

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

2016 OCT -5 A 10:10

In the Matter of:

Amandeep Cheema,

Applicant.

Docket No. 16-0216

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

**ORDER ON THE OIC'S MOTION
FOR LEAVE TO AMEND
LICENSE APPLICATION DENIAL**

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Background

On July 26, 2016, Cheryl Penn ("Penn"), Producer Licensing and Oversight Compliance Supervisor at the Office of Insurance Commissioner ("OIC"), sent e-mail correspondence to Amandeep Cheema ("Cheema"), denying her application for an insurance producer license. In the correspondence, Penn alleges that Cheema admitted to investigators at the OIC that her husband assisted her by providing answers to producer licensing test questions, and cites RCW 48.17.530(1)(c) as the sole basis for the OIC denying Cheema's application for a producer's license.

In correspondence dated August 10, 2016, Cheema demands a hearing to contest the OIC's denial of her license application, and argues that she did not obtain her license through misrepresentation or fraud. On September 8, 2016, the undersigned held a first prehearing conference in this matter. Drew Stillman, Insurance Enforcement Specialist of the OIC's Legal Affairs Division, appeared on behalf of the OIC. Attorney Steve Chance represented Cheema. At the prehearing conference the OIC requested that it be allowed to amend the legal bases of its denial of Cheema's application for an insurance producer's license.

On September 13, 2016, the OIC filed a Motion for Leave to Amend (“Motion”) the denial in Penn’s July 26, 2016, correspondence with additional reasons and statutory bases for the denial, including: RCW 48.01.030; RCW 48.17.125; RCW 48.17.530(1)(b); RCW 48.17.530(1)(h); RCW 48.17.530(1)(k); RCW 48.30.040; WAC 284-17-125(1); and WAC 284-17-125(3). The OIC also filed the Declaration of Drew Stillman in Support of its Motion. On September 20, 2016, Cheema filed an Opposition to the OIC’s Motion (“Opposition”). On September 28, 2016, the OIC filed its Reply to the OIC’s Motion. Having considered these pleadings, I now make the following ruling pursuant to RCW 34.05.437(1) and WAC 10-08-200(4).

Analysis

RCW 34.05.413(5) addresses when an adjudicative proceeding commences, and states: “An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a prehearing conference, hearing, or other stage of an adjudicative proceeding will be conducted.” WAC 284-02-070(2)(d) explains the nature of hearings before the OIC, and states: “Adjudicative proceedings or contested case hearings of the insurance commissioner are informal in nature, and compliance with the formal rules of pleading and evidence is not required.” (Brackets and emphasis added). WAC 284-02-070(2)(a) states: “Provisions applicable to adjudicative proceedings are contained in chapter 48.04 RCW and chapter 34.05 RCW, the Administrative Procedure Act, and chapter 10-08 WAC.”

WAC 10-08-130(1) explains that the presiding officer (myself) may direct the parties or their representatives to engage in a prehearing conference to consider, among other things:

- (b) The necessity or desirability of amendments to the pleadings. . .
- (e) Procedural matters; . . .
- (g) Such other matters as may aid in the disposition or settlement of the proceeding.

WAC 10-08-130(3) explains that following the prehearing conference, the presiding officer shall do the following: “[I]ssue an order reciting the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered.” (Brackets and emphasis added).

It is clear from the language of WAC 10-08-130, that amendments to the pleadings (including OIC’s July 26, 2016 denial), or such other matters as may aid in the disposition of a case (e.g., consolidation of related issues) are contemplated in adjudicative proceedings. That said, I examine the common law and the superior court civil rules for guidance on when an agency may amend its original order that is currently the subject of an adjudicative proceeding.

An administrative agency has the authority to correct an obvious mistake when correction can be done promptly and fairly, even when the agency has made a final decision. *In the Matter of the Personal Restraint of Quackenbush*, 142 Wn.2d 928, 937, 16 P.3d 638 (2001). See also *Hall v.*

Seattle, 24 Wn. App. 357, 362, 602 P.2d 366 (1979)(“It will ill serve the public interest to deny an agency the right to correct its own obvious mistakes when that can be done promptly and fairly.”).

