

No. 2022-7325

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

Date: 05/11/2022

Subject Considered:

Texas Department of Insurance

v.

James Haley

SOAH Docket No. 454-21-2541.C

General remarks and official action taken:

The subject of this order is James Haley's application for an All Lines Insurance Adjuster—Designated Home State license. This order denies Mr. Haley's application.

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 Texas Department of Insurance (TDI) deny Mr. Haley's application. A copy of the proposal for decision is attached as Exhibit A.

Legal Authority for Changes to Proposal for Decision

The legal authority for the changes to the proposal for decision made in this order is Tex. Gov't. Code § 2001.058(e)(3), which provides that "[a] state agency may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative judge, only if the agency determines . . . that a technical error in a finding of fact should be changed."

Findings of Fact Nos. 8–10 and 12 address criminal charges against Mr. Haley. Findings of Fact Nos. 8–10 concern charges brought in the 9th Circuit Court-District Division-Nashua in Hillsborough County, New Hampshire; and Finding of Fact No. 12 concerns a charge brought in the 9th Circuit Court-District Division-Manchester in Hillsborough

County, New Hampshire. However, the proposed findings incorrectly refer to the courts as "9th District Court" and state that the courts are located in Nashua County and Manchester County, respectively.

In addition, proposed Finding of Fact No. 9 states that Mr. Haley pleaded guilty to a Class A misdemeanor for criminal mischief/vandalism in Cause No. 459-2010-CR-05987 on March 1, 2010, and that he was ordered to pay \$1,240 in restitution. However, the Case Summary for Cause No. 459-2010-CR-05987¹ shows that Mr. Haley pleaded guilty to this charge in 2011, not 2010, and that the \$1,240 amount was a fine, not restitution.

Findings of Fact

1. Findings of Fact Nos. 1–7, 11, and 13–28 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. In place of Finding of Fact No. 8 as contained in Exhibit A, the following finding of fact is adopted:

In April and May of 2007, in Cause Nos. 459-2007-CR-03248 and 45-2007-CR-04475, in the 9th Circuit Court-District Division-Nashua, Hillsborough County, New Hampshire, Mr. Haley pleaded guilty to Class A misdemeanors for simple assault and criminal mischief, respectively. Mr. Haley's simple assault offense resulted from him "forcefully bumping his chest into" the shoulder and chest area of a police officer, and his criminal mischief offense resulted from him damaging another individual's vehicle. These offenses were resolved within a single court order and Mr. Haley was sentenced to 20 days' incarceration in the House of Corrections and placed on probation for two years.

3. In place of Finding of Fact No. 9 as contained in Exhibit A, the following finding of fact is adopted:

On March 1, 2011, in Cause No. 459-2010-CR-05987, in the 9th Circuit Court-District Division-Nashua, Hillsborough County, New Hampshire, Mr. Haley pleaded guilty to a Class A misdemeanor for criminal mischief/vandalism. This offense resulted from Mr. Haley damaging

¹ See TDI Exhibit 1, Bates numbers 0101 and 0102.

another individual's vehicle after engaging in an argument with that individual while intoxicated. Mr. Haley was sentenced to pay a fine of \$1,240.

4. In place of Finding of Fact No. 10 as contained in Exhibit A, the following finding of fact is adopted:

On October 14, 2011, in Cause No. 459-2011-CR-01996, in the 9th Circuit Court-District Division-Nashua, Hillsborough County, New Hampshire, Mr. Haley pleaded guilty to Class A misdemeanors for simple domestic assault and resisting arrest or detention. Mr. Haley's offenses resulted from him interacting with his spouse in a threatening demeanor and pulling his arm away from a police officer who attempted to intervene. Mr. Haley was placed on probation for approximately one year.

5. In place of Finding of Fact No. 12 as contained in Exhibit A, the following finding of fact is adopted:

On August 2, 2017, in Cause No. 456-2017-CR-00648, in the 9th Circuit Court-District Division-Manchester, Hillsborough County, New Hampshire, Mr. Haley pleaded No Contest to Class A misdemeanors for simple domestic assault and criminal mischief. Mr. Haley's offenses resulted from him slapping his spouse, pushing his approximately 60-year-old mother-in-law to the ground, and breaking a taillight on his spouse's vehicle. The court found Mr. Haley guilty and placed him on probation for two years and ordered him to cease contact with his mother-in-law.

Conclusions of Law

The conclusions of law contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

Order

It is ordered that James Haley's application for an All Lines Insurance Adjuster—Designated Home State license is denied.

COMMISSIONER'S ORDER
TDI v. James Haley
SOAH Docket No. 454-21-2541.C
Page 4 of 4

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel

Exhibit A

SOAH DOCKET NO. 454-21-2541.C

ACCEPTED
454-21-2541
09/09/2021 3:01 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

**TEXAS DEPARTMENT
OF INSURANCE,
Petitioner**

v.

**JAMES HALEY,
Applicant**

**BEFORE THE STATE OFFICE
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OF
ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny James Haley's application for an All Lines Insurance Adjuster—Designated Home State License (license) based on his criminal history and his allegedly intentional failure to disclose that criminal history in his application.¹ After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department uphold Staff's recommendation and deny Mr. Haley's license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held via Zoom videoconference on July 13, 2021, before ALJ Meaghan Bailey with the State Office of Administrative Hearings. Staff was represented by staff attorney Casey Seebot, and Mr. Haley represented himself. The hearing concluded and the evidentiary record closed the same day.

Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below without further discussion.

¹ During the hearing Staff argued that Mr. Haley also intentionally failed to disclose in his application that he held a current license to sell insurance in Massachusetts. This allegation was not included within Staff's Original Petition and therefore it is not addressed or considered in the Proposal for Decision (PFD). July 13, 2021 Hearing Transcript (Tr.) at 59.

