

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
BOARD OF CHIROPRACTIC EXAMINERS**

IN THE MATTER OF

JESSE HUGH HICKERSON

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FINAL ORDER

OAH Case No. 901456

Agency Case No. 2009-5014

HISTORY OF THE CASE

On October 15, 2009, Jesse Hugh Hickerson (Applicant) applied to become a certified chiropractic assistant (CCA) in Oregon. On November 23, 2009, the Board of Chiropractic Examiners (Board) issued a Notice of Proposed Denial of Certificate. Applicant timely requested a hearing, and the file was referred to the Office of Administrative Hearings (OAH) on December 28, 2009.

The matter was assigned to Administrative Law Judge (ALJ) Rick Barber. A prehearing conference was held on February 23, 2010, and the case was set for hearing on May 25, 2010.

On March 19, 2010, Senior Assistant Attorney General Lori Lindley filed a Motion for Summary Determination on the Board's behalf. That motion correctly indicated that any response by Applicant must be filed on or before April 2, 2010, to be timely. Applicant did not file a response to the motion. On April 8, 2010, ALJ Barber issued a Proposed Order with a favorable ruling on the Board's Motion for Summary Determination denying Applicant's certificate. The exceptions period ran on April 19, 2010. No exceptions were filed by Applicant.

ISSUE

Whether the Board's Notice of Proposed Denial of Certificate should be affirmed as a matter of law.

NATURE OF THE REVIEW

Pursuant to OAR 137-003-0580, a Motion for Summary Determination may be filed by the agency or a party not less than 28 days before the date set for hearing, requesting a ruling on the legal issues in the contested case. The rule, quoted in part below, sets forth the standard by which the ALJ reviewed the motion:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

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(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

OAR 137-003-0580.

EVIDENTIARY RULINGS

Along with the Motion, the Board provided Exhibits A through F, demonstrating Applicant's criminal history. ALJ Barber admitted the exhibits for purposes of this Motion; as required by the rule quoted above, ALJ Barber has viewed the evidence in a light most favorable to Applicant, the non-moving party.

FINDINGS OF FACT

1. On December 31, 2003, Applicant pled guilty and was convicted of Possession of a Controlled Substance (PCS), a Class C felony. (Ex. B).

2. On October 19, 2007, Applicant pled guilty to Harassment and was convicted of a Class B misdemeanor. (Ex. F).

CONCLUSIONS OF LAW

The Board's Notice of Proposed Denial of Certificate should be affirmed as a matter of law.

RULING

The Board contends that its denial of Applicant's chiropractic assistant application must be affirmed as a matter of law on two theories. First, the Board argues that issue preclusion requires affirmance of the denial. Second, the Board argues that it may deny the application because of Applicant's criminal history. In the proposed order, ALJ Barber addressed the latter argument first because it was dispositive.

Applicant's Criminal History. The record is un rebutted that Applicant was convicted of a felony drug charge and a harassment charge (misdemeanor), in the last seven years. OAR 811-010-0110 states in part:

(14) The Board may refuse to grant a certificate to any applicant, may suspend or revoke a certificate, or may impose upon an applicant for certification or Chiropractic Assistant a civil penalty not to exceed \$1,000 upon finding of any of the following:

* * * * *

(b) Conviction of a misdemeanor involving moral turpitude or a felony[.]

The rule in question allows the Board to refuse a certificate if there is a criminal history involving either a misdemeanor involving moral turpitude *or* a felony.

The Board's basis for denial in the Proposed Notice was his conviction history of ongoing methamphetamine issues and his inability to comply with the terms of his probation. The Board indicated in the Proposed Notice the convictions rose to the level of moral turpitude and warranted denial of the certificate. The Board also stated that they were concerned about that as well as Applicant not having an absence of a criminal activity for any recent time period. However, the ALJ found that the basis of the Board's notice was unclear and only relied on the felony conviction. Since the ALJ agreed with the Board that a felony conviction denial was proper, the Board will forgo the other reasons alleged and will rely on the felony conviction solely for the basis of the denial. The Board relies on the felony conviction, and because that conviction clearly gives it the right to deny the application, the ALJ and Board concludes that the denial was proper as a matter of law, without regard to the other arguments presented.

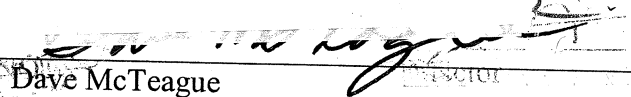
Because the felony conviction gives the Board the ability to make the denial, the Board agrees that they do not need to address the claim preclusion argument or the Board's factual contention that Applicant's misdemeanor conviction involved moral

turpitude.

ORDER

The Applicant is hereby denied a certificate as a Chiropractic Assistant due to the felony conviction mentioned above for which the law provides a denial can be based

Original signature on file at OBCE



Dave McTeague

Executive Director, Oregon Board of
Chiropractic Examiners

June 4, 2010

APPEAL

If you wish to appeal the final order, you must file a petition for review with the Oregon Court of Appeals within 60 days after the final order is served upon you. *See* ORS 183.480 et seq.