

No. **2023-8162**

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

Date: 8/31/2023

Subject Considered:

Texas Department of Insurance v.
Joshua Dermain Malone

SOAH Docket No. 454-23-05445.C

General Remarks and Official Action Taken:

The subject of this order is Joshua Dermain Malone's application for an adjuster all lines license. This order denies Mr. Malone'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 Mr. Malone's application be denied. A copy of the proposal for decision is attached as Exhibit A.

Findings of Fact

The findings of fact contained in Exhibit A are adopted and incorporated by reference into this order.

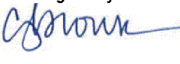
Conclusions of Law

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

COMMISSIONER'S ORDER
TDI v. Joshua Dermain Malone
SOAH Docket No. 454-23-05445.C
Page 2 of 2

Order

It is ordered that Joshua Dermain Malone's application for an adjuster all lines license is denied.

DocuSigned by:

FC5D7EDDFFB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

v.

**JOSHUA DERMAIN MALONE,
RESPONDENT**

PROPOSAL FOR DECISION

Joshua Dermain Malone applied to the Texas Department of Insurance (Department) for an adjuster all lines license (license) to be issued by the Department. Department staff (Staff) seeks to deny the application based upon Mr. Malone's criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends Mr. Malone's license application be denied.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

On October 5, 2019, Mr. Malone filed the license application with the Department, and on May 22, 2020, the Department proposed to deny the application based on Mr. Malone’s criminal history.¹ Mr. Malone timely appealed the Department’s proposed denial, and this matter was referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.

On January 18, 2023, SOAH ALJ Steve M. Rivas convened a hearing on the merits by Zoom videoconference. Attorney Casey Seeboth represented Staff. Mr. Malone appeared and represented himself. The record initially closed on February 1, 2023, when the ALJ received Staff’s admitted exhibit and hearing transcript. On March 23, 2023, the ALJ reopened the record to request a table of contents for Staff’s 143-page exhibit. The record again closed on March 24, 2023, when the ALJ received the table of contents. Notice and jurisdiction were not disputed by either party and are set out below in the Findings of Fact and Conclusions of Law.

II. APPLICABLE LAW

Under Texas Occupations Code section 53.021(a)(1), the Department may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the

¹ Staff Ex. 1 at 4-12.

person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation.

Texas Occupations Code section 53.022 sets forth the following factors, which address whether a criminal conviction directly relates to the duties and responsibilities of the licensed 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 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;
4. the relationship of the crime to the ability or capacity 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.²

The Department must also consider factors set out in Texas Occupations Code section 53.023 in determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime. Those factors include:

1. the extent and nature of the person's past criminal activity;

² Tex. Occ. Code §§ 53.022(1)-(5).

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 after 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.³

In accordance with the requirements of Texas Occupations Code section 53.025, the Department has developed guidelines relating to matters it will consider in determining whether to grant a license if the applicant has been convicted of a crime.⁴ The crimes that the Department considers to be of such a serious nature that they are of prime importance in determining fitness for licensure include any offense with the essential elements of burglary;⁵ theft;⁶ and the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance or a dangerous drug.⁷

³ Tex. Occ. Code § 53.023(a)(1-7).

⁴ 28 Tex. Admin. Code § 1.502(e).

⁵ 28 Tex. Admin. Code § 1.502(e)(4)(E) as described by Texas Penal Code, Chapter 30.

⁶ 28 Tex. Admin. Code § 1.502(e)(4)(F) as described by Texas Penal Code, Chapter 31.

⁷ 28 Tex. Admin. Code § 1.502(e)(4)(G).

In addition, the applicant shall also furnish proof that the applicant has:

1. maintained a record of steady employment;
2. supported their dependents, where applicable;
3. otherwise maintained a record of good conduct; and
4. paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which they have been convicted.⁸

Staff has the burden of producing evidence to show that Mr. Malone's application should be denied because he has a criminal history that supports denial of the license.⁹

III. EVIDENCE

Staff offered one exhibit and called one witness, Lewis Weldon Wright, IV, to testify. Mr. Malone testified on his own behalf and offered no additional exhibits.¹⁰

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

⁹ 1 Tex. Admin. Code § 155.427.

