

No. **2023-7978**

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

Date: 5/23/2023

Subject Considered:

Texas Department of Insurance v.
Manuel Eduardo Estrada

SOAH Docket No. 454-22-2720.C

General Remarks and Official Action Taken:

The subject of this order is Manuel Eduardo Estrada's application for a general lines agent license with a life, accident, and health qualification. This order denies Mr. Estrada's application.

Background

After proper notice was given, the above-styled case was heard by an administrative law judge (ALJ) for the State Office of Administrative Hearings. The ALJ wrote and filed a proposal for decision containing a recommendation that the Texas Department of Insurance (TDI) deny Mr. Estrada's application. A copy of the proposal for decision is attached as Exhibit A. No party filed exceptions to the proposal for decision.

Findings of Fact

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

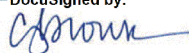
Conclusions of Law

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

COMMISSIONER'S ORDER
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Order

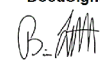
It is ordered that Manuel Eduardo Estrada's application for a general lines agent license with a life, accident, and health qualification is denied.

DocuSigned by:

FC5D7EDDFFBB4F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

5DAC5618BBC74D4... _____
Jessica Barta, General Counsel

DocuSigned by:

9BA00EB5A311424... _____
Brian Leventhal, Attorney

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

—
**TEXAS DEPARTMENT OF INSURANCE,
PETITIONER**

V.

**MANUEL EDUARDO ESTRADA,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Manuel Eduardo Estrada (Respondent) for a general lines agent license with a life, accident, and health qualification, based on his criminal history and responses on his license application. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department deny Respondent's license application at this time.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below. The hearing in this case was held via Zoom videoconference on August 24, 2022, before ALJ Heather D. Hunziker of the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Jeannie Ricketts; Respondent represented himself. The hearing concluded that day, and the record closed on September 8, 2022, when the court reporter's transcript was filed with SOAH.

II. APPLICABLE LAW

The Department considers it very important that license-holders be honest, trustworthy, and reliable,¹ and will evaluate an applicant's criminal history and other conduct to determine whether the applicant possesses those qualities. The Department may deny a license to an applicant who has intentionally made a material misstatement in the license application or engaged in fraudulent or dishonest acts or practices.² For purposes of denying a license application, the Department may treat an applicant's deferred adjudication as a conviction if the applicant's period of supervision was completed less than five years before the date of the application and the Department determines that the person may pose a continued threat to public safety or the employment of the applicant in the licensed occupation would create a situation in which the applicant has an opportunity to

¹ 28 Tex. Admin. Code § 1.502(c).

² Tex. Ins. Code § 4005.101(b)(2), (5).

repeat the prohibited conduct.³ To guide its decision-making when considering an applicant's criminal history, the Department has established guidelines that identify certain crimes it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure, including offenses involving fraud, dishonesty, or deceit as an essential element.⁴ The Department has determined that the crimes it considers to be of prime importance are also directly related to the occupations it regulates.⁵

In deciding whether to deny a license based on a person's criminal history, the Department will weigh the factors in Texas Occupations Code sections 53.022 and 53.023 and determine whether the applicant is fit to perform the duties and discharge the responsibilities of the licensed occupation despite the criminal offense.⁶ The factors in Texas Occupations Code section 53.022 address whether the person's criminal offense directly relates to the occupation, and those factors are:

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;

³ Tex. Occ. Code § 53.021(d).

⁴ 28 Tex. Admin. Code § 1.502(e)(1).

⁵ 28 Tex. Admin. Code § 1.502(e); *see also* Tex. Occ. Code § 53.025.

⁶ 28 Tex. Admin. Code § 1.502(h).

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.⁷

As additional factors for the Department to consider after determining a conviction directly relates to the occupation, Texas Occupations Code section 53.023(a) lists:

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 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 fitness, including letters of recommendation.⁸

⁷ Tex. Occ. Code § 53.022.

⁸ Tex. Occ. Code § 53.023(a).

An applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations discussed above.⁹ Additionally, an applicant may furnish proof to the Department that he has: (1) maintained a record of steady employment; (2) supported his dependents; (3) maintained a record of good conduct; and (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.¹⁰ The Department will not issue a license unless, when viewed in the light of the occupation being licensed, those mitigating factors outweigh the serious nature of the applicant's criminal offense.¹¹

Staff bears the burden of proving its grounds for denying Respondent's license application; but Respondent has the burden to prove his fitness to be licensed despite his criminal history or fraudulent or dishonest conduct.¹² The burden of proof is by a preponderance of the evidence.¹³

⁹ Tex. Occ. Code § 53.023(b).

¹⁰ 28 Tex. Admin. Code § 1.502(h)(2)(G).

¹¹ 28 Tex. Admin. Code § 1.502(f).

¹² Tex. Ins. Code § 4005.101(b); 1 Tex. Admin. Code § 155.427.

¹³ *Granek v. Texas St. Bd. of Med. Examin'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.).

III. EVIDENCE

At the hearing, Staff offered four exhibits, which were admitted without objection, and the testimony of Lewis Weldon Wright.¹⁴ Petitioner testified on his own behalf but did not offer any exhibits.

A. BACKGROUND

On May 5, 2016, Respondent judicially confessed to state jail felony fraudulent use or possession of identifying information with intent to harm and defraud, in cause number F1412864 in the 363rd District Court of Dallas County, Texas.¹⁵ Adjudication was deferred, and Respondent was placed on probation for four years, which was later extended by one year.¹⁶ He was ordered to pay \$1,840.00 in restitution.¹⁷ The felony charge was dismissed on May 5, 2021.¹⁸

On November 12, 2021, Respondent applied for a general lines agent license with a life, accident, and health qualification with the Department; and he failed to disclose his criminal history. On January 20, 2022, Staff proposed to deny Respondent's application based on his commission of an act for which a license

¹⁴ Staff's admitted exhibits—Staff Exhibits 1, 1a, 2, and 3—consisted of: (1) notice of hearing, original petition, mailing certificates, and amended petition; (1a) internal licensing record screenshot of Respondent's last known address; (2) Respondent's licensing application documents; and (3) an order extending Respondent's community supervision period.

¹⁵ Staff Ex. 2 at 025.

¹⁶ Staff Ex. 2 at 026; Staff Ex. 3 at 062.

¹⁷ Staff Ex. 2 at 028.

¹⁸ Staff Ex. 2 at 029.

may be denied, citing Texas Insurance Code section 4005.101.¹⁹ Respondent timely requested a hearing.²⁰

B. TESTIMONY OF MR. WRIGHT

Mr. Wright is an Administrative Review Program Specialist in the Department's Agent and Adjuster Licensing Office and has worked for the Department for 15 years. His job responsibilities include facilitating the evaluation of license applications which raise concerns for the Department, such as those with a criminal history. He explained the application review process; and he confirmed that Respondent applied for a general lines agent license with a life, accident, and health qualification on November 12, 2021.²¹ Mr. Wright said the primary duties of this license holder would be to sell or market insurance products; represent insurance carriers and their products in the market; and deliver those products to the buying public.

Mr. Wright testified that insurance agents must be trustworthy. He explained that the insurance-buying public has a very limited understanding of how insurance works, so they rely on the agent's knowledge of the complex industry. He concluded that such consumers need protection, especially because the

¹⁹ Staff Ex. 2 at 033. Texas Insurance Code section 4005.101 includes multiple bases to deny a license application, including those Staff alleges of Respondent: intentionally making a material misstatement in the license application, and engaging in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(2), (5).

²⁰ Staff Ex. 2 at 058-059.

²¹ Staff Ex. 2 at 049.

industry is “ripe for fraudulent behavior.”²² He noted that, if the Department licenses an individual who is not trustworthy, the possible fraud that results could be minimal or catastrophic, because the authority licensed allows the agent to deal with transactions from tens of dollars to millions.

Mr. Wright testified that Respondent pled guilty to the unlawful use of an individual’s routing number and account number related to their financial institution. Mr. Wright said the offense was committed between June 18-25, 2014.