II. DISCUSSION

A. Applicable Law

The Department may deny a license to an applicant who: (1) has intentionally made a material misstatement in their license application; (2) has attempted to obtain a license by fraud or misrepresentation; or (3) has been convicted of an offense that directly relates to the duties and responsibilities of the desired licensed occupation.²

The Department must consider the factors set forth in Texas Occupations Code §§ 53.022 and 53.023 and 28 Tex. Admin. Code (TAC) § 1.502(h) in determining whether a conviction directly relates to an occupation and whether to deny a license application to an applicant based on that conviction. Under its rules, the Department must deny a license application unless it finds these factors outweigh the seriousness of the criminal offense when viewed in conjunction with the desired licensed occupation.³

The first set of factors that the Department must consider are those that are used to determine whether a criminal conviction directly relates to the occupation:

1. the nature and seriousness of the crime;
2. the relationship of the crime to the purposes for requiring a license to engage in the occupation;
3. the extent to which the 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;
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; and
5. any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.⁴

² Tex. Ins. Code § 4005.101(b)(2), (3); Tex. Occ. Code § 53.021(a)(1).

³ 28 Tex. Admin. Code § 1.502(f).

⁴ Tex. Occ. Code § 53.022; 28 Tex. Admin. Code § 1.502(h)(1). Mr. Haley submitted his application on October 11, 2019, when the current version of Texas Occupations Code § 53.022 was in effect. Therefore, the current

The Department must also consider the following factors to determine an applicant's fitness to perform the duties and discharge the responsibilities of the licensed occupation despite the applicant's criminal convictions:

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 before and after the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
6. evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and
7. other evidence of the person's present fitness, including letters of recommendation.⁵

In addition to the factors above, the Department's rules require the Department to consider an applicant's proof that they have:

1. maintained a record of steady employment;
2. supported the applicant's or holder's dependents where applicable;
3. otherwise maintained a record of good conduct; and
4. paid all outstanding court costs, supervision fees, and restitution as may have been ordered in all criminal cases in which the applicant or holder has been convicted.⁶

version applies to and is cited in the PFD. The Department adopted the factors set out in Texas Occupations Code § 53.022(1)-(4) in its rules. However, the Department's rules do not include the factor set out in Texas Occupations Code § 53.022(5). See 28 Tex. Admin. Code § 1.502(h)(1)-(4).

⁵ Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(h)(2)(A)-(E). The current version of Tex. Occ. Code § 53.023 was in effect when Mr. Haley submitted his application; therefore, the current version applies to and is cited in the PFD. The Department adopted the factors set out in Texas Occupations Code § 53.023(1)-(5) in its rules. However, the Department's rules did not adopt the factors set out in Texas Occupations Code § 53.023(6)-(7). Instead, the Department's rules include similar factors as set forth in 28 Tex. Admin. Code § 1.502(h)(2)(F)-(G).

⁶ 28 Tex. Admin. Code § 1.502(h)(2)(G)(i)-(iv).

B. Uncontested Background Information

In April and May of 2007, in Cause Nos. 459-2007-CR-03248 and 45-2007-CR-04475, in the 9th District Court of Nashua County, New Hampshire, Mr. Haley pleaded guilty to Class A misdemeanors for simple assault and criminal mischief, respectively.⁷ Mr. Haley's simple assault offense resulted from him "forcefully bumping his chest into" the shoulder and chest area of a police officer, and his criminal mischief offense resulted from him damaging another individual's vehicle.⁸ These offenses were resolved within a single court order, and Mr. Haley was sentenced to 20 days' incarceration in the House of Corrections and placed on probation for two years.⁹

On March 1, 2010, in Cause No. 459-2010-CR-05987, in the 9th District Court of Nashua County, New Hampshire, Mr. Haley pleaded guilty to a Class A misdemeanor for criminal mischief/vandalism.¹⁰ This offense resulted from Mr. Haley damaging another individual's vehicle after engaging in an argument with that individual while intoxicated.¹¹ Mr. Haley was sentenced to pay \$1,240 in restitution.

On October 14, 2011, in Cause No. 459-2011-CR-01996, in the 9th District Court of Nashua County, New Hampshire, Mr. Haley pleaded guilty to Class A misdemeanors for simple domestic assault and resisting arrest or detention.¹² Mr. Haley's offenses resulted from him interacting with his spouse in a threatening demeanor and pulling his arm away from a police officer who attempted to intervene.¹³ Mr. Haley was placed on probation for approximately one year.¹⁴

⁷ Staff Exs. 1 at 95-96, 99-100 and 2 at 126-27, 132-33.

⁸ Staff Ex. 2 at 126, 132.

⁹ Staff Ex. 1 at 95; Tr. at 53.

¹⁰ Staff Ex. 101-02.

¹¹ Staff Ex. 3.

¹² Staff Ex. 1 at 103-05; Tr. at 53-54.

¹³ Staff Ex. 1 at 68.

¹⁴ Staff Ex. 1 at 68.

In November of 2012, Mr. Haley was charged with two misdemeanor offenses for using a motor vehicle without permission and crashing that vehicle into a hotel and leaving the scene of the accident while in Boston, Massachusetts. Mr. Haley was sentenced to three months' incarceration but the court deemed that sentence as time served so he only spent one night in jail.¹⁵

On August 2, 2017, in Cause No. 456-2017-CR-00648, in the 9th District Court of Manchester County, New Hampshire, Mr. Haley pleaded No Contest to Class A misdemeanors for simple domestic assault and criminal mischief.¹⁶ Mr. Haley's offenses resulted from him slapping his spouse, pushing his approximately 60-year old mother-in-law to the ground, and breaking a taillight on his spouse's vehicle.¹⁷ The court found Mr. Haley guilty and placed him on probation for two years and ordered him to cease contact with his mother-in-law.¹⁸

During the hearing, Mr. Haley discussed a Class E misdemeanor drug possession charge he received in 2017 that resulted from his possession of Xanax during a routine stop.¹⁹ Based on this arrest, Mr. Haley was placed on probation for one year and required to take random drug tests during that time period.²⁰

On October 11, 2019, Mr. Haley filed his license application with the Department.²¹ In his application, he answered "no" to the following question: "Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor."²² On February 26, 2020, Staff proposed to deny Mr. Haley's application based on his prior criminal record, and Mr. Haley requested a hearing later that day.²³

¹⁵ Staff Ex. 1 at 22-23, 44.

