

No. 2020-6524

**Official Order  
of the  
Texas Commissioner of Insurance**

**Date: 10/28/2020**

**Subject Considered:**

Texas Department of Insurance

v.

Jennifer Marie Mercer

SOAH Docket No. 454-20-2547.C

**General remarks and official action taken:**

The subject of this order is the application of Jennifer Marie Mercer for an adjuster all lines license.

**Background**

After proper notice was given, the above styled case was heard by an administrative law judge for the State Office of Administrative Hearings. The administrative law judge made and filed a proposal for decision containing a recommendation that the department grant Ms. Mercer's application for an adjuster-all lines license. A copy of the proposal for decision is attached as Exhibit A.

The Texas Department of Insurance (TDI) filed exceptions to the administrative law judge's proposal for decision. Ms. Mercer did not file a reply to the exceptions.

In response to the exceptions, the administrative law judge revised the findings of fact and conclusions of law contained in his proposal for decision. The administrative law judge did not change his recommendation that Ms. Mercer's application for a license be granted. A copy of the administrative law judge's response to exceptions is attached as Exhibit B.

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### **Discussion of Applicable Law**

In the discussion of applicable law in the proposal for decision, the administrative law judge correctly notes that sections in Texas Occupations Code Chapter 53 apply in determining the fitness of a person who has been convicted of a crime to perform the duties and responsibilities of a licensed occupation. And on pages three through four of the proposal for decision, the administrative law judge repeats factors from the applicable section, Texas Occupations Code § 53.022. However, the footnote for the statutory language listed by the administrative law judge mistakenly cites Texas Occupations Code § 53.002 instead of § 53.022.

The mistaken citation in the discussion of applicable law in the proposal for decision does not impact any findings of fact or conclusions of law or the resolution suggested by the administrative law judge, so this order does not change those findings or conclusions.

### **Findings of Fact**

The findings of fact contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

### **Conclusions of Law**

The conclusions of law contained in Exhibit A as revised consistent with Exhibit B are adopted by TDI and incorporated by reference into this order.

### **Order**

It is ordered that Jennifer Marie Mercer's application for an adjuster all lines license be granted.

COMMISSIONER'S ORDER  
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Page 3 of 3

Commissioner of Insurance

DocuSigned by:  
By: Doug Slape  
C77A87C8C21B435...  
Doug Slape  
Chief Deputy Commissioner  
Tex. Gov't Code § 601.002  
Commissioner's Order No. 2018-5528

Recommended and reviewed by:

DocuSigned by:  
James Person  
75578E954EFC48A...  
James Person, General Counsel

DocuSigned by:  
Justin Beam  
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Justin Beam, Assistant General Counsel

**SOAH DOCKET NO. 454-20-2547.C**

<b>TEXAS DEPARTMENT OF INSURANCE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>JENNIFER MARIE MERCER,</b>	§	
<b>Applicant</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Jennifer Marie Mercer (Respondent) for an adjuster all lines license based on her criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department approve Respondent’s license application.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

The hearing in this case was held telephonically on April 16, 2020, before ALJ Michelle Kallas with the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Patrick Quigley. Respondent represented herself at the hearing. The hearing concluded the same day. The record closed on May 8, 2020, to allow for delivery of the hearing transcript to SOAH. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

## II. DISCUSSION

### A. Background

The material facts are not in dispute. Respondent committed five criminal offenses, all felonies, when she was between 21 and 28 years old. Respondent served all her sentences and completed all conditions of parole. The following is a summary of Respondent's convictions:<sup>1</sup>

- On August 24, 1999, in cause number CR 1999-001607, Respondent pleaded guilty to the offense of possession of drug paraphernalia, a class 6 felony, in the Superior Court of Arizona, Maricopa County. Respondent's probation was revoked on November 30, 2000, and Respondent was sentenced to 3 months in jail.<sup>2</sup>
- On August 24, 1999, in cause number CR 1999-008110, Respondent pleaded guilty to the offense of attempted unlawful use of means of transportation, a class 6 felony, in the Superior Court of Arizona, Maricopa County. Respondent was sentenced to 3 months in jail as a condition of probation for 3 years. On November 30, 2000, Respondent's probation was revoked, and she was sentenced to 1 year in jail.<sup>3</sup>
- On March 4, 2003, in cause number CR 2002-020819, Respondent pleaded guilty to the offense of theft, a class 5 felony, in the Superior Court of Arizona, Maricopa County. She was sentenced to serve 1.5 years in the department of corrections.<sup>4</sup>
- On July 18, 2005, in cause number CR 2004-136923, Respondent pleaded guilty to the offense of possession or use of narcotic drug, a class 4 felony, in the Superior Court of Arizona, Maricopa County. Respondent was placed on probation, ordered to pay a fine, and ordered to complete community service. Respondent's probation was revoked on July 24, 2006, and Respondent was sentenced to 3.5 years in prison. Respondent completed her parole on September 28, 2009.<sup>5</sup>

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<sup>1</sup> The parties stipulated to the facts surrounding Respondent's convictions. *See* Staff Ex. 8.

