

STATE OF INDIANA
COUNTY OF MARION

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BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

IN THE MATTER OF:

Scott Hicks

Petitioner

Type of Agency Action: Enforcement

CAUSE NO.: DOI-2405-001255

24905-AD23-1221-049

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FILED

OCT 21 2024

STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

On August 23, 2024, the Administrative Law Judge, Natalie Fierek, filed her Non-Final Administrative Decision Order in the above-captioned matter.

1. The Department served Non-Final Administrative Decision Order and Notice of Filing Non-Final Order on Petitioner by emailing 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 Non-Final Administrative Decision 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 Non-Final Administrative Decision Order and issues the following Final Order:


IT IS THEREFORE ORDERED by the Commissioner of Insurance:

1. Petitioner's Preliminary Administrative Order and Notice of Denial is AFFIRMED.

2. Petitioner may reapply for licensure one (1) year from the date of Final Order.

Under Ind. Code §4-21.5-5-5, Petitioner 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 21 day of October, 2024.


Holly W. Lambert, Commissioner
Indiana Department of Insurance

Copies to:

Scott Hicks, sent via email to Scott@buildbunker.com

Joseph Bossinger, Attorney
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
jbossinger@idoi.in.gov



ISSUED:
August 23,
2024

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

Scott Hicks,

Petitioner,

v.

Indiana Department of Insurance,

Respondent.

Administrative Case Number: DOI-2405-001255

Agency Number: 22905-AD23-1221-049

Ultimate Authority: Department of Insurance

NON-FINAL ADMINISTRATIVE DECISION

The Administrative Law Judge (ALJ) Natalie Fierek, having heard the evidence and arguments presented in this matter, now issues this Non-Final Order addressing the decision by the Indiana Department of Insurance (IDOI) to deny Petitioner a non-resident producer license. This decision is favorable to Respondent. Any party dissatisfied with this decision may appeal. Appeal instructions are at the end of this document.

Jurisdiction

The ALJ assigned to this matter by the Director of the Office of Administrative Law Proceedings (OALP), see Ind. Code § 4-15-10.5-13, has jurisdiction over this case pursuant to Indiana Code § 4-15-10.5-12, which gives OALP jurisdiction over agency administrative actions subject to the Indiana Administrative Orders and Procedures Act at Indiana Code Art. 4-21.5 (AOPA) or “any other statute that requires or allows the office to take action.” The OALP has jurisdiction over this case because this case is governed by AOPA.

Issue

The issue in this case is whether the Indiana Department of Insurance’s denial of Petitioner’s application for nonresident producer licensure was reasonable.

Procedural History

1. On May 23, 2024, Petitioner, Scott Hicks, filed a request for hearing on the Preliminary Administrative Order and Notice of License Denial issued by the Commissioner of the Indiana Department of Insurance (IDOI) on March 26, 2024.
2. The Notice of Administrative Filing was forwarded to the Office of Administrative Law Proceedings (OALP) on May 28, 2024. On May 29, 2024, the evidentiary hearing of this matter was scheduled for June 20, 2024.
3. A Joint Motion to Continue the Hearing was filed by the parties, and the evidentiary hearing was rescheduled for August 21, 2024.
4. On August 21, 2024, an evidentiary hearing was conducted by videoconference on the zoom platform. Petitioner appeared self-represented. Respondent appeared by counsel, Joseph Bossinger, and investigator, Gina Davies.
5. Petitioner and Ms. Davies were duly sworn and testified.
6. The following Exhibits were offered and admitted at the evidentiary hearing:
 - a. Respondent Exhibit A, NIPR License Application for Scott Hicks (4 pages), admitted without objection.
 - b. Respondent Exhibit B, Letter from State of Wisconsin to Scott Hicks dated May 3, 2016 (2 pages), admitted without objections.
 - c. Respondent Exhibit C, Letter from State of Wisconsin to Scott Hicks dated October 2, 2017 (2 pages), admitted without objection.
 - d. Respondent Exhibit D, Preliminary Administrative Order and Notice of License Denial (3 pages), admitted without objection.
7. Petitioner offered no exhibits.