¹⁶ Staff Ex. 1 at 73-92.

¹⁷ Staff Ex. 1 at 77, 81, 84, 87.

¹⁸ Staff Ex. 1 at 74, 76, 83, 89.

¹⁹ Tr. at 56.

²⁰ Staff Ex. 1 at 68-69.

²¹ Staff Ex. 1 at 119.

²² Staff Ex. 1 at 120.

²³ Staff Ex. 1 at 11, 56.

During the July 13, 2021 hearing, Mr. Haley testified that he intentionally concealed his criminal history from the Department by answering “no” to the criminal history question in his application.²⁴ More specifically, while under direct examination by Mr. Seebot, Mr. Haley stated the following:

- Q (BY MR. SEEBOTH) Mr. Haley, please look at Page 120 of Exhibit 1. And the questions that begin in the middle of that page, the very first question asked you: Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor? And you answered that question no. Is that right?
- A That is correct.
- Q But that is not a correct answer. Is it?
- A No, that is not a correct answer.
- Q All right. And you purposely chose to answer that question no. Didn’t you?
- A That is correct.

Mr. Haley further testified that he intentionally did not disclose his criminal history in his application because he had previously been turned away from opportunities due to his past offenses and he did not want that to happen again. He also did not want his criminal history to slow down the Department’s process for evaluating his application.²⁵ Mr. Haley stated that, if faced with the same choice again, he would still choose to conceal his criminal history in his application and hope the Department did not find out.²⁶

C. Evidence

Staff offered three exhibits, which were admitted into evidence without objection. Staff also offered the testimony of Mr. Haley; Ryan Bogasch; and Lewis Weldon Wright. Mr. Haley testified on his own behalf and offered no exhibits.

²⁴ Tr. at 41-44.

²⁵ Tr. at 77-78.

²⁶ Tr. at 73. Mr. Haley stated: “you know, if I had to do it again I would say, no, I haven’t had a misdemeanor, and I’d hope that you guys didn’t see it, you know.”

1. Mr. Haley's Testimony²⁷

Mr. Haley confirmed that he personally filled out and submitted his application with the Department to be an independent All Lines Insurance Adjuster so that he could represent insurance companies during the claims process for a wide variety of claims including property casualty, workers' compensation, etc.²⁸ He also confirmed that an adjuster is responsible for: (1) talking with insureds and other witnesses, sometimes in person if needed, who have information about the claim or event that precipitated the claim; (2) evaluating the damage or loss that an insured claims is covered under a policy; (3) reporting the claim and their investigation of that claim, including all the details discovered during the adjusting process, to the insurance company; and (4) making payments to insureds if authorized to do so.²⁹

In 2015 or 2016, Mr. Haley received a Master's Degree in Business Healthcare Administration from River University. Mr. Haley pursued this degree hoping it would assist him if he came across a future opportunity to work in pharmaceutical or medical device sales; however, he noted that no such opportunities arose. Mr. Haley was previously licensed in Massachusetts to sell life insurance and other related products with Lincoln Heritage Life Insurance Company (Lincoln Heritage). Mr. Haley did not enjoy this work and his license expired. He explained that while employed with Lincoln Heritage he was instructed not to use Wite-Out to correct errors on one of the first policies he sold and that he has an outstanding debt to the company for "maybe 2 grand, maybe 1,500."³⁰ Currently, Mr. Haley is employed with LeaffFilter providing subcontracting construction work and is also involved in truck and trailer sales.³¹

In pursuit of an adjuster's license, Mr. Haley enrolled in training with an online adjusting school where he received a certificate of course completion. Mr. Haley explained that he is seeking

²⁷ This section summarizes Mr. Haley's testimony while under direct examination from Mr. Seebot as well as the narrative testimony he provided as his direct case.

²⁸ Staff Ex. 1 at 119-23; Tr. at 38-39.

²⁹ Tr. at 19-21, 35-36.

³⁰ Tr. at 32-33.

³¹ Tr. at 26-28.

a Texas home state designation because, although he has no intention of moving to Texas, his resident state of Massachusetts does not require an individual to obtain a license in order to act as an insurance adjuster, so he has to be designated by another state that implements such a requirement.³²

Mr. Haley testified that he decided to conceal his criminal background in his application after speaking with and considering the advice he received from an individual already working in the insurance industry and a random Department employee he was able to reach via telephone.³³ With regard to the advice given to him by the Department employee, Mr. Haley stated he was told: “Hey, we’ve seen everything, you know. Be honest. That’s the best thing you can do for yourself.”³⁴

After Mr. Haley submitted his application, he communicated with Staff employee Fay Solis multiple times via e-mail and telephone.³⁵ On November 4, 2019, Ms. Solis sent Mr. Haley a letter notifying him that an analysis of his fingerprints provided as part of his application indicated that he may have a criminal background that he failed to disclose in his application. Ms. Solis requested additional information and certified copies of the court documents for each criminal offense reflected on his record.³⁶ On or around January 13, 2020, Mr. Haley responded to Ms. Solis’s letter and provided a three-page written statement and some of the requested criminal records.³⁷ With regard to his written statement, Mr. Haley provided the following testimony at the hearing as to why he intentionally failed to disclose his criminal history in his application:

³² Tr. at 24-25, 33-34. As discussed in greater detail below, Mr. Wright (Department employee) confirms Mr. Haley’s understanding of the licensing rules in Texas and Massachusetts and elaborates on the home state designation process.

³³ Tr. at 45-46.

³⁴ Tr. at 47. The advice Mr. Haley received from the unidentified individual already working in the insurance industry was objected to as hearsay by Mr. Seeboth. That objection was upheld and therefore those out-of-court statements are not addressed or considered in the PFD.

