



OFFICE OF
INSURANCE COMMISSIONER
HEARINGS UNIT

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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of:) No. 11-0220
)
RACHEL ANDERSON) FINAL ORDER ON OIC's MOTION RE
) RIGHT TO HEARING
)
_____)

TO: Rachel Anderson
2337 E. 18th Street
Bremerton, WA 98310

COPY TO: Mike Kreidler, Insurance Commissioner
Mike Watson, Chief Deputy Insurance Commissioner
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

NATURE OF PROCEEDING

On July 25, 2011, the Insurance Commissioner received a letter dated July 21, 2011 from Rachel Anderson ("Anderson"). The purpose of said Demand for Hearing is to contest the Insurance Commissioner's ("OIC") decision not to pursue disciplinary action against Washington resident insurance producer John L. Peterson, and not to provide further relief for Anderson as requested. Specifically, Anderson asserts, the producer advised her in writing on Dec. 30, 2008, and January 6, 2009, that her application would not be considered by The Standard until after its telephone interview with her, and that therefore when The Standard contacted her for the telephone interview she advised The Standard at that time that she was not sure she wanted to apply for the coverage and did not proceed with the telephone interview she understood that her application was incomplete and would not be considered by The Standard.

Therefore, Anderson asserts that she is aggrieved because The Standard did, in fact, subsequently review her application and denied it, leaving her with a denial of application for insurance on her record. Further, Anderson asserts that the producer inserted specific significant information about her into her application for insurance without her knowledge or consent and therefore the application should be determined to be incomplete and invalid. The relief Anderson requests is for the Insurance Commissioner to require The Standard to remove the denial of her application from its records, to take disciplinary action against the producer, and to certify the facts of this matter to the public prosecutor.

OIC's MOTION RE RIGHT TO HEARING

On September 21, 2011, the undersigned held a first prehearing teleconference in this matter. Anderson appeared pro se. The OIC appeared by and through Carol Sureau, Esq., Deputy Insurance Commissioner in charge of his Legal Affairs division. During said prehearing conference, the OIC stated that initially it wishes to file a Motion challenging only Anderson's right to a hearing in this matter based upon the language of RCW 48.04.010(1). Accordingly, pursuant to a briefing schedule agreed upon by the parties, the OIC filed its Motion Re Hearing Right on October 10, 2011 and Anderson filed her Response to OIC's Motion Re Hearing Right on October 31, 2011. Subsequent to said filings, the parties agreed that the undersigned should make the final decision based upon the parties' pleadings and without oral argument.

Based upon the above activity, and after a careful review and consideration of (1) the arguments of the parties presented in the OIC's written Motion re Hearing Right identified above; (2) Anderson's Response to OIC's Motion re Hearing Right identified above; (3) the applicable statutes, regulations and case law; and (4) the entire hearing file, it is the decision of the undersigned that the OIC's Motion should be GRANTED based upon the following considerations:

1. The parties have properly filed their OIC's Motion re Hearing Right and Anderson's Response to OIC's Motion, the undersigned has been properly delegated to hear and determine this matter, and all procedural requirements have been met.

2. Insofar as is pertinent herein, RCW 48.04.010 provides:

- (1) *The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:*
 - (a) *If required by any provision of this code; or*
 - (b) *... upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner [Emphasis added.]*

3. In its Motion re Right to Hearing, the OIC argues that the OIC's decision not to pursue disciplinary action against a producer is not considered an "act" under RCW 48.04.040(1). The OIC asserts, however, that the OIC's decision not to pursue disciplinary action could be deemed a "failure to act" under RCW 48.04.040(1), but that there is a right to hearing only for *failure of the OIC to act, if such failure is deemed an act under any provision of this code*. Therefore, the OIC argues, because its decision not to do as Anderson requests in this matter cannot be deemed an act under any provision of [the insurance] code it is not an act which is an appealable failure to act.

