
BEFORE THE UTAH INSURANCE COMMISSIONER

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

NATHAN BEESON and HEALTHCARE
SOLUTIONS, INC.,

Respondents

**FINDINGS OF FACT, CONCLUSION OF
LAW and ORDER**

Docket No. 2023-4402

Donald H. Hansen
Administrative Law Judge/Presiding Officer

BACKGROUND

This appeal involves two notices of agency action and revocation orders affecting the Respondents' Utah insurance licenses. On October 18, 2022, Respondents Nathan Beeson and Healthcare Solutions, Inc. (Respondents) were served with a Notice of Agency Action and Order by the Utah Insurance Department (Department). The Order revoked the Utah insurance licenses of both Respondents. On December 1, 2022 a separate Notice of Agency Action and Order were issued against respondent Healthcare Solutions, Inc., a Wyoming corporation, revoking its Utah resident license.

Respondents filed a request for hearing (appeal) of both agency actions on May 5, 2023, styling their appeal as "Respondents' Motion to Set Aside Agency Action and Order, Or in the Alternative to Reconsider" (Respondents' Motion). The Department filed an opposition memorandum on May 15, 2023 in response to Respondents' Motion. Respondents did not reply

to the Department's memorandum.

Oral argument was conducted on Respondent's Motion on June 6, 2023. The Department appeared through Shelley A. Coudreaut, Assistant Utah Attorney General. Respondents were represented by attorney Jon Hogelin¹. Respondent Beeson also appeared and presented testimony at the hearing. All parties were present at the hearing by telephone. The central issue considered at the appeal hearing, was the timeliness, or lack thereof, of Respondents' appeal.

The undersigned Donald Hansen is the Administrative Law Judge for the Department and serves as Presiding Officer in this adjudicative proceeding.

FINDINGS OF FACT

1. Respondent Beeson (Beeson) formerly was a licensee of the Department, holding two Utah resident individual producer licenses for separate insurance lines.
2. Respondent Healthcare Solutions, Inc. (Healthcare) was, at relevant times, a Wyoming corporation wholly owned and/or controlled by Beeson. Healthcare formerly held a Utah nonresident organization producer license, number 855465. Healthcare also held a resident organization producer license, number 758278.
3. On October 18, 2022, the Department issued a Notice of Agency Action and Order which revoked Beeson's Utah licenses, numbers 598468 and 888903. The same Order revoked HealthCare's Utah nonresident license number 855465.

¹ Mr. Hogelin's capacity in the matter is ambiguous. He stated during the hearing that he was appearing for Respondents solely for purposes of the appeal hearing, but, although he was identified as counsel for Respondents in Respondents' Motion, he has not responded in writing to the Department's "*Objection to Respondent's Motion to Set Aside*," dated May 15, 2023, nor has he filed a motion to withdraw as counsel for Respondents. Thus, in an abundance of caution, he will be treated as Respondents' counsel of record and will be copied on this decision and Order, along with Respondents through service upon Respondent Beeson.

4. On December 1, 2022, the Department issued a Notice of Agency Action and Order which revoked Healthcare's Utah resident producer license, number 758278 ².
5. Each of the Notices of Agency Action and Orders described above contained the same cautionary notice routinely provided to respondents in Department actions, which reads:

Pursuant to Utah Code Sec. 63G-4-203(1)(i) and Utah Admin. Code R590-160-7(1), this informal adjudicative proceeding shall be deemed closed, and this Order shall become final and take full effect, 15 days after this Notice of Agency Action and Order is email to the respondent unless a request for a hearing on this matter is received from the Respondent prior to that date.

6. The Notices of Agency Action and Orders also provided detailed instructions regarding how to file a request for a hearing:

A request for a hearing shall be in writing and sent by email to uidadmincases@utah.gov or by U.S. mail to Office of the Administrative Law Judge, Utah Insurance Department, 4315 S. 2700 W. Suite 2300, Taylorsville UT 84129. The request for hearing shall be signed by the person making the request and shall state the basis for the relief requested.

7. The Notices of Agency Action also caution every recipient that "[f]ailure to request a hearing will result in the Respondent being bound by the Order [and] will be deemed a failure to exhaust administrative remedies."
8. Respondents received both of the Department's Notices of Agency Action and Orders on or about their dates of service, *i.e.*, October 18, 2022 and December 1, 2022.
9. At some time around the service of the first Notice of Agency Action, Beeson was preparing for, and undergoing, major oral surgery. The SARPE oral surgery

² The specific grounds for the Department's dual notices of agency action and revocation orders are not discussed in this decision, inasmuch as they are not relevant to the sole issue currently before the Presiding Officer, which is the threshold jurisdictional issue of the timeliness of Respondents' appeal.

procedure which Beeson underwent involves several stages of preparation and a lengthy period of recovery. For an unspecified period of time during this process, Beeson was unable to speak.

10. Since the Department's Notices of Agency Action and Order were served, Beeson's income has substantially declined.
11. At some time shortly after receiving the Department's Notices of Agency Action and Orders, Beeson asked attorney Hogelin to seek an extension of time to respond from the Department. During the hearing, Hogelin stated that the employee in his office to whom he assigned the task of requesting an extension failed to complete the assignment and his/her employment was terminated.
12. Respondents' Motion, which for this appeal is treated as a request for hearing, was not filed until May 5, 2023. Thus, it was filed 198 days after the October 18, 2022 Notice of Agency Action, and 155 days after the December 1, 2022 Notice of Agency Action.

DISCUSSION and CONCLUSIONS OF LAW

1. Respondents were duly notified by each of the Department's Notices of Agency Action and Orders that the Order would become final and effective if not appealed via a timely request for hearing within 15 days, and that failure to request a hearing is legally considered a jurisdictional failure to exhaust administrative remedies.
2. The time to appeal the Department's October 18, 2022 Notice of Agency Action and Order expired on November 2, 2022.

3. The time to appeal the Department's December 1 2022 Notice of Agency Action and Order expired on December 16, 2022.
4. Respondents did not attempt to appeal either of the Department's actions until Respondents' Motion was filed on May 5, 2023.
5. The evidence that Beeson suffered declining income following the Department's actions, is taken as true in this case. However, there is no evidence that such income loss was causally connected to Respondents' failure to file a request for hearing until some seven months after the first Notice of Agency Action was served. As the instructions in every Notice of Agency Action make clear, filing a request for hearing requires no money whatsoever. There is no filing fee or other expense associated with filing a request for hearing. Hence, the argument that Beeson experienced a loss of income following the Department's actions which resulted in his inability to timely file a request for hearing, is not considered valid.
6. The evidence that Beeson experienced a difficult medical procedure around the time of the Department's Notices of Agency Action also fails to establish a causal link between his medical condition and his failure to timely file a request for hearing. There is no evidence that Beeson was so completely impaired as to render him incapable of filing a timely written request for hearing, which is not a complicated ordeal. The fact that, for an unspecified period, he was unable to speak would not have left him unable to file a written request for hearing. Accordingly, Respondents' argument based on Beeson's medical condition does not justify his failure to file a timely request for hearing.

7. Beeson's attempt to obtain an extension of time to request an appeal from the Department through his attorney, and the attorney's failure to ensure that this request was carried out (and the ensuing termination of the attorney's employee tasked with requesting the extension) presents a somewhat more difficult problem. On one hand, Respondents seem to argue that they should not be punished for their attorney's failure to ensure that the request for an extension was executed by the attorney's employee. This would be a compelling argument if requests for extension of the 15-day period for filing a hearing request were automatically granted. But such is not the case. There is no evidence that Respondents' request for an extension would have been granted even if it had been requested within either of the two 15-day periods that occurred in this case. Respondents may have reasonably relied on their attorney to make a timely request for an extension, but they could not rely on a mere assumption that the request would be granted, which would be wholly speculative. There was no evidence offered that Beeson took timely steps to be certain that the request for a time extension had been made and responded to before the 15-day periods had expired. Consequently, Respondents' argument that they had requested an extension, or intended to, is also unpersuasive.
8. Respondents argue that this tribunal is empowered to pardon their tardy request for hearing under the "excusable neglect" standard of Utah Rules of Civil Procedure, rule 60(b). However, they present no authority for the proposition that rule 60(b), which concerns "[r]elief from judgment or order," applies in this administrative proceeding.

The Rules of Civil Procedure “govern the procedure in the courts of the State of Utah in all actions of a civil nature.” *Id.*, rule 1 (emphasis added). An administrative tribunal is clearly not a “court” of general jurisdiction as contemplated by the Rules of Civil Procedure. Moreover, even if this tribunal were expressly authorized to apply rule 60(b) on grounds of “excusable neglect (*see* rule 60(b)(1)), such a motion must be filed within 90 days of the challenged judgment or order. *Id.* Here, Respondents’ Motion of May 5, 2023 was not filed within 90 days of either the October 18, 2022 Notice of Agency Action or the December 1, 2022 Notice of Agency Action. Therefore, Respondents’ argument under rule 60(b) is unavailing.

9. Respondents fail to cite any legal authority suggesting that the 15-day period to file a request for hearing may be lengthened or waived by the Department due to a respondent’s extenuating circumstances. Even if there were such an exception available, relief would not be granted in this case due to Respondents’ failure to establish that they were effectively prevented by circumstances beyond their control from timely requesting a hearing.
10. Based on the foregoing, Respondents’ request for hearing was untimely with respect to both Notices of Agency Action and Orders, and Respondents have not established any legal or factual basis to make an exception to the 15-day time period at issue in this case.

ORDER

The Department's Notices of Agency Action and Orders dated October 18, 2022 and December 1, 2022 revoking Respondents' Utah insurance licenses are each AFFIRMED.

DATED this 6th day of July, 2023.

JONATHAN T. PIKE
UTAH INSURANCE COMMISSIONER

/s/Donald H. Hansen

Donald H. Hansen
Administrative Law Judge/Presiding Officer
Utah Insurance Department
4315 South 2700 West, Suite 2300
Taylorsville, UT 84129
801-957-9321
Email: uidadmincases@utah.gov

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW and ORDER** was emailed to:

Nathan Beeson

[REDACTED]
[REDACTED]
[REDACTED]

HealthCare Solutions

[REDACTED]
[REDACTED]
[REDACTED]

Shelley A. Coudreaut, Esq.
Assistant Attorney General
sacoudreaut@agutah.gov

DATED this 6th day of July, 2023.

/s/Tatiana Karaivanova

Tatiana Karaivanova
Utah Insurance Department
4315 South 2700 West, Suite 2300
Taylorsville, UT 84129
801-957-9321

Right to Request Reconsideration

Pursuant to Utah Code Sec. 63G-4-302, any party may file a written request for reconsideration with the agency within 20 days after the date of this order. The request should be sent to uidadmincases@utah.gov.

Right to Judicial Review

Pursuant to Utah Code Sec. 63G-4-401, a party may obtain judicial review of final agency action by filing a petition for judicial review within 30 days after the date the order constituting final agency action is issued. *See also*, Utah Code Sec. 63G-4-403.

Right to Agency Review

Any party may request agency review of an order in an adjudicative proceeding within 30 days of the date of the order to be reviewed. The request should be sent to uidadmincases@utah.gov. Utah Insurance Department Rule R590-160-8 provides as follows:

(1)

(a) Agency review of an adjudicative proceeding, except an informal adjudicative proceeding that becomes final without a request for a hearing pursuant to Subsection R590-160-7(1), shall be available to a party to a proceeding by filing a request for agency review with the commissioner within 30 days of the date of the order.

(b) Failure to seek agency review shall be considered a failure to exhaust administrative remedies.

(2) Agency review shall comply with Sections 63G-4-301 and 63G-4-302.

(3)

(a) The commissioner or the commissioner's designee shall conduct the review.

(b) A designee shall not be the presiding officer who issued the decision under review.

(c) If a designee conducts a review, the designee shall recommend a disposition to the commissioner who shall make the final decision and shall sign the order.

(4) Content of a Request for Agency Review.

(a) A request for agency review shall comply with Subsection 63G-4-301(1)(b), and shall include the following:

(i) a copy of the order that is the subject of the request;

(ii) the factual basis for the request, including:

(A) citation to the record of the formal adjudicative proceeding; and

(B) clear reference to evidence or a proffer of evidence in an informal adjudicative proceeding;

(iii) the legal basis for the request, including citation to supporting authority;

(iv) for a challenge to a finding of fact in a formal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the entire record; and

(v) for a challenge to a finding of fact in an informal adjudicative proceeding, the reason that the finding is not supported by substantial evidence based on the evidence received or proffered.

(b) A party challenging a finding of fact in a formal adjudicative proceeding shall:

(i) order a transcript of the recording relevant to the finding;

(ii) certify that a transcript has been ordered;

(iii) file the transcript with the commissioner or the commissioner's designee and serve a copy on each party; and

(iv) bear the cost of preparing the transcript.

(c) The commissioner or commissioner's designee may waive the transcript requirement on motion for good cause shown.

(5) Memoranda.

(a)(i) A party requesting agency review shall submit a supporting memorandum with the request.

(ii) If a transcript is necessary to conduct the agency review, the supporting memorandum shall be filed no later than 15 days after the service of the transcript on the opposing party.

(b) An opposing memorandum shall be filed no later than 15 days after the filing of the supporting memorandum.

(c) A reply memorandum shall be filed no later than five days after the filing of the opposing memorandum.

(d) The commissioner or the commissioner's designee may order a party to submit additional memoranda to assist in conducting agency review.

(6) Request for a Stay.

(a) On motion by any party and for good cause, the commissioner or commissioner's designee may stay the presiding officer's order during the pendency of agency review.

(b) A motion for a stay shall be made in writing and may be made at any time during the pendency of agency review.

(c) An opposition to a motion for a stay shall be made in writing within 10 days from the date the stay is requested.

(7) The commissioner or the commissioner's designee may grant oral argument if requested in a party's initial pleading.

(8) Failure to comply with Section R590-160-9 may result in dismissal of the request for agency review.