

No. 2022-7554

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

Date: 10/11/2022

Subject Considered:

Texas Department of Insurance

v.

Alexius P. Rodriguez

SOAH Docket No. 454-21-1785.C

General remarks and official action taken:

The subject of this order is Alexius P. Rodriguez's application for a general lines life, accident, and health license. The Texas Department of Insurance (TDI) grants Mr. Rodriguez's license application, but with a two-year probated suspension.

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 made and filed a proposal for decision containing findings of fact and conclusions of law.

Staff for TDI (Staff) filed exceptions to the ALJ's proposal for decision. Mr. Rodriguez did not file a reply to the exceptions.

In response to TDI's exceptions, the ALJ issued an updated proposal for decision containing an additional finding of fact inserted as Finding of Fact No. 13 and renumbered the findings of fact that follow the additional finding, but otherwise made no revisions. A copy of the ALJ's response and updated proposal for decision is attached as Exhibit A.

TDI adopts the ALJ's updated proposal for decision, but with changes to the findings of fact and conclusions of law as described in this order.

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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), 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 the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies [of the agency], or prior administrative decisions" or that a technical error should be changed.

Analysis

Error and Inconsistency in the Proposal for Decision

In the proposal for decision, the case style incorrectly refers to the applicant as "Alexius O. Rodriguez." However, Mr. Rodriguez's middle initial is "P." This technical error does not require any change to the ALJ's proposed findings of fact or conclusions of law, but it is acknowledged here to avoid any confusion.

The proposal for decision also uses inconsistent terms to address the license type for which Mr. Rodriguez applied. The introductory paragraph and Conclusion of Law No. 7 refer to the license type as a "general lines agent license." But the Background in the Discussion and Finding of Fact No. 1 refer to it as a "general lines life, accident, and health license." And the Analysis in the Discussion combines these terms, referring to the license type as a "general lines life, accident, and health agent license."

Because the original petition refers to the application as being for a "general lines life, accident, and health license,"¹ and because this is also the term used in the application denial letter sent to Mr. Rodriguez,² this term is used for consistency within this order. Proposed Conclusion of Law No. 7 is amended accordingly.

Tex. Occ. Code §§ 53.022 and 53.023, and 28 Tex. Admin Code § 1.502

The circumstances of Mr. Rodriguez's criminal conduct are described in the proposal for decision, and they will not be repeated in full here. But between 2000 and 2012, Mr. Rodriguez pleaded guilty to and was convicted of four separate 2nd degree felony

¹ See Factual Allegation 1 in Original Petition, TDI Exhibit 2.

² See Letter to Alexius Rodriguez dated January 30, 2020, TDI Exhibit 4.

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offenses of Burglary of a Habitation. Further, in 2006, Mr. Rodriguez also pleaded guilty to and was convicted of Theft of Stolen Property, a Class B misdemeanor.³ TDI Staff sought to deny Mr. Rodriguez's application based on this criminal history.

Applicable version of the law

The ALJ correctly notes that TDI must consider the factors enumerated in Tex. Occ. Code §§ 53.022 and 53.023 in determining whether to grant a license to an applicant with criminal convictions.⁴ However, in conducting his analysis, the ALJ applies older versions of Tex. Occ. Code §§ 53.022 and 53.023, before they were amended in 2019.⁵ Mr. Rodriguez submitted his application on October 1, 2019, and TDI must apply Tex. Occ. Code §§ 53.022 and 53.023 as they existed at that time.⁶ Failure to do so is a misapplication of the law.

Tex. Occ. Code § 53.022, as amended by House Bill 1342, 86th Legislature, provides:

In determining whether a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider each of the following factors:

- (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 Mr. Rodriguez also pleaded guilty to Possession of Marijuana in 2004 and Driving While Intoxicated in 2014, both Class B Misdemeanors. He received deferred adjudication for the first offense and was convicted of the second.

⁴ 28 Tex. Admin. Code § 1.502(h).