¹⁰ Mr. Malone's letters of recommendation were contained within Staff's Exhibit 1 at 94-96.

A. MR. MALONE’S CRIMINAL HISTORY

On January 11, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on August 25, 1990, in cause number F-9051203, Criminal District Court No. 3, Dallas County, Texas.¹¹ Mr. Malone was sentenced to five years’ confinement in the Texas Department of Corrections (TDC) and was ordered to pay a \$300 fine.¹²

On January 19, 1991, Mr. Malone was convicted of unauthorized use of a motor vehicle, a third-degree felony, for an offense that occurred on June 12, 1989, in cause number F-8984564, Criminal District Court No. 3, Dallas County, Texas.¹³ Mr. Malone was sentenced to five years’ confinement in the TDC.¹⁴

On March 28, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on December 4, 1989, in cause number F-89A4770, Criminal District Court No. 1, Dallas County, Texas.¹⁵ Mr. Malone was sentenced to five years’ confinement in the TDC and was ordered to pay a \$300 fine.¹⁶ On the same date, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on

¹¹ Staff Ex. 1 at 62-63, 115-116.

¹² *Id.*

¹³ Staff Ex. 1 at 85-90, 138-143.

¹⁴ *Id.*

¹⁵ Staff Ex. 1 at 56-58, 109-111.

¹⁶ *Id.*

August 24, 1990, in cause number F-9051202, Criminal District Court No. 3, Dallas County, Texas.¹⁷ Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.¹⁸

On April 2, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on January 3, 1991, in cause number F9138550, in the 292nd Judicial District Court, Dallas County, Texas.¹⁹ Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.²⁰

Also on April 2, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on February 11, 1991, in cause number F-9140010, Criminal District Court No. 1, Dallas County, Texas.²¹ Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.²²

On December 14, 1992, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on October 16, 1991, in

¹⁷ Staff Ex. 1 at 59-61, 112-114.

¹⁸ *Id.*

¹⁹ Staff Ex. 1 at 68-69, 121-123.

²⁰ *Id.*

²¹ Staff Ex. 1 at 70, 84, 123, 137.

²² *Id.*

cause number F-9145045, Criminal District Court No. 1, Dallas County, Texas.²³ Mr. Malone was sentenced to 15 years' confinement in the TDC.²⁴

Also on December 14, 1992, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on December 27, 1991, in cause number F-9172500, Criminal District Court No. 1, Dallas County, Texas.²⁵ Mr. Malone was sentenced to 15 years' confinement in the TDC.²⁶

On May 30, 2013, Mr. Malone was convicted of possession of a controlled substance (heroin) with intent to deliver, a first-degree felony, for an offense that occurred on August 26, 2008, in cause number F-1060705, Criminal District Court No. 1, Dallas County, Texas.²⁷ Mr. Malone was sentenced to 25 years' confinement in the TDC.²⁸

Also on May 30, 2013, Mr. Malone was convicted of possession of a controlled substance (cocaine) with intent to deliver, a first-degree felony, for an offense that occurred on June 7, 2010, in cause number F-1086581, Criminal

²³ Staff Ex. 1 at 124-129.

²⁴ *Id.*

²⁵ Staff Ex. 1 at 130-136.

²⁶ *Id.*

²⁷ Staff Ex. 1 at 23-34.

²⁸ *Id.*

District Court No. 1, Dallas County, Texas.²⁹ Mr. Malone was sentenced to 25 years' confinement in the TDC.³⁰ Mr. Malone was released from prison in July 2018, but remains on parole.

B. TESTIMONY OF LEWIS WELDON WRIGHT, IV

Mr. Wright is the liaison between the Agent and Adjuster Licensing Office and the Enforcement Division of the Department. He reviews nonstandard license applications and makes recommendations to deny or issue a license.

Mr. Wright testified that under 28 Texas Administrative Code section 1.502(c), the Department considers it very important that a licensed individual is honest, trustworthy, and reliable. He stated that consistent with Texas Occupations Code section 53.025 and 28 Texas Administrative Code section 1.502, in determining an individual's fitness for licensure, certain crimes are considered to be of such a serious nature that they are of prime importance in determining fitness for licensure.

