

STATE OF INDIANA)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
)
Douglas Henselmeier)
)
Petitioner)
)
Type of Agency Action:Enforcement)
)

FILED

JUL 15 2022

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: DOI-2201-000148
20792-AG21-0728-015

FINAL ORDER

On May 23, 2022, the Administrative Law Judge, Ann Pagonis, filed her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Recommended Order and Notice of Filing Recommended Order on Petitioner by emailing the same to his email address of record.

2. The Department has complied with the notice requirements of Ind. Code §4-21.5-3-17.

3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order, and more than eighteen (18) days have elapsed.

Therefore, the Commissioner of Insurance, being fully advised, now hereby adopts in full the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommended Order and issues the following Final Order:

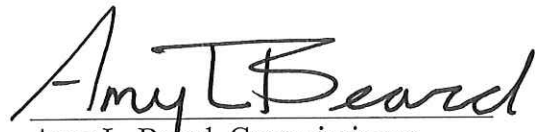
IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Denial of Petitioner's resident producer license application number 2668280

is **AFFIRMED**.

Under Ind. 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 15 day of July, 2022.

A handwritten signature in black ink that reads "Amy L. Beard". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Douglas Henselmeier served by email: henselmeierd@yahoo.com

Samantha Aldridge, Attorney
Indiana Department of Insurance
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RECOMMENDED ORDER

Pursuant to IC 4-21.5 this Recommended Order is not final and shall be presented to the ultimate authority for issuance of a final order.



FILED: May 23, 2022

STATE OF INDIANA OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Administrative Cause No.: DOI-2201-000148
Underlying/State Agency Action No.: 20792-AG21-728-15

Final Agency Authority: Commissioner of the Department of Insurance

Douglas Henselmeier
Petitioner,

Type of Agency Action: Enforcement

License Number: 2668280

v.

Department of Insurance
Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

An evidentiary hearing was held on this matter on March 1, 2022, at 10:00 am EST via telephonic conference. Administrative Law Judge Ann Pagonis ("ALJ"), having heard, reviewed, and considered all of the evidence, now renders a decision concerning the matter of Douglas M. Henselmeier ("Petitioner").

Petitioner appeared telephonically, and without counsel. The Department of Insurance ("Respondent") was represented by counsel, Samantha Aldridge.

Petitioner testified on his own behalf in the narrative style and offered five (5) exhibits, identified as Petitioner's Exhibits ("PX") 1 through 5.

- PX 1, consisting of one (1) page, is a letter from Petitioner to Respondent.
- PX 2 consisting of eight (8) pages, is a collection of Certificates of Completion showing that Petitioner completed eight (8) classes from the North American Learning Institute.
- PX 3 consisting of two (2) pages, is a Certificate of Release or Discharge from Active Duty.
- PX 4 consisting of two (2) pages, is a letter of acceptance to the Cincinnati VAMC Posttraumatic Stress Disorder (PTSD) Residential Treatment Program from the Department of Veterans Affairs Medical Center.
- PX 5, consisting of five (5) pages, is a document with trauma screening results.

Respondent called Calla Dain, investigator for the Department of Insurance, as a witness and offered seven (7) exhibits that were admitted into the record without objection and identified as Respondent's Exhibits ("RX") 1 through 7.

- RX 1, consisting of sixteen (16) pages, is a document detailing Petitioner's license renewals.
- RX 2, consisting of four (4) pages, is a chronological case summary (CCS) of Petitioner's Operating a Vehicle While Intoxicated Endangering a Person, a Class A Misdemeanor, case, under cause number 55D03-1402-CM-000272.
- RX 3, consisting of eleven (11) pages, is a CCS of Petitioner's 2019 criminal case with four (4) counts, under cause number 55D03-1906-F6-001137.
- RX 4, consisting of one (1) page, is the sentencing order for defendant's criminal case under cause number 55D03-1906-F6-001137.
- RX 5, consisting of nine (9) pages, is a CCS of Petitioner's 2020 criminal case with four (4) counts, under cause number 55D03-2006-F6-000924.
- RX 6, consisting of one (1) page, is the sentencing order for defendant's criminal case under cause number 55D03-2006-F6-000924.
- RX 7, consisting of four (4) pages, is the Administrative Order and Notice of Nonrenewal of License the Petitioner appealed, giving rise to this action.