Mr. Wright testified that Respondent answered “no” to the application question about whether he had a criminal history, and he failed to provide his court documents related to his criminal offense, as required. Mr. Wright stated that Respondent’s criminal history came up during the Department’s background screening using Respondent’s fingerprints; and, due to his criminal history, Respondent was asked to submit additional information as part of his application. Mr. Wright testified that Staff proposed to deny Respondent’s application based on his intentional misstatement on the application and on his criminal history of fraud or dishonest conduct.

According to Mr. Wright, the Department considers the nature and seriousness of Respondent’s felony fraudulent use or possession of identifying information to be severe and of prime importance to the Department when determining fitness for licensure. He explained that Respondent’s crime of fraudulent use or possession of identifying information is directly related to the

²² Tr. at 22.

business of insurance, and that any offense for which fraud, dishonesty, or deceit is an essential element is specifically enumerated as a crime of prime importance under 28 Texas Administrative Code section 1.502(d). Mr. Wright confirmed that, given the timing, the Department considers Respondent's deferred adjudication as a conviction for licensure purposes.

Turning to the additional factors for consideration, Mr. Wright noted that Respondent was already 43 years old when he committed the offense. He also noted that the Department considered the proximity in time between Respondent's completion of community supervision and the application—in this case Respondent completed supervision in May 2021 and submitted his application with the Department in November 2021. Therefore, at the time the application was received, approximately six months had elapsed—not long for rehabilitation, according to Mr. Wright.

Mr. Wright testified that Respondent submitted an excellent letter of recommendation to the Department, but it was in an industry (food preparation) that is not directly related to the occupation being sought, does not speak to the occupation's characteristics or traits, and does not recognize Respondent's criminal history.²³ As for the resume Respondent provided, Mr. Wright noted that according to the resume, Respondent has maintained steady employment both before and after his criminal offense—albeit in food service and preparation.²⁴

²³ Staff Ex. 2 at 034.

²⁴ Staff Ex. 2 at 037-40.

Mr. Wright also noted that the resume does not indicate that Respondent has handled money as a fiduciary in any fashion.

In addition, Mr. Wright noted that Respondent's rehabilitative effort, overall, was "minimal."²⁵ He said Respondent did not provide a lot of supporting evidence about rehabilitation, and there has not been enough time since the offense for Respondent to establish rehabilitation after the offense.

Finally, Mr. Wright summarized the Department's concerns about Respondent's honesty and failure to disclose his criminal offense in his license application. He testified that any time an applicant fails to disclose criminal history to the Department, it brings into question intentional misrepresentation for the purposes of obtaining a license. Mr. Wright highlighted the discrepancy between Respondent's explanation of his offense in the statement he provided to the Department,²⁶ which was that a family member of Respondent's had misused his identifying information, and what the court documents revealed, that Respondent had misused an employer's information. In conclusion, Mr. Wright stated that the Department does not believe Respondent's mitigating evidence outweighs the serious nature of his offense, and that denial of licensure is appropriate in this case.

²⁵ Tr. at 44.

²⁶ Staff Ex. 2 at 046.

C. TESTIMONY OF RESPONDENT

Respondent testified that, as he explained in his written statement to the Department,²⁷ a family member living with him took his wallet and disappeared, and three days later the manager of the company he was working for said Respondent had fraudulently used the company credit card that had been in his wallet.

Respondent said he took responsibility for the card loss, followed all the procedures, and went to court; and that was the only time something like this has happened. He explained that he judicially confessed because of his “integrity as a person”²⁸ and that he “was responsible for holding that financial information in my hands from the company.”²⁹ He testified that he completed his community supervision and paid the fees.

Respondent explained that he trained for the adjuster license, passed the test, and applied for the license because he needs to be able to support his family. He asserted that he has never committed any other offense.

²⁷ Staff Ex. 2 at 046.

²⁸ Tr. at 59.

²⁹ Tr. at 59.

