

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

**IN THE MATTER OF
KENESHA DARLINGTON**

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**FINAL DECISION
INS 24-034**

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 August 20, 2024, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of the respondent will hereby be revoked.

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 3 day of Sept August, 2024.



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

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
KENESHA DARLINGTON

INS 24-034

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 September 3, 2024.

Dated this 5th day of September, 2024.



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

CERTIFICATE OF SERVICE

I, Callie Pospishil, 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:

KENESHA DARLINGTON
5911 Toscana Dr
Apt 1117
Davie, Fl 33314
kdarhealth@gmail.com
darlington.kenesha@yahoo.com

Dated this 5th day of September, 2024 in Pierre, South Dakota.



Callie A. Pospishil
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
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**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
KENESHA DARLINGTON**

**INS 24-034
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on August 13, 2024, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on July 10, 2024. Callie A. Pospishil appeared as counsel for the Division. KENESHA DARLINGTON (“DARLINGTON”) did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 9 into evidence, and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case.

ISSUE

Whether the Non-Resident Insurance Producer License of DARLINGTON should be revoked due to using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and failing to respond to the Divisions inquiries, in violation of SDCL 58-30-167(8) and 58-33-66(1).

FINDINGS OF FACT

1. DARLINGTON is licensed by the Division as an insurance producer on January 29, 2021. The license is currently active. (Exhibit 1).
2. DARLINGTON’s insurance appointment was terminated for cause from an insurer due to suspected fraudulent activity and failure to respond. (Exhibits 2-4, 6 & 7).
3. The Division sent inquiries to DARLINGTON on January 30, 2024, and February 20, 2024, at the address of record regarding the licensure matters. (Exhibits 5, 8, & 9).
4. DARLINGTON did not provide a complete response to the Division’s inquiries.
5. Any additional Findings of Fact 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 conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

REASONING

This case involves a request by the Division to revoke the South Dakota Non-Resident Insurance Producer's License of DARLINGTON. 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 58-33-66(1) requires DARLINGTON to respond to the Division and supply requested documents within twenty days from the receipt of a request. Also, the Division considers SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... revoke or refuse to continue, any license issued under this chapter... after a hearing... The director may... revoke... an insurance producer's license... for any one or more of the following causes:

- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

The evidence indicates that DARLINGTON used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and failed to respond to Division inquiries regarding the actions. Applying the law to the Findings of Fact, it is clear the Non-Resident Insurance Producer License of DARLINGTON is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over DARLINGTON 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 that DARLINGTON violated SDCL 58-33-66.
4. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License DARLINGTON is subject to revocation pursuant to SDCL 58-30-167(8).
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 Non-Resident Insurance Producer License of DARLINGTON should be revoked.

Dated this 20th day of August, 2024.



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

CERTIFICATE OF SERVICE

I certify on August 20, 2024, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.


Julie McClelland
Office of Hearing Examiners

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