Based upon the evidence presented at said hearing, the ALJ now makes and issues the following Findings of Fact, Conclusions of Law, and Recommended Order.

FINDINGS OF FACT

1. On July 21, 2014, Petitioner was convicted of Operating a Vehicle While Intoxicated Endangering a Person, a Class A Misdemeanor. Petitioner did not report this matter to the Commissioner of the Department of Insurance ("Commissioner"). (RX 2 and RX 7.)
2. On July 12, 2019, Petitioner had an initial pretrial hearing in 55D03-1906-F6-001137, where Petitioner was charged with Operating a Vehicle While Intoxicated with a Prior Conviction, a Level 6 Felony; Operating a Vehicle While Intoxicated Endangering a Person, a Level 6 Felony; Operating a Vehicle While Intoxicated Endangering a Person, a Class A Misdemeanor; and Operating a Vehicle While Intoxicated, a Class C Misdemeanor. (RX 3.)
3. On July 29, 2019, Petitioner's application to renew his resident producer license was accepted by Respondent. On the application, Petitioner answered "no" to the question "...are you currently charged with committing a felony, which has not been previously reported to this insurance department?" (RX 1 and RX 7.)
4. Petitioner did not report 55D03-1906-F6-001137 to the Commissioner within thirty (30) days of the initial pretrial hearing in that matter. (Dain Test. and RX 7.)
5. On July 6, 2020, Petitioner had an initial pretrial hearing in 55D03-2006-F6-000924, where Petitioner was charged with Operating a Vehicle While Intoxicated with a Prior Conviction within 7 Years, a Level 6 Felony; Operating a Vehicle While Intoxicated Endangering a Person with a Prior within 7 Years, a Level 6 Felony; Operating a Vehicle While Intoxicated Endangering a Person, a Class A Misdemeanor; and Operating a Vehicle While Intoxicated, a Class C Misdemeanor. (RX 5.)
6. Petitioner did not report 55D03-2006-F6-000924 to the Commissioner within thirty (30) days of the initial pretrial hearing in that matter. (RX 7.)
7. On July 13, 2021, Petitioner applied to renew his resident producer license and answered "yes" to the question "Have you been convicted of a felony...or are you currently charged with committing a felony, which has not been previously reported to this insurance department?" Petitioner disclosed 55D03-2006-F6-000924 on Petitioner's 2021 application for renewal. (RX 1 and RX 7.)
8. Petitioner's license expired on July 31, 2021. (RX 7.)

9. Respondent refused to renew Petitioner's license due to Petitioner not timely reporting his criminal cases to the Commissioner and for not disclosing 55D03-1906-F6-001137 on his 2019 application for renewal. (RX 7.)
10. Petitioner does not argue that he failed to report his criminal cases to the Commissioner in a timely manner. Petitioner was not aware of the requirement that Petitioner report any criminal prosecution initiated against him in any jurisdiction to the Commissioner within thirty (30) days. Petitioner engages in mental health treatment through the Veteran's Administration and wishes to have his license reinstated so that he can continue with his career. (PX 1.)
11. Conclusions of Law that can be adopted as Findings of Fact are incorporated as such.

