Florissant, Missouri 63033

Tracking No. 1Z0R15W84294100032


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