⁵ See HB 1342, 86th Leg. (2019).

⁶ See HB 1342, Sec. 14 ("The changes in law made by this Act apply only to an application for a license submitted on or after the effective date of this Act.") and Sec. 15 ("This Act takes effect September 1, 2019.").

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(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.

The primary difference between the prior and current versions of Tex. Occ. Code § 53.022 is the addition of factor (5): any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

Tex. Occ. Code § 53.023 as amended by HB 1342 provides:

(a) If a licensing authority determines under Section 53.022 that a criminal conviction directly relates to the duties and responsibilities of a licensed occupation, the licensing authority shall consider the following in determining whether to take an action authorized by Section 53.021:

(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.

(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations described by Subsection (a)(7).

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The primary difference between the prior and current versions of Tex. Occ. Code § 53.023 is the addition of factor (a)(6): evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision.⁷

Consideration of all factors

Because of Mr. Rodriguez's criminal history, TDI may not issue him a license unless the factors specified in Tex. Occ. Code §§ 53.022 and 53.023 and 28 Tex. Admin Code § 1.502(h)⁸ outweigh the serious nature of his offenses when viewed in light of the occupation being licensed. See 28 Tex. Admin Code § 1.502(f). State law and TDI rules require that all applicable factors must be weighed in determining an applicant's fitness for licensure. See Tex. Occ. Code §§ 53.022 and 53.023(a) (stating that "the licensing authority shall consider" enumerated factors); 28 Tex. Admin Code § 1.502(h)(1) and (2) (stating that "the department shall consider" enumerated factors). Thus, a failure to properly weigh all applicable factors is a misapplication of law and agency rules that could warrant changes to the proposal for decision under Tex. Gov't Code § 2001.058(e)(1).

The proposal for decision fails to address all factors required to be considered under Tex. Occ. Code §§ 53.022 and 53.023 and 28 Tex. Admin Code § 1.502(h).⁹ First, as previously noted, the ALJ did not consider any correlation between the elements of the

⁷ HB 1342 also amended Tex. Occ. Code § 53.023 by adding subsection (a)(7), which was formerly subsection (a)(6). The prior version of that subsection provided that the licensing authority must consider "other evidence of the person's fitness, including letters of recommendation from: (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; (B) the sheriff or chief of police in the community where the person resides; and (C) any other person in contact with the convicted person."

⁸ Current TDI rule 28 Tex. Admin Code § 1.502(h)(1) mirrors the prior version of Tex. Occ. Code § 52.022, while § 1.502(h)(2) mirrors the prior version of Tex. Occ. Code § 52.023. Nevertheless, TDI's rule must yield to the current statutory language in the Occupations Code. See *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n.*, 511 S.W.3d 28, 33 (Tex. 2017) (an administrative rule may not contravene specific statutory language).

⁹ As previously noted, the ALJ applied an outdated version of Tex. Occ. Code § 52.023 that excluded factor (a)(6): evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision. Even though this factor was not acknowledged in the proposal for decision, the ALJ acknowledged that Mr. Rodriguez was released from community supervision in proposed Finding of Fact No. 13.

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crime(s) and the duties and responsibilities of the licensed occupation. Tex. Occ. Code § 53.022(5).

Under Tex. Penal Code § 30.02, a person commits the offense of burglary if the person:

- (1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony, theft, or an assault; or
- (2) remains concealed, with intent to commit a felony, theft, or an assault, in a building or habitation; or
- (3) enters a building or habitation and commits or attempts to commit a felony, theft, or an assault.