When considering Mr. Malone's criminal history, Mr. Wright stated that several of Mr. Malone's burglary convictions fell within 28 Texas Administrative Code sections 1.502(e)(3) and (e)(4)(E) because the offenses were felonies

²⁹ Staff Ex. 1 at 13-21.

³⁰ Staff Ex. 1 at 13-21.

involving moral turpitude, and they also contained the essential elements of burglary. He noted that an individual with an insurance license has increased opportunities to commit these same acts because the individual has access to money received from applicants, insured individuals, and the insurance carriers and intermediary agencies. Mr. Wright testified there was further concern because a common issue related to insurance is coverage against theft or burglary, so Mr. Malone's crimes are directly related to the business of insurance.

Mr. Wright testified that Mr. Malone's drug offenses are also considered to be serious and of prime importance in determining his fitness for licensure under Texas Occupations Code section 53.025 and 28 Texas Administrative Code section 1.502(e)(4)(G). He stated that these offenses directly relate to the business of insurance because it is important that an agent have the character and disposition to make sound decisions and conduct themselves in a way that will not hinder the insurance claims process.

Mr. Wright testified that the application is not automatically denied because an applicant has a criminal history. He stated that the Department must consider factors outlined in Texas Occupations Code section 52.023. Although he did not detail each of the factors in section 53.023, Mr. Wright asserted that, having considered the applicable factors, the Department appropriately proposed denial of Mr. Malone's license application.

C. MR. MALONE'S TESTIMONY AND EVIDENCE

Mr. Malone testified that he was 39 years old in June 2010, when he last engaged in criminal conduct for drug possession with intent to deliver. He did not deny his criminal history and expressed regret over his past decisions. He admitted that his motivation for burglarizing vehicles was financial—to sell the vehicles or the vehicle parts and stereos.

As for his work history, Mr. Malone testified he had part-time jobs in the past and since his release from prison in 2018, he has been self-employed as a personal boxing trainer, and an operator of a refreshment stand selling snow cones and other items. He said that on occasion he drives a truck hauling cargo to San Antonio or Houston because he maintains a commercial driver's license.

He testified he is currently going through the family court system to gain visitation rights of his daughters although he is under no court order to pay child support at this time. He further testified that he is in full compliance with the terms of his parole, which requires him to pay a monthly fee and to attend weekly support meetings in Dallas, Texas. In total, Mr. Malone testified, he spent five years in prison and paid a \$300 fine for his convictions.³¹

Mr. Malone submitted the following letters of recommendation with his license application to the Department:

³¹ Although the exact dates of his incarceration were not introduced into evidence, Mr. Malone's prison sentences were presumably carried out before his 2018 release.

- On March 9, 2018, Kenneth Taylor, Mr. Malone’s brother-in-law, wrote that he has known Mr. Malone for 25 years and that despite some “hiccups” in Mr. Malone’s life, Mr. Taylor is certain that Mr. Malone is willing and capable of being a licensed insurance adjuster.³²
- On March 6, 2020, Pastor Wilma Johnson of the General Assembly Church of the Living God in Corsicana, Texas, wrote that Mr. Malone is a faithful and steadfast member of the church, is very dependable and caring, and will do his best at whatever he is doing, and will always be safe and careful.³³
- On March 8, 2020, Joe Malone, Mr. Malone’s brother, wrote that he is a licensed adjuster and that if Mr. Malone is licensed, the two would work along-side each other and that he would guide Mr. Malone as he becomes familiar with being a productive insurance adjuster. Joe Malone also wrote that Mr. Malone has left his criminal past behind and that is committed to quality, growth, and progress.³⁴

IV. ANALYSIS

Staff contends that Mr. Malone’s criminal history shows that he lacks the honesty and trustworthiness required to hold an insurance agent license. There is no dispute regarding Mr. Malone’s extensive criminal history set forth above. His convictions are serious and are given significant weight as crimes of prime

³² Staff Ex. 1 at 94.

³³ Staff Ex. 1 at 95.

