
BEFORE THE UTAH INSURANCE COMMISSIONER

UTAH INSURANCE DEPARTMENT,

Complainant,

vs.

ALESSANDRO CAMERON MARSH,
AKA: SAMUAL CAMERON MARSH

Respondent

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
and
ORDER DENYING UNTIMELY
REQUEST FOR HEARING**

Docket No. 2023-4516

Donald H. Hansen
Administrative Law Judge/Presiding Officer

INTRODUCTION

Alessandro Cameron Marsh (Respondent) was licensed by the Utah Insurance Department (Department) as an individual resident producer, license number 680198. On May 24, 2023, the Department issued a Notice of Agency Action and Order purporting to revoke Respondent's license on various grounds relating to Respondent's character and fitness to be an insurance licensee under Utah law. The Department's Notice of Agency Action included a provisional Order revoking Respondent's license which, the Notice specified, would become final unless Respondent filed a request for hearing within fifteen (15) days from the date of the Order. Therefore, a request for hearing, to be considered timely, must have been filed on or before Thursday, June 8, 2023. Respondent did not file a request for hearing by said date.

On June 20, 2023, Respondent filed an email with a written request to the Department to "remove" the Department's Order revoking his license and to the "correct" the Department's

records¹. In substance, Respondent's request argued that he had voluntarily surrendered his license on May 23, 2023 by filing the prescribed surrender form, one day before the Department's Notice of Agency Action, and therefore the Department could not revoke a license that had already been surrendered by the licensee.²

The Department responded to Respondent's request on June 27, 2023 by filing "Complainant's Objection to Respondent's Request to Set Aside Agency Action and Order," which essentially argued that Respondent's June 20 request was not timely under the Utah Insurance Code and administrative rules because it was not filed within 15-days after service of the Notice of Agency Action, and therefore the Presiding Officer is without jurisdiction to grant the relief sought by Respondent³. On June 29, 2023, Respondent filed an "Amended Request to Set Aside Agency's [*sic*] Action" which argued, in essence, that the Department lacked jurisdiction to issue its Notice of Agency Action and Order because it failed to properly serve the

¹ This email from Respondent will be treated by the Presiding Officer as a request for hearing. *See* Utah Code Sec. 63G-4-203(1)(i) and Utah Admin. Code R590-160-7(1).

² The Presiding Officer did not schedule oral argument on Respondent's request for hearing because, in light of the nature of the threshold jurisdictional issue before the tribunal, and the multiple opportunities afforded the parties to provide comprehensive written briefing, oral argument would be unnecessary, redundant and would not materially assist the Presiding Officer in understanding the issue presented and the parties' arguments thereon.

³ The 15-day period for filing a request for hearing is based upon the Utah Administrative Procedures Act, Utah Code Sec. 63G-4-203(1)(b), and the Utah Admin. Code R590-160-7(1)(c). Neither the Utah Insurance Code nor the Department's administrative rules explicitly provide an exception to the 15-day period based on extenuating circumstances. However, the Presiding Officer concludes that there is necessarily an implied "good cause" exception to the 15-day time limit to file a request for hearing where a respondent is prevented from filing a request for hearing within the 15-day period due to compelling circumstances not of his/her own making, and beyond his/her ability to control. So, as a hypothetical scenario, if a respondent received a notice of adverse agency action but immediately thereafter experienced an incapacitating medical condition which prevented him/her from filing a request for hearing until after the expiration of the 15-day period, and the respondent had no other person who was aware of the notice of agency action and authorized by the respondent to respond to it, such circumstances might be considered to be good cause to accept an untimely request for hearing.

Notice and Order upon Respondent.

The following as a complete list of all pleadings (or equivalent documents) filed by the parties in this matter:

	<u>DATE</u>	<u>FILING PARTY</u>	<u>PLEADING TITLE</u>
1.	5/24/2023	Department	Notice of Agency Action and Order
2.	6/7/2023	Department	License Inactivation Notice (eff. 5/23/2023)
3.	6/20/2023	Respondent	Request to Have Record Amended and Order Removed
4.	6/20/2023	Respondent	Cancellation and Voluntary Surrender of License (dated 5/23/2023)
5.	6/27/2023	Department	Complainant's Objection to Respondent's to Set Aside Agency Action and Order
6.	6/29/2023	Respondent	Respondent's Amended Request to Set Aside Agency's Action and Order
7.	6/30/2023	Judge	Interim Case Management Order
8.	6/30/2023	Respondent	Additional Arguments in Support of Respondent's Request to Set Aside Agency's Action and Order
9.	7/3/2023	Respondent	Amended Additional Arguments in Support of Respondent's Request to Set Aside Agency Action and Order
10.	7/3/2023	Respondent	Emergency Motion to Stay Revocation Order
11.	7/5/2023	Judge	Interim Order Denying Respondent's Emergency Motion to Stay Revocation Order
12.	7/7/2023	Respondent	Respondent's Motion to Disqualify [Presiding Officer] Without Cause

