

STATE OF INDIANA)
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
)
Gene Hardy)
)
Petitioner)
)
Type of Agency Action:Enforcement)
)

CAUSE NO.: DOI-2201-000102
21032-AD21-1102

FILED
JUN 29 2022
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On April 18, 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 Default Order and Notice of Filing Recommended Default 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 Default 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 Default 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 914551 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 29 day of June, 2022.



Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Gene Hardy served by email: ghardy81@gmail.com

Victoria Hastings, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
vhastings@idoi.in.gov

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: April 18, 2022

STATE OF INDIANA OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Administrative Cause No.: DOI-2201-000102

Underlying/State Agency Action No.: 21032-AD21-1102-156

Final Agency Authority: Commissioner of the Department of Insurance

Gene Hardy
Petitioner,

v.

Indiana Department of Insurance
Respondent.

Type of Agency Action: Enforcement

License Application #: 914551

FINDINGS OF FACT, CONCLUSIONS OF LAW

AND RECOMMENDED ORDER

An evidentiary hearing was held in this matter on February 17, 2022, at 1:00 pm ET via telephonic conference. Administrative Law Judge ("ALJ") Ann Pagonis, having heard, reviewed, and considered all of the evidence, now renders a decision concerning the matter of Gene Hardy ("Petitioner").

Petitioner appeared pro se. The Enforcement Division of the Indiana Department of Insurance ("Respondent") was represented by counsel, Samantha Aldridge.

Petitioner testified on his own behalf in the narrative style and did not offer any exhibits. Respondent called Calla Dain, investigator for the Department of Insurance, as a

witness and offered eight (8) exhibits into evidence. The exhibits were admitted into the record without objection and identified as Respondent's exhibits ("RX") 1 through 8.

- RX 1 is a six (6) page license application from Petitioner from 2013.
- RX 2 is a five (5) page license application from Petitioner from 2017.
- RX 3 is a three (3) page license application from Petitioner from 2021.
- RX 4 is a fourteen (14) page chronological case summary from Petitioner's 2003 Battery A Misdemeanor case.
- RX 5 is a ten (10) page chronological case summary from Petitioner's 2003 Possession of Marijuana A Misdemeanor case.
- RX 6 is a three (3) page chronological case summary from Petitioner's 2004 Check Deception case.
- RX 7 is a fourteen (14) page chronological case summary from Petitioner's 2019 Theft A Misdemeanor case.
- RX 8 is a three (3) page Preliminary Administrative Order and Notice of License Denial issued by Respondent to Petitioner, which Petitioner appealed, giving rise to the present matter.

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

FINDINGS OF FACT

1. On February 6, 2004, Petitioner was convicted of Possession of Marijuana, an A Misdemeanor, and False Reporting or Informing, a B Misdemeanor, in Allen County, Indiana. (Transcript page 24 and RX 5.)
2. On February 20, 2004, Petitioner was convicted of battery, an A Misdemeanor in Allen County, Indiana. (Transcript page 23 and RX 4.)
3. On January 29, 2007, Petitioner was convicted of Check Deception, an A Misdemeanor, in Huntington County, Indiana. (Transcript page 24 and RX 6.)
4. Petitioner did not disclose the misdemeanor cases mentioned above in his applications for licensure that he submitted to Respondent in 2013, 2017, or 2021

- because he believed that he did not have to report crimes that were more than seven (7) years old. (Transcript pages 20, 33, 36-37, RX 1, RX 2, and RX3.)
5. Ms. Dain was a licensing coordinator in 2013 and would have processed Petitioner's 2013 resident licensing producer application. Ms. Dain would not have told Petitioner not to disclose criminal convictions that are seven (7) years or older. (Transcript page 33, 34, and 35.)
 6. On August 23, 2019, Petitioner had an initial pre-trial hearing in a criminal matter in Marion County, Indiana. Petitioner was charged with Theft, a Level 6 Felony. (Transcript page 24 and RX 7.)
 7. Petitioner was a licensed resident producer on August 23, 2019. Petitioner did not disclose the criminal matter to the Commissioner of the Department of Insurance within 30 days of the initial hearing. (Transcript pages 45 and 46.)
 8. On June 23, 2020, Petitioner was convicted of Theft, an A Misdemeanor, in Marion County, Indiana. (Transcript pages 24, 46, and RX 7.)
 9. Petitioner disclosed the 2020 conviction for Theft, an A Misdemeanor, on his application to reinstate his insurance producer license that he submitted on October 4, 2021. (Transcript pages 24, 26-27, and RX 3.)
 10. The circumstances of the theft case were that Petitioner was the co-owner of a fireworks store and an employee stole money from the store. Petitioner plead guilty to the theft. (Transcript pages 26 and 27.)