³⁴ Staff Ex. 1 at 96.

importance in determining fitness for licensure. The Department considers crimes of prime importance to be directly related to the duties and responsibilities of the licensed occupation.

As explained by Mr. Wright, if licensed, Mr. Malone would have increased opportunities to commit the same acts because he would have access to money received from applicants, insured individuals, and the insurance carriers and intermediary agencies. The drug offenses also weigh against Mr. Malone because they call into question whether he possesses the character and disposition to make sound decisions and conduct himself in a way that will not hinder the insurance claims process.

Turning to the factors in Texas Occupations Code section 53.023(a), the evidence shows Mr. Malone's offenses are both serious and extensive—eight felony burglary convictions and two felony drug convictions between 1991 and 2013. The evidence further shows that on the date he first committed burglary, June 12, 1989, he was 18 years old. Although he was in his late teens and early 20s when he committed the eight burglaries (1989-1991), he was 39 years old in 2010 when he committed his most recent offenses for possession of cocaine and heroin with intent to deliver. These drug offenses were both first-degree felonies. Hence, his most recent felonies cannot be discounted as a youthful indiscretion.

Although 24 years have elapsed since Mr. Malone first committed burglary, only 13 years have elapsed since the drug offenses, for which he was sentenced to 25-years' incarceration and has not yet been discharged from parole. As such, he

has not been able to establish a record of good conduct while not under court supervision, and the Department is unable to measure his character and integrity while not complying with the terms of his parole.

Mitigating these factors are Mr. Malone's steady work history both before and after the criminal offense, and his compliance with the terms of his parole. The three letters of recommendation he provided speak very highly of his work ethic and character—including letters from family members and clergy. Further mitigation is evidence that Mr. Malone has not failed to support his dependents and is trying, through family court, to establish visitation rights with his daughter. However, as discussed above, Mr. Malone's convictions are serious and extensive.

Mr. Malone has the burden of proving present fitness to be licensed despite his criminal history. While he appears to be making significant strides toward rehabilitation, the ALJ finds that insufficient time has passed to demonstrate that he is reformed considering his criminal history. Mr. Malone is heading in the right direction, and his continued work ethic and adoption of a law-abiding lifestyle will eventually pay off as he continues to make better decisions moving forward in his life and career. However, after considering the applicable factors outlined above, Mr. Malone has not yet demonstrated he is fit for licensure at this time. Accordingly, the ALJ concludes that the mitigating factors do not outweigh the seriousness and extent of his criminal offenses, and Mr. Malone has not shown his fitness for licensure.

Based on the foregoing, the ALJ concludes that Mr. Malone's application for

an adjuster all lines license should be denied. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

V. FINDINGS OF FACT

1. On January 11, 1991, Joshua Dermain Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on August 25, 1990, in cause number F-9051203, Criminal District Court No. 3 Dallas County, Texas. Mr. Malone was sentenced to five years' confinement in the Texas Department of Corrections (TDC) and was ordered to pay a \$300 fine.
2. On January 19, 1991, Mr. Malone was convicted of unauthorized use of a motor vehicle, a third-degree felony, for an offense that occurred on June 12, 1989, in cause number F-8984564, Criminal District Court No. 3, Dallas County, Texas. Mr. Malone was sentenced to five years' confinement in the TDC.
3. On March 28, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on December 4, 1989, in cause number F-89A4770, Criminal District Court No. 1, Dallas County, Texas. Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.
4. On March 28, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on August 24, 1990, in cause number F-9051202, Criminal District Court No. 3 Dallas County, Texas. Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.
5. On April 2, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on January 3, 1991, in cause number F9138550, in the 292nd Judicial District Court, Dallas County, Texas. Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.