<sup>2</sup> *See* Staff Ex. 7 at 45-55.

<sup>3</sup> *See* Staff Ex. 7 at 56-68.

<sup>4</sup> *See* Staff Ex. 7 at 87-96.

<sup>5</sup> *See* Staff Ex. 7 at 97-107.

- On July 24, 2006, in cause number CR 2006-1147781999-008110, Respondent pleaded guilty to the offense of unlawful use of means of transportation, in the Superior Court of Arizona, Maricopa County. Respondent was sentenced to 3.5 years in prison and completed her parole on September 28, 2009.<sup>6</sup>

On March 18, 2018, Respondent applied for an adjuster all lines license with the Department. On May 30, 2018, the Department proposed to deny her application based on her prior criminal record, and Respondent timely requested a hearing.<sup>7</sup>

## **B. Applicable Law**

To act as an adjuster in this state, a person must hold a license issued by the Department.<sup>8</sup> The Department may deny a license application if the Department determines that the applicant has been convicted of a felony or has engaged in fraudulent or dishonest acts.<sup>9</sup> Chapter 53 of the Texas Occupations Code provides the framework for licensing agencies, such as the Department, to use in evaluating applicants who have criminal convictions. Texas Occupations Code § 53.021(a)(1) authorizes the Department to deny a license on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.<sup>10</sup>

In determining whether a conviction directly relates to the occupation, the Department must consider the following factors:

1. the nature and seriousness of the crime;

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<sup>6</sup> See Staff Ex. 7 at 77-86.

<sup>7</sup> Staff Ex. 8 at 155.

<sup>8</sup> Tex. Occ. Code § 4101.051.

<sup>9</sup> Tex. Ins. Code § 4005.101(b)(5), (8).

<sup>10</sup> Tex. Occ. Code §§ 53.021(a)(1), .022. The Legislature recently amended the relevant sections of Chapter 53, effective September 1, 2019. However, the amendments pertain only to applications submitted after the effective date. Therefore, the prior version of Chapter 53 applies in this case. See Acts 2019, 86<sup>th</sup> Leg., Ch. 765 (HB 1342), §§ 14-15, eff. Sept. 1, 2019.

2. the relationship of the crime to the purposes for requiring a license to engage in the occupation;
3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
4. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.<sup>11</sup>

The Department, in accordance with Texas Occupations Code § 53.025, has taken those factors into consideration and developed guidelines relating to licensing of persons with criminal backgrounds.<sup>12</sup> The Department's guidelines identify offenses the Department considers directly related to a person's fitness for licensure, including any offense for which fraud, dishonest, or deceit is an essential element; and any offense with the essential elements of a felony theft.<sup>13</sup>

The Department shall not issue a license if an applicant has committed a felony or engaged in fraudulent or dishonest acts unless the Department finds that the mitigating factors outweigh the serious nature of the criminal offense when viewed in light of the occupation being licensed. In determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime, the Department must consider the following mitigating factors:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;
3. the amount of time that has elapsed since the person's last criminal activity;
4. the conduct and work activity of the person prior to and following the criminal activity;

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<sup>11</sup> Tex. Occ. Code § 53.002.

<sup>12</sup> 28 Tex. Admin. Code § 1.502.

<sup>13</sup> 28 Tex. Admin. Code § 1.502(e)(1), (4)(F).

5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and
6. other evidence of the person's present fitness, including letters of recommendation from:
  - a. prosecutor, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
  - b. the sheriff or chief of police in the community where the person resides; and
  - c. any other persons in contact with the convicted person; and
7. proof furnished by the applicant that the applicant has:
  - a. maintained a record of steady employment;
  - b. supported the applicant's dependents;
  - c. maintained a record of good conduct; and
  - d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.<sup>14</sup>

Staff has the burden of producing evidence to show that Respondent's application should be denied because she has a criminal history that supports denial of the license.<sup>15</sup> Once Staff produces such evidence, the burden shifts to Respondent to show that she is fit for a license despite her criminal history.<sup>16</sup>

### C. Evidence

Staff offered eight exhibits, which were admitted, including Respondent's application, along with information she provided about her convictions and letters of recommendation. Staff

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<sup>14</sup> Tex. Occ. Code § 53.023. The Department has adopted these factors in its guidelines. 28 Tex. Admin. Code § 1.502(h).

