

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NUMBER: AG16-0726-148

IN THE MATTER OF:)

DONALD L. EMRY)
596 Windward Lane)
Plainfield, Indiana 46168)

License Number 2052140)

FILED

FEB 01 2017

STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF FILING OF FINAL ORDER

The parties to this action are hereby notified that the Commissioner's Final Order is deemed filed as of this date. Pursuant to Ind. Code § 4-21.5-5-5, Applicant has the right to appeal this Final Order by filing a petition for Judicial review in the appropriate court within thirty (30) days.

2/1/17
Date


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

Commissioner Stephen W. Robertson, being advised of the matter concerning the licensure of Donald L. Emry (“Respondent”), and having reviewed the Administrative Law Judge’s Findings of Fact, Conclusions of Law, and Recommended Order (the “Second Recommended Order”), and Respondent’s Objection to Recommended Order, now modifies the Recommended Order and issues the following Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT

1. On July 25, 2016, Respondent came to the Indiana Department of Insurance (“Department”) to renew his license and during that process a Department employee claimed that Respondent struck her twice on her forearm.
2. Video footage of the incident does not show the moment the strike occurred because the view is obscured; however, footage shows Respondent’s arm move in motions that could be interpreted as a hand strikes.

3. Respondent denied striking the employee, but the video footage, the employee's testimony, and testimony by another employee, who did not witness the physical contact, but corroborated that the employee was fearful for her safety after her interaction with Respondent.

4. On July 26, 2016, Respondent's Indiana insurance producer license was temporarily suspended by an Emergency Order signed by Commissioner Robertson.

5. The Emergency Order stated that Respondent could request a hearing on the emergency suspension and mandated a hearing within 90 days to determine whether Respondent's license should be permanently revoked.

6. On July 29, 2016, Respondent, by counsel, requested an evidentiary hearing regarding the emergency suspension.

7. On August 10, 2016, a Scheduling Order was filed by Administrative Law Judge Reuben B. Hill ordering that a hearing be held on August 10, 2016, regarding the Emergency Order and another hearing be held on September 7, 2016, regarding the permanent suspension of Respondent's insurance producer license.

8. Judge Hill held a hearing regarding the temporary suspension on August 10, 2016.

9. On August 12, 2016, Judge Hill filed a Findings of Fact, Conclusions of Law and Recommended Order ("First Recommended Order") recommending that the emergency suspension of Respondent's license be continued.

10. On September 20, 2016, a Final Order signed by Commissioner Robertson was filed stating that the Emergency Order was upheld and the suspension of Respondent's insurance producer license would continue.

11. On August 30, 2016, and October 25, 2016, Respondent filed Motions to Continue the permanent suspension hearing.

12. Administrative Law Judge Reuben B. Hill held a hearing on November 16, 2016, to determine whether Respondent's insurance producer's license should be permanently revoked.

13. On December 16, 2016, the Administrative Law Judge submitted a Findings of Fact, Conclusions of Law and Recommended Order ("Second Recommended Order").

14. The Commissioner now adopts the Administrative Law Judge's Second Recommended Order's Findings of Facts, paragraphs 1-9 (unnumbered).

15. On December 29, 2016, Respondent filed an objection to the Second Recommended Order.

16. Respondent's objection states that:

- a. There is insufficient evidence to support the Department's claim that Respondent struck Ms. Canfield; and
- b. The Second Recommended Order was made without proper consideration of the circumstances and is, therefore, arbitrary and capricious.

17. Conclusions of Law that are properly stated as Findings of Fact are hereby incorporated as such.

CONCLUSIONS OF LAW

1. Respondent, by his conduct in striking a Department employee while conducting business relating to his license, violated Indiana Code § 27-1-15.6-12(b)(8).

2. The Conclusions of Law in the Second Recommended Order submitted on December 16, 2016, numbered as Conclusions of Law 1 – 7, are adopted and incorporated herein.

3. The Commissioner adds the following additional Conclusions of Law:

- a. The Commissioner is responsible for ensuring that the Department is a safe working environment for Department employees as well as for the visiting public. *Indiana Code § 27-1-1-2*
- b. Respondent's actions on July 25, 2016, demonstrated uncontrolled and aggressive behavior while interacting with Department employees and caused an immediate threat to the Department; Respondent's coercive and intimidating behaviors directed at the Department staff call into question Respondent's trustworthiness in dealing with Indiana consumers. *Indiana Code § 27-1-15.6-12(b)(8)*
- c. The Department has met its burden of proof and shown by a preponderance of the evidence that Respondent's conduct demonstrates untrustworthiness in the conduct of business in Indiana. *Indiana Code § 4-21.5-3-14(c)*

4. Findings of Fact that can be adopted as Conclusions of Law are hereby incorporated as such.


FINAL ORDER

With the Findings of Fact and the Conclusions of Law as stated, the Commissioner of Insurance now issues the following Final Order modifying the Administrative Law Judge's Second Recommended Order as follows:

1. Respondent's license is hereby suspended for a period of two (2) years from the date of the Emergency Order, July 26, 2016.
 - a. Respondent may reapply after the elapse of the (2) year suspension if Respondent has successfully completed a Department approved anger management course.
 - b. The successful completion of the anger management course is not determinable of whether Respondent will be granted a license; but rather a condition precedent to reapplication.
2. After the two (2) year suspension and successful completion of the anger management course, Respondent may reapply for a license.

Under Indiana Code §4-21.5-5-5, Respondent has the right to appeal this Final Order by filing a petition for judicial review in the appropriate court within thirty (30) days.

ALL OF WHICH IS ORDERED by the Commissioner this 1st day of February 2017.


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

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