

Cairns, Kelly (OIC)

From: Stillman, Drew (OIC)
Sent: Thursday, March 26, 2015 3:58 PM
To: 'finkle@jdrllc.com'
Cc: Cairns, Kelly (OIC); 'Anderson, Jason'
Subject: Robert Timmer, Docket No. 14-0247

Good afternoon Judge Finkle,

The OIC urges the Presiding Officer to deny Robert Timmer's requests to (1) transfer the hearing to an ALJ at OAH and (2) delegate to the ALJ the authority to enter the final order in this matter.

I. The Presiding Officer should deny Timmer's transfer request because it is unreasonable to allow hearing transfers to occur regardless of timing.

The Presiding Officer should deny Timmer's request because it is unreasonable, contrary to the policies underlying administrative procedure, and untimely.

It is unreasonable to read the APA and the Insurance Code to allow anything but a smooth progression to a hearing. We must read a statute to require reasonable results, even if contrary to the literal text. *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543-44 (1940). To do so, we consider the statute's broader context. See *City of Edmonds v. Washington State Bldg. Code Council*, 18 F.3d 802, 805 (9th Cir. Wash. 1994). Broadly, the APA and Insurance Code outline a progression from the commencement of an adjudicative proceeding to a hearing and beyond. A licensee clearly has the option to select the venue for hearing when the licensee demands a hearing. Mr. Timmer selected a hearing at the OIC. It is unreasonable to read the statute in a way that allows him to engage in last-minute forum shopping or delay tactics that destroy the objectives of fairness and efficiency underlying administrative procedure.

II. The Presiding Officer should deny Timmer's request to delegate final order authority because ALJ's cannot issue final orders and Timmer misapplies the appearance of fairness doctrine.

The Presiding Officer should deny Timmer's request because there is no other alternative and Timmer's appearance of fairness argument is a red herring.

The Presiding Officer does not have the authority to grant Timmer's request to delegate final order authority to an ALJ. Only the Insurance Commissioner or his designee may enter final orders. RCW 34.05.461(1). ALJs may only issue initial orders and cannot be the Commissioner's designee. *Id*; WAC 284-02-070(2)(d)(i) ("The initial order of an administrative law judge will not become a final order without the commissioner's review (RCW 34.05.464) and entry of a final order.").

Even if Timmer had a valid appearance of fairness claim, his clipped citation and unsound inferences are inadequate basis. He has the burden of establishing a violation and must do more than speculate about institutional bias. *Magula v. Dep't of Labor & Indus.*, 116 Wn. App. 966, 972, 69 P.3d 354 (2003). In fact, the "fairness of a decision-making body is measured by how the legislature chose to structure the administrative body." *Residents Opposed to Kittitas Turbines v. Energy Facility Site Evaluation Coun.*, 165 Wn.2d 275, 314, 197 P.3d 1153 (2008) (citation omitted). This means that the combination of investigative, prosecutorial, and adjudicative functions in one administrative body, in and of itself, does not violate due process or the appearance of fairness doctrine. *Washington State Med. Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 477-81, 663 P.2d 457 (1983) (explaining that a general predilection toward certain result is inadequate to show a violation). Moreover, political beliefs and communications with uninvolved agency staff do not give rise to bias warranting disqualification. *Cf. RCW 34.05.455(1)(c); Layne v. Hyde*, 54 Wn. App. 125, 131, 773 P.2d 83 (1989).

Here, Timmer draws unsound inferences from documents unrelated to this matter and speculates about the views of agency personnel who are not taking part in this proceeding. This lends no support to his contention that the appearance of fairness doctrine is implicated. In any event, Timmer's last-minute email should be considered a wholly insufficient means to argue that the Presiding Officer should alter a decades-old statutory scheme. The Presiding Officer must decline to do so.

Sincerely,

Drew Stillman

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