13.	7/7/2023	Respondent	Respondent's Motion to Recuse [Presiding Officer]
14.	7/11/2023	Department	Complainant's Objection to Respondent's Motion to Disqualify Without Cause and Respondent's Motion to Recuse
15.	7/12/2023	Judge	Interim order Regarding Respondent's Motion to Disqualify Without Cause, and Motion to Recuse
16.	7/12/2023	Respondent	Reply to Complainant's Objection to Respondent's Motion to Disqualify Without Cause and Motion to Recuse
17.	7/14/2023	Respondent	Request to Dismiss Complainant's Response to Amended Request to Set Aside Agency Action and Order
18.	7/14/2023	Department	Complainant's Response to Respondent's Amended Requests to Set Aside Agency Action and Order
19.	7/18/2023	Commissioner	Order Denying Respondent's Motion to Recuse
20.	7/18/2023	Department	Complainant's Objection to Respondent's Request to Dismiss Complainant's Request to Set Aside Agency Action and Order
21.	7/19/2023	Respondent	Respondent's Objection to Complainant's Objection to Respondent's Request to Dismiss Complainant's Response to Amended Request to Set Aside Agency Action and Order

Each of the above pleadings has been carefully reviewed by the Presiding Officer and based thereon, the Presiding Officer now enters the following:

FINDINGS OF FACT

1. At all relevant times, Respondent held a non-resident individual producer insurance license issued by the Department, license number 982105.
2. On May 24, 2023, the Department served its Notice of Agency Action, Order and supporting Declaration against Respondent, by delivering the same to the Respondent at this last known email address of record on file with the Department.
3. The Department's Notice of Agency Action and Order provided a detailed factual basis for the proposed agency action, *to-wit*, revocation of Respondent's license.
4. The Department's Notice of Agency Action contained an Order which stated in relevant part:
 - (1) Respondent's Utah non-resident producer individual insurance license, number 982105 is revoked.
 - (2) 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 respondent unless a request for a hearing on this matter is received from Respondent prior to that date.
 - (3) 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.

.....

 - (5) If you fail to request a hearing you will be bound by this Order. Failure to request a hearing will be deemed a failure to exhaust administrative remedies and will preclude any further administrative or judicial review or appeal of this matter.
5. Accordingly, Respondent's final day on which he could timely file a request for a hearing was Thursday, June 8, 2023.
6. Respondent did not respond to the Notice of Agency Action until June 20, 2023, at which time he delivered to the Department an email entitled, "Request to have record amended

and order removed,” which the Presiding Officer treated as a statutory request for hearing. *See* fn.1, *supra*.

7. Respondent’s request for a hearing was filed nine (9) days after the expiration of the 15-day filing period provided by the above-quoted Notice of Agency Action and Order.

8. The Department asserted Respondent’s untimely request for a hearing and, consequently, his failure to exhaust administrative remedies, as a jurisdictional defense in two separate pleadings through the course of this administrative litigation. *See*, Complainant’s Objection to Respondent’s Request to Set Aside Agency Action and Order, filed June 27, 2023, p.3, paragraphs 7-9; *see also* Complainant’s Response to Respondent’s Amended Requests (*sic*) to Set Aside Agency Action and Order, filed July 13, 2023, pp. 11-12.

9. Respondent did not respond to the Department’s jurisdictional defense (Para. 8 above) and provided no explanation or excuse for the late filing of his request for hearing.

ANALYSIS

Subject matter jurisdiction is a *sine qua non* to any judicial or quasi-judicial proceeding. If a court or administrative tribunal lacks subject matter jurisdiction, it cannot proceed to consideration of any of the substantive claims or defenses asserted by the parties in a particular proceeding. It may not consider substantive legal arguments directed to the underlying merits of the controversy before it. An untimely act that is required by statute to be taken within a specified time cannot establish jurisdiction. *Smith v. Smith*, 2017 UT 77, Para. 36. The defense of lack of subject matter jurisdiction may be raised at any time and cannot be waived. Utah R. Civ. P, rule 12(h) (“When it appears ... that the court lacks jurisdiction of the subject matter, the court must dismiss the action.”); *see also Gonzales v. Thaler*, 565 U.S. 134, 141 (2012).

Jurisdiction is a threshold issue; without it, a tribunal can step no further. The tribunal's only authority when failure of jurisdiction is established is to dismiss the case. *Faucheaux v. Provo City*, 2019 UT 41, Para. 33. *See also, Ramsay v. Kane County Res. Special Serv. Dist.*, 2014 UT 5, Para. 17, 322 P.3d 1163.