³⁵ Tr. at 36.

³⁶ Staff. Ex. 1 at 116-18; Tr. at 42.

³⁷ Staff Ex. 1 at 66-69; Tr. at 36-37, 42-43.

- Q At the time you wrote this statement, you believed that – you had the impression that your criminal record documents might create an issue that otherwise would not exist. Right?
- A Yes, I did.
- Q You decided not to disclose your criminal record to the [Department] because you felt the Department didn't need to know about your record. Isn't that so?
- A No. No, not at all. I was just hoping they -- they didn't find it, you know. You know how that one goes.
- Q You felt that your record wasn't something that [the Department] would want to know about? Is that what I understood you to say?
- A Oh, no. Like, I know they would want to know about it. I was just – I was kind of hoping that they – they just – you know. I'm being honest. I was hoping they wouldn't see it. Right? I mean, isn't that what I did? (laughter)
- Q You purposely concealed it. Correct?
- A Yes, sir.³⁸

As part of his written statement to Ms. Solis, Mr. Haley provided the following list of six of his past criminal offenses:

- 4-13-2007, age 24, disorderly conduct, Class A misdemeanor
- 5-18-2007, age 24, disorderly conduct, Class A misdemeanor
- 5-18-2007, age 24, criminal mischief, Class A misdemeanor
- 8-29-2010, age 27, criminal mischief/criminal trespass, criminal
- 3-22-2011, age 27, simple assault/resisting arrest, criminal
- 2-16-2017, age 34, drug possess, class E misdemeanor³⁹

Mr. Haley testified that he did not provide Ms. Solis with an explanation regarding the first four offenses even though he understood she had specifically requested explanations and

³⁸ Tr. at 43-44.

³⁹ Staff Ex. 1 at 68. The dates and types of offenses Mr. Haley provided in his written statement to Ms. Solis do not exactly mirror the certified court records he provided. Moreover, Mr. Haley did not include his most recent 2017 assault conviction against his spouse and mother-in-law in the list.

additional information. He was able to find the court records for some of the offenses listed above and provided those as attachments to his statement.⁴⁰

Mr. Haley admitted that he left Ms. Solis an aggressive voicemail on February 26, 2020, as part of their back and forth communications regarding his application and his criminal background. Mr. Haley made the following statements in his voicemail to Ms. Solis:

- I want to get in front of the [Department] person who said no to me as soon as possible so I can just look at what this person looks like. I just want to see what this person is like.
- I just need to come down there and just clear up a little confusion and at the end of the day, if they still feel confident enough to tell me to fuck myself, that's fine but I need to take a flight down there and see this for myself because I am so fucking livid about that, that took over five months to put that information together.
- Obviously, we need to have a talk person to person because I don't do that shit because people don't do that to me in my life ever.⁴¹

When questioned about the voicemail, Mr. Haley expressed that he hated hearing his voice on the recording. He noted "that's not how the world works . . . But, yeah, I was upset."⁴²

Mr. Haley admitted that he previously had an anger problem for a long time that "opened up other things to go awry," and that many of his offenses were the result of his acting out in anger in a confrontational setting. However, he stressed that he had never been arrested sober and that he has since "fixed his life." He expressed regret about his past actions and indicated that he does not drink or go out with friends anymore.⁴³ During the hearing he did not try to minimize or justify the assault charges against his spouse and confirmed that he and his spouse are still

⁴⁰ Tr. at 49.

⁴¹ Tr. at 68-69. Mr. Seebot read these statements into the record and then played an audio recording of Mr. Haley's voicemail to Ms. Solis which contained the statements referenced above. Mr. Haley used an aggressive and threatening tone throughout his voicemail to Ms. Solis.

⁴² Tr. at 71.

⁴³ Tr. at 59-60, 63, 75, 82.

together.⁴⁴ He begrudgingly acknowledged that he used to be a bully, but asserted he is a different person now that he has a son and is older. He proclaimed that he is a family man now and that it brings him joy to take care of his family.⁴⁵

Mr. Haley emphasized that he had great recommendation letters from individuals who have genuinely nice things to say about him and expressed dissatisfaction with the fact that Staff did not call to speak with those individuals.⁴⁶ Mr. Haley concluded his testimony by requesting that the Department give him a chance.⁴⁷

2. Mr. Bogasch's Testimony

Mr. Bogasch is employed with the London Companies which own Lincoln Heritage, and he previously employed Mr. Haley as an independent contractor to sell Lincoln Heritage insurance products. He testified that Mr. Haley's employment with the London Companies began on April 25, 2017, until Mr. Haley was terminated due to a lack of production on December 20, 2017.⁴⁸ Mr. Bogasch testified that several months would go by without Mr. Haley producing or writing any life insurance policies.⁴⁹

Mr. Bogasch confirmed that Mr. Haley was advised by the Lincoln Heritage underwriting department to not use Wite-Out on his policy applications and that Mr. Haley currently owes a \$3,603 outstanding debt to Heritage Lincoln due to a charge-back of commissions.⁵⁰

⁴⁴ Tr. at 83.

⁴⁵ Tr. at 64-65.

⁴⁶ Mr. Haley's recommendation letters are summarized below in PFD Section II.C.3.

⁴⁷ Tr. at 73, 131.

⁴⁸ Mr. Haley stated that he was not terminated by Lincoln Heritage and that he decided to end his employment with the company on his own terms.

⁴⁹ Tr. at 88-90.

⁵⁰ Tr. at 90. Mr. Bogasch did not describe what a "charge-back of commissions" is or how it resulted in Mr. Haley's outstanding debt to Heritage Lincoln.

