

**BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF KANSAS**

In the Matter of the Application for a)	
Kansas Nonresident Insurance Producer's)	
License of JARRATT WHITE)	Docket No. 91985
NPN # 20143801)	

**ORDER DENYING APPLICANT'S
REQUEST FOR A HEARING UNTIMELY**

(Pursuant to K.S.A. 40-4905 and K.S.A. 77-501 *et seq.*)

The Kansas Insurance Department ("Department") denied the application of Jarratt White ("Applicant") for a Kansas nonresident insurance producer's license ("Application"). Applicant claimed he submitted a request for a hearing within the time specified in the denial letter. However, the Department did not receive a request from the Applicant until after the deadline to request a hearing expired. The Presiding Officer issued an Order to Show Cause requiring the Applicant to explain why his request for a hearing should not be denied as untimely. Applicant responded to the Presiding Officer's Order to Show Cause and Counsel for the Department filed a Motion in Opposition of Applicant's Untimely Request for a Hearing ("Motion").

Having reviewed Applicant's response to the Order to Show Cause and the Department's Motion, the Commissioner finds the evidence supports a finding that the Applicant's request for a hearing was untimely and denies Applicant's request for a hearing.

Underlying Facts

1. Applicant's Application was denied by letter dated December 17, 2021.
2. Applicant was notified in the letter as follows:

You have a right to a hearing before the Assistant Commissioner of Insurance to appeal the staff decision to deny your application for a license. Pursuant to K.S.A. 77-537 and K.S.A. 77-542, **within fifteen (15) days of the date of this letter, you may submit a**

written request for an appeal. A form which you may use for this purpose is enclosed.

3. The denial letter further notified Applicant that in the absence of a request for a hearing, the denial would become effective as a Final Order.
4. Applicant's deadline to submit a request for a hearing expired on January 4, 2022.
5. Applicant submitted a request for a hearing on January 19, 2022, via email to Jill Spurling, Legal Assistant to the Presiding Officer.
6. The Presiding Officer issued an Order to Show Cause on January 25, 2022, to provide the Applicant an opportunity to explain why his request for a hearing should not be denied as untimely. The Order directed Applicant to provide valid and substantive reasons to establish excusable neglect in failing to submit a timely request for a hearing.
7. Applicant provided a response to the Order to Show Cause via email to Ms. Spurling which stated the following:

“I believe there has been some sort of miscommunication. I requested a hearing and sent it out on 12/20/21 I never heard anything back and I was emailing a representative from liberty mutual licensing department because they have been handling all the licensing stuff for the employees . I was even in contact with a Sarah Cowan and she advised me the only thing I can do is request a hearing so I did as soon as possible. I never heard anything back and even called the department on different occasions and was told it can take 30-45 days to get prehearing and I would be contacted at a later date so I never knew that you didn't receive my request though the mail. Then on 1/19/2022 liberty mutual gave me a letter saying I have 30 days so I called back and asked for your information directly and that's when I reached out to you . Since it was the holidays we had a lot of time off for work and when I got back I the office on 01/04/2022 I sent out an email to my licensing department updating them with the status and saying I requested a hearing through the mail , it also shows their response I also attached the screen shots of the emails I had with Sarah from the Kansas Insurance department and I attached the letter I received from liberty mutual on 001/19/2022 .”

8. Applicant provided a screenshot of an email with Sarah Cowan dated December 17, 2021, which asked, "Is a hearing request the only option I have?" A second screenshot of an email from Ms. Cowan to Applicant on December 20, 2021, confirmed that a hearing was his only option.

9. Applicant also submitted a screenshot of an email from him to a producer licensing onboarding email address at Liberty Mutual dated January 4, 2022, in which he stated:

I was advised that I need to pay \$500 and request a hearing I order to get my Kansas license because [I] have had a misdemeanor in last 5 years and they said the hearing can take 90 days. I printed the paper and sent out the hearing request in the mail so I'm waiting on a response.

10. Counsel for the Department submitted a Motion in Opposition of Applicant's Untimely Request for a Hearing on February 4, 2022, which confirmed the email communications between the Applicant and Ms. Cowan and provided the following additional information:

a. On January 19, 2022, Applicant contacted the Department about appealing the decision on his Application. Applicant spoke to Toni Garrard, Senior Administrative Assistant for the Department's Legal Division, and inquired about how to request a hearing on the denial.

b. Ms. Garrard executed an Affidavit summarizing her conversation with Applicant that occurred on January 19, 2022. Ms. Garrard stated in the Affidavit that Applicant inquired about how to request a hearing, she instructed him on the process, and where the hearing request should be sent. Ms. Garrard further stated Applicant did not state during the conversation that he had already requested a hearing.

c. There is no record of the Department receiving a hearing request from Applicant dated December 20, 2021, by mail or otherwise. The Department received only the hearing request submitted to Ms. Spurling by email on January 19, 2022.