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 4-15-405-13.
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. Indiana Code 27-1-15.6-12(b)(2)(A) allows the Commissioner to refuse to renew an Insurance Producer License for violating an insurance law.
4. Indiana Code 27-1-15.6-17(b) is an insurance law that states that not more than thirty (30) days after an initial pre-trial hearing date, a producer shall report to the Commissioner any criminal prosecution of the producer initiated in any jurisdiction. Petitioner violated this insurance law by not reporting the theft case to the Commission within thirty (30) days of the August 23, 2019, initial pre-trial hearing.
5. Indiana Code 27-1-15.6-12(b)(1) is an insurance law that states that the Commissioner may refuse to issue a producer's license if the applicant provides incorrect or incomplete information on the application. Petitioner did not disclose his 2004 and 2007 criminal cases in his applications for licensure, so his applications were incomplete.
6. The person requesting an agency act has the burden of persuasion and the burden of going forward. IC 4-21.5-3-14(c). Petitioner requests that the Department renew his resident producer license and, therefore, bears the burden.
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. IC 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 minimum, the ALJ's findings "...must be based upon the kind of evidence that is substantial and reliable." IC 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. Pursuant to Indiana Code 27-1-15.6-12(d), a hearing was held to determine the reasonableness of the Commissioner's decision. Respondent failed to meet his burden of proving the Commissioner's decision to deny Petitioner's application for licensure was unreasonable. The Commissioner's decision is reasonable because Petitioner violated insurance law.

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 Insurance** that the denial of Petitioner's resident producer license under application #914551 should be AFFIRMED.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the **Commissioner of Insurance** on April 18, 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 then 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. For provisions on how to compute days see Ind. Code 4-21.5-3-2.

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



Ann Pagonis
Administrative Law Judge

Distributed to Parties:

Gene Hardy – Petitioner and served by email at ghardy81@gmail.com

Victoria Hastings – Respondent's Attorney; served by email to the email address on file with the Indiana Roll of Attorneys, Vhastings@idoi.in.gov

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.: 21032-AD21-1102-156

IN THE MATTER OF:)

Gene A. Hardy)
2912 Algonquin Dr.)
Lafayette, IN 47905)

Applicant.)

Type of Agency Action: Enforcement)

License Application #: 914551)

FILED

DEC 21 2021

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL

The Indiana Department of Insurance, pursuant to the 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 Gene A. Hardy ("Applicant") of the following Administrative Order:

1. Applicant was previously licensed as a resident producer with the Indiana Department of Insurance from September 26, 2013, to September 30, 2015, and March 31, 2017, to September 30, 2019, under license number 906898.
2. Applicant filed an application to reactivate his resident producer licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on October 4, 2021.
3. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code § 27-1-15.6-6 and Indiana Code § 27-1-15.6-12.

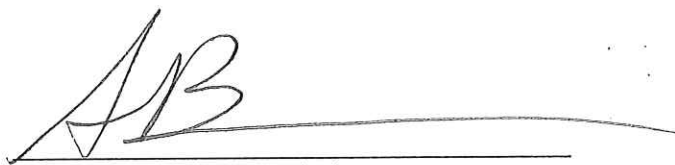
4. Indiana Code § 27-1-15.6-12(b)(1) provides, in part, that the Commissioner may refuse to issue an insurance producer's license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.
5. Indiana Code § 27-1-15.6-12(b)(2)(A), provides, in part, that the Commissioner may refuse to issue an insurance producer's license for violating an insurance law.
6. Indiana Code § 27-1-15.6-17(b), is an insurance law that 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.
7. Following a review of public records and a review of materials submitted by Applicant in support of his application, the Commissioner, being fully advised, now hereby notifies Applicant that he has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(1) due to his failure to disclose on his current and prior license applications the following criminal convictions:
 - a. February 6, 2004, convictions for Possession of Marijuana, a Class A Misdemeanor; and False Reporting, a Class B Misdemeanor;
 - b. February 20, 2004, conviction for Battery, a Class A Misdemeanor; and
 - c. January 29, 2007, conviction for Check Deception, a Class A Misdemeanor.
8. Following a review of public records and a review of materials submitted by Applicant in support of his application, the Commissioner, being fully advised, now hereby notifies Applicant that he has not fully met the requirements of licensure as stated by Indiana Code § 27-1-15.6-12(b)(2)(A) due to his failure to timely report his August 16, 2019 charge for Theft, a Level 6 Felony, to the Department while Applicant was previously licensed.

9. Indiana Code § 27-1-15.6-12(d) provides that the applicant may, not more than sixty-three (63) days after notice of denial of the application is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.
10. 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.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby **DENIED** pursuant to Indiana Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(2)(A) due to Applicant's failure to disclose his criminal history, and his failure to timely report the same to the Department. Applicant may reapply for licensure not less than one (1) year from the date of this order.

12/21/21

Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution to:

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