3. Mr. Wright's Testimony

Mr. Wright is the Administrative Review Liaison to the Department's Enforcement Division. His current duties are to facilitate communications between the agent and the Enforcement Division's adjuster licensing office concerning matters with: (1) applicants, (2) applications that may raise concerns for the Department, or (3) any reports of misconduct from existing license holders. Mr. Wright has been employed with the Department for approximately 13 and a half years, and has been worked in various governmental and private positions throughout the insurance industry since 1986.⁵¹

As a general characterization, Mr. Wright acknowledged that an insurance adjuster essentially serves as the eyes, ears, and hands of an insurance company during the claims investigation and settlement process, and that the claims settlement process can oftentimes present very confrontational and adverse situations.⁵² He estimated that the Department receives approximately 130,000 – 150,000 applications annually, and that, as part of the review of those applications, Staff primarily looks at the applicant's responses to the application questions and the applicant's criminal history to determine whether there are any potential concerns. Staff conducts a criminal history background check on an applicant by providing their fingerprints that were submitted as part of their application to the Texas Department of Public Safety and the Federal Bureau of Investigation and requesting a criminal background report.⁵³ Mr. Wright explained that the background reports received from those agencies provide only a brief description of an applicant's criminal offenses, information on when and where each offense occurred, and possibly a citation number. The reports do not include certified copies of court documents.⁵⁴

Upon receipt of a background report showing an applicant has prior offenses, Staff will reach out to the applicant informing them that their background report indicates they have a

⁵¹ Tr. at 92-93.

⁵² Tr. at 94-95.

⁵³ Tr. at 98-99.

⁵⁴ Tr. at 99-100.

criminal history and requesting that they submit additional information such as certified court documents and indictments, judgements, and sentencing information related to the offenses listed on the report. Mr. Wright noted that the requested documents are required for Staff to complete its licensing application evaluation. He explained that this information-gathering process with the applicant serves to: (1) confirm whether the reported offenses are valid and actually apply to the applicant, and (2) elicit a personal statement from the applicant regarding the circumstances leading up to the offense or any extenuating circumstances that should be taken into consideration.⁵⁵ Mr. Wright confirmed that a background check was conducted for Mr. Haley and that Staff sent him a letter requesting the necessary additional information regarding the criminal offenses listed on his background report.⁵⁶

Mr. Wright testified that, as occurred in this case, when it becomes known that an applicant failed to disclose their criminal history in their application, Staff must consider whether the applicant intentionally concealed the criminal history or attempted to obtain a license by fraud or misrepresentation, as provided under Texas Insurance Code §§ 4005.101(b)(2)-(3), which serve as independent grounds to deny the licensure.

Additionally, Mr. Wright discussed the Department's rule relating to licensing individuals with criminal histories,⁵⁷ and opined that the Department is concerned with any and all criminal offenses and evaluates offenses on a case-by-case basis in the interest of protecting consumers from wrongdoing, fraudulent and dishonest acts, or a number of other transgressions. Mr. Wright noted that the Department must determine whether the elements of an applicant's criminal offenses directly relate to the duties and responsibilities of the applicant's desired licensed occupation.⁵⁸

With regard to Mr. Haley's uncontested criminal offenses identified above, Mr. Wright testified that it is his opinion and Staff's recommendation that the criminal mischief, vandalism of

⁵⁵ Tr. at 99-102.

⁵⁶ Staff. Ex. 1 at 116-18.

⁵⁷ 28 Tex. Admin. Code § 1.502.

⁵⁸ 28 Tex. Admin. Code § 1.502(h)(1).

property, and assault offenses directly relate to the licensed occupation of an All Lines Insurance Adjuster. Mr. Wright stressed that the “insurance product is designed to provide individuals with protection against damage to personal property” and that the claims settlement process is often a confrontational or adverse process. Therefore, an adjuster must have respect for other’s property and possessions and must communicate in a professional manner that does not provoke the policy holder or the insurance company so as to avoid litigation, extra costs regarding claims settlement, and physical harm.⁵⁹

Pursuant to his review of Mr. Haley’s criminal history, Mr. Wright determined that within a recent 10-year period, beginning when Mr. Haley was approximately 24, Mr. Haley committed at least six offenses that resulted in various misdemeanor convictions, including damage to property and aggressive acts against other individuals. On cross-examination by Mr. Haley, Mr. Wright testified that the frequency of Mr. Haley’s offenses is alarming and concerning because the offenses are “rather frequent in comparison to a lot of the [applications] that we evaluate.”⁶⁰ He also emphasized that Mr. Haley’s last offense involved violent acts against other individuals, occurred when he was 35 years old, and that when Mr. Haley submitted his application only three years had elapsed since he committed that offense. According to Mr. Wright, the extent and nature of Mr. Haley’s criminal history is severe.⁶¹ He opined:

In this case, there was a severity and a frequency that had to be considered . . . and it appeared that a common characteristic is that the confrontations were not handled within the boundaries of the law. And we’re in an industry that has multiple laws that need to be adhered to, and the pattern indicated there was a problem adhering to laws.⁶²

Mr. Wright testified that Staff did not receive any information from Mr. Haley concerning his attempt to achieve and maintain sobriety or his attempt to manage his self-acknowledged anger issue. Mr. Wright noted that, as part of the evaluation of Mr. Haley’s application, the nature and

⁵⁹ Tr. at 103-07.

⁶⁰ Tr. at 121-22.

⁶¹ Tr. at 107-10.

