Official Order of the Texas Commissioner of Insurance

Date: <u>05/19/2021</u>

Subject Considered:

Texas Department of Insurance v.

Tyrone Johnson

SOAH Docket No. 454-21-1142.C

Order on Request for Hearing

General remarks and official action taken:

The subject of this order is the request by Tyrone Johnson for a hearing, despite issuance of a default order due to his failure to respond to a notice of hearing. Mr. Johnson's request is denied.

Background

On January 25, 2021, the Texas Department of Insurance (TDI) filed a notice with the State Office of Administrative Hearings setting a hearing on Mr. Johnson's application for an adjuster all lines license. TDI proposed to deny Mr. Johnson's application based on his criminal history. A copy of the notice of hearing was mailed to Mr. Johnson's last known address via certified mail; however, Mr. Johnson failed to file a written response to the notice of hearing.

On April 1, 2021, TDI issued a default order denying Mr. Johnson's application for an adjuster all lines license due to his failure to file a written response to the notice of hearing. *See* Commissioner's Order No. 2021-6762.

On April 11, 2021, Mr. Johnson sent an email to TDI requesting a hearing to be held on April 12, the date originally scheduled for his hearing. TDI Enforcement staff submitted a reply opposing Mr. Johnson's request.

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Discussion

Under 28 TAC § 1.89, after informal disposition of a contested case by default, a motion by the respondent to set aside the default order and reopen the record will be granted if the respondent establishes that the failure to file a written response or to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident.

Under Government Code § 2001.146, a motion for rehearing in a contested case may be granted if the motion identifies with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error. Importantly, a motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. See 28 TAC § 1.89(d)(2).

It is unclear whether Mr. Johnson's request for a hearing is made under 28 TAC § 1.89 or Government Code § 2001.146, but he has failed to meet the requirements under either provision. His email to TDI provided no explanation of why he failed to respond to the notice of hearing or why the default order was issued in error.

Because Mr. Johnson failed to satisfy the requirements of 28 TAC § 1.89 or Government Code § 2001.146, his request is denied.

Order

It is ordered that Tyrone Johnson's request for a hearing is denied.

Commissioner of Insurance

DocuSigned by:

By: _______

Doug Slape

Chief Deputy Commissioner

Tex. Gov't Code § 601.002

Commissioner's Order No. 2018-5528

2021-6839

Justin Beam
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Justin Beam, Assistant General Counsel