CONCLUSIONS OF LAW

1. The Office of Administrative Law Proceedings ("OALP") has jurisdiction over both the subject matter and the parties to this action and the Commissioner of the Department of Insurance ("Commissioner") has final authority. IC 27-1-15.6-12(d); IC 4-15-10.5-12; IC 4-15-10.5-13.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, IC 4-21.5-3. IC 27-1-15.6-12(d).
3. Petitioner appeals Respondent's decision to deny Petitioner a license because of his failure to timely disclose the criminal matters to the Commissioner within thirty (30) days of the initial pretrial conference and his failure to disclose his 2019 felony case on his 2019 application for renewal of his license.
4. The Commissioner may refuse to renew a license to an individual who violates insurance law. Indiana Code 27-1-15.6-12(b)(6).
5. Indiana Code 27-1-15.6-17(b) is an insurance law which states not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction.
6. Indiana Code 27-1-15.6-12(b)(1) states that the Commissioner may refuse to renew a producer's license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

6. The person requesting an agency act has the burden of persuasion and the burden of going forward. Indiana Code 4-21.5-3-14(c). Petitioner requests that the Department issue a license, therefore Petitioner bears the burden of proof.

7. Proceedings held before an ALJ are *de novo*, which means the ALJ does not—and may not—defer to an agency’s initial determination. Indiana Code § 4-21.5-3-14(d); *Ind. Dep’t of Natural Res. v. United Refuse Co., Inc.*, 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as factfinder, the ALJ must independently weigh the evidence in the record and may base findings and conclusions only upon that record. *Id.* At a minimum, the ALJ’s findings “...must be based upon the kind of evidence that is substantial and reliable.” Indiana Code § 4-21.5-3-27(d). “[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision...” *St. Charles Tower, Inc. v. Bd. of Zoning Appeals*, 873 N.E.2d 598, 601 (Ind. 2007).

8. A hearing was held to determine the reasonableness of the Commissioner’s decision pursuant to Indiana Code 27-1-15.6-12(d).

9. Petitioner did not timely report the criminal prosecutions to the Commissioner, which is a violation of insurance law. Petitioner also did not disclose his 2019 felony matter on his application for license renewal in 2019. It is not unreasonable for the Commissioner to deny renewal of Petitioner’s license because of Petitioner’s failure to timely report the criminal prosecution to the Commissioner and because Petitioner submitted a license application with incorrect, misleading, incomplete, or materially untrue information in 2019. Petitioner has not met his burden of proving that the Commissioner’s decision not to issue him a license was unreasonable.

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

RECOMMENDED ORDER

IT IS THEREFORE RECOMMENDED:

In consideration of the foregoing, Findings of Fact and the Conclusions of Law as stated, the Administrative Law Judge now recommends to the **Commissioner of the Department of Insurance** that the denial of Mr. Henselmeier’s application for a resident producer license under license application number 2668280 shall be AFFIRMED.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the **Commissioner of the Department of Insurance** on May 23, 2022. **This recommended order is not final.**

This matter is now before the ultimate authority, the Commissioner of Insurance who has the final authority over this matter and shall review this Recommended Order and issue a final order to all parties.

To preserve an objection to this order for judicial review, the Parties must object to the order in writing that: 1) Identifies the basis for the objection with reasonable particularity; and 2) Is filed with the ultimate authority, the Commissioner of the Department of Insurance, within fifteen (15) days from the date of this Order. Indiana Code 4-21.5-3-29.

Any questions regarding this matter may now be directed to Dawn Bopp at dbopp@idoi.in.gov.



Ann Pagonis
Administrative Law Judge

Distributed to Parties:

Indiana Department of Insurance – Respondent, served by Counsel Samantha Aldridge by email at saldridge@idoi.in.gov

Douglas Henselmeier – Petitioner, served by email at henselmeierd@yahoo.com

Additional Distribution to Non-Party:

IDOI Commissioner – Ultimate Authority and served by Dawn Bopp at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 20792-AG21-0728-150

IN THE MATTER OF:)

Douglas M. Henselmeier)
PO Box 1433)
Martinsville, IN 46151)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 2668280)