Applicable Law

11. The Commissioner has jurisdiction over the Applicant as well as the subject matter of this proceeding, and such proceeding is held in the public interest.
12. Pursuant to K.S.A. 77-526(a), the Assistant Commissioner of Insurance acting on behalf of the Commissioner of Insurance as the agency head, as provided in K.S.A. 77-547, is empowered to render a Final Order.
13. Pursuant to K.S.A. 40-4905(g), “Any applicant whose application for a license is denied shall be given an opportunity for a hearing in accordance with the provisions of the Kansas administrative procedure act [“KAPA”].”
14. Under KAPA, “Any notice of agency action resulting in a right to request a hearing pursuant to the Kansas administrative procedure act must include a statement informing the person that a written request for a hearing must be filed with the agency within 15 days of service of the notice.” K.S.A. 77-542(a).
15. Pursuant to K.S.A. 77-537(b)(2), “The state agency shall serve each party with a copy of the order in a summary proceeding in the manner prescribed by K.S.A. 77-531, and amendments thereto. The order shall include...notice of the time and manner for requesting a hearing on the order, as provided in K.S.A. 77-542.”
16. Pursuant to K.S.A. 77-537(b)(3), a summary order served on a party shall include “notice that, if a hearing is not requested, the order shall become effective upon the expiration of the time for requesting a hearing.”

Policy Reasons

17. Before denying an untimely request for a hearing, the Commissioner must determine the requirements of KAPA in providing notification of the right to request a hearing and the time and manner in which to request a hearing were properly given.

Findings of Fact and Conclusions of Law

18. The Presiding Officer finds that the summary order and notice of the time and manner in which to request a hearing on the summary order provided by Department to the Applicant met the requirements of KAPA. The Applicant was clearly notified of the requirement to request a hearing within fifteen days of the date of the denial letter and the manner in which to request a hearing. The letter further notified the Applicant that failure to appeal the decision would result in the letter becoming effective as a final order.

19. Applicant does not dispute receiving the denial letter, and in fact, contacted the Department the same date it was emailed to him, December 17, 2022, asking if a hearing was the only option to appeal the Department's decision.

20. Applicant was advised by email on December 20, 2021, that he would have to submit a request for a hearing to appeal the denial decision.

21. There is no evidence supporting Applicant's assertion to his employer that he "sent [a hearing request] out on 12/20/21." The Applicant asserts that he "never heard back and *even called the department on different occasions . . .*" The Applicant provides no dates for the alleged calls to the Department nor details as to whom he spoke. If he had, in fact, made such calls it does not seem credible that he would not have inquired, prior to January 19, 2022, whether the Department had received his request for a hearing.

22. Although the Applicant sent an email on January 4, 2022, to his employer's licensing department saying he requested a hearing through the mail, this does constitute proof that he actually mailed a request for a hearing on December 20, 2022.

23. When the Applicant was notified by his employer on January 19, 2022, that his employment was in jeopardy, he contacted the Department asking *again* how to appeal the denial of his license. At no time did he indicate he had previously requested a hearing, nor did he inquire as to the status of the hearing request he supposedly had already mailed to the Department. That same day he emailed a hearing request to the Department. It does not seem reasonable that had the Applicant mailed a hearing request on December 20, 2021, that he would then inquire on January 19, 2022, how to submit a hearing request.

24. The Applicant was ordered to provide "valid and substantive reasons to establish excusable neglect in failure to submit a request for a hearing by the deadline of January 4, 2022." This Applicant has failed to do. The Presiding Officer does not find his claim that he mailed a request on December 20, 2022, to be credible. He could easily have inquired during his purported calls to the Department "on different occasions" whether his request had been received prior to the deadline of January 4, 2022. His inquiry to Ms. Garrard on January 19, 2022, about how to appeal his denial casts additional doubt on his claim.

25. Applicant's documentation and response to the Order to Show Cause does not provide sufficient evidence to demonstrate he requested a hearing prior to January 19, 2022, or that good cause exists for granting an untimely request for a hearing.

26. The Presiding Officer finds the summary order of the denial of the Applicant's application for licensure became a Final Order when the Applicant did not request a hearing within the time specified in the notification included in the summary order.

IT IS THEREFORE ORDERED BY THE COMMISSIONER OF INSURANCE
THAT the Applicant's request for a hearing is **DENIED** as untimely. The contents of the December 17, 2021, letter describing the Department's reasons for the denial became a Final Order as a matter of law when Applicant failed to timely request an administrative hearing by January 4, 2022.

IT IS SO ORDERED THIS 14th DAY OF FEBRUARY 2022, IN THE CITY OF TOPEKA, COUNTY OF SHAWNEE, STATE OF KANSAS.



VICKI SCHMIDT
COMMISSIONER OF INSURANCE

BY: *Barbara W. Rankin*
Barbara W. Rankin
Assistant Commissioner
Presiding Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

Pursuant to K.S.A. 77-601 through K.S.A. 77-631, Applicant is entitled to judicial review, if this Order Denying Applicant's Untimely Request for a Hearing becomes a Final Order. The petition for judicial review must be filed within thirty (30) days of service of the date the Proposed Default Order becomes a Final Order (plus three [3] days for service by mail pursuant to K.S.A. 77-531). In the event Applicant files a petition for judicial review pursuant to K.S.A. 77-613(e), the Agency Officer to be served on behalf of the Kansas Insurance Department is:

Justin L. McFarland, General Counsel
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, KS 66604

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the above-and-foregoing Order Denying Applicant's Untimely Request for a Hearing upon Applicant by causing a copy of the same to be deposited in the United States mail, first class postage prepaid, on the 14th day of January 2022, addressed to the following:

Jarratt White



Applicant

And hand-delivered to the following:

Kimberley Davenport Megrail
Senior Attorney
Kansas Insurance Department
1300 SW Arrowhead Road
Topeka, KS 66604
Counsel for the Kansas Insurance Department

Jill Spurling
Legal Assistant

A handwritten signature in black ink, appearing to read "Jill Spurling", written over a horizontal line.