IV. ANALYSIS

Under Texas Insurance Code section 4005.101(b)(2), the Department may deny a license application if the Department determines that the applicant has intentionally made a material misstatement in the license application. The Department may also deny a license application if the applicant has engaged in fraudulent or dishonest acts or practices, as contemplated by Texas Insurance Code section 4005.101(b)(5). Respondent's judicial confession was for felony fraudulent use or possession of identifying information with intent to harm and defraud. Because less than five years have passed since Respondent completed his period of community supervision and being licensed would provide him an opportunity to reoffend, his guilty plea may be treated as a conviction.³⁰

The ALJ must now determine whether Respondent presented evidence to demonstrate that his fitness for licensure outweighs the serious nature of his criminal offense when viewed in light of his requested licensed occupation.³¹ In making this determination the ALJ considers the factors set out in Texas Occupations Code section 53.023 and 28 Texas Administrative Code section 1.502(h). As Mr. Wright testified, the nature of Respondent's offense was serious and raised valid concerns as to his fitness. While the evidence established that the fraudulent use or possession of identifying information was Respondent's only criminal activity, Respondent was 43 years old at the time he entered his judicial confession, so it was not a crime of youthful indiscretion. Respondent's

³⁰ Tex. Occ. Code § 53.021(d).

³¹ See Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(f), (h)(1)-(2).

resume demonstrates a steady work history—though not in any fiduciary capacity—and his testimony indicates a desire to be licensed to support his family. Respondent also provided a letter of recommendation in which individuals with personal knowledge of him indicated that he is hardworking and professional. Additionally, it should be noted that Respondent complied with the conditions of his deferred judgment and supervised probation, paid all imposed fines, court costs and restitution, and was discharged from said supervision and probation. Yet that discharge occurred just six months before Respondent applied for the license, so there was not much time for rehabilitation to have occurred; more time is needed to determine whether Respondent is fit to hold a license.

The ALJ must also consider other evidence of Respondent’s present fitness, including Respondent’s failure to disclose, and mischaracterization of, his offense. Respondent did not dispute that he made an intentional misstatement on his application and he provided no explanation for his failure to disclose. In addition, his felony offense was severe, as noted by Mr. Wright.

Ultimately, the ALJ concludes that the evidence regarding Respondent’s current fitness for licensure does not outweigh the serious nature of his offense when viewed in light of the potential occupation being licensed. Respondent’s license application should be denied at this time.

V. FINDINGS OF FACT

1. On November 12, 2021, Manuel Eduardo Estrada (Respondent) applied for a general lines agent license with a life, accident, and health qualification with the Texas Department of Insurance (Department).
2. On January 20, 2022, the staff (Staff) of the Department proposed to deny Respondent's application based on his intentional misstatement on the application and based on his criminal history of fraud or dishonest conduct.
3. Respondent requested a hearing to challenge the denial.
4. On May 17, 2022, Staff issued a notice of hearing which attached and incorporated by reference its petition in the case.
5. On May 20, 2022, the State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) issued Order No. 1, which specified that the hearing would be held via the Zoom videoconferencing platform and provided the applicable log-in information.
6. The notice of hearing, petition, and SOAH Order No. 1 contain 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 the factual matters asserted.
7. The hearing in this case was held via Zoom videoconference on August 24, 2022, before SOAH ALJ Heather D. Hunziker. Staff was represented by staff attorney Jeannie Ricketts. Respondent represented himself. The hearing concluded that day, and the record closed on September 8, 2022, when the court reporter's transcript was filed with SOAH.
8. Respondent fraudulently used an individual's routing number and account number related to their financial institution, between June 18-25, 2014.
9. On May 5, 2016, Respondent judicially confessed to state jail felony fraudulent use or possession of identifying information with intent to harm

and defraud related to the June 2014 fraud, in cause number F1412864 in the 363rd District Court of Dallas County, Texas. Adjudication was deferred and Respondent was placed on probation for four years, which was later extended by one year. He was ordered to pay \$1,840.00 in restitution. The felony charge was dismissed on May 5, 2021.