⁶² Tr. at 123.

tone of Mr. Haley's communications with Staff, including Ms. Solis, during the evaluation process were considered because:

Any rehabilitative evidence that can be discovered in favor of making a licensing decision should be considered. We are already dealing with evaluating an individual who had criminal offenses on their record. Finding any rehabilitative effort or any rehabilitative evidence, any evidence to the state of mind . . . should be considered. So, current communications provide insight into that.⁶³

Mr. Wright indicated that Staff also considered the following mitigating factors that weighed in favor of Mr. Haley's fitness for licensure: (1) his job longevity and stability in the subcontracting construction and automotive sales businesses; and (2) the recommendation letters provided by his former and current colleagues, friends, and family, as summarized below:

1. Andrea McQuinn George, former colleague of Mr. Haley's for approximately four years, stated that Mr. Haley has many valuable skills and characteristics and can handle both a team or an independent work environment. Ms. George recommended Mr. Haley for future employment and noted he would be a tremendous asset to an organization. Ms. George did not address or indicate that she was aware of Mr. Haley's criminal history.⁶⁴
2. Paul Romano, co-owner/operator of M&M Trailer Automotive and one of Mr. Haley's current employers, stated that Mr. Haley has the intelligence, work ethic, and communication skills to add value wherever he goes. Mr. Romano boasted about Mr. Haley's aptitude for communication and negotiation, as well as his upbeat personality and engaging personal style that enables him to effectively interact with others. Mr. Romano did not address or indicate he was aware of Mr. Haley's criminal history.⁶⁵
3. Mark Fallon, owner/operator at Fallon Homes and former employer of Mr. Haley for approximately eight years, gave his personal and professional endorsement of Mr. Haley. Mr. Fallon highlighted Mr. Haley's ability to work under pressure and to meet tight deadlines, as well as his interpersonal and communication skills that allow him to develop and maintain good working relationships. Mr. Fallon said he would give Mr. Haley the highest reference in terms of character and

⁶³ Tr. at 113.

⁶⁴ Staff Ex. 1 at 50.

⁶⁵ Staff Ex. 1 at 51.

professionalism. Mr. Fallon did not address or indicate he was aware of Mr. Haley's criminal history.⁶⁶

4. James G. Haley indicated he was aware of Mr. Haley's background and his record and believes that those indiscretions occurred when Mr. Haley was a young man and that they should not be measured against his recent growth and maturity. He further stated that Mr. Haley takes his responsibilities as a father very seriously and that his educational history is significant which provides him the capacity and capability to successfully manage an adjuster's duties.⁶⁷
5. Heather Haley, Mr. Haley's spouse for the past 10 years, acknowledged that Mr. Haley made some unfortunate choices in his past that carry a stigma on his character, but she maintained that his past does not define him and does not describe who is as a husband, father, friend, or colleague. She stated that Mr. Haley sticks to his word and ensures that any task he decides to take on is done efficiently and effectively.⁶⁸
6. Rachel Amster, a long-time friend with a familial connection to Mr. Haley, provided that Mr. Haley is of good moral character, comes from a strong family, and believes in hard work, integrity, and good will to others. Ms. Amster stated that Mr. Haley is sensible in his reactions in all circumstances and handles situations with thoughtfulness and maturity. While Ms. Amster is aware of Mr. Haley's criminal record, she stated that it would be erroneous to look upon his character in any negative light. Ms. Amster stated that Mr. Haley deserves a chance to not be classified by his mistakes.⁶⁹

Ultimately, upon review and consideration of Mr. Haley's application and the applicable factors, Staff recommended that Mr. Haley's license application be denied.

D. Analysis

Staff recommends Mr. Haley's application be denied due to: (1) the intentional material misrepresentation he made in his application concerning his criminal history; (2) his attempt to gain licensure from the Department by making the misrepresentation in his application; and (3) his

⁶⁶ Staff Ex 1 at 52.

⁶⁷ Staff Ex. 1 at 70.

⁶⁸ Staff Ex. 1 at 71.

⁶⁹ Staff Ex. 1 at 72.

misdemeanor convictions for offenses that directly relate to the duties and responsibilities of an All Lines Insurance Adjuster.

Upon review of the evidence, parties' arguments, and applicable law, the ALJ finds that Staff met its burden to prove the alleged violations referenced above by a preponderance of the evidence and recommends the Department deny Mr. Haley's license application.

1. Mr. Haley's Intentional Misrepresentation and Attempt to Obtain Licensure by Misrepresentation

Under Texas Insurance Code §§ 4005.101(b)(2) and (3), the Department may deny Mr. Haley's license application if he intentionally made a material misstatement in his application or attempted to obtain a Department-issued license by fraud or misrepresentation.

It is uncontested and indisputable that Mr. Haley intentionally chose to conceal his multiple misdemeanor convictions when specifically asked about his criminal history in his application, and that he intentionally concealed that information in order to obtain licensure from the Department. Mr. Haley admitted that prior to submitting his application he reached out to a Department employee seeking insight about how his criminal record would be evaluated with regard to his application and that he was instructed to be honest about his past offenses. Mr. Haley disregarded that advice. Not only did Mr. Haley intentionally conceal his criminal record in the hopes that the Department would not discover it, which he presumed would affect or slow down Staff's evaluation of his application, he stated that if faced with the same choice again he would still choose to intentionally conceal that information from the Department for the same reasons.⁷⁰

Once Mr. Haley submitted his application to the Department he became subject to the applicable Texas Insurance Code and Occupations Code statutes as well as the Department's rules. Therefore, he cannot independently choose to conceal his criminal history in his application and

⁷⁰ Tr. at 73.

treat it as though it never existed, even though he contends his past offenses do not define the person he is today.

Accordingly, based on Mr. Haley's testimony, as discussed above, the ALJ recommends his application should be denied because he intentionally lied in his application by misrepresenting his criminal history for the sole purpose of obtaining licensure from the Department.

2. Mr. Haley's Misdemeanor Convictions

Pursuant to 28 TAC § 1.502(f), the Department shall not issue a license to Mr. Haley if he committed a misdemeanor that directly relates to the duties and responsibilities of an All Lines Insurance Adjuster, unless the Department finds that the factors set out in 28 TAC § 1.502(h) outweigh the serious nature of his criminal offenses and show that he is fit for licensure. In order to make this determination, the Department must consider the factors set out in Texas Occupations Code §§ 53.022 and .023 and 28 TAC § 1.502(h).

It is uncontested that Mr. Haley committed six misdemeanors within a 10-year time span beginning when he was approximately 24 years old. Mr. Haley committed his last offense when he was 35 years old and approximately three years prior to submitting his application.⁷¹ Mr. Haley's past criminal offenses include criminal mischief, simple domestic assault, resisting arrest, drug possession, and property vandalism.

