

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:)
)
)
Gabriel Kupres)
)
)
Petitioner)
)
Type of Agency Action:Enforcement)
)

FILED

OCT 26 2023

STATE OF INDIANA
DEPT. OF INSURANCE

CAUSE NO.: DOI-2304-001099
22099-AD23-0119-011

FINAL ORDER

On August 1, 2023, the Administrative Law Judge, Carrie Ingram, filed her Findings of Fact, Conclusions of Law and Non-Final Order in the above-captioned matter.

1. The Department served Findings of Fact, Conclusions of law, and Non-Final Order and Notice of Filing Non-Final 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.

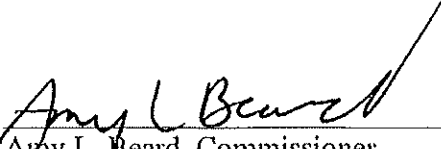
3. Neither party has filed an objection with the Commissioner regarding the Administrative Law Judge's Findings of Fact, Conclusions of Law and Non-Final Order, and more than eighteen (18) days have elapsed.

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 Non-Final Order and issues the following Final Order:

IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. The Denial of Petitioner's resident producer license application is Reversed.
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 26 day of October, 2023.



Amy L. Beard, Commissioner
Indiana Department of Insurance

Copies to:

Gabriel Kupres served by email at gabekupres@icloud.com

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Indiana Department of Insurance
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FILED:
August 1,
2023

**STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

**Gabriel Kupres,
Petitioner**

v.

**Indiana Department of Insurance
Respondent**

**OALP Case No.: DOI-2304-001099
Underlying Agency No.: 22099-AD23-0119-
011**

Ultimate Authority: Commissioner of the Department of Insurance

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NONFINAL ORDER

An evidentiary hearing was held on this matter on May 3, 2023, at 9:00 AM Eastern Time via telephonic conference. Administrative Law Judge (ALJ) Carrie Ingram presided over the hearing. At the evidentiary hearing, Gabriel Kupres appeared telephonically. The Department of Insurance (DOI) appeared telephonically by Counsel Samantha Aldridge, and Investigator Hana Biele.

Gabriel Kupres and Hana Biele testified at the evidentiary hearing. Petitioner offered no exhibits for admission and Respondent offered three exhibits for admission at the evidentiary hearing. The following exhibits were admitted at the evidentiary hearing:

1. Respondent’s Exhibit 1, Petitioner’s Application for Resident Insurance Producer License, 2 pages, admitted without objection.
2. Respondent’s Exhibit 2, Charging Information and Affidavit of Probable Cause for case number 64D03-2207-F6-006100, 4 pages, admitted over Petitioner’s objection.
3. Respondent’s Exhibit 3, the Chronological Case Summary for case number 64D03-2207-F6-006100, 4 pages, admitted without objection.

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

FINDINGS OF FACT¹

1. On or about July 19, 2022, Petitioner was traveling on his motorcycle at speeds in excess of 100 miles per hour. Lieutenant Edwards attempted to make a traffic stop of Petitioner on his motorcycle and chased Petitioner. Ultimately Petitioner was involved

¹ Conclusions of Law that can be adopted as Findings of Fact are incorporated as such.

in a single vehicle accident and was taken to the hospital by ambulance. Lt. Edwards advised Petitioner that he would not be arresting him at that time, but instead would issue a warrant in approximately one week. See testimony of Petitioner.

2. On or about July 21, 2022, a criminal case was opened in the Porter Superior Court and assigned the case number of 64D03-2207-F6-006100. Petitioner was the named defendant in that case. See Exhibit 3.
3. On July 21, 2022, criminal charging information and an affidavit of probable cause was filed in in the criminal case. Petitioner was charged with Resisting Law Enforcement, a Level 6 felony, and Reckless Driving, a C Misdemeanor. Neither the charging information nor the affidavit of probable cause were not served on the Petitioner. See testimony of Petitioner and Exhibits 2 and 3.
4. The chronological case summary shows that an "Automated Paper Notice" was issued to Petitioner on July 23, 2022. It is unknown what, if anything, was sent to Petitioner. It is clear, however, that Petitioner was not served with a Summons or an Arrest Warrant because neither had been issued at that time. See Exhibit 3.
5. Petitioner called Lt. Edwards several times in the weeks following July 19, 2022, to ask about the arrest warrant. Petitioner did not receive a response and still no summons or arrest warrant had been issued. See testimony of Petitioner.
6. In August 2022, Petitioner saw Lt. Edwards and Lt. Edwards did not arrest Petitioner. See testimony of Petitioner.
7. On or about January 3, 2023, Petitioner applied for a resident producer license with DOI. In the application, Petitioner disclosed that he was not currently charged with committing a felony or misdemeanor. See Exhibit 1.
8. As of January 3, 2023, no summons or arrest warrant had been issued or served on Petitioner for the criminal case opened on July 21, 2022. See Exhibit 3.
9. On or around January 12, 2023, Petitioner was notified that his application for resident insurance producer license was being denied because of pending misdemeanor and felony charges that he failed to disclose. Petitioner immediately contacted Lt. Edwards's office to ask whether criminal charges had been filed. Petitioner was told that his case had fallen through the cracks and that no arrest warrant had been issued. See testimony of Petitioner.
10. On January 12, 2023, a Motion for Warrant was filed in the criminal case and an Arrest Warrant was issued. Petitioner immediately turned himself in. See testimony of Petitioner and Exhibit 3.
11. On or about February 14, 2023, Petitioner's application for a resident producer license was denied because he had pending criminal charges that he did not disclose. See testimony of Hana Biele.