An unexcused failure to file a timely request for administrative appeal or review results in a failure to exhaust administrative remedies, and thus a lack of subject matter jurisdiction. For instance, in *Christensen v. Utah St. Tax Comm.*, 2020 UT 45, the plaintiffs had not paid Utah income taxes for three years while Mr. Christensen worked overseas because he did not believe he was a Utah domiciliary at the time. Plaintiffs participated in an initial informal hearing, after which they were ordered to pay taxes and interest. They failed to then request a formal hearing, as was their statutory right, and instead sought judicial review in Utah district court, which denied the Tax Commission's motion to dismiss based on failure to exhaust administrative remedies. The Commission appealed and the Utah Supreme Court reversed, holding that plaintiffs' failure to file an administrative appeal for a formal hearing constituted a failure to exhaust administrative remedies. *Id.*, Paras. 28-37. The court stated that, "[a] petition for judicial review was untimely and deprived the court of jurisdiction" (citing *Union Pac. R.R. v. Utah State Tax Comm.*, 2000 UT 40, Para. 25); *see also Osguthorpe v. ASC Utah, Inc.* 2015 UT 89, Para. 29 (an untimely notice of appeal prevents an appellate court from exercising jurisdiction).

Here, Respondent missed several opportunities to attempt to justify his tardy filing of his request for a hearing. He was given ample notice of the Department's jurisdictional defense but offered no rebuttal. The Department asserted the untimely-filing-failure-to-exhaust defense a minimum of two times in this record (*see Findings of Fact*, Para. 8), and yet Respondent never

offered any excuse, rationale, explanation or justification for the tardy filing of his request for hearing⁴. He did file ten separate motions, “requests” and objections with this tribunal immediately after receiving filings by the Department’s counsel, so there does not appear to be any hardship that prevented him from filing those pleadings in short order. He could have done the same thing with respect to the timely-filing issue but didn’t.

The Presiding Officer has determined that the 15-day time limit for filing a request for hearing is impliedly subject to an exception for “good cause,” meaning compelling circumstances not of the party’s own making, and beyond his/her ability to control (*see* fn. 3, *supra*). However, this case does not come even close to meeting such an exception. Given multiple opportunities to justify or explain his tardiness in filing his request for hearing, Respondent failed to even attempt such an effort, in spite of two explicit jurisdictional challenges by the Department.

CONCLUSIONS OF LAW

1. Respondent’s June 20, 2023 request for hearing was untimely and its untimeliness was not excused by good cause shown.

⁴ It is acknowledged that Respondent claimed that he had suffered “irreparable harm as a result of the revocation order, already losing 3 carriers appointments and potentially another administrative proceedings with another state insurance department.” Respondent’s Emergency Motion to Stay Revocation Order, filed July 3, 2023, p. 2. Para. 2. By this assertion, it appears that Respondent may be claiming an exception to the failure-to-exhaust rule. *See* Utah Code, Sec. 63G-4-401(2)(b)(ii). However, in *Tooele County v. Erda Community Association*, 2022 UT App 123, the court of appeals endorsed the *Christensen* ruling, and discussed the hardship exception to the failure-to-exhaust-administrative-remedies doctrine, where “there is a likelihood of oppression or injustice.” The court held, “[f]or this exception to apply, it is the exhaustion requirement itself -- and not the underlying issue -- that must result on oppression or injustice.” *Id.*, at Para. 48. In this case, Respondent does not claim that the exhaustion requirement itself (*i.e.*, filing a timely request for hearing) resulted in irreparable harm. Rather, he claims the underlying issue of his license revocation is the cause of his harm. Hence, this exception to the failure-to-exhaust requirement does not apply to Respondent.

2. Respondent's failure to timely request a hearing, without legal excuse, results in a lack of subject matter jurisdiction before this tribunal.

3. Inasmuch as this tribunal lacks jurisdiction to conduct further proceedings, it is only permitted to dismiss Respondent's request for hearing with prejudice.

ORDER

The Presiding Officer ORDERS that Respondent's request for hearing is DISMISSED WITH PREJUDICE.

DATED this 17th day of August 2023.

JONATHAN T. PIKE
UTAH INSURANCE COMMISSIONER

/s/ Donald H. Hansen
Donald 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, CONCLUSIONS OF LAW and ORDER DENYING UNTIMELY
REQUEST FOR HEARING** was sent by U.S Mail and/or email to:

Alessandro Cameron Marsh
[REDACTED]
[REDACTED]

Alessandro Cameron Marsh
[REDACTED] [REDACTED]
[REDACTED]

Alessandro Cameron Marsh
[REDACTED] [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

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

DATED this 17th day of August 2023.

/s/ Jeanine Couser
Jeanine Couser
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.