4. Anderson asserts that she filed a Complaint with the OIC detailing the activities in which she alleges Mr. Peterson engaged. Mr. Peterson was the producer representing The Standard in Anderson's application for disability insurance. Anderson requested that the OIC take action against Mr. Peterson, and certify the facts of his actions to the public prosecutor, for 1) providing false and misleading statements to Anderson concerning when her application would be complete, leading her to believe that when she decided not to conduct the telephone interview with The Standard she was withdrawing her application and therefore it would not even be reviewed by The Standard; and 2) for inserting/forging information into portions of her application which she had not answered, and that Mr. Peterson did this without her knowledge or approval. Anderson further asked the OIC to require The Standard to revise its records to reflect that there was no denial of her application, based on her assertion that her application process was incomplete and should never have been either reviewed or accepted/denied by The Standard based upon the above information that Mr. Peterson provided to her about when it would be complete and also based upon the fact that the application contained information completed by the producer without her knowledge or consent. Therefore, in her Response to the OIC's Motion re Right to Hearing, Anderson argues 1) that the OIC's investigation was an "act" within the meaning of RCW 48.04.010(1)(b); 2) that the OIC also "acted" when it determined that there was insufficient evidence of violations and so decided to do nothing further; and 3) that the OIC's failure to certify the facts of producer Peterson's violations of the Insurance Code to a public prosecutor "which is a mandatory duty" qualifies as a "failure to act" (whether or not the OIC chose to discipline Peterson for his conduct) under RCW 48.04.010(1)(b).

5. While the OIC's argument may at first seem constrained, the example provided clearly demonstrates the proper interpretation of RCW 48.04.010(1)(b) and elucidates the difference between itself and the Anderson situation at issue herein. The example is as follows: RCW 48.18.110(2) provides *if the OIC does not disapprove a rate filing within sixty days ... the filing shall be deemed approved*. In this statute, the action of the OIC in disapproving a filing is clearly contemplated and set forth in the Code as an "act." Therefore, the OIC's failure to disapprove the filing would be considered a "failure to act, if such failure is deemed an act under the Code" and in that situation a right to hearing on the OIC's failure to disapprove a filing exists. The situation where an "act" is contemplated under the Code, as shown in this example, can be clearly differentiated from the Anderson situation in which the specific "act" requested by Anderson is not contemplated in the Code.

6. Anderson asserts that it is "mandatory" that the OIC certify the facts of this matter to the public prosecutor. However, she provides no sufficient authority to support this argument. Indeed, there is no mandatory duty for the OIC to send any given case to the prosecutor (and the OIC has no authority to dictate to the prosecutor what he or she must do about the case). Anderson herself, however, clearly is entitled to send her statement of the case, any and all documents herein supporting her position, and any other information she may have, to the prosecutor for action. There is no requirement that cases must be sent from specified authorities for action by the prosecutor (or civil courts). Indeed, it would seem from Anderson's filings herein, which included comparison of a copy of the application when she states she last saw it to the copy which the producer sent to the insurer, that there is an issue of insertion of information into this document whether it be with or without Anderson's knowledge or consent, as well as written statements from the producer regarding when the application would be complete.

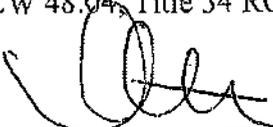
7. Based upon the above considerations, while the situation which Anderson describes is indeed serious and if the producer did insert information into her application without her knowledge or consent and/or if the producer misled her, to her detriment, into believing her application would remain incomplete, then he could be in violation of applicable insurance statutes and regulations, and likely other laws. However, the OIC has discretion based upon its own evaluation of the situation whether or not to require The Standard to remove the denial from her record, whether or not to pursue disciplinary action against the producer and whether or not to send the documents in this matter to the prosecutor.

8. Finally, Anderson has asked that a protective order be issued in this matter, based upon the fact that the documents filed herein contain personal medical information along with her social security number and other personal information. It has been determined herein, solely as a matter of law, that Anderson does not have a right to hearing herein. Therefore while a protective order may well have been issued regarding some or all of the supporting documents filed by Anderson should the case have proceeded to hearing on the merits, because the matter has been disposed of solely as a matter of law with the supporting documents being irrelevant, only Anderson's Demand for Hearing, the OIC's Motion re Right to Hearing and Anderson's Response thereto, without supporting documents, are made a matter of public record.

Based upon the above activity,

IT IS HEREBY ORDERED that the OIC's Motion re Right to Hearing, which challenges Rachel Anderson's right to a hearing in this matter, is GRANTED.

ENTERED AT TUMWATER, WASHINGTON, this 5th day of September, 2012, pursuant to RCW 48.04, Title 34 RCW, and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Order Re Motion Challenging Right to Hearing
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Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Rachel Anderson, Mike Kreidler, Mike Watson, Carol Sureau.

DATED this 5th day of September, 2012.


KELLY A. CAIRNS