6. On April 2, 1991, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on February 11, 1991, in cause number F-9140010, Criminal District Court No. 1, Dallas County, Texas. Mr. Malone was sentenced to five years' confinement in the TDC and was ordered to pay a \$300 fine.
7. On December 14, 1992, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on October 16, 1991, in cause number F-9145045, Criminal District Court No. 1, Dallas County, Texas. Mr. Malone was sentenced to 15 years' confinement in the TDC.
8. On December 14, 1992, Mr. Malone was convicted of burglary of a motor vehicle, a third-degree felony, for an offense that occurred on December 27, 1991, in cause number F-9172500, Criminal District Court No. 1, Dallas County, Texas. Mr. Malone was sentenced to 15 years' confinement in the TDC.
9. On May 30, 2013, Mr. Malone was convicted of possession of a controlled substance (heroin) with intent to deliver, a first-degree felony, for an offense that occurred on August 26, 2008, in cause number F-1060705, Criminal District Court No. 1, Dallas County, Texas. Mr. Malone was sentenced to 25 years' confinement in the TDC.
10. On May 30, 2013, Mr. Malone was convicted of possession of a controlled substance (cocaine) with intent to deliver, a first-degree felony, for an offense that occurred on June 7, 2010, in cause number F-1086581, Criminal District Court No. 1, Dallas County, Texas. Mr. Malone was sentenced to 25 years' confinement in the TDC.
11. In July 2018, Mr. Malone was released from prison but remains on parole.
12. On October 5, 2019, Mr. Malone filed the license application with the Texas Department of Insurance (Department) and, on May 22, 2020, the Department proposed to deny the application based on Mr. Malone's criminal history.

13. Mr. Malone timely appealed the Department's proposed denial, and this matter was referred to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
14. On November 22, 2022, Department staff (Staff) issued a notice of hearing.
15. The 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.
16. On January 18, 2023, SOAH Administrative Law Judge Steve Rivas convened a hearing on the merits by Zoom videoconference. Attorney Casey Seeboth represented Staff. Mr. Malone appeared and represented himself.
17. The record initially closed on February 1, 2023, when the ALJ received Staff's admitted exhibit and the hearing transcript. The record was reopened and then closed on March 24, 2023, when the ALJ received Staff's table of contents for its 143-page exhibit.
18. Mr. Malone's criminal history is serious and extensive with eight felony burglary convictions and two felony drug convictions since 1991.
19. Mr. Malone was 39 years old when he committed his most-recent felony drug offense.
20. Mr. Malone has been self-employed since 2018 as a personal boxing trainer, an operator of a refreshment stand, and an occasional truck driver.
21. Mr. Malone has earned the trust and respect of family and clergy members.

22. Mr. Malone is compliant with his terms of parole, which includes payment of a fee and attending weekly support meetings in the Dallas area.
23. Mr. Malone is not fit for licensure by the Department based on Finding of Fact Nos. 1-11, 19-20.

VI. 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. Malone received timely and sufficient notice of hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license application on an applicant's conviction of a felony offense. Tex. Ins. Code § 4005.101(b)(8).
5. In determining whether to grant or deny the application based on the applicant's criminal history, the Department will consider the factors in Texas Occupations Code sections 53.022 and 53.023. 28 Tex. Admin. Code § 1.502(h).
6. Mr. Malone's license application should be denied by the Department because a preponderance of the evidence establishes that he is not fit for licensure at this time.

Signed May 5, 2023.

ALJ Signature:

Steve Rivas

Steve Rivas

Presiding Administrative Law Judge

2023-8162

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Status as of 5/12/2023 9:37 AM CST

Associated Case Party: Texas Department of Insurance

Name	BarNumber	Email	TimestampSubmitted	Status
Whitney Fraser		Whitney.Fraser@tdi.texas.gov	5/12/2023 9:35:49 AM	SENT
Casey Seeboth		Casey.Seeboth@tdi.texas.gov	5/12/2023 9:35:49 AM	SENT
Texas Department of Insurance		Enforcementgeneral@tdi.texas.gov	5/12/2023 9:35:49 AM	SENT

Associated Case Party: Chief Clerk

Name	BarNumber	Email	TimestampSubmitted	Status
Chief Clerk		ChiefClerk@tdi.texas.gov	5/12/2023 9:35:49 AM	SENT

Associated Case Party: JoshuaDermainMalone

Name	BarNumber	Email	TimestampSubmitted	Status
Joshua Dermain Malone		jdmalone71@yahoo.com	5/12/2023 9:35:49 AM	SENT