Furthermore, an agency has the power to correct its own action *prior to a hearing* at any point during an adjudicative proceeding. *Lawrence v. Dep't of Health*, 133 Wn. App. 665, 678, 138 P.3d 124 (2006). The Administrative Procedure Act, specifically RCW 34.05.434(2)(g)-(h),¹ simply requires that parties be put on notice of the issues to be litigated. *McDaniel v. Dep't of Social and Health Svcs.*, 51 Wn. App. 893, 898, 756 P.2d 143 (1988)(citing *International Ass'n of Firefighters, Local 469 v. Public Employment Relations Comm'n*, 38 Wn. App. 572, 579, 686 P.2d 1122 (1984)). Even if absent from the pleadings, where there is sufficient notice, and the issue(s) is fully litigated, an administrative law judge's decision will be upheld. *Id.* (quoting *International Ass'n of Firefighters*, 38 Wn. App. at 579).

RCW 48.17.090 addresses applications for resident insurance producer licenses and explains what must be included in such applications, and what the commissioner must review before approving such an application, and states in part:

(1) An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. As a part of or in connection with the application, the individual applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Before approving the application, the commissioner shall find that the individual:

- (a) Is at least eighteen years of age;
- (b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530;
- (c) Has completed a prelicensing course of study for the lines of authority for which the person has applied;
- (d) Has paid the fees set forth in RCW 48.14.010; and
- (e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(Emphasis added).

RCW 48.17.530, cross-referenced in RCW 48.17.090(2)(b), states in part:

¹ Formerly RCW 34.04.090(1)(d).

(1) The commissioner may. . . refuse to issue. . . an insurance producer's license. . . for any one or more of the following causes:

(a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(b) Violating any insurance laws, or violating any rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(c) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;

(e) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(f) Having been convicted of a felony;

(g) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(h) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere;

(i) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

(j) Forging another's name to an application for insurance or to any document related to an insurance transaction;

(k) Improperly using notes or any other reference material to complete an examination for an insurance license;

(l) Knowingly accepting insurance business from a person who is required to be licensed under this title and is not so licensed, other than orders for issuance of title insurance on property located in this state placed by a nonresident title insurance agent authorized to act as a title insurance agent in the title insurance agent's home state; or

(m) Obtaining a loan from an insurance client that is not a financial institution and who is not related to the insurance producer by birth, marriage, or adoption, except the commissioner may, by rule, define and permit reasonable arrangements.

(Emphasis added).

RCW 48.17.530(1) sets out causes, any of which the Commissioner *may* cite as the basis for denying a resident insurance producer application. Amongst the alternatives in RCW 48.17.530(1), the Commissioner maintains discretion to choose one or more of the appropriate grounds for denying an application. That said, RCW 48.17.090 sets forth the mandatory rule that if the Commissioner decides to approve an application for a resident insurance producer license, he must find, and the applicant must demonstrate, that the applicant has not committed any act under RCW 48.17.530(1) for which the Commissioner may deny his or her application.

The OIC's Motion, among other things, looks to add RCW 48.17.530(b), (h), and (k) as a basis for the denial of Cheema's application. The OIC's inclusion of only RCW 48.17.530(c) as the basis

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for its July 26, 2016 denial of Cheema's application for an insurance producer license is the result of at worst an obvious mistake, and at the very least an oversight, that must be permitted to be corrected under the cases cited above, especially since the hearing in this matter is not scheduled until December 2, 2016, provided the case is not decided via dispositive motion. RCW 48.17.090(2)(b) mandates that prior to approving an application for a resident insurance producer license, I must find that Cheema did not commit any violation in RCW 48.17.530. For me to not permit alleged violations of RCW 48.17.530(b), (h), and (k) to be litigated in this adjudicative proceeding would be contrary to the dictates of RCW 48.17.090(2)(b), which is a key provision I must consider in this matter.

The remaining authority the OIC looks to add as the basis of its denial includes RCW 48.01.030, RCW 48.17.125, RCW 48.30.040, and WAC 284-17-125. A closer look at these provisions demonstrates that they are interrelated with the allegations of misrepresentation and fraud that the OIC included in its July 26, 2016 denial of Cheema's application for an insurance producer license, and concern the same circumstances, notably whether prohibited practices occurred related to an insurance producer examination. These provisions address honesty in insurance matters generally, prohibit certain practices concerning producer examinations, and also address false or misleading representations relative to the business of insurance generally. Per the authority in *Quackenbush, Hall, Lawrence, and McDaniel*, at this early stage in this adjudicative proceeding the OIC must be given a chance to amend their bases for denial of Cheema's application.