12. Petitioner credibly testified that when he filled out his application, he was unaware of the criminal charges that were filed on July 21, 2022. Petitioner's testimony is also supported by other credible evidence, including the evidence that an arrest warrant was not issued until January 12, 2023.

CONCLUSIONS OF LAW²

1. OALP has jurisdiction over both the subject matter and the parties to this action and the Commissioner is the ultimate authority. Ind. Code § 27-1-15.6-12(d); Ind. Code §§ 4-15-10.5-12 and 13.
2. This hearing was held in compliance with the Administrative Orders and Procedures Act of the Indiana Code, Ind. Code § 4-21.5-3. Ind. Code § 27-1-15.6-12(d).
3. The person requesting an agency act has the burden of persuasion and the burden of going forward. Ind. Code § 4-21.5-3-14(c). Petitioner requests that DOI issue a license, therefore Petitioner bears the burden of proof.
4. 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).
5. Despite the *de novo* review, Indiana Code 27-1-15.6-12(d) limits the ALJ's review to a determination of whether the Commissioner's actions were reasonable.
6. An application for a resident insurance producer license may be denied if the applicant provides "incorrect, misleading, incomplete, or materially untrue information in a license application." Ind. Code § 27-1-15.6-12(b)(1).
7. Here, Petitioner did not provide information that he knew to be incorrect, misleading, incomplete, or materially untrue in his license application. It was reasonable for Petitioner to think that no criminal charges had been filed against him in this situation. Petitioner was not arrested at the time of the incident, Petitioner contacted the police department to inquire about the arrest warrant, Petitioner saw Lt. Edwards four to five

² Findings of Fact that can be adopted as Conclusions of Law are incorporated as such.

weeks after the incident and was not arrested, and no summons or arrest warrant were issued until January 12, 2023.

8. It is not reasonable for the Commissioner to deny Petitioner's application for failing to disclose misdemeanor and felony charges when Petitioner was not served proper notice through a Summons or Arrest Warrant of those charges.
9. Petitioner met his burden of proving that the Commissioner's decision not to issue him a license was unreasonable.

NONFINAL ORDER

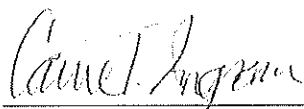
In consideration of the foregoing, Findings of Fact and the Conclusions of Law as stated, the ALJ now recommends that the Commissioner REVERSE her decision to deny Petitioner's application for a resident producer license.

ALL OF WHICH IS ADOPTED by the Administrative Law Judge and recommended to the Commissioner of the Department of Insurance on August 1, 2023. This order is not final. This matter is now before the ultimate authority, the Commissioner of the Department of Insurance who has the final authority over this matter and shall review this Nonfinal 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. For provisions on how to compute days see Ind. Code § 4-21.5-3-2.

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

So Ordered: August 1, 2023.



Carrie T. Ingram
Administrative Law Judge
Indiana Office of Administrative Law Proceedings

Distribution:

Petitioner: Gabriel Kupres served by email at gabekupres@icloud.com

Respondent: IDOI served by email to Attorney Samantha Aldridge at saldrige@idoi.in.gov

Ultimate Authority Commissioner for the Indiana Department of Insurance served via email at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 22099-AD23-0119-011

IN THE MATTER OF:)
)
Gabriel Kupres)
727 Pine Lake Avenue)
La Porte, IN 46350)
)
Applicant.)
)
Type of Agency Action: Enforcement)
)
License Application #: 1027924)

FILED

FEB 14 2023

STATE OF INDIANA
DEPT. OF INSURANCE

PRELIMINARY ADMINISTRATIVE ORDER
AND NOTICE OF LICENSE DENIAL


The Indiana Department of Insurance (“Department”), 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 Gabriel Kupres (“Applicant”) of the following Administrative Order:

1. Applicant submitted an application for a resident producer licensure with the Commissioner of the Indiana Department of Insurance (“Commissioner”) on January 3, 2023.
2. 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.
3. Indiana Code § 27-1-15.6-12(b)(1) states, in part, that the Commissioner may refuse to approve an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

4. Following a review of public records and the materials submitted by the Applicant, 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 Applicant's failure to disclose a pending felony charge from July 19, 2022, for Resisting Law Enforcement, a Level 6 Felony, in the State of Indiana.
5. 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 Applicant's application is mailed, make written demand to the Commissioner for a hearing before the Commissioner to determine the reasonableness of the Commissioner's action.
6. This is considered an administrative action by the Indiana Department of Insurance. If you choose to appeal this administrative action, please follow the aforementioned instructions. Subsequently, after the Department has received your written request for a hearing, the State of Indiana Office of Administrative Law Proceedings ("OALP") will assign an administrative law judge to preside over this matter, and you will receive more information from OALP to begin the administrative process.

IT IS THEREFORE ORDERED that Applicant's request for licensure is hereby **DENIED** pursuant to Indiana Code § 27-1-15.6-12(b)(1), due to Applicant's failure to disclose his pending felony on his application for licensure. Applicant may reapply for licensure not less than one (1) year from the date of this order.

02.14.2023
Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution:

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Victoria Hastings, Attorney
ATTN: Hana Biele, Investigator
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