The ALJ agrees with Staff's determination that the frequency and the aggressive and violent tendencies of Mr. Haley's offenses demonstrate the seriousness nature of his crimes.⁷² The ALJ also finds that Mr. Haley's explanation during the hearing about how or why he committed the offenses raises concerns as to his ability to understand their seriousness and demonstrates the nonchalance in which he committed the offenses. More specifically, with regard to his offenses, Mr. Haley testified that:

⁷¹ Tex. Occ. Code § 53.023(a)(1)-(3); 28 Tex. Admin. Code § 1.502(h)(2)(A)-(C).

⁷² Tex. Occ. Code § 53.022(1); 28 Tex. Admin. Code § 1.502(h)(1)(A).

I just thought I was like this entitled dude. Like, I almost thought it was funny, like, hey, nothing happened. \$40 bail, blah, blah, blah and it's nothing really that big a deal That was the whole thing. That's exactly what it was I was just stuck on stupid, I didn't realize there was like such a lasting effect to it all.⁷³

The ALJ finds that this explanation could have held some weight if Mr. Haley's criminal history was limited to a single offense committed as a youthful indiscretion; however, that is not the case. Mr. Haley was a 24-year-old adult when his offenses began and he continued to commit offenses for a 10-year period ending recently when he was 35 years old. Moreover, his offenses did not decrease in severity as he got older. Instead, one of his last two offenses committed in 2017 consisted of violence and property damage against his spouse and mother-in-law. Therefore, the ALJ concludes that Mr. Haley's crimes should be carefully considered in conjunction with the duties and responsibilities of his desired licensed occupation.

The responsibilities of an adjuster include, among other things: (1) upholding the insurance product which is designed to provide individuals with protection against damage to personal property, and (2) behaving in a professional and courteous manner when interacting with clients during the claims settlement process, which is often a confrontational or adverse process. Mr. Haley's criminal history demonstrates that he does not respect other individuals' property. Mr. Haley has purposely damaged three individuals' vehicles, with the last incident occurring in 2017 against his spouse's vehicle, and has caused property damage to a hotel after crashing into it with a vehicle that he was not authorized to operate. It is also apparent from his criminal history, his recorded communications with Ms. Solis, and his behavior and the offensive language he used during the hearing that Mr. Haley is easily provoked when something does not go the way he wants and reacts in an aggressive and unprofessional manner.⁷⁴ For these reasons, the ALJ concludes that Mr. Haley's prior offenses are related and correlate to the duties and responsibilities of an All Lines Insurance Adjuster and could hinder his ability or the capacity required for him to perform those duties and responsibilities.

⁷³ Tr. at 82.

⁷⁴ See the July 13, 2021 Hearing Transcript for the numerous unprofessional statements Mr. Haley made during the hearing.

Additionally, if Mr. Haley's license were to be granted, it may provide him with an opportunity to engage in similar criminal activity because he may be placed in confrontational and adverse situations with other individuals.⁷⁵ Although Mr. Haley has no intention of moving to Texas, it is unknown if he will ever need to travel to the state to converse with insureds or an insurance company's employees in person. Additionally, Mr. Haley asserted multiple times in his voicemail to Ms. Solis that he desired to or intended to travel to Texas to personally confront the Department employee who he presumed had evaluated and denied his license. Accordingly, the ALJ finds there is a potential risk to Texas insureds or insurance company employees that may do business with Mr. Haley if he were to be licensed by the Department.

When evaluating the applicable factors, the ALJ finds that some factors weigh in Mr. Haley's favor and serve as mitigating elements. For example: no evidence was offered to show that: (1) Mr. Haley has committed any additional criminal offenses since 2017 or has failed to comply with any court-ordered probation or restitution; (2) Mr. Haley has held long-term, steady employment; (3) Mr. Haley supports his spouse and his son; (4) Mr. Haley does not drink or go out with his friends anymore; and (5) multiple former and current colleagues, friends, and family members provided glowing recommendation letters as to Mr. Haley's work ethic and character.⁷⁶

However, the ALJ finds that the extent to which the recommendation letters serve as mitigation to demonstrate Mr. Haley's fitness for licensure is reduced by the fact that the three letters received from his former and current employers did not address or indicate that those individuals were aware of Mr. Haley's criminal history. Additionally, the ALJ concludes that Mr. Haley's recent aggressive and unprofessional communications to Ms. Solis and his behavior during the hearing contradict the assertions made by James G. Haley and Rachel Amster in their recommendation letters that Mr. Haley has experienced recent growth and maturity, is sensible in his reactions in all circumstances, and handles situations with thoughtfulness and maturity.

Therefore, despite the positive factors mentioned above, the ALJ finds that upon

⁷⁵ Tex. Occ. Code § 53.022(2)-(5); 28 Tex. Admin Code § 1.502(h)(1)(B)-(D).

⁷⁶ Tex. Occ. Code § 53.023(3)-(7); 28 Tex. Admin Code § 1.502(h)(2)(D)-(G).

consideration of all the applicable factors, the weight of the evidence indicates Mr. Haley is not fit for licensure. Accordingly, the ALJ recommends that Mr. Haley's application should be denied because he has been convicted of multiple misdemeanors that directly relate to the duties and responsibilities of an All Lines Insurance Adjuster and that his mitigating factors do not outweigh the serious extent or nature of his criminal history.