10. Respondent has complied with all conditions of his community supervision and paid the restitution ordered by the court.
11. In committing the offense, Respondent engaged in fraudulent or dishonest acts or practices.
12. Respondent submitted his license application to the Department less than five years after being discharged from deferred adjudication.
13. In his application submitted to the Department, Respondent intentionally made a material misstatement that he had no criminal history.
14. Licensure as a general lines agent license with a life, accident, and health qualification would provide Respondent the opportunity to reoffend.
15. Fraudulent use or possession of identifying information with intent to harm and defraud involves fraudulent conduct or dishonesty, and directly relates to the duties and responsibilities of an insurance agent.
16. Respondent has no other criminal history.
17. Respondent was 43 years old at the time he committed his offense.
18. Respondent worked steadily both before and after his criminal offense.
19. Respondent provided a letter of recommendation in which an individual with personal knowledge of him indicated that he is hardworking and professional.
20. The mitigating factors Respondent established do not outweigh the serious nature of his criminal offense.
21. Respondent is not presently fit to hold a general lines agent license with a life, accident, and health qualification.

VI. CONCLUSIONS OF LAW


1. The Commissioner of Insurance and the Department have jurisdiction over this matter. Tex. Ins. Code §§ 4005.101, .102; Tex. Occ. Code §§ 53.021-.023.
2. SOAH has authority to hear this matter and issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003; Tex. Ins. Code § 4005.104.
3. Respondent received timely and sufficient notice of hearing. Tex. Gov't Code §§ 2001.051-.052.; Tex. Ins. Code § 4005.104(b).
4. The Department may deny a license if the Department determines that the applicant has intentionally made a material misstatement in the license application or has engaged in fraudulent or dishonest acts or practices. Tex. Ins. Code § 4005.101(b)(2), (5).
5. The Department may deny a license application if the applicant has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.021(a)(1).
6. The Department may consider a person who has pleaded guilty to an offense, but whose adjudication has been deferred, to be convicted if the period of supervision was completed less than five years before the date of the application and the Department determines that the person may pose a continued threat to public safety or the employment of the person in the licensed occupation would create a situation in which he has the opportunity to repeat the prohibited conduct. Tex. Occ. Code § 53.021(d).
7. The Department may consider Respondent to have been convicted of his felony fraudulent use or possession of identifying information offense for purposes of Texas Occupations Code § 53.021(a). Tex. Occ. Code § 53.021(d).

8. The Department has determined that certain crimes are of such a serious nature that they are of prime importance in determining fitness for licensure. These crimes include any offense for which fraud, dishonesty, or deceit is an essential element. 28 Tex. Admin. Code § 1.502(e)(1).
9. The Department will consider the factors listed in Texas Occupations Code sections 53.022 and 53.023 in determining whether to grant or deny any license to an applicant who has committed a felony or engaged in fraudulent or dishonest activity that directly relates to the duties and responsibilities of the licensed occupation, 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 Texas Administrative Code § 1.502(f), (h).
10. Staff has the burden to prove by a preponderance of the evidence its alleged grounds to deny Respondent's license application, while Respondent has the burden to prove by a preponderance of the evidence that he is fit to perform the duties and discharge the responsibilities of an insurance agent despite his criminal history. *See* Tex. Ins. Code § 4005.101(b); 1 Tex. Admin. Code § 155.427; 28 Tex. Admin. Code § 1.502(h).
11. Staff met its burden to prove that Respondent intentionally made a material misstatement in the license application and engaged in dishonest acts or practices. *See* Tex. Ins. Code § 4005.101(b)(2), (5); Tex. Occ. Code §§ 53.021, .022, .023; 28 Tex. Admin. Code §1.502(d), (f).
12. Respondent did not meet his burden to prove that he is presently fit to perform the duties and discharge the responsibilities of the licensed occupation despite his criminal history. Tex. Occ. Code § 53.023; 28 Tex. Admin. Code § 1.502(d), (h)(2)-(3).
13. Respondent's license application should be denied.

2023-7978

SIGNED SEPTEMBER 21, 2022.

ALJ Signature:

A handwritten signature in cursive script, reading "Heather Hunziker", written over a horizontal line.

Heather D. Hunziker,

Presiding Administrative Law Judge