

**SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE**

**IN THE MATTER OF
JACOB HUBBS**

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**FINAL DECISION
INS 23-26**

After reviewing the record and the proposed order of the Hearing Examiner in this matter,

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Proposed Order, dated October 2nd, 2023 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Resident Insurance Producer License Application of the respondent is denied.

Parties are hereby advised of the right to further appeal the final decision to Circuit Court within (30) days of receiving such decision, pursuant to the authority of SDCL 1-26.

Dated this 11 day of November, 2023.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 57501

**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF THE
INSURANCE PRODUCER
LICENSE APPLICATION OF
JACOB HUBBS**

**INS 23-26
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on September 29, 2023, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on June 21, 2023. Clayton Grueb appeared as counsel for the Division with a witness, Haelly Pease. Nick Moser appeared as counsel for the applicant, Jacob Hubbs (Hubbs). Mr. Hubbs appeared and testified at the hearing. Davin Hubbs testified on behalf of Jacob Hubbs. The parties stipulated to Exhibits 1 through 11, which were entered into evidence.

Judicial Notice is taken of the previous Final Decision issued by the Secretary of Labor and Regulation on June 24, 2022. Findings of fact contained therein are adopted in this Proposed Decision, as if contained herein.

ISSUE

Whether the decision by the South Dakota Division of Insurance to deny Jacob Hubbs's resident insurance producer application was reasonable under SDCL §§58-30-167 and ARSD 20:06:01:03?

FINDINGS OF FACT

1. Hubbs applied for a resident insurance producers license on May 1, 2023.
2. This was the third attempt for Hubbs to obtain his resident insurance producer license. A prior determination following an administrative hearing was made by the Division of Insurance and the Secretary of Labor & Regulation on his 2nd attempt to apply. This prior determination was issued on June 24, 2022.
3. Hubbs answered "Yes" to questions 1(A), 1(B), and 2 on his most recent application. This indicates that he has both felony and misdemeanor convictions on his criminal record and has been a part of an insurance administrative hearing.
4. Hubbs included all required information with the application.
5. Hubbs has been working as a full-time processor for his father, Dave Hubbs, since he was released from prison.
6. Dave Hubbs is licensed as a resident insurance producer in South Dakota. He sells crop insurance in the Southeast part of the state, as well as in Nebraska. The firm has about

900 clients. Dave has a portfolio of about 250 clients. If granted a license, Dave Hubbs would have responsibility for Jacob Hubbs' work.

7. Hubbs has worked consistently since being placed on probation. He has done excellent work for his employer. The clients in his father's portfolio have all be informed of Jacob Hubbs' convictions and work towards rehabilitation. Employer and clients provided letters of recommendation for him for the previous hearing.
8. Hubbs has been sober for 5 years. He has support of family and church members.
9. The Division of Insurance denied Hubbs most recent application on May 31, 2023.
10. Hubbs filed a timely appeal on June 2, 2023.
11. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
12. To the extent any of the foregoing are improperly designated and are instead conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

REASONING

This case involves a denial by the Division of an application by Jacob Hubbs to be a South Dakota Insurance Producer. As this does not involve a revocation of a license, but an issuance of a license, the appropriate burden of proof is that of a preponderance of the evidence. *In re Certifiability of Jarman*, 2015 S.D. 8, ¶16, 860 N.W.2d 1, 8.

The Division is given the duty to protecting the insurance consumers or purchasers in this state by regulating the insurance industry and licensing the producers of insurance. To that end, they are given the legal requirement to enact rules to qualify and license. The administrative rule regarding licensure is found at ARSD 20:06:01:03. Which reads:

ARSD 20:06:01:03. In determining whether a person is in good standing, the director may consider, but is not limited to, the following factors:

- (1) Suspension, revocation, or denial of license by a state;
- (2) Administrative or judicial action pending in any state and the nature of that action;
- (3) Complaints, nature and number, against the person;
- (4) False statements, oral or written, to the division, including omissions;
- (5) Neglect of financial or fiduciary responsibilities;
- (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;
- (7) Evidence of drug or alcohol abuse or dependency; and
- (8) Acting as an agent without being licensed.

In reviewing these factors, the director may consider the recentness of the action or conduct overall, any mitigating circumstances, evidence of rehabilitation, and the person's cooperation.

In addition, the Division considers the factors found at SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... refuse to issue ... an insurance producer's license ...for any one or more of the following causes:
(6) Having been convicted of a felony;

Mr. Jacob Hubbs went off to college in 2015. He found himself in a situation at or about 2016. He ended up purchasing some fentanyl pills from the dark web and started selling them. He was caught with about 1000 illegal pills and faced felony drug charges. He was sentenced to 70 months in jail and 3 years of probation. He ended up attending a 9-month drug program and was released from probation early. He finished his probation about 2 and a half years ago.

Since his release from prison, he's held a steady job, gotten married, and has become a father. He attends church and has friends and family nearby. He doesn't attend any drug counseling or similar, and it is unclear if he had addiction problems or if he only sold the pills.

There is no set timeframe for rehabilitation, within the law or the insurance industry. There is no indication when a person is fully recovered from a "dark period" or when a person's past activity no longer follows them. To that end, the Division is given the power to make the determination whether an applicant is in good standing or is capable of representing the insurance industry in an upright and legal manner. The decision of the Division is required to be reasonable. "Reasonable" is defined generally as "Fair, proper, or moderate under the circumstances; sensible, according to reason." Black's Law Dictionary, 11th edition, 2019.

The evidence shows that Division considered all the pertinent information and has looked at all the recommendation letters. The law allows the decision of the Division to rest solely on one felony in a person's history. The Division's determination in this matter was reasonable given the recentness of the completion of probation and the seriousness of the crimes.

This decision does not prevent Mr. Hubbs from applying again at some point in the future. Reapplication is not something that has a time period attached to it. Furthermore, it should be reiterated that it has only been 2.5 years since Mr. Hubbs was released from probation.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over the application of Mr. Hubbs and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the reasonableness by a preponderance of the evidence.

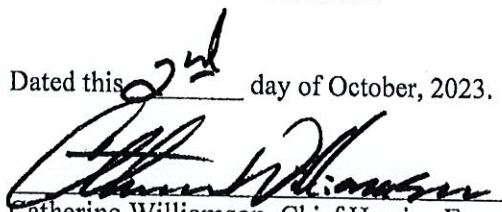
3. The Division established by a preponderance that the Division was reasonable in denying the application of Jacob Hubbs for a South Dakota Insurance Producer's license. SDCL 58-30-167 (6). ARSD 20:06:01:03.
4. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
5. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning, and Conclusions of Law, the Hearing Examiner enters the following:

PROPOSED DECISION

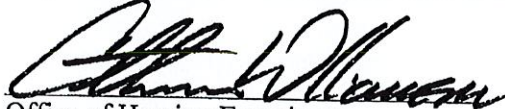
It is the Proposed Decision of the Office of Hearing Examiners that the determination by the Division of Insurance to deny a South Dakota Resident Insurance Producer License to Jacob Hubbs be affirmed as reasonable.

Dated this 2nd day of October, 2023.


Catherine Williamson, Chief Hearing Examiner
Office of Hearing Examiners
523 East Capitol Avenue
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify on October 27, 2023, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.


Office of Hearing Examiners

Mr. Clayton E Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Avenue, Suite 1
Rapid City, SD 57701

Mr. Nick Moser
Attorney at Law
PO Box 667
Yankton SD 57078

Mr. Larry Dieter, Director
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

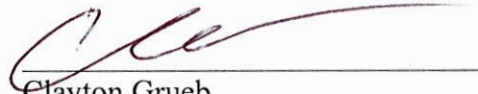
IN THE MATTER OF
THE INSURANCE PRODUCER
LICENSE APPLICATION OF
JACOB HUBBS

INS 23-26

NOTICE OF ENTRY OF PROPOSED
FINDINGS OF FACT, CONCLUSION OF LAW,
AND DECISION AND FINAL DECISION

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on November 7, 2023.

Dated this 14th day of November, 2023.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396


CERTIFICATE OF SERVICE

I, Clayton Grueb, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision with respect to the above-entitled action was sent U.S. Certified Mail thereon, to the following:

Jacob Hubbs
606 Goeden Dr.
Yankton , SD 57078

Nick Moser
P.O. Box 667
Yankton, SD 57078

Dated this 14th day of November, 2023 in Rapid City, South Dakota.



Clayton Grueb
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