In addition, under Tex. Penal Code § 31.03, a person commits the offense of theft if the person unlawfully appropriates property with intent to deprive the owner of property, and unlawful appropriation of property occurs if:

- (1) it is without the owner's effective consent;
- (2) the property is stolen, and the actor appropriates the property knowing it was stolen by another; or
- (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

Licensed insurance agents hold a position of trust with consumers and the public, and they must establish a relationship of confidence with the consumer. *See, e.g.*, 28 Tex. Admin Code § 1.502(a) ("The special nature of the relationship between licensees, insurance companies, other insurance-related entities, discount health care programs, and the public with respect to insurance and related businesses regulated by the department requires that the public place trust in and reliance upon such persons due to the complex and varied nature of insurance, insurance-related products, and discount health care programs."). In addition, TDI has determined that licensed agents must be honest, trustworthy, and reliable. *See id.* § 1.502(c). Agents may engage with consumers in person, sometimes in private settings like a home or office, giving them access to another's habitation or building and the property in that habitation or building. Public trust and confidence in an agent would clearly be damaged if they

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entered another's home or building with the intent to steal that person's property or commit another crime, which TDI has previously found to be a dishonest act.¹⁰ The same can be said of theft.¹¹ Thus there is a correlation between the elements of burglary and theft and the duties and responsibilities of the licensed occupation. This factor weighs against granting Mr. Rodriguez a license.

Second, a review of the proposal for decision reveals that the ALJ did not consider the extent to which a license would give Mr. Rodriguez an opportunity to commit further crimes of the same type. Tex. Occ. Code § 53.022(3); 28 Tex. Admin. Code § 1.502(h)(1)(C). As noted above, agents may engage with consumers in person, sometimes in private settings like a home or office, giving them access to another's habitation or building and the property in that habitation or building. Agents also can handle large amounts of cash and perform other tasks through which they will assume control over the property of insureds. The typical duties and responsibilities of an insurance agent demonstrate that granting Mr. Rodriguez a license would give him the opportunity to engage in criminal activity of the same type as his burglary and theft offenses.¹² This factor also weighs against granting Mr. Rodriguez a license.

Based on the analysis above, the proposal for decision is changed as described below to address the extent to which a license might offer an opportunity for Mr. Rodriguez to engage in further criminal activity of the same type as that in which he previously

¹⁰ See *Subject Considered: Bobbie D. Tally*, Commissioner's Order No. 99-0809 (issued June 3, 1999, which includes a conclusion that felony burglary of a habitation is a dishonest act and a crime of moral turpitude that relates directly to the duties and responsibilities of the licensed occupation).

¹¹ See *In the Matter of Einabeth Sabrina Chandler Application for A General Lines Life, Accident, and Health License*, Commissioner's Order No. 2741 (issued September 11, 2013) (finding that the applicant's crime of theft was a dishonest act).

¹² See *Texas Department of Insurance v. Andrea D. Beller*, Commissioner's Order No. 2021-6818 (issued May 5, 2021, which includes a finding that granting a license to the applicant, who had a criminal history that included burglary, would offer an opportunity to engage in similar criminal activity); see also the proposal for decision for *Texas Department of Insurance v. Bobbie D. Tally a.k.a. Bobbie D. Tally Hood*, 2004 WL 4171100 ("The evidence showed that this Applicant pled guilty to a fraudulent or dishonest act . . . by burglarizing a habitation. Thus, her conduct directly relates to the duties and responsibilities of an insurance service representative because she will bind insurance risks, handle large amounts of cash, and perform other tasks through which she will assume control over the property of insureds."), adopted by Commissioner's Order No. 99-0809, footnote 10 *supra*.

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had been involved and to address the correlation between the elements of his crimes and the duties and responsibilities of the licensed occupation.

Conclusion

The Commissioner has reviewed the record and weighed all applicable factors, and even with the two factors discussed above that weigh against Mr. Rodriguez, she accepts the ALJ's recommendation to grant Mr. Rodriguez's application. However, additional monitoring of Mr. Rodriguez by TDI is warranted because of the serious nature of his crimes and the fact that a license would offer him an opportunity to engage in similar criminal activity. Therefore, Mr. Rodriguez's license will be placed on probated suspension for two years with reporting requirements, to allow TDI to observe how he performs as a licensee. Proposed Conclusion of Law No. 8 is modified accordingly.