Findings of Fact

1. On October 25, 2023, Petitioner, Scott Hicks, submitted an application for nonresident producer licensure with the Commissioner of the Indiana Department of Insurance (IDOI) under License Application No.: 1101556 (Respondent Ex. D at 1).
2. Petitioner completed the application online through inscipher llc using Authorized Submitter, Crystal Harward. Petitioner provided the responses for the application (Petitioner testimony, Res. Ex. A at 2).

3. The application was forwarded to the IDOI through the National Insurance Producer Registry (NIPR) (Petitioner testimony).
4. Question two (2) of the application states, "Have you ever been named or involved as a party in an administrative proceeding, . . . regarding any professional or occupational license or registration? 'Involved' means having a license censured, suspended, revoked, canceled, terminated, or being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation, sanctioned or surrendering a license to resolve an administrative action. 'Involved' also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. 'Involved' also means having a license, or registration application denied or the act of withdrawing an application to avoid denial." (emphasis added). Petitioner responded "No" to this question (Res. Ex. A at 1).
5. On May 3, 2016, the State of Wisconsin Office of the Commissioner of Insurance sent Petitioner a letter informing Petitioner that his application for a permanent Individual intermediary agent's insurance license was denied because Petitioner had failed to disclose a misdemeanor conviction on his application. This was a temporary denial with a fifteen (15) day duration (Res. Ex. B at 1).
6. The May 3, 2016, letter stated that the license denial "constitutes a permanent administrative action taken by the state of Wisconsin," that if Petitioner is licensed in other states, he would need to report this administrative action as required, and that he must disclose this administrative action on all future licensing applications (Res. Ex. B at 1-2).
7. On October 2, 2017, the State of Wisconsin Office of Commissioner of Insurance sent Petitioner a letter informing him that his permanent individual intermediary agent's insurance application was denied because he had failed to disclose a previous administrative action taken by the state of Wisconsin (Res. Ex. C at 1). The administrative action that Petitioner failed to disclose was the administrative action outlined in the May 3, 2016, letter (Petitioner testimony).
8. The October 2, 2017, denial was a temporary denial lasting thirty-one (31) days (Res. Ex. C at 1).
9. The October 2, 2017, letter stated that the license denial "constitutes a permanent administrative action taken by the state of Wisconsin," that if Petitioner is licensed in other states, he would need to report this administrative action as required, and that he must disclose this administrative action on all future licensing applications (Res. Ex. C at 1-2).

10. Petitioner provided incorrect information on his application for nonresident producer licensure that was submitted to the IDOI on October 25, 2023, when he denied that he had been involved in a previous administrative action involving a professional or occupational license (Totality of the evidence).
11. Petitioner did not initially understand that an “administrative action” as indicated on the application included the temporary license denials issued by the state of Wisconsin (Petitioner testimony).
12. After being contacted by other states regarding the discrepancy in Petitioner’s application, Petitioner amended his application with insciper llc (Petitioner testimony).
13. It is unknown whether the amended application was submitted to the IDOI (Ms. Davies testimony).
14. On March 26, 2024, the Commissioner of the IDOI denied Petitioner’s application for nonresident producer licensure due to Petitioner’s two prior administrative actions in another state and his failure to disclose the two prior administrative actions on his application (Res. Ex. D at 3).

Conclusions of Law

1. IDOI is responsible for licensing insurance producers who practice in the State of Indiana. Indiana Code § 27-1-15.6
2. OALP has jurisdiction over both the subject matter and the parties to this action and the Commissioner of IDOI is the ultimate authority. IC § 27-1-15.6-12(d); IC §§ 4-15-10.5-12 and 13.
3. 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).
4. 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 IDOI issue a license, therefore Petitioner bears the burden of proof.
5. 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 a 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).