III. FINDINGS OF FACT

1. On October 11, 2019, James Haley filed an application for an All Lines Insurance Adjuster—Designated Home State License with the Texas Department of Insurance (Department).
2. In his application, Mr. Haley answered “no” to the following question: “Have you ever been convicted of a misdemeanor, had a judgment withheld or deferred, or are you currently charged with committing a misdemeanor?”
3. On February 26, 2020, the staff (Staff) of the Department proposed to deny Mr. Haley’s application based on his criminal history.
4. Mr. Haley timely requested a hearing to challenge the denial.
5. On June 8, 2021, Staff issued a notice of hearing on the denial of his application.
6. Staff’s 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 incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
7. The hearing was held via Zoom videoconference on July 13, 2021, before Administrative Law Judge Meaghan Bailey with the State Office of Administrative Hearings. Staff was represented by staff attorney Casey Seebot, and Mr. Haley represented himself. The hearing concluded and the evidentiary record closed the same day.
8. In April and May of 2007, in Cause Nos. 459-2007-CR-03248 and 45-2007-CR-04475, in the 9th District Court of Nashua County, New Hampshire, Mr. Haley pleaded guilty to Class A misdemeanors for simple assault and criminal mischief, respectively. Mr. Haley’s simple assault offense resulted from him “forcefully bumping his chest into” the shoulder and chest area of a police officer, and his criminal mischief offense resulted from him damaging another individual’s vehicle. These offenses were resolved within a single court order and Mr. Haley was sentenced to 20 days’ incarceration in the House of Corrections

and placed on probation for two years.

9. On March 1, 2010, in Cause No. 459-2010-CR-05987, in the 9th District Court of Nashua County, New Hampshire, Mr. Haley pleaded guilty to a Class A misdemeanor for criminal mischief/vandalism. This offense resulted from Mr. Haley damaging another individual's vehicle after engaging in an argument with that individual while intoxicated. Mr. Haley was sentenced to pay \$1,240 in restitution.
10. On October 14, 2011, in Cause No. 459-2011-CR-01996, in the 9th District Court of Nashua County, New Hampshire, Mr. Haley pleaded guilty to Class A misdemeanors for simple domestic assault and resisting arrest or detention. Mr. Haley's offenses resulted from him interacting with his spouse in a threatening demeanor and pulling his arm away from a police officer who attempted to intervene. Mr. Haley was placed on probation for approximately one year.
11. In November of 2012, Mr. Haley was charged with two misdemeanor offenses for using a motor vehicle without permission and crashing that vehicle into a hotel and leaving the scene of the accident while in Boston, Massachusetts. Mr. Haley was sentenced to three months' incarceration but the court deemed that sentence as time served so he only spent one night in jail.
12. On August 2, 2017, in Cause No. 456-2017-CR-00648, in the 9th District Court of Manchester County, New Hampshire, Mr. Haley pleaded No Contest to Class A misdemeanors for simple domestic assault and criminal mischief. Mr. Haley's offenses resulted from him slapping his spouse, pushing his approximately 60-year old mother-in-law to the ground, and breaking a taillight on his spouse's vehicle. The court found Mr. Haley guilty and placed him on probation for two years and ordered him to cease contact with his mother-in-law.
13. Mr. Haley was convicted of a Class E misdemeanor for drug possession in 2017 that resulted from his possession of Xanax during a routine stop. Based on this arrest, Mr. Haley was placed on probation for one year and required to take random drug tests during that time period.
14. Mr. Haley intentionally chose to conceal his criminal history in his application because he did not want it to affect Staff's decision to grant him licensure or slow down Staff's evaluation of his application.
15. When submitting his application containing the intentional material misrepresentation as to his criminal history, Mr. Haley hoped that Staff would not find out about his criminal history.
16. If faced with the choice again, Mr. Haley would still choose to intentionally conceal his criminal history in his application to the Department for the same reasons.
17. Mr. Haley left an aggressive voicemail with Department employee Fay Solis as part of

their back-and-forth communications regarding his application and criminal history.

18. Mr. Haley behaved in an unprofessional manner and used offensive language during the hearing.
19. Mr. Haley has not committed any other criminal offenses since his last offense in 2017.
20. Mr. Haley has complied with all of his court-ordered probation and restitution requirements.
21. Approximately three years elapsed from Mr. Haley's last offense to the date he submitted his application.
22. Mr. Haley was approximately 24 years old when he committed his first offense and 35 years old when he committed his last offense. His offenses occurred over a recent 10-year period.
23. Mr. Haley has worked steadily for the last several years doing subcontracting construction work and truck and trailer sales.
24. Mr. Haley has focused on rehabilitation by ceasing to consume alcohol and no longer hangs out with his friends.
25. Mr. Haley supports his spouse and his son and takes pride in being a family man.
26. Three former employees or employers who know Mr. Haley well wrote him letters of recommendation praising his work ethic and inter-personal skills, but did not mention his criminal history.
27. Three friends or family members of Mr. Haley wrote him letters of recommendation praising his personal growth, communication skills, and stated that his criminal history does not define the person he is today.
28. The mitigating factors Mr. Haley established do not outweigh the serious nature of his criminal offenses, particularly his vandalism, criminal mischief, and assault offenses, when viewed in light of his desired licensed occupation.

IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter. Tex. Ins. Code §§ 4001.002, .105, 4005.101.
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. Mr. Haley 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 to an applicant who has intentionally made a material misstatement in their license application. Tex. Ins. Code § 4005.101(b)(2).
5. The Department may deny a license to an applicant who has obtained or attempted to obtain a license by fraud or misrepresentation. Tex. Ins. Code § 4005.101(b)(3).
6. The Department may deny a license to an applicant who has been convicted of an offense that directly relates to the duties and responsibilities of the applicant's desired licensed occupation. Tex. Occ. Code § 53.021(a)(1).
7. The Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to issue a license to an applicant with a criminal history and will not issue a license unless those mitigating factors outweigh the serious nature of the criminal offense when viewed in the light of the occupation being licensed. 28 Tex. Admin. Code § 1.502(g), (h).
8. The Department should deny Mr. Haley's application for a license because he intentionally made a material misrepresentation in his application by concealing his criminal history.
9. The Department should deny Mr. Haley's application for a license because he attempted to obtain a Department-issued license by intentionally misrepresenting his criminal history in his application.
10. The Department should deny Mr. Haley's application for a license because he was convicted of multiple offenses that directly relate to the duties and responsibilities of an All Lines Insurance Adjuster and the mitigating factors he established do not outweigh serious nature of those offenses.

SIGNED: September 9, 2021.



MEAGHAN BAILEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS