

No. **2021-6669**

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

Date: 01/28/2021

Subject Considered:

Texas Department of Insurance

v.

Zachary Hayes

SOAH Docket No. 454-20-4255.C

General remarks and official action taken:

The subject of this order is the temporary general lines agent license with a property and casualty qualification held by Zachary Hayes.

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 the department revoke the temporary general lines agent license with a property and casualty qualification held by Zachary Hayes. 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 by the Texas Department of Insurance (TDI) and incorporated by reference into this order.

Conclusions of Law

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

COMMISSIONER'S ORDER
TDI v. Zachary Hayes
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Order

It is ordered that the temporary general lines agent license with a property and casualty qualification held by Zachary Hayes is revoked.

Commissioner of Insurance

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By:  _____
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Doug Slape
Chief Deputy Commissioner
Tex. Gov't Code § 601.002
Commissioner's Order No. 2018-5528

Recommended and reviewed by:

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James Person, General Counsel

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Justin Beam, Assistant General Counsel

SOAH DOCKET NO. 454-20-4255.C

TEXAS DEPARTMENT OF
INSURANCE

Petitioner

v.

ZACHARY HAYES,

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Department of Insurance (Department) seeks to revoke the temporary general lines agent license with a property and casualty qualification held by Zachary Hayes for an incident involving credit card fraud. The Administrative Law Judge (ALJ) finds that the Department should revoke Mr. Hayes's license.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are set forth in the Findings of Fact and Conclusions of Law below without further discussion here. On August 26, 2020, Steven M. Rivas, an ALJ with the State Office of Administrative Hearings (SOAH) convened a hearing on the merits by videoconference. Staff was represented by attorney Stephanie Andrews. Mr. Hayes appeared and was represented by attorney Frank King. The hearing adjourned that day, and the record closed on September 11, 2020, when the ALJ received a copy of the hearing transcript.

II. DISCUSSION**A. Applicable Law**

The Department shall issue a temporary license immediately on receipt of a properly completed application executed by the applicant.¹ On March 24, 2020, the Department's

¹ Tex. Ins. Code § 4001.153.

Commissioner issued Commissioner's Bulletin No. B-0008-20 in response to Governor Abbott's suspension of certain licensing requirements and fees to cope with the COVID-19 pandemic.² The bulletin provided a temporary waiver of testing, fingerprints, and additional fees associated with licensure, and stated the temporary licenses issued will remain active until further notice.³

The Department may discipline a license holder if the Department determines the license holder has been convicted of a felony.⁴ The Department may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged if the person charged with an offense has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license.⁵

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. The Department considers any offense for which fraud, dishonesty, or deceit is an essential element to be a crime of such serious nature that it is of prime importance in determining fitness for licensure.⁶

In determining the fitness to perform the duties and responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority must also consider the following factors:

1. the extent and nature of the person's past criminal activity;
2. the age of the person when the crime was committed;

² <https://www.tdi.texas.gov/bulletins/2020/B-0008-20.html>.

³ *Id.*

⁴ Tex. Ins. Code § 4005.101(b)(8).

⁵ Tex. Occ. Code § 53.021(d)(1)(B)(i).

⁶ Tex. Occ. Code § 53.022; 28 Tex. Admin. Code § 1.502(e)(1).

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 following release;
6. other evidence of the person's present fitness, including letters of recommendation from:
 - a. prosecutors, 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 or license-holder's dependents;
 - c. otherwise 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.⁷

Staff has the burden of proving its basis for revoking Mr. Hayes's license, while Mr. Hayes's has the burden to prove he is fit to be licensed despite his criminal history.⁸

⁷ Tex. Occ. Code § 53.023. The Department has adopted these factors in its rules. 28 Tex. Admin. Code § 1.502(h).

⁸ Tex. Occ. Code § 53.023(a); 1 Tex. Admin. Code § 155.427.

B. Evidence**1. Background Facts**

On June 4, 2015, in Cause No. 146957401010 in the 228th District Court of Harris County, Texas, Mr. Hayes pled guilty to the offense of credit card abuse, a state jail felony, for an offense that occurred on April 28, 2015.⁹ The court deferred adjudication of the offense and placed Mr. Hayes on two years of community supervision.¹⁰ Mr. Hayes was discharged from community supervision on June 20, 2017.

According to the criminal complaint filed by the Harris County District Attorney, the incident occurred when Mr. Hayes worked as a bartender at a restaurant in Houston, Texas.¹¹ On the date in question, a 75-year-old customer attempted to pay her bill using an American Express gift card. However, Mr. Hayes informed her that she needed to provide an additional form of payment because, per restaurant policy, a gift card could only be used to pay for 80% of the total bill. Therefore, the customer provided Mr. Hayes an American Express Gold credit card. Mr. Hayes returned the gift card to the customer but kept the credit card.¹²

An investigation by the Houston Police Department (HPD) revealed that Mr. Hayes used the customer's credit card, without consent, to make a \$3.56 purchase at a Shell Gas Station and a \$463.73 purchase at a Walmart in Houston, Texas.¹³ The HPD investigation further revealed that Mr. Hayes attempted to purchase a "large amount of alcoholic beverages" at an HEB Grocery store, but that purchase was declined.¹⁴

⁹ TDI Ex. 7.

¹⁰ TDI Ex. 4.

¹¹ TDI Ex. No. 7.

¹² *Id.* at 052. Mr. Hayes used the entire \$150 gift card by applying \$97 toward bill and \$53 toward a tip for himself.

¹³ *Id.*

¹⁴ *Id.* at 053.

On April 8, 2020, Mr. Hayes applied for a temporary general lines agent license with a property and casualty qualification. On July 1, 2020, pursuant to legislative mandate outlined in the Commissioner's Bulletin No. B-0008-20, the Department issued license number 2536701 to Mr. Hayes.

2. Mr. Hayes's Evidence

At the hearing, Mr. Hayes did not deny that the incident occurred. He expressed regret and stated that he has learned his lesson and is trying to establish a career in order to support himself and his family. Mr. Hayes testified that he is currently employed by the Thomas Steed Agency d/b/a Goosehead Insurance in Houston, Texas, and has been so employed since 2015. According to Mr. Hayes's resume, he was employed in the food service industry for several years prior to his current employment at Goosehead.¹⁵

Thomas Steed, owner of Thomas Steed Agency d/b/a Goosehead Insurance, testified that he has known Mr. Hayes for 10 years and is aware of his criminal history. Mr. Steed testified that Goosehead is very diligent in the manner it protects its customers credit card information. Moreover, he testified that Mr. Hayes has a strong work ethic and sales record, and believes Mr. Hayes will continue to perform well and is on track for a promotion to possibly lead his own sales team. Mr. Steed further acknowledged that his own license and business is at stake if Mr. Hayes engages in further criminal activity, especially credit card abuse.

Aldo Heredia, an agent who also works at Goosehead, testified that he has known Mr. Hayes for approximately eight years and believes Mr. Hayes has a good work ethic, has integrity, and has very good character. However, Mr. Heredia admitted, he did not know about Mr. Hayes's criminal history, and he further acknowledged it would be dishonest to take a credit card belonging to someone else and use that credit card to make purchases without consent.

¹⁵ TDI Ex. 3 at 052.

The ALJ made note of the following letters of recommendation:

- Leah Hayes, Mr. Hayes's mother, wrote in a letter dated April 12, 2020, that Mr. Hayes was extremely sorry for the mistake he made and that he wants to right his wrongs. She also stated that Mr. Hayes is very compassionate, hardworking, and has volunteered in the community on multiple occasions. She further believes that Mr. Hayes has proven to be a very trustworthy person.
- Amy Karnani, owner of The Sugar Refinery restaurant, wrote in a letter dated April 12, 2020, that Mr. Hayes worked at that restaurant for three years and that he was forthcoming about his criminal past. Ms. Karmani stated that due to his work ethic and professionalism, she would have promoted him to a management position had the business not closed due to financial issues.
- Wafi Dinari, Proprietor of Quisies Table restaurant, also wrote in a letter dated April 12, 2020, that although she only knew Mr. Hayes for a short time, she intended to hire him as a manager at the restaurant due to his work ethic and professionalism despite knowing about his criminal past. Ms. Dinari stated that she was unable to hire Mr. Hayes but only due to the coronavirus pandemic.

The ALJ made further note of the following reviews made by Goosehead customers:¹⁶

- Jarvis from Rosharon, Texas, wrote that Mr. Hayes "is absolutely dedicated to getting the right policy for each & every individual that fits his/her situation." Mr. Hayes also received a 10/10 rating in "satisfaction" and a 10/10 rating in "likely to refer" from this customer.¹⁷
- Joshua Watson wrote that Mr. Hayes is "very knowledgeable, took extra care in tailoring to my needs, and made the change in policies quick and painless." Mr. Watson noted that he "already started recommending him to a few of my colleagues," and further indicated he was very satisfied with his purchase and that it was very likely he would refer a family member, friend or colleague to Goosehead.¹⁸

¹⁶ None of the customer reviews were dated.

¹⁷ Hayes Ex. I.

¹⁸ Hayes Ex. J.

- Kasidy from Austin, Texas, wrote that Mr. Hayes “was great and easy to work with.” Mr. Hayes also received a 10/10 rating in “satisfaction” and a 10/10 rating in “likely to refer” from this customer.¹⁹
- Lillia from Houston, Texas, wrote that Mr. Hayes “has really good customer service and was really helpful.” Mr. Hayes also received a 10/10 rating in “satisfaction” and a 10/10 rating in “likely to refer” from this customer.²⁰
- Rachel from Fulshear, Texas, wrote that Mr. Hayes “saved me lots of money,” and “took the time to explain my policy, thoroughly.” Mr. Hayes also received a 10/10 rating in “satisfaction” and a 10/10 rating in “likely to refer” from this customer.²¹
- Ronnie from Sugarland, Texas, wrote that Mr. Hayes “is a true professional who did an excellent job of getting me set up with my new policies, answered all my questions and concerns, and is a true asset to your organization.” Mr. Hayes also received a 10/10 rating in “satisfaction” and a 10/10 rating in “likely to refer” from this customer.²²
- Thi Thaonhu Vo wrote that Mr. Hayes provided “excellent and timely service in finding the policy that best fits my needs.” Thi Thaonhu Vo further indicated he was very satisfied with his purchase and that it was very likely he would refer a family member, friend or colleague to Goosehead.²³

3. Department’s Evidence

Staff presented testimony from Lewis Weldon Wright IV, the liaison between the Agent and Adjuster Licensing Office and the Enforcement Division of the Department. He testified that he has been with the Department for 13 years, and under normal circumstances, would review a nonstandard license application and make a recommendation to deny or issue a license prior to a license being issued. However, in this case, Mr. Wright testified, he conducted a criminal background check of Mr. Hayes after the Department issued the license to Mr. Hayes pursuant to the

¹⁹ Hayes Ex. K.

²⁰ Hayes Ex. L.

²¹ Hayes Ex. M.

²² Hayes Ex. N.

²³ Hayes Ex. O.

Commissioner's mandate, which required the Department to issue a temporary license to any person who applied for a temporary license without first undergoing the standard criminal background check. The Department's recourse against a license holder who is subsequently deemed unfit for licensure is to revoke that person's license, according to Mr. Wright.

Following Mr. Hayes's background check, the decision was made to revoke his temporary license based on his criminal history. Mr. Wright testified that under 28 Texas Administrative Code § 1.502(c), the Department considers it to be very important that a licensed individual is honest, trustworthy, and reliable. He stated that consistent with Texas Occupations Code § 53.023 and 28 Texas Administrative Code § 1.502, in determining an individual's fitness for licensure, certain crimes are considered to be of a more serious nature. Specifically, he stated, that under 28 Texas Administrative Code § 1.502(e)(1), the Department considers any offense of fraud is a serious offense and of prime importance in determining fitness for licensure.

He further noted that while there is no evidence of further criminal activity, it has been less than five years since Mr. Hayes was discharged from community supervision. Mr. Wright further noted that although Mr. Hayes has maintained a record of good conduct and has maintained steady employment, the mitigating evidence does not outweigh the seriousness of his offense at this time. He further testified that some of the people who submitted positive letters of reference or testified on behalf of Mr. Hayes did not seem to know about his criminal history. Furthermore, he testified, none of the customers who submitted a review for Mr. Hayes mentioned his criminal history.

C. Analysis

Staff presented sufficient evidence that Mr. Hayes's temporary license should be revoked. The question is whether Mr. Hayes offered sufficient mitigating evidence to demonstrate he is fit to be licensed despite his criminal history. After considering the factors listed in Texas Occupations Code § 53.023, the ALJ finds Mr. Hayes did not prove he is currently fit for licensure.

Although there is no evidence that Mr. Hayes engaged in any other criminal activity, the Department considers the felony offense of fraud to be of prime importance when determining fitness for licensure. The gravity of Mr. Hayes's actions cannot be understated. Mr. Hayes withheld a credit card given to him by an elderly customer and later used that card to make unauthorized purchases. Mr. Hayes betrayed the trust given to him by a customer and his actions are troubling. Hence, there is no question that Mr. Hayes's offense was serious.

Mr. Hayes was 24 years old at the time he committed the offense, which means it cannot be regarded as a youthful indiscretion. He was mature enough to understand the consequences of his actions. In addition, only five years have elapsed since he committed the offense and only three years have elapsed since he was discharged from community supervision. The ALJ is reluctant to allow Mr. Hayes to remain in a position where the likelihood to engage in similar activity is present.