18 USC § 1033(e)(2)

Because Mr. Rodriguez has been convicted of a criminal felony involving dishonesty or a breach of trust, it is necessary that he have written consent to engage or participate in the business of insurance.¹³ This order contains such written consent.

Changes to proposed findings of fact and conclusions of law

Based on the analysis above concerning the factors to be considered in granting a license to an applicant with a criminal history, Findings of Fact Nos. 11A and 11B as follows are adopted:

11A. Having a license would give Mr. Rodriguez an opportunity to commit further crimes of the same type as burglary and theft.

¹³ Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both. 18 USC § 1033(e)(1)(A).

A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any insurance regulatory official authorized to regulate the insurer, which consent specifically refers to this subsection. 18 USC § 1033(e)(2).

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11B. A correlation exists between the crimes of burglary and theft and the duties and responsibilities of the holder of a general lines life, accident, and health license.

Based on the analysis above concerning the inconsistency in how the proposal for decision addresses the license type for which Mr. Rodriguez applied, Proposed Conclusion of Law No. 7 is changed to state:

Mr. Rodriguez has shown that he is currently fit to hold a general lines life, accident, and health license despite his criminal offenses. Tex. Occ. Code §§ 52.022–.023; 28 Tex. Admin. Code § 1.502(h).

Based on the analysis above concerning the factors to be considered in granting a license to an applicant with a criminal history, Proposed Conclusion of Law No. 8 is changed to state:

The Department should grant Mr. Rodriguez's application for a license. However, the license should be subject to a two-year probated suspension and reporting requirements.

Findings of Fact

1. The findings of fact proposed in Exhibit A are adopted by TDI and incorporated by reference into this order.
2. TDI adopts the following finding of fact as Finding of Fact No. 11A:

Having a license would give Mr. Rodriguez an opportunity to commit further crimes of the same type as burglary and theft.
3. TDI adopts the following finding of fact as Finding of Fact No. 11B:

A correlation exists between the crimes of burglary and theft and the duties and responsibilities of the holder of a general lines life, accident, and health license.

Conclusions of Law

1. Conclusions of Law Nos. 1–6 as contained in Exhibit A are adopted by TDI and incorporated by reference into this order.

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2. In place of Conclusion of Law No. 7 as proposed in Exhibit A, TDI adopts the following conclusion of law:

Mr. Rodriguez has shown that he is currently fit to hold a general lines life, accident, and health license despite his criminal offenses. Tex. Occ. Code §§ 52.022–.023; 28 Tex. Admin. Code § 1.502(h).

3. In place of Conclusion of Law No. 8 as proposed in Exhibit A, TDI adopts the following conclusion of law:

The Department should grant Mr. Rodriguez's application for a license. However, the license should be subject to a two-year probated suspension and reporting requirements.

Order

It is ordered that Alexius P. Rodriguez's application for a general lines life, accident, and health license is approved, subject to the terms and conditions in this order.

In addition, Mr. Rodriguez is granted written consent, as contemplated by 18 USC § 1033(e)(2), to engage in the business of insurance, subject to the following requirements:

1. Mr. Rodriguez must continuously maintain the license or other authorization issued by the Texas Department of Insurance to which this written consent applies.
2. This written consent is strictly limited to performing acts which constitute the business of insurance, as defined in TEX. INS. CODE § 101.051.
3. This written consent is limited to acts performed by Mr. Rodriguez in the State of Texas for persons that are domiciled in Texas and risks and subjects of insurance that are resident, located, or to be performed in Texas.

If Mr. Rodriguez is subsequently convicted of another felony offense, or if additional information concerning his activities within the business of insurance becomes available, TDI reserves its rights to withdraw this written consent under 18 USC § 1033(e)(2).

This determination does not authorize Mr. Rodriguez to engage in the business of insurance, except as specifically stated in this order, and does not preclude TDI from

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proposing denial of any other license, authority, registration, or application Mr. Rodriguez submits at a later date.

It is further ordered that Mr. Rodriguez's license is suspended for two years. The suspension is probated, and during the period of probation, Mr. Rodriguez must comply with the following terms and conditions:

If, during the probation period imposed by this order, TDI issues any additional licenses or authorizations to Mr. Rodriguez, those additional licenses or authorizations will be suspended until the probation period imposed by this order has ended. The suspension will be probated, and the same terms and conditions stated in this order will apply.

Beginning from the date of this order and continuing through the probation period, Mr. Rodriguez must provide written notice of his criminal record to any appointing company, agency, employer, sponsor, or other entity on behalf of which he performs the acts of an agent. Mr. Rodriguez must provide TDI with a copy of the notification within 30 days of the appointment, employment, or sponsorship by emailing it to TDI at EnforcementReports@tdi.texas.gov.

Beginning from the date of this order and continuing through the probation period, Mr. Rodriguez must file a written report, on or before the 15th day of the month on a quarterly basis for the months of October, January, April, and July, with TDI by emailing it to EnforcementReports@tdi.texas.gov.

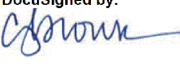
The reports must include the following information:

- a. Mr. Rodriguez's current mailing address and telephone number;
- b. the name, mailing address, and telephone number of Mr. Rodriguez's employer, and if Mr. Rodriguez is self-employed, a statement that he is self-employed and the name, mailing address, and telephone number of his business;
- c. the name and address of any insurer that has appointed Mr. Rodriguez as an agent;
- d. the name and address of any insurer that has cancelled Mr. Rodriguez's appointment as an agent; and
- e. a copy of any and all contracts Mr. Rodriguez has entered into with an insurer, broker, agent, agency, managing general agent, or any other person or entity in the business of insurance.

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Mr. Rodriguez must notify TDI immediately of the following by emailing EnforcementReports@tdi.texas.gov:

- a. any charges or indictments filed against him for a misdemeanor or felony during the period he is required to file reports, excluding traffic offenses and Class C misdemeanors;
- b. any state or regulatory actions taken against him including formal and informal actions;
- c. any change in his employment or his residence; and
- d. any complaint made against Mr. Rodriguez concerning his performance as an agent, as well as a written explanation detailing the steps taken to resolve it.

DocuSigned by:

FC5D7EDDFFB84F8... _____
Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

75578E954EFC48A... _____
James Person, General Counsel

DocuSigned by:

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Justin Beam, Assistant General Counsel



Exhibit A

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

October 7, 2021

Kent Sullivan
Commissioner of Insurance
Texas Department of Insurance
333 Guadalupe, Tower 1, 13th Floor, Mail Code 113-2A
Austin, Texas 78714

VIA E-FILE TEXAS

**RE: Docket No. 454-21-1785.C; Texas Department of Insurance
v. Alexius O. Rodriguez**

Dear Commissioner Sullivan:

On September 7, 2021, Staff of the Texas Department of Insurance filed exceptions to the Proposal for Decision (PFD) that had been issued on August 27, 2021. Respondent Alexius Rodriguez did not file responses to the exceptions.

In the exceptions letter, Staff indicates that the PFD did not include findings of fact regarding Respondent's crimes being of prime importance in determining fitness for licensure. The ALJ believes that the PFD did address that in finding of fact No. 11. Similarly, the ALJ stands by finding of fact No. 14, addressing the letter from Respondent's mother. Furthermore, Mr. Rodriguez provided a letter of recommendation from the chief of the Donna, Texas police department.

Staff also requests a finding of fact regarding Mr. Rodriguez's release from community supervision on April 11, 2018. The ALJ agrees and has made the requested change. The Corrected Proposal for Decision is attached.

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Exceptions Letter by ALJ and Corrected Proposal For Decision

October 7, 2021

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A PFD corrected pursuant to 1 Texas Administrative Code § 155.507(d)(2) does not reopen the period for filing exceptions. With the one change, the PFD is ready for consideration.

Sincerely,


Matt Jones
Administrative Law Judge

MJ/lc

Attachment

cc: Latoy Merida, Staff Attorney, Texas Department of Insurance, 333 Guadalupe, Tower 1, 13th Floor, Austin, Texas 78701 - **VIA E-FILE TEXAS**
Chief Clerk, Texas Department of Insurance, 333 Guadalupe, Tower I, Suite 1300D, Austin, Texas 78701 - **VIA E-FILE TEXAS and INTERAGENCY MAIL**
Alexius Rodriguez [REDACTED] Donna, TX 78537 - **VIA E-FILE TEXAS**

SOAH DOCKET NO. 454-21-1785.C

TEXAS DEPARTMENT OF INSURANCE	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
ALEXIUS O. RODRIGUEZ,	§	
Applicant	§	ADMINISTRATIVE HEARINGS

CORRECTED PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to deny the application of Alexius P. Rodriguez for a general lines agent license based on his criminal history. After considering the evidence and the applicable law, the Administrative Law Judge (ALJ) recommends the Department grant Mr. Rodriguez’s license application.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing in this case was held via Zoom videoconference on June 28, 2021, before ALJ Matt Jones at the State Office of Administrative Hearings. Staff was represented by staff attorney Latoya Merida, and Mr. Rodriguez represented himself. The hearing concluded on June 28, 2021, and the record closed July 2, 2021. Notice and jurisdiction were not disputed and are set out in the Findings of Fact and Conclusions of Law below.

II. DISCUSSION

A. Background

On August 28, 2000, March 6, 2009, and August 28, 2012, Mr. Rodriguez pleaded guilty to four separate 2nd degree felony offenses of Burglary of a Habitation in Cause Nos. CR-1156-00-F, CR-102-09-F, CR-2985-12-F, and CR-2986-12-F.¹ Each of the four offenses

¹ Staff’s Exhibits 4 and 5.

occurred in Hidalgo County. He was fined, ordered to pay restitution and court costs, and received community supervision. The first conviction occurred when Mr. Rodriguez was 17 and the last two when he was 29.

On September 29, 2004, Mr. Rodriguez pleaded guilty to the Class B misdemeanor offense of Possession of Marijuana in Cause No. CR-219731-E.² He was placed on deferred adjudication for 60 days and had to pay a fine and court costs.

On March 27, 2006, Mr. Rodriguez pleaded guilty to the Class B misdemeanor offense of Theft of Stolen Property in Cause No. CR-05-10383-A in County Court at Law No. 1 in Hidalgo County, Texas for an offense occurring on August 18, 2005.³ He received 180 days of Community Supervision.

On May 1, 2014, Mr. Rodriguez pleaded guilty to the Class B Misdemeanor offense of Driving While Intoxicated in Cause No. CR-14-2605-A in County Court at Law No. 1 in Hidalgo County, Texas for an offense occurring on January 11, 2014.⁴ He received nine months of Community Supervision.

On October 1, 2019, Mr. Rodriguez applied for a general lines life, accident, and health license with the Department.⁵ On January 30, 2020, the Department proposed to deny his application based on his criminal history.⁶ Mr. Rodriguez appealed that decision and made a written request for a hearing that was received on February 14, 2020.⁷

² Staff's Exhibit 4.

³ Staff's Exhibit 4.

⁴ Staff's Exhibit 4.

⁵ Staff's Exhibit 4.

⁶ Staff's Exhibit 4.

⁷ Staff's Exhibit 4.

B. Applicable Law

The Department may deny a license to an applicant who has engaged in fraudulent or dishonest acts or practices or who has been convicted of a felony.⁸ To guide its decision making, the Department has identified certain crimes that it considers to be of such a serious nature that they are of prime importance in determining fitness for licensure.⁹ These crimes include any offense for which fraud, dishonesty, or deceit is an essential element.¹⁰ The Department has also specifically enumerated the crimes of theft and burglary as a crimes of prime importance.¹¹

The Department considers the factors listed in Texas Occupations Code §§ 53.022 and 53.023 in determining whether to grant a license to an applicant with criminal convictions.¹² Under its rules, the Department is to deny a license application unless it finds these factors outweigh the seriousness of the criminal offense.¹³

The first set of factors that the Department considers are those that are used to determine whether a 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; and

⁸ Tex. Ins. Code § 4005.101(b)(5), (8).

