

No. 2023-8327

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

Date: 11/6/2023

Subject Considered:

Texas Department of Insurance v.
Blanca Estela Rodriguez

SOAH Docket No. 454-23-24815.C

Order on Motion to Set Aside Default Judgment and Motion for Rehearing

General Remarks and Official Action Taken:

The subjects of this order are the Motion to Set Aside Default Judgment and Reopen Record and Motion for Rehearing filed by Blanca Estela Rodriguez. This order grants Ms. Rodriguez's motions.

Background

On September 14, 2023, Commissioner's Order No. 2023-8201 was issued, revoking any licenses held by Ms. Rodriguez. The order was issued following Ms. Rodriguez's failure to file a written response to the notice of hearing issued in the matter.

Under 28 Tex. Admin. Code § 1.89(d) and Government Code § 2001.146 the following timeframes apply for setting aside Order No. 2023-8201 and resetting the hearing:

- Last day to file motion for rehearing: Monday, Oct. 9
- Last day to file a response to motion for rehearing: Tuesday, Oct. 24
- Last day for the Texas Department of Insurance (TDI) to act on a motion for rehearing: Wednesday, Nov. 8.

On Monday, October 9, 2023, Ms. Rodriguez filed four motions in response to the default order, a Motion Permitting Motion to Set Aside Default Judgment and Reopen Record, a Motion Permitting Motion for Rehearing to be Timely Filed, a Motion to Set Aside Default Judgment and Reopen Record, and a Motion for Rehearing.

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On Monday, October 23, 2023, a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) issued an order granting the Motion to Set Aside Default Judgment and Reopen Record. The order sets aside Commissioner Order No. 2023-8201, but it does not state what authority SOAH has to rule on Ms. Rodriguez's motion to set aside the default order issued by the commissioner and reopen the record.

On Tuesday, October 24, 2023, TDI Enforcement filed a timely reply to Ms. Rodriguez's motion to set aside default order and reopen the record and her motion for rehearing. TDI Enforcement did not oppose Ms. Rodriguez's motions.

On Wednesday, October 25, 2023, the ALJ issued an order on Ms. Rodriguez's motion for rehearing. The order states that the default order was set aside and a hearing on the merits is set to convene on November 8, 2023, so it is not necessary to consider or make a ruling on the motion for rehearing. This order does not address what authority SOAH has to rule on Ms. Rodriguez's motion for rehearing.

Discussion

Under 28 Tex. Admin. Code § 1.88, a respondent in a contested case hearing must file a written response to the notice of hearing for the matter within 20 days of receipt of the notice. If the respondent fails to timely file a written response, the respondent is subject to issuance of a default order under 28 Tex. Admin. Code § 1.89.

Under 28 Tex. Admin. Code § 1.89(d), a motion to set aside the default order and reopen the record must be filed with the commissioner prior to the time that the order becomes final under the provisions of Government Code Chapter 2001. The section also provides that a motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing, and that the filing of a motion to set aside the default order and reopen the record has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing.

Under 28 Tex. Admin Code § 1.90(h), the commissioner may state in a written order the decision as to a motion for rehearing or may allow the motion for rehearing to be overruled by operation of law and take no action.

Under Government Code § 2001.146, a motion for rehearing must be filed no later than the 25th day after the date the order that is the subject of the motion is signed. A motion for rehearing is a procedural requirement to preserve a party's right to appeal

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an order. An agency is not required to act on it, but if the agency does not act on the motion by the 55th day after the order that is the subject of the motion was signed, the motion will be overruled by operation of law.

Under Government Code § 2001.058(f), a state agency may by rule authorize SOAH to render a final decision in a contested matter pending before the agency. Only if a state agency adopts such a rule is SOAH authorized to issue a ruling on a motion for rehearing.¹ However, TDI has not adopted such a rule. Therefore, TDI is the agency authorized to act on a motion for rehearing filed in this matter, not SOAH. If TDI does not rule on Ms. Rodriguez's motion for rehearing, it will be overruled by operation of law and Commissioner's Order No. 2023-8201 will stand.

Because TDI Enforcement is not opposed to Ms. Rodriguez's motions, TDI will grant them.

Order

It is ordered that the Motion to Set Aside Default Judgment and Reopen Record and Motion for Rehearing filed by Blanca Estela Rodriguez are granted.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Jessica Barta, General Counsel

DocuSigned by:

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Justin Beam, Chief Clerk

¹ See Government Code § 2001.058(f), stating "If a state agency adopts such a rule, the following provisions apply to contested cases covered by the rule... the State Office of Administrative Hearings is the state agency with which a motion for rehearing or a reply to a motion for rehearing is filed under Section 2001.146 and is the state agency that acts on the motion...."