

No. 2022-7482

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

Date: 09/06/2022

Subject Considered:

Texas Department of Insurance

v.

Derek Jerrod Sample

SOAH Docket No. 454-22-2830.C

Order Denying Motion for Rehearing

General remarks and official action taken:

The subject of this order is the Motion for Rehearing filed by Derek Jerrod Sample. This order denies Mr. Sample's motion.

Background

On May 27, 2022, the Texas Department of Insurance (TDI) filed a notice with the State Office of Administrative Hearings setting a hearing to address a proposed disciplinary action against Mr. Sample. TDI proposed to take disciplinary action against Mr. Sample based on allegations that he:

- (1) engaged in fraudulent or dishonest acts or practices;
- (2) misappropriated, converted to his own use, or illegally withheld money belonging to an insurer or another person;
- (3) willfully violated an insurance law of this state; and
- (4) failed to comply with an order issued under Tex. Ins. Code § 82.052.

A copy of the notice of hearing was mailed to Mr. Sample's last known address via certified mail; however, Mr. Sample failed to file a written response to the notice of hearing.

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On July 14, 2022, TDI issued a default order revoking Mr. Sample's general lines agent license, due to his failure to file a written response to the notice of hearing. See Commissioner's Order No. 2022-7381.

On August 2, 2022, Mr. Sample mailed his Motion for Rehearing to TDI. On August 23, 2022, Enforcement staff (Staff) for TDI submitted a reply to Mr. Sample's motion.

Discussion

Under 28 Tex. Admin. Code § 1.89(d), after informal disposition of a contested case by default, a motion by the respondent to set aside the default order and reopen the record will be granted if the respondent establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident. Under Tex. Gov't Code § 2001.146(g), a motion for rehearing in a contested case may be granted if the motion identifies with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

In his motion, Mr. Sample says that he misread the notice of hearing and did not realize or understand that he was required to file a written response to the notice of hearing within 20 days from the date it was mailed to him. He also says he was "dealing with a death in [his] family," but provides no additional details on the matter nor explains how it caused him to misread or misunderstand the notice of hearing.

In its reply, TDI Staff notes that the notice of hearing sent to Mr. Sample includes language requiring a response, conspicuously printed in bold, capitalized font. The language states:

YOU MUST FILE A WRITTEN RESPONSE TO THE NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS WITHIN 20 DAYS OF THE DATE THE NOTICE OF HEARING WAS MAILED. FAILURE TO FILE A WRITTEN RESPONSE BY THIS DEADLINE SHALL ENTITLE TDI TO SEEK DISPOSITION BY DEFAULT UNDER 1 TEX. ADMIN. CODE § 155.501 AND 28 TEX. ADMIN. CODE §§ 1.88 AND 1.89.

IF YOU FAIL TO FILE A WRITTEN RESPONSE, THE SCHEDULED HEARING CAN BE CANCELED AND WITHOUT FURTHER NOTICE TO YOU THE

COMMISSIONER OF INSURANCE CAN ISSUE AN ORDER IN WHICH THE ALLEGATIONS IN THE NOTICE OF HEARING ARE DEEMED ADMITTED AS TRUE AND THE RELIEF SOUGHT IN THE NOTICE OF HEARING, INCLUDING REVOCATION OF YOUR LICENSE, ISSUANCE OF A CEASE AND DESIST ORDER, IMPOSITION OF ADMINISTRATIVE PENALTIES, AND/OR PAYMENT OF RESTITUTION, IS GRANTED BY DEFAULT.

Mr. Sample's motion does not establish that his failure to file a written response was neither intentional nor the result of conscious indifference and that the failure was due to a mistake or accident. He acknowledges that he received the notice of hearing, but claims that he misunderstood it, even though the notice of hearing clearly and conspicuously states he must file a written response within 20 days of when the notice was sent and states what may occur if he fails to file a written response.

Additionally, Mr. Sample's motion does not identify any findings of fact or conclusions of law that are the subject of his complaint, nor does it include any evidentiary or legal ruling claimed to be erroneous or state a legal and factual basis for a claimed error.

Mr. Sample's motion does not satisfy the requirements of 28 Tex. Admin. Code § 1.89(d) or Tex. Gov't Code § 2001.146(g) to set aside the default and have a rehearing granted, so his motion should be denied.

Order

It is ordered that the Motion for Rehearing filed by Derek Jarrod Sample is denied.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

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Recommended and reviewed by:

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James Person

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James Person, General Counsel

DocuSigned by:

Justin Beam

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