6. 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 are reasonable.
7. An application for a nonresident insurance producer license may be denied for "providing incorrect, misleading, incomplete, or materially untrue information in a license application," IC § 27-1-15.6-12(b)(1), IC § 27-1-15.6-8(a). Petitioner provided incorrect information on his license application when he indicated that he had not been involved as a party in an administrative proceeding previously. Petitioner had been a party to two administrative proceedings in the state of Wisconsin prior to his application for licensure with the IDOI. Although Petitioner did not understand the temporary licensure denials to be "administrative actions," the letters sent to him by the state of Wisconsin informed Petitioner that the denials were administrative actions and had to be disclosed on future applications. Despite this, Petitioner failed to disclose these actions.
8. Additionally, an application for a nonresident insurance producer license may also be denied for "having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state," IC § 27-1-15.6-12(b)(9). Petitioner had his insurance producer license denied temporarily twice by the state of Wisconsin. Because Petitioner's insurance producer license had been denied by the state of Wisconsin, the IDOI may deny Petitioner's nonresident producer license.
9. Petitioner has not met his burden of proving that the Commissioner's decision denying his application for nonresident producer licensure was unreasonable.

Decision and Order

The ALJ recommends that the Commissioner AFFIRM the May 26, 2024, Preliminary Administrative Order and Notice of License Denial. Petitioner may reapply for licensure one (1) year from May 26, 2024.

So ordered on: August 23, 2024



Administrative Law Judge
Natalie Fierek

Appeal Rights

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.

Distribution:

Petitioner, Scott Hicks, sent via email to Scott@buildbunker.com

Respondent, Department of Insurance, via counsel, Joseph Bossinger, sent via e-mail at JBossinger@idoi.in.gov

Ultimate Authority, Commissioner of Department of Insurance, sent via e-mail at DBopp@idoi.in.gov

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 22905-AD23-1221-049

IN THE MATTER OF:

Scott O. Hicks
6939 W. Glenbrook Rd.
Milwaukee, WI 53223

Applicant.

Type of Agency Action: Enforcement

License Application #: 1101556

FILED

MAR 26 2024

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 Scott O. Hicks ("Applicant") of the following Administrative Order:


1. Applicant submitted an application for nonresident producer licensure with the Commissioner of the Indiana Department of Insurance ("Commissioner") on October 25, 2023.
2. Before approving an application, the Commissioner must find that the applicant has met specific requirements under Indiana Code § 27-1-15.6-8 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 issue an insurance producer license for providing incorrect, misleading, incomplete, or materially untrue information in a license application.

4. Indiana Code § 27-1-15.6-12(b)(9) states, in part, that the Commissioner may refuse to issue an insurance producer license for having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.
5. Following a review of public records and the materials submitted by Applicant, the Commissioner, being fully advised, now hereby notifies Applicant that Applicant has not fully met the requirements of licensure, as stated by Indiana Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(9), due to Applicant's two prior administrative actions in another state and for Applicant failing to disclose the administrative actions on Applicant's application for licensure:
 - a. A May 3, 2016, license denial by the Wisconsin Office of the Commissioner of Insurance, due to competence and trustworthiness factors, specifically for failing to disclose misdemeanor convictions.
 - b. An October 2, 2017, license denial by the Wisconsin Office of the Commissioner of Insurance, for failing to disclose the May 3, 2016, administrative action.
6. 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.
7. 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 Codes §§ 27-1-15.6-12(b)(1) and 27-1-15.6-12(b)(9) due to Applicant's two prior administrative actions in another state and for failing to disclose the administrative actions on Applicant's application for licensure. Applicant may reapply for licensure not less than one (1) year from the date of this order.

3-26-2024
Date Signed



Amy L. Beard, Commissioner
Indiana Department of Insurance

Distribution:

Scott O. Hicks
6939 W. Glenbrook Rd.
Milwaukee, WI 53223

Joseph Bossinger, Attorney
ATTN: Hana Biele, Investigator
Indiana Department of Insurance
311 W. Washington St., Suite 103
Indianapolis, IN 46204
317 234-5153, Fax 317 234-2103