An examination of CR 15 and the case law interpreting that provision, and application of the same by analogy to the Motion filed by the OIC in this matter (given the informal nature of the proceedings before the OIC, and the fact that compliance with the formal rules of pleading and evidence is not required, per WAC 284-02-070(2)(d)), *also* leads me to conclude that the OIC's Motion should be granted in its entirety.

CR 15(a) addresses a party's ability to amend pleadings in Superior Court, and the grounds for doing so, and states in part: "[A] party may amend the party's pleadings only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." (Brackets and emphasis added).

In *Hendricks v. Hendricks*, 35 Wn.2d 139, 148, 211 P.2d 715 (1949) the Washington Supreme Court stated the following with respect to amendments to pleadings, and the purpose behind rules like CR 15:

. . . [W]e have pointed out that the statutes permitting amendments to pleadings were enacted in the furtherance of substantial justice, and that amendments are properly allowed at any stage of the case, when to allow them will not operate to the prejudice of the opposing party. We have indicated that the true test is found in the answer to the question: Is the opposing party prepared to meet the new issue?

CR 15 should be liberally construed, and amendments should be allowed when the opposing party will be put to no disadvantage by the amendment. *Olson v. Roberts & Schaeffer Co.*, 25 Wn. App.

225, 227, 607 P.2d 319 (1980)(citations omitted). In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as CR 15 requires, be “freely given.” *Tagliani v. Cowell*, 10 Wn. App. 227, 233, 517 P.2d 207 (1973)(quoting *Foman v. Davis*, 371 U.S. 178, 182, 9 L.Ed. 2d 222, 83 S. C. 227, 230 (1962)).

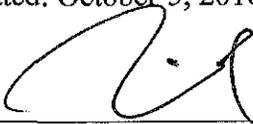
Granting the OIC’s Motion is warranted under CR 15(a) since such amendments will not prejudice Cheema per the standard in *Hendricks*. If Cheema is prepared to address the OIC’s denial of her license application under RCW 48.17.530(1)(c), due to allegations of misrepresentation and fraud concerning an insurance producer examination, she is prepared to meet the OIC’s other arguments under RCW 48.01.030, RCW 48.17.125, RCW 48.17.530, RCW 48.30.040, and WAC 284-17-125(1), which involve similar allegations concerning the same examination. As such, per *Olson*, Cheema will not be put at a disadvantage by me granting the OIC’s Motion.

Assuming this matter is not resolved on dispositive motion(s), a hearing is scheduled for December 2, 2016, during which Cheema and her representative will be allowed to present their case. Cheema has put forth no reason, similar to those articulated in *Tagliani*, which would justify denying the OIC’s Motion. Rather, Cheema simply argues at 2:16-20 of its Opposition that the OIC has not shown in its Motion why the amendments it proposes are necessary, and similarly argues at 4:8-9 of its Opposition that the OIC has failed to make any showing that the additional grounds for the license denial are “necessary or relevant.” Even if we assume these objections are true, they are not a basis to deny the OIC’s Motion under the authority discussed above.

Order

The OIC’s Motion is granted.

Dated: October 5, 2016



WILLIAM PARDEE
Presiding Officer

CERTIFICATE OF SERVICE

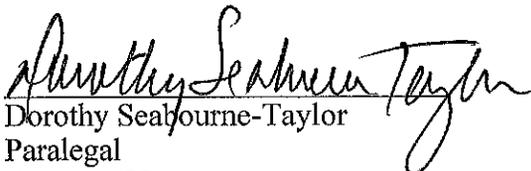
The undersigned certifies under the penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be filed and served the foregoing Order on the OIC's Motion for Leave to Amend License Application Denial on the following people at their addresses listed below:

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Drew Stillman, Insurance Enforcement Specialist, Legal Affairs Division
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PO Box 40255
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Dated this 5th day of October, 2016, in Tumwater, Washington.


Dorothy Sealbourne-Taylor
Paralegal
Hearings Unit