⁹ 28 Tex. Admin. Code § 1.502(e).

¹⁰ 28 Tex. Admin. Code § 1.502(e)(1).

¹¹ 28 Tex. Admin. Code § 1.502(e)(4)(E), (F).

¹² 28 Tex. Admin. Code § 1.502(h).

¹³ 28 Tex. Admin. Code § 1.502(f).

4. the relationship of the crime to the ability, capacity, or fitness required to perform the duties and responsibilities of the licensed occupation.¹⁴

The Department must also consider the following factors related to fitness:

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 prior to and following the criminal activity;
5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;
6. other evidence of the person's present fitness, including letters of recommendation from:
 - a. prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - b. the sheriff or chief of police in the community where the person resides; and
 - c. any other persons in contact with the convicted person; and
7. proof furnished by the applicant that the applicant has:
 - a. maintained a record of steady employment;
 - b. supported the applicant's dependents;
 - c. maintained a record of good conduct; and
 - d. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant or holder has been convicted.¹⁵

¹⁴ Tex. Occ. Code § 53.022.

¹⁵ Tex. Occ. Code § 53.023.

C. Evidence

Staff offered six exhibits, which were admitted into evidence. Staff also offered the testimony of Lewis Weldon Wright, IV, an Administrative Review Liaison for the Department. Mr. Rodriguez testified on his own behalf, and offered a letter of recommendation from Gilbert Guerrero, chief of the Donna, Texas police department.

1. Testimony of Mr. Wright

Mr. Wright testified that, when an applicant has no criminal history, the Department's application review process is short. The Department confirms that the applicant is over 18, has passed the required examination, and has paid the licensing fee. If an applicant has a criminal history, however, the application goes through administrative review, which is the section where Mr. Wright works.

Mr. Wright testified that Mr. Rodriguez's application was not a run-of-the-mill application due to his criminal history. According to Mr. Wright, the Department considers burglary of a habitation to be a serious offense because it involves theft. He added that Mr. Rodriguez pleaded guilty four times to burglary of a habitation and once to theft of stolen property.

Focusing on the other licensure factors, Mr. Wright testified that Mr. Rodriguez has a significant criminal history that took place over 15 years. He also testified that Mr. Rodriguez's resume indicated he had a solid work history and that Mr. Rodriguez provided evidence of rehabilitation through his work history and a reference letter from his mother, who is also his employer.

Mr. Wright's conclusion, as he testified, was that Mr. Rodriguez's application should be denied because of the nature, severity, and frequency of his crimes.

2. Testimony of Mr. Rodriguez

Mr. Rodriguez testified that he struggled with alcohol when he was younger and it was this struggle that was the root of his crimes. He has been to alcohol rehabilitation twice and relapsed once. The relapse resulted in his conviction for driving while intoxicated. In addition, he has maintained steady employment as the office manager at his mother's insurance business. Finally, he testified he wants the license to better provide for his family.

3. Letters of Reference

Mr. Rodriguez provided one reference letter to the Department, which were introduced into evidence. The reference letter was from his mother, who is also his employer. The letter praises Mr. Rodriguez's character, work ethic, and responsibility. Mr. Rodriguez also filed a letter from the Chief of the Donna Police Department, Gilberto Guerrero, who praised his character.

D. Analysis

Under Texas Insurance Code § 4005.101(b)(5), the Department may deny a license application if the Department determines that the applicant has engaged in fraudulent or dishonest acts or practices. The Department may also deny Mr. Rodriguez's license application, as contemplated by Texas Insurance Code § 4005.101(b)(8), because he has been convicted of multiple serious felony offenses.

However, pursuant to 28 Texas Administrative Code § 1.502(h), the Department will consider the factors listed in Texas Occupations Code §§ 53.022 and 53.023, set out above, in determining whether to grant Mr. Rodriguez's license application despite his criminal past. Regarding these factors, the evidence established that Mr. Rodriguez's criminal history is lengthy and serious. In addition, Mr. Rodriguez was 29 when he was last convicted of a serious crime, so his last criminal actions were not committed when he was young. However, at the time of hearing, over seven years had passed since his last criminal activity. Mr. Rodriguez has an extensive work history and positive letters of recommendation that focus on his character and work ethic.

Mr. Rodriguez has also rehabilitated himself by overcoming an alcohol addiction that he blamed for his criminal past.

The ALJ concludes that Mr. Rodriguez's application for a general lines life, accident, and health agent license should be granted. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. On October 1, 2019, Alexius Rodriguez applied for a general lines life, accident, and health license with the Texas Department of Insurance (Department).
2. On January 30, 2020, staff (Staff) of the Department proposed to deny his application based on his criminal history.
3. Mr. Rodriguez requested a hearing to challenge the denial.
4. On March 25, 2021, Staff issued a notice of hearing on the denial of his application.
5. 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.
6. The hearing in this case was held via Zoom videoconference on June 28, 2021, before Administrative Law Judge Matt Jones at the State Office of Administrative Hearings (SOAH). Staff was represented by staff attorney Latoya Merida. Mr. Rodriguez represented himself. The hearing concluded on June 28, 2021, and the record closed July 2, 2021.
7. On August 28, 2000, March 6, 2009, and August 28, 2012, Mr. Rodriguez pleaded guilty to four separate 2nd degree felony offenses of Burglary of a Habitation. Each of the four offenses occurred in Hidalgo County. He was fined, ordered to pay restitution and court costs, and received community supervision. The first conviction occurred when Mr. Rodriguez was 17 and the last two when he was 29.
8. On September 29, 2004, Mr. Rodriguez pleaded guilty to the Class B misdemeanor offense of Possession of Marijuana. He was placed on deferred adjudication for 60 days and had to pay a fine and court costs.

9. On March 27, 2006, Mr. Rodriguez pleaded guilty to the Class B misdemeanor offense of Theft of Stolen Property for an offense occurring on August 18, 2005. He received 180 days of Community Supervision.
10. On May 1, 2014, Mr. Rodriguez pleaded guilty to the Class B Misdemeanor offense of Driving While Intoxicated for an offense occurring on January 11, 2014. He received nine months of Community Supervision.
11. Burglary of a habitation and theft of stolen property are serious crimes which directly relate to the duties of an insurance licensee.
12. Approximately seven years have elapsed since Mr. Rodriguez's last offense.
13. Mr. Rodriguez was released from community supervision on April 11, 2018.
14. Mr. Rodriguez has worked steadily since his last criminal activity.
15. Mr. Rodriguez's boss, who is his mother, praised his work ethic.
16. Gilbert Guerrero, chief of the Donna, Texas police department, praised Mr. Rodriguez's character.
17. Mr. Rodriguez struggled with alcohol addiction when he was younger and has twice been to rehabilitation. Mr. Rodriguez has not relapsed since 2014.
18. The mitigating factors Mr. Rodriguez established outweigh the serious nature of his criminal offense.

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. Rodriguez 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 engaged in fraudulent or dishonest acts or practices or has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(5), (8).

5. 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. The Department has also specifically enumerated the crimes of theft and burglary as crimes of prime importance. 28 Tex. Admin. Code §§ 1.502(e)(1), .502(e)(4)(E)-(F).
6. 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).
7. Mr. Rodriguez has shown that he is currently fit to hold a general lines agent license despite his criminal offenses. Tex. Occ. Code §§ 52.022-023; 28 Tex. Admin. Code § 1.502(h).
8. The Department should grant Mr. Rodriguez's application for a license.

SIGNED October 7, 2021.


MATT JONES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS