

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

**IN THE MATTER OF
ERIC KIMBROUGH**

)
)
)

**FINAL DECISION
INS 23-50**

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 January 11, 2024 is adopted in full.

IT IS FURTHER ORDERED that the Non-resident 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 5 day of February, 2024.



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
ERIC KIMBROUGH**

**INS 23-50
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on January 11, 2024 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on November 9, 2024. Clayton Grueb appeared as counsel for the Division. Eric Kimbrough failed to appear. The Division moved for Default Judgement and offered exhibits 1 through 4 into the record. After hearing the arguments and reviewing the evidence, the Hearing Examiner now enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision in this contested case.

ISSUE

Whether the Division was reasonable in denying the Respondent's application for a non-resident Insurance Producer License due to the Respondent having a felony conviction; for demonstrating incompetence, untrustworthiness, or financial responsibility, and not being in good standing to obtain a license, in violation of SDCL §§ 58-30-167(1), (2), (6) & (8) and ARSD 20:06:01:03.

FINDINGS OF FACT

1. Eric Kimbrough applied for a South Dakota Non-Resident Insurance Producer License on May 18, 2023. (Exhibit 1).
2. Eric Kimbrough answered "YES" to the application question, "Have you ever been convicted of a felony" (Exhibit 1).
3. Eric Kimbrough attached documentation showing he has an extensive criminal history including felony convictions. (Exhibits 2 & 3).
4. The Division mailed Eric Kimbrough a denial letter on September 14, 2023. (Exhibit 4).
5. Eric Kimbrough made a timely request for a hearing.
6. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

7. 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 request by Eric Kimbrough to review the Division's decision to deny his application for Resident Insurance Producer's License. As this matter deals with the issuance of a professional license, the general burden of proof for administrative hearings of preponderance of the evidence, will apply. *In re Setliff*, 645 N.W.2d 601, 605 (2002 S.D.) Pursuant to SDCL § 58-30-168, the Court is to "determine the reasonableness of the director's action." Therefore, it is the Division's burden to show by the preponderance of the evidence that they were reasonable in denying Eric Kimbrough's license.

SDCL § 58-30-167 states that "... The Director may ... refuse to issue or renew an insurance producer's license . . . for any one or more following causes, (shown in pertinent part):

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;
- (6) Having been convicted of a Felony;
- (8) demonstrating incompetence, untrustworthiness, or financial irresponsibility;

ARSD 20:06:01:03 states that "In determining whether a person is in good standing, the director may consider, but is not limited to, the following factors" (shown in pertinent part):

- (4) False statements, oral or written, to the division, including omissions;
- (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;

The evidence indicates that Eric Kimbrough has a felony conviction. The evidence further indicates that the Division was appropriate in finding that Eric Kimbrough lacked good standing. Applying the law to the Findings of Fact the Division has shown by the preponderance of the evidence that the Division was reasonable in denying Eric Kimbrough's application for a Non-Resident Insurance Producer License.

CONCLUSIONS OF LAW

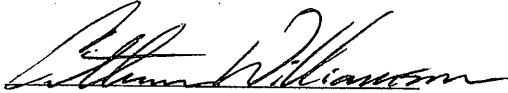
1. The Division has jurisdiction Eric Kimbrough and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing by the preponderance of the evidence that it acted reasonably in denying Eric Kimbrough's license.
3. The Division established by the preponderance of the evidence that Eric Kimbrough violated SDCL §§ 58-30-167 (1), (2), (6) & (8).
4. The Division established by the preponderance of the evidence that Eric Kimbrough is not in good standing pursuant to ARSD 20:06:01:03.
5. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
6. 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

The South Dakota Division of Insurance decision to deny Eric Kimbrough's application for a Non-Resident Insurance Producer License was reasonable.

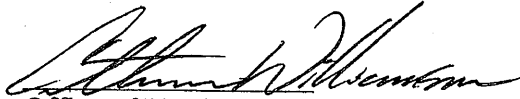
Dated this 11th day of January, 2024.



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

CERTIFICATE OF SERVICE

I certify on January 11, 2024, 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

Eric Kimbrough
109 Hemlock Dr., Apt. 211
Bloomington, IL 61704

Clayton Grueb
Division of Insurance
2330 N. Maple Ave, Suite 1
Rapid City, SD 57701

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

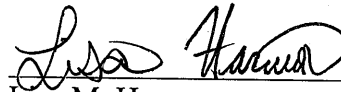
IN THE MATTER OF
ERIC KIMBROUGH

INS 23-50

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 February 5, 2024.

Dated this 8th day of February, 2024.



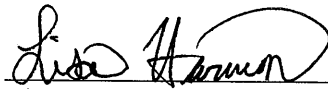
Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563

CERTIFICATE OF SERVICE

I, Lisa Harmon, 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, U.S. First Class Mail, and electronic mail thereon, to the following:

Eric Kimbrough
109 Hemlock Dr., Apt. 211
Bloomington, IL 61704

Dated this 8th day of February, 2024 in Pierre, South Dakota.



Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563