Mr. Hayes has a record of good conduct since the offense and been steadily employed since 2012. The letters of recommendation and customer reviews for Mr. Hayes also demonstrate his strong work ethic and professionalism in a work environment. However, only three years have elapsed since Mr. Hayes was discharged from community supervision. Because Mr. Hayes has only demonstrated a record of good conduct for three years, the ALJ is not persuaded he has fully rehabilitated to make better decisions after considering the details of his offense. The positive attributes noted herein will serve Mr. Hayes well going forward. But, at this time, he has not demonstrated a fitness for licensure and the Department should revoke his temporary license.

III. FINDINGS OF FACT

1. On April 28, 2015, Zachary Hayes was 24 years old and worked as a bartender at a restaurant in Houston, Texas. On that date, a 75-year-old customer attempted to pay her bill using an American Express gift card.
2. Mr. Hayes informed the customer that she needed to provide an additional form of payment because, per restaurant policy, a gift card could only be used to pay for 80% of the total bill.
3. The customer provided Mr. Hayes an American Express Gold credit card.

4. Mr. Hayes returned the gift card to the customer but kept the customer's credit card.
5. Mr. Hayes used the customer's credit card, without consent, to make a \$3.56 purchase at a Shell Gas Station in Houston, Texas.
6. Mr. Hayes used the customer's credit card, without consent, to make a \$463.73 purchase at a Walmart in Houston, Texas.
7. Mr. Hayes attempted to purchase alcoholic beverages with the customer's credit card at an HEB Grocery store, but that purchase was declined.
8. On June 4, 2015, in Cause No. 146957401010 in the 228th District Court of Harris County, Texas, Mr. Hayes pled guilty to the offense of credit card abuse, a state jail felony. The court deferred adjudication of the offense and placed Mr. Hayes on two years of community supervision.
9. On March 24, 2020, the Commissioner of the Texas Department of Insurance (Department) issued Commissioner's Bulletin No. B-0008-20 in response to Governor Abbott's suspension of certain licensing requirements and fees to cope with the COVID-19 pandemic. The bulletin provided a temporary waiver of testing, fingerprints, and additional fees associated with licensure, and stated the temporary licenses issued will remain active until further notice.
10. The Commissioner's Bulletin further stipulated that the Department shall issue a temporary license immediately on receipt of a properly completed application executed by the applicant.
11. On April 8, 2020, Mr. Hayes applied for a temporary general lines agent license with a property and casualty qualification.
12. On July 1, 2020, pursuant to legislative mandate outlined in the Commissioner's Bulletin No. B-0008-20, the Department issued license number 2536701 to Mr. Hayes.
13. After the Department issued the license to Mr. Hayes, Lewis Weldon Wright IV, the liaison between the Agent and Adjuster Licensing Office and the Enforcement Division of the Department, conducted a criminal background check of Mr. Hayes and discovered his felony conviction.
14. On July 14, 2020, the Department's staff filed a notice of hearing to revoke Mr. Hayes's temporary license.

15. The notice 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 August 26, 2020, Steven M. Rivas, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH) convened a hearing on the merits by videoconference. Staff was represented by attorney Stephanie Andrews. Mr. Hayes appeared and was represented by attorney, Frank King. The hearing adjourned that day, and the record closed on September 11, 2020, when the ALJ received a copy of the hearing transcript.
17. The felony offense of credit card abuse is serious.
18. There is no evidence that Mr. Hayes has any further criminal history.
19. Five years have elapsed since Mr. Hayes committed the offense.
20. Mr. Hayes has a record steady employment since 2012.
21. Mr. Hayes has a record of good conduct since 2015.
22. Less than five years have passed since Mr. Hayes was discharged from community supervision.

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. Hayes received timely and sufficient notice of the hearing. Tex. Gov't Code ch. 2001; Tex. Ins. Code § 4005.104(b).
4. The Department may discipline a license holder if the Department determines the license holder has been convicted of a felony. Tex. Ins. Code § 4005.101(b)(8).

5. The Department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged if the person completed the period of supervision less than five years before the date the person applied for the license. Tex. Occ. Code § 53.021(d)(1)(B)(i).
6. The Department considers an offense involving fraud to be a crime of such serious nature that it is of prime importance in determining fitness for licensure. Tex. Occ. Code § 53.022, 28 Tex. Admin. Code § 1.502(e)(1).
7. In determining whether to revoke a license based on the license holder's criminal history, the Department will consider the factors in Texas Occupations Code §§ 53.022 and 53.023. 28 Tex. Admin. Code § 1.502(h).
8. The Department should revoke Mr. Hayes's temporary license because a preponderance of the evidence fails to establish his fitness to be licensed in light of his felony conviction. Tex. Ins. Code § 4005.101(b)(8).

SIGNED November 9, 2020.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**