

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

**IN THE MATTER OF
ALDENISHAE CALTON**

)
)
)

**FINAL DECISION
INS 20-30**

An administrative hearing via teleconference was held on this matter on November 19, 2020 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division"). Attorney, Lisa M. Harmon, appeared as representative for the Division. The Division had a witness, Tiffany Carr. Aldenishae Calton ("Calton") appeared and testified at the hearing.

The Office of Hearing Examiners, through Hearing Examiner Ryan Darling, entered and served a Proposed Decision regarding the parties on January 15, 2021. After reviewing the record and the Proposed Decision, this Final Decision follows and includes Findings of Fact, Reasoning, Conclusions of Law, and the Order. I adopt the Hearing Examiner's Proposed Decision with modifications, the reasons for which are noted in footnotes relating to those areas pursuant to SDCL 1-26D-8. Documentary evidence will be cited as "(Exhibit ___)".

ISSUE

Whether the decision by the Division to deny Calton a nonresident insurance producer license was reasonable?

FINDINGS OF FACT¹

1. On or about February 28, 2020, Calton applied for a nonresident insurance producer license in South Dakota. Calton currently lives in Texas. (Exhibit 1).
2. On the application, Calton indicated "yes" when asked if she had ever been convicted of a misdemeanor or felony. (Exhibit 1).
3. In 2009, Calton had a misdemeanor theft offense. (Exhibits 6 & 11).
4. Calton was convicted of failure to ID/false information on April 29, 2013. This was Class A misdemeanor offense. (Exhibits 2 & 6).
5. Calton was convicted of disorderly conduct on April 21, 2017. This was a Class C misdemeanor offense. (Exhibits 2, 6, & 11).
6. Calton was also charged with possession of marijuana. The Division requested information on the charge more than once and did not get a response. (Exhibits 2 through 8).

¹ These Findings contain references to the administrative record.

7. On or about June 16, 2019, Calton was charged with aggravated assault with a deadly weapon in Texas. The case is still pending. (Exhibits 2 & 6).
8. The state of Kansas denied Calton's application for a license on March 23, 2020. (Exhibit 9).
9. On March 12, 2020, the Division sent a letter to Calton asking for an explanation of her criminal history. The letter was sent to Calton's address of record. (Exhibit 3).
10. On April 20, 2020, the Division sent a "Failure to Respond" letter to Calton asking for an explanation on the criminal history. (Exhibit 5).
11. On May 7, 2020, the Division sent another letter to Calton requesting more information on Calton's criminal history and the administration action in Kansas. (Exhibit 10).
12. On August 6, 2020, the Division sent a certified letter to Calton denying her application for a producer license. The reasons for denial included failing to provide complete information and documentation on her criminal history, violation South Dakota insurance laws and laws of another state, attempting to obtain a license through misrepresentation, using dishonest practices, and having an insurance producer license denied in another state.² (Exhibit 12).
13. Calton filed a timely appeal of the determination. (Exhibit 13).
14. A hearing on this matter was scheduled for November 19, 2020.
15. Any additional findings included in the Reasoning section of this decision are incorporated herein by this reference.
16. 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.

REASONING³

This case involves a request by Calton to determine the reasonableness of the Division's decision to deny her application for an insurance producer license. As this matter deals with the denial of a professional license, rather than revocation of an existing license, the general burden of proof for administrative hearings, preponderance of the evidence, will apply. *In re Jarman*, 2015 S.D. 8, ¶ 15, 860 N.W.2d 1, 7-8; *In re Setliff*, 2002 S.D. 58, ¶ 13, 645 N.W.2d 601, 605 (other citations omitted). "Preponderance of the evidence" is defined as "the greater weight of evidence." *Pieper v. Pieper*, 2013 S.D. 98, ¶ 22, 841 N.W.2d 781, 787 (quoting *L.S. v. C.T.*, 2009 S.D. 2, ¶ 23, 760 N.W.2d 145, 151). Pursuant to SDCL 58-30-168, the review 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 the agency was reasonable in its decision to deny Calton's license application. *Id.*; *Jarman*, 2015 S.D. at ¶ 15, 860 N.W.2d at 7-8 (other citations omitted).

² Added the reasons for the denial as presented at hearing and present in the administrative record.

³ The Reasoning section was modified to include applicable legal standards for reviewing the denial of an insurance producer license rather than the standard for revoking a license, and to remove statutory references that were not alleged or not made a part of the administrative record.

CONCLUSIONS OF LAW⁵

1. The Division has jurisdiction over Calton 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 may modify the Hearing Examiner's Proposed Decision by giving reasons for doing so in writing pursuant to SDCL 1-26D-6 and 1-26D-8.
3. The Division bears the burden of establishing that its denial of Calton's insurance application was reasonable by a preponderance of the evidence.
4. The Division established by a preponderance of the evidence that SDCL 58-30-167(1), (2), (3), (8) and (9) provide grounds for the denial of Calton's license application.
5. These violations permit the Director of the Division of Insurance to refuse to issue an insurance producer license pursuant to the provisions of SDCL 58-30-167(1), (2), (3), (8) and (9).
6. The Division established by a preponderance of the evidence that its denial of Calton's nonresident insurance producer license renewal was reasonable.
7. Any Conclusions of Law in the Reasoning section of this decision are incorporated herein by reference. 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 Secretary of the Department of Labor and Regulation enters the following:

FINAL DECISION

The decision by the Director of the Division of Insurance to deny Calton's insurance producer license application was reasonable by a preponderance of the evidence. Calton's nonresident insurance producer application should be denied.

THEREFORE IT IS HEREBY ORDERED that Calton's nonresident insurance producer license application is denied.

Parties are hereby advised of the right to further appeal this Final Decision to Circuit Court within 30 days, pursuant to the authority of SDCL Ch. 1-26.

⁵ The Conclusions of Law section was updated to match the additional law in the Reasoning section and reflect the standards for license denial.

Dated this 5 day of February, 2021.

A handwritten signature in cursive script, appearing to read "M. Hultman", with a long horizontal flourish extending to the right.

Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 5750

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

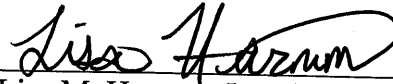
**IN THE MATTER OF
ALDENISHAE CALTON**

)
)
)

**NOTICE OF ENTRY OF
FINAL DECISION
INS 20-30**

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Findings of Fact, Reasoning, Conclusions of Law, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on February 5, 2021.

Dated this 8th day of February, 2021.



Lisa M. Harmon, Legal Counsel
South Dakota Division of Insurance

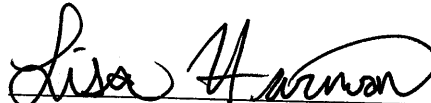
CERTIFICATE OF SERVICE

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

Aldenishae Calton
2280 N. Greenville Ave.
Richardson, TX 75082

Aldenishae Calton
7340 Grass Valley Trl
Fort Worth, TX 76123

Dated this 8th day of February, 2021.



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

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

IN THE MATTER OF

**INS 20-30
PROPOSED DECISION**

ALDENISHAE CALTON

This matter came for hearing before the Office of Hearing Examiners on November 19, 2020 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (Division). Attorney, Lisa Harmon, appeared as a representative for the Division. The Division had a witness, Tiffany Carr. Petitioner, Aldenishae Calton (Calton) appeared and testified at the hearing. The Hearing Examiner enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision.

ISSUE

Whether the decision by the Division to deny Calton a non-resident insurance producer license was reasonable?

FINDINGS OF FACT

1. On or about February 28, 2020, Calton applied for a non-resident insurance producer license in South Dakota. Calton currently lives in Texas.
2. On the application, Calton indicated "yes" when asked if she had ever been convicted of a misdemeanor or felony.
3. In 2009 Calton had a misdemeanor theft offense.
4. Calton was convicted of failure to ID/false information on April 29, 2013. This was Class A misdemeanor offense.
5. Calton was convicted of disorderly conduct on April 21, 2017. This was a Class C misdemeanor offense.
6. Calton was also charged with possession of marijuana. The Division requested information on the charge more than once and did not get a response.

7. On or about June 16, 2019, Calton was charged with aggravated assault with a deadly weapon in Texas. The case is still pending.
8. The state of Kansas denied Calton's application for a license on March 23, 2020.
9. On March 12, 2020 the Division sent a letter to Calton asking for an explanation of her criminal history. The letter was sent to Calton's address of record.
10. On April 20, 2020 the Division sent a "Failure to Respond" letter to Calton asking for an explanation on the criminal history within 20 days.
11. On May 7, 2020 the Division sent another letter to Calton requesting more information on Calton's criminal history and the administration action in Kansas.
12. On August 6, 2020 the Division sent a certified letter to Calton denying her application for a producer license. The reasons for denial included failing to provide complete information and documentation on her criminal history.
13. Calton filed a timely appeal of the determination.
14. A hearing on this matter was scheduled for November 19, 2020.
15. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
16. 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 the Division to deny a South Dakota Non-Resident Insurance Producer's License for Aldenishae Calton. As a consequence of the potential loss of Respondent's livelihood from the lack of licensure, the burden of proof in this matter is higher than the preponderance of evidence standard, which applies in a typical administrative hearing. "In matters concerning the revocation of a professional license, we determine that the appropriate standard of proof to be utilized by an agency is clear and convincing evidence." *In re Zar*, 434 N.W.2d 598, 602 (S.D. 1989). Our Supreme Court has defined "clear and convincing evidence" as follows:

The measure of proof required by this designation falls somewhere between the rule in ordinary civil cases and the requirement of our

criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt. It is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. The evidence need not be voluminous or undisputed to accomplish this.

Brown v. Warner, 78 S.D. 647, 653, 107 NW2d 1, 4 (1961).

SDCL 58-30-167(6) provides that the director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for having been convicted of a felony.

SDCL 58-30-167(8) provides that the director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

Unfair or deceptive acts or practices in the business of insurance include failing to respond to an inquiry from or failing to supply documents requested by the Division of Insurance within twenty days of receipt of such inquiry or request. SDCL 58-33-66(1).

Calton has a criminal history that includes deceptive offenses (failure to ID and theft). Calton also failed to provide timely responses to inquiries from the Division. This is deemed an unfair or deceptive act by statute. There was also an unreported administrative action. It is not unreasonable for the Division to deny a license based on these past events.

CONCLUSIONS OF LAW

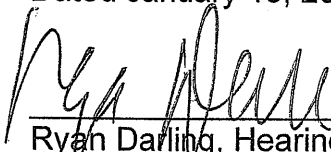
1. The Division has jurisdiction over Calton and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence to deny a South Dakota Nonresident Insurance Producer License for Calton. SDCL§ 58-33-167(6) and (8).
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

The South Dakota Non-Resident Insurance Producer License application of Aldenishae Calton should be denied.

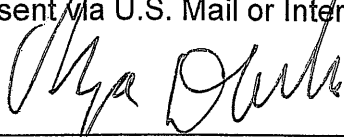
Dated January 15, 2021.



Ryan Darling, Hearing Examiner
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify that on January 15, 2021, at Pierre, South Dakota, a true and correct copy of the Findings of Fact, Conclusions of Law and Order in the above-entitled matter was sent via U.S. Mail or Inter-Office Mail to each party listed below.



Ryan Darling

ALDENISHAE CALTON
2280 N GREENVILLE AVE
RICHARDSON TX 75082

ALDENISHAE CALTON
7340 GRASS VALLEY TRL
FORT WORTH TX 76123

LISA HARMON
124 S EUCLID AVE 2D FLOOR
PIERRE SD 57501