<sup>15</sup> 1 Tex. Admin. Code § 155.427.

<sup>16</sup> Tex. Occ. Code § 52.023(b)-(c); 28 Tex. Admin. Code § 1.502(h)(3).



also presented testimony from Lewis Wright, an Administrative Review Liaison for the Department. Respondent testified on her own behalf and called Sara Fulmer to testify. Respondent did not offer any documents during the hearing.

**1. Lewis Wright**

Mr. Wright has worked for the Department for 13 years. He reviews license applications submitted to the Department that contain responses to questions that raise concern for the initial application processor. One such concern would be an identified criminal history for the applicant. Mr. Wright reviews staff findings along with the applicable statutes in making a recommendation on the granting of the application. He testified that the core mission is to protect Texas consumers and ensure that a license holder is honest, trustworthy, and reliable. According to Mr. Wright, past criminal history may be an indicator of future behavior and must be evaluated before the granting of a license.

Mr. Wright testified that Respondent applied for an adjuster all lines license on March 18, 2018. Her application was denied on May 30, 2018. According to Mr. Wright, there were issues with Respondent's application, namely her criminal convictions. During the application process, it was determined that Respondent had five felony convictions, two convictions involving drugs and three convictions involving theft. Once the Department learned of the convictions, Respondent was requested to provide a statement regarding the convictions along with related court documents and letters of reference. Respondent provided all of the requested documents to the Department.

Once the Department received the information, Mr. Wright reviewed it under the guidelines of Texas Occupations Code § 53.023 and Texas Administrative Code § 1.502 in order to make a determination on whether or not the license should be granted. He considered Respondent's age at the time of the criminal convictions and whether the offenses could be considered a youthful indiscretion. He also considered that, to his knowledge, Respondent has not committed any further felonies since her release in 2009. However, he noted that it was of particular importance that some of her offenses were enumerated within the statutes and regulations

as problematic, specifically the charges of unauthorized use of a motor vehicle, a theft crime. After several staff members of the Department reviewed Respondent's evidence, the consensus was to deny the application.

## 2. Respondent

In her application to the Department, Respondent explained how she began using drugs at the age of 13. She eventually ran away from home and dropped out of school. She got sober during a pregnancy in 1996 and obtained her GED. Then she relapsed in 1997 and began using harder drugs. It was during this time that she got into significant criminal trouble. Following her final arrest in 2006, Respondent decided she needed to make a change in her behavior. She completed therapy and got married. She volunteers her time helping the homeless and is active in her church.<sup>17</sup>

Respondent testified that she is currently 41 years old and works for Esurance. She is married and has four children. Her resume shows that she has held relatively consistent employment since her release from prison in 2009.<sup>18</sup> Respondent testified she has changed her behavior. She owns a house, takes care of her family, and provides support for her mother. She acknowledged her past drug problems and criminal history. According to Respondent, she began suffering from depression at an early age resulting in her drug use and subsequent criminal activity. She completed women's therapy through ASPIRE, which included group and individual therapy, and continues to seek therapeutic treatment to stay on track. She testified that she no longer has a desire to use drugs and does not plan to repeat her past mistakes.

As part of her application, Respondent submitted numerous letters of recommendation from family, friends, and coworkers. Several of these individuals stated that Respondent is not the

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<sup>17</sup> Staff Ex. 7 at 29.

<sup>18</sup> Staff Ex. 6 at 19. According to Respondent's resume and testimony, with the exception of a lapse in employment from 2010 to 2011, she has been employed consistently since March 2009.

same person she was when she committed the criminal acts. They generally described Respondent as dependable, responsible, hardworking, trustworthy, loyal, and an asset to the community.<sup>19</sup>

### **3. Sarah Fulmer**

Ms. Fulmer testified that she is employed with Esurance as a senior manager for rapid response covering a multistate area, including Texas. She has worked with Respondent for about 3 years. Ms. Fulmer described Respondent as a great employee who is driven and always shows up for work. While she is aware of Respondent's criminal history, Ms. Fulmer does not question Respondent's hiring.