FILED

NOV 30 2021

STATE OF INDIANA
DEPT. OF INSURANCE

ADMINISTRATIVE ORDER AND
NOTICE OF NONRENEWAL OF LICENSE

The Indiana Department of Insurance ("Department"), pursuant to Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.*, and Indiana Code § 27-1-15.6-12, hereby gives notice to Douglas M. Henselmeier, ("Respondent") of the following Administrative Order:

1. Respondent is a licensed resident insurance producer holding license number 2668280 since February 10, 2003 ("Respondent's license").
2. Respondent's license expired on July 31, 2021.
3. On or about July 13, 2021, Respondent submitted an application to renew his producer license.
4. On that 2021 application Respondent disclosed the following June 19, 2020, criminal charges, in the Morgan County Superior Court in Indiana, which were not reported to the Department in a timely manner:

- a. Operating a Vehicle While Intoxicated: Endangering a Person, a Class A Misdemeanor;
- b. Operating a Vehicle While Intoxicated, a Class C Misdemeanor;
- c. Operating a Vehicle While Intoxicated: Endangering a Person – Prior Within 7 years, a Level 6 Felony; and
- d. Operating a Vehicle While Intoxicated – Prior Within 7 years, a Level 6 Felony.

5. Respondent's initial pretrial hearing date in the above criminal matter was held on July 6, 2020.

6. On or about July 29, 2019, Respondent submitted an application to renew his producer license.

7. An investigation discovered that Respondent was charged with the following criminal charges on June 17, 2019, in the Morgan County Superior Court in Indiana, which Respondent failed to disclose on his July 29, 2019 application, and were not reported to the Department in a timely manner:

- a. Operating a Vehicle While Intoxicated: Endangering a Person, a Class A Misdemeanor;
- b. Operating a Vehicle While Intoxicated, a Class C Misdemeanor;
- c. Operating a Vehicle While Intoxicated: Endangering a Person, a Level 6 Felony; and
- d. Operating a Vehicle While Intoxicated – Prior Conviction, a Level 6 Felony.

8. Respondent's initial pretrial hearing date in the above criminal matter was held on July 12, 2019.

9. An investigation discovered that on February 23, 2014, in the Morgan County Superior Court, Respondent was charged with operating a Vehicle While Intoxicated, a Class A Misdemeanor, which was not reported to the Department in a timely manner.

10. Respondent's initial pretrial hearing date in the above criminal matter was held on March 21, 2014.

11. On July 21, 2014, Respondent was subsequently convicted of Operating a Vehicle While Intoxicated, a Class A Misdemeanor.

12. Indiana Code § 27-1-15.6-12(b)(2)(A) provides, in part, that the Commissioner may refuse to renew an insurance producer's license for violating an insurance law.

13. Indiana Code § 27-1-15.6-17(b), is an insurance law, which states not more than thirty (30) days after an initial pretrial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction.

14. Indiana Code § 27-1-15.6-12(b)(1), provides, in part, that the Commissioner to refuse to renew a producer's license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

15. Indiana Code § 27-1-15.6-12(d) requires the Commissioner to notify a licensee of the reason for the nonrenewal of his license. This Order serves as that notice.

16. The Commissioner further notifies Respondent that, pursuant to Indiana Code § 27-1-15.6-12(d), Respondent may, within sixty-three (63) days of the mailing of this Order, make a written demand upon the Commissioner for a hearing to determine the reasonableness of this action. Such a hearing shall be held within thirty (30) days from the date of receipt of Respondent's written demand.

17. This is considered an agency action. This action has been initiated by the aforementioned authority. If you choose to appeal this agency action, the State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and subsequently you will be contacted by the OALP with more information to begin the administrative process.

WHEREFORE, based on the foregoing, the Commissioner of Insurance hereby notifies Respondent that **his license shall not be renewed** due to his failure to timely report his criminal proceedings the Department, and his failure to disclose pending felony charges on an application.

1130/21
Date Signed


Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution:

Victoria Hastings, Attorney
ATTN: Calla Dain, Insurance Investigator
Indiana Department of Insurance
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