Respondent currently works for Esurance as a claims processor but Ms. Fulmer seeks to move Respondent to an adjuster position. According to Ms. Fulmer, as an adjuster Respondent would not be able to pay claims in any amount she wanted. Respondent would have supervision and an authority limit in paying claims.

### **D. Analysis**

The Department may deny a license application if the Department determines that the applicant has committed a felony or has engaged in fraudulent or dishonest acts or practices.<sup>20</sup> It is undisputed that from 1999 to 2006, Respondent committed multiple felonies, some of which included elements of fraud and/or dishonesty. Pursuant to 28 Texas Administrative Code § 1.502(h), the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Respondent's adjuster license application.

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<sup>19</sup> See Staff Ex. 7 at 30-44, 129-140, 148-154.

<sup>20</sup> Tex. Ins. Code § 4005.101(b)(5); see also Tex. Occ. Code § 53.021(a)(1); 28 Tex. Admin. Code § 1.502(e)(1), (4)(F).

Considering these factors, the evidence established that Respondent was convicted of several serious offenses that are directly related to the profession of an insurance adjuster. Respondent, who is now 41 years old, was 21 years old when her criminal activity began. Her final arrest was in 2006. More than 14 years have elapsed since Respondent committed her last offense, and nearly 11 years have elapsed since she completed her incarceration and probation. There is no evidence of subsequent criminal activity by Respondent. She has established a good record of conduct and has worked consistently over the last 9 years. She also has positive recommendations from members of her community. Respondent was forthcoming in her testimony and documentation, accepted responsibility for her past mistakes, took steps to change her life for the better, and expressed remorse. She presented herself as a person with integrity who is committed to her family and to her career. Given all the circumstances, Respondent has shown by a preponderance of the evidence that she is presently fit to hold an adjuster all lines license despite her criminal history.

Accordingly, the ALJ recommends that Respondent's application for an adjuster all lines license should be granted. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

### **III. FINDINGS OF FACT**

1. On March 18, 2018, Jennifer Marie Mercer (Respondent) applied for an adjuster all lines license with the Texas Department of Insurance (Department).
2. On May 30, 2018, the Department proposed to deny her application.
3. Respondent requested a hearing to challenge the denial.
4. On March 11, 2020, the Department issued an amended notice of hearing on the denial of Respondent's application.
5. The amended notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.

6. The hearing in this case was held by telephone on April 16, 2020, before Administrative Law Judge Michelle Kallas with the State Office of Administrative Hearings (SOAH). Staff attorney Patrick Quigley represented the Department. Respondent represented herself. The hearing concluded that day and the record closed on May 8, 2020, following the submission of the transcript.
7. On August 24, 1999, in cause number CR 1999-001607, Respondent pleaded guilty to the offense of possession of drug paraphernalia, a class 6 felony, in the Superior Court of Arizona, Maricopa County. Respondent's probation was revoked on November 30, 2000, and Respondent was sentenced to 3 months in jail.
8. On August 24, 1999, in cause number CR 1999-008110, Respondent pleaded guilty to the offense of attempted unlawful use of means of transportation, a class 6 felony, in the Superior Court of Arizona, Maricopa County. Respondent was sentenced to 3 months in jail as a condition of probation for 3 years. On November 30, 2000, Respondent's probation was revoked, and she was sentenced to 1 year in jail.
9. On March 4, 2003, in cause number CR 2002-020819, Respondent pleaded guilty to the offense of theft, a class 5 felony, in the Superior Court of Arizona, Maricopa County. She was sentenced to serve 1.5 years in the department of corrections.
10. On July 18, 2005, in cause number CR 2004-136923, Respondent pleaded guilty to the offense of possession or use of narcotic drug, a class 4 felony, in the Superior Court of Arizona, Maricopa County. Respondent was placed on probation, ordered to pay a fine, and ordered to complete community service. Respondent's probation was revoked on July 24, 2006, and Respondent was sentenced to 3.5 years in prison. Respondent completed her parole on September 28, 2009.
11. On July 24, 2006, in cause number CR 2006-1147781999-008110, Respondent pleaded guilty to the offense of unlawful use of means of transportation, in the Superior Court of Arizona, Maricopa County. Respondent was sentenced to 3.5 years in prison and completed her parole on September 28, 2009.
12. Respondent was 21-28 years old when she committed the felony offenses.
13. More than 14 years have elapsed since Respondent committed the most recent offense.
14. Nearly 11 years have passed since Respondent completed her sentence and was released from probation. She has not had any other criminal violations since that time.
15. Respondent has been consistently employed for 9 years.
16. Respondent has earned respect and trust from her colleagues and acquaintances.

17. Respondent is rehabilitated and is a better person today than when she committed the offenses.
18. The preponderance of the evidence demonstrates Respondent's current fitness to hold a license.

#### **IV. CONCLUSIONS OF LAW**

1. The Department has jurisdiction over this matter. Tex. Ins. Code chs. 4005, 4101.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Respondent received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices or has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(5), (8).
5. The Department may deny a license if the applicant has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
6. Respondent's felony theft offense, and her two felony offenses of attempted unlawful use of means of transportation, directly relate to the occupation of an insurance adjuster. 28 Tex. Admin. Code § 1.502(e)(1), (4)(F).
7. Staff of the Department had the burden to prove by a preponderance of the evidence that grounds exist to deny Respondent's application. The Department met its burden of proof. 1 Tex. Admin. Code § 155.427.
8. Respondent had the burden to prove by a preponderance of the evidence that she is fit to perform the duties and discharge the responsibilities of the licensed occupation despite her criminal background. Tex. Occ. Code § 53.023.
9. Despite her criminal convictions, Respondent has shown the fitness required to perform the duties and discharge the responsibilities of the licensed occupation. Tex. Occ. Code § 53.022-.023; 28 Tex. Admin. Code § 1.502(h)(2).

10. The Department should approve Respondent's application for a license.

**SIGNED June 25, 2020.**

Handwritten signature of Michelle Kallas in black ink.

Michelle Kallas  
Administrative Law Judge  
State Office of Administrative Hearings

**2020-6524**

ACCEPTED  
454-20-2547  
8/3/2020 10:38 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Donnie Roland, CLERK



FILED  
454-20-2547  
8/3/2020 10:04 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Donnie Roland, CLERK

**Exhibit B**

# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

August 3, 2020

Kent Sullivan  
Commissioner of Insurance  
Texas Department of Insurance  
333 Guadalupe, Tower 1, 13<sup>th</sup> Floor, Mail Code 113-2A  
Austin, Texas 78714

**VIA E-FILE TEXAS**

**RE: Docket No. 454-20-2547; *Texas Department of Insurance v. Jennifer Marie Mercer***

Dear Commissioner Sullivan:

On June 25, 2020, the Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in this case. The staff of the Texas Department of Insurance (Staff) timely filed exceptions on July 10, 2020. Jennifer Marie Mercer (Applicant) did not file any exceptions and did not respond to Staff's exceptions. Pursuant to State Office of Administrative Hearings Rule § 155.507(c), the ALJ has reviewed the PFD and Staff's exceptions and makes the recommendations set forth below.

**1. Exception to Conclusion of Law No. 10 stating, "The Department should approve Respondent's application for a license."**

Staff excepts to Conclusion of Law No. 10 as a legal recommendation and not a legal conclusion. The ALJ agrees and recommends removing Conclusion of Law No. 10.

**2. Lack of a Finding of Fact regarding the serious nature of the crime.**

Staff excepts to the lack of a Finding of Fact about the serious nature of the crimes Applicant committed. While Findings of Fact No. 7-11 state that Applicant pleaded guilty to multiple felonies involving drugs, theft, and unlawful use of means of transportation, the ALJ agrees that the addition of the following Finding of Fact is supported by the record and should be added:



Finding of Fact No. 11a. Possession of drug paraphernalia, unlawful use of means of transportation, theft, and possession or use of narcotic drug are serious offenses.

**3. Exception to Finding of Fact No. 17 which states, “Respondent is rehabilitated and is a better person today than when she committed the offenses.”**

The ALJ recommends no changes to Finding of Fact No. 17. The ALJ thoroughly reviewed the evidence at the time the PFD was written and again in relation to responding to these exceptions. The ALJ disagrees with Staff’s position that the evidence does not support this Finding of Fact.

Other than the recommendations set forth above, the ALJ does not recommend any other changes to the PFD.

Sincerely,



Michelle Kallas  
Administrative Law Judge

MK/me

cc: Patrick Quigley, Staff Attorney, Texas Department of Insurance, P.O. Box 149104, Austin Texas 78714-9104 VIA E-FILE TEXAS  
Jennifer Marie Mercer [REDACTED], Meza, AZ 85211-5970 - VIA E-FILE TEXAS