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JUN 10 2009

By *J. DAVID NAVARRO*, Clerk
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

EDWARD E. CAIN

Petitioner,

v.

IDAHO DEPARTMENT OF
INSURANCE

Respondent.

Case No. CV OC 08 20810

MEMORANDUM DECISION

This case is before the court on administrative appeal from a decision of the Director of the Department of Insurance suspending his insurance agent's license and imposing sanctions. The petitioner appeared through counsel, Larry M. Dunn, Boise. The respondent appeared through deputy attorney general Thomas A. Donovan.

For reasons stated, the decision of the Department of Insurance is affirmed in all respects.

Facts and Procedural History

Petitioner has been a licensed insurance agent since 1998. He was unemployed for a brief time in 2004 and drew unemployment benefits. He became employed at the end of that year, or early in 2005, but, by misrepresenting his employment status, he continued to draw unemployment benefits until April of 2005.

Eventually, these facts caught up with him, and he was charged with a felony in 2007. The charges were reduced to a misdemeanor, and he entered a plea of guilty. He received a suspended jail sentence and a fine, with the notation that all restitution had been paid. These facts were brought to the attention of the Department of Insurance. The department instituted proceedings to revoke petitioner's agents license, contending several violations of I.C. § 41-1016.

A hearing officer was appointed, and a hearing held. There was no dispute to the facts outlined above. The hearing officer concluded that the circumstances described constituted a violation of I.C. § 41-1016(1)(f), but did not constitute a violation of I.C. §§ 41-1016(1)(h). He recommended a fine of \$1,000 but did not recommend revocation or suspension of license. A motion for reconsideration was denied.

When the findings and conclusions were presented to the director for action, the director accepted the hearing officer's findings of fact. However, the director concluded that the circumstances as found did constitute a violation of I.C. § 41-1016(1)(h) as well as § 41-1016(1)(f). He adopted the \$1,000 fine as recommended by the hearing officer, and added a suspension of license for a period of six months. A motion for reconsideration was denied.

Petitioner filed a timely petition for judicial review with this court.

Analysis

The statute in question, in its relevant parts, provides as follows:

I.C. § 41-1016. Administrative penalty--Suspension, revocation, refusal of license

(1) The director may impose an administrative penalty not to exceed one thousand dollars (\$1,000 ... and may suspend for not more than twelve (12) months ... any license issued under this chapter ... if the director finds that as to the licensee or applicant any one (1) or more of the following causes or violations exist:

(f) Being convicted of or pleading guilty to any felony, or to a misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public;

(h) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere;

There is no question that subsection (f) applies to this case, and the petitioner has not appealed from this finding. Under the statute, violation of this section, alone, is sufficient to support the imposition of both the administrative fine and license suspension. Nevertheless, the agent appeals, arguing that subsection (h) should not have applied, and that the sanction was inappropriate.

Do the circumstances establish a violation of I.C. § 41-1016(1)(h)?

It is not questioned that the undisputed facts that petitioner's wrongdoing did constitute fraudulent or dishonest practices under the first phrase of this section, demonstrated untrustworthiness and financial irresponsibility under the second phrase, and was a source of loss to the public under the third. The only issue raised is whether the misconduct met the condition stated of being "in the conduct of business in this state or elsewhere."

The hearing officer concluded not, based upon his construction of the phrase as requiring that the wrongdoing occur in the conduct of commercial activity or commerce. The hearing officer concluded that the misrepresentations made in order to obtain unemployment benefits were not made in furtherance of a commercial activity or in commerce, and therefore did not constitute wrongdoing “in the conduct of business.”

The director did not accept this conclusion. He construed the phrase more broadly, as including any activity carried on for profit or gain. Under this construction, the action of the petitioner in wrongfully obtaining unemployment benefits by submitting nineteen false status reports was an activity carried on for gain and was, therefore, in the conduct of business.

The precise issue has not been construed in any case in Idaho. Under well settled Idaho law, the courts are to grant “considerable weight” to an agency’s interpretation of statute. In this case, I conclude that the broader interpretation of the questioned phrase is reasonable and squarely within the director’s area of responsibility.

The fact that the hearing officer had concluded otherwise is of no consequence here. The director is not changing or modifying a finding of fact made by the hearing officer based on the evidence in the case. The only change here was in the consequences of the conclusions that the hearing officer drew from the findings of fact. Here, the director accepted all of the hearing officer’s findings of fact, without change or amendment. The conclusions were advanced by the hearing office as recommendations only, subject to review and change by the director.

I conclude that there is no basis to disturb the director’s conclusion in this case that the petitioner’s conduct constituted a violation of I.C. § 41-1016(1)(h).

Is the six month license suspension an abuse of discretion?

The hearing officer concluded that a fine was sufficient and any suspension or revocation of license would be unduly harsh. The agency staff sought a reconsideration of this conclusion from the hearing officer, but their motion was denied.

When the recommended order was reviewed by the director, he accepted the hearing officer's conclusion on the \$1,000 fine, but did not accept the conclusion that no further sanction should be imposed. The director added a six-month suspension of license.

Petitioner argues that the director did not provide sufficient reason for disregarding the hearing officer's recommendations, citing *Pearl v Board of Medicine*, 137 Idaho 107 (2002). However, in *Pearl*, the agency disregarded the hearing officer's findings of fact in addition to his recommended conclusions of law. Here, the director accepted the hearing officer's findings of fact and the conclusions of law generally – with the exception of the conclusion on violation of subsection 1016(1)(h) of the statute – but disagreed only with the consequence to be applied. The hearing officer's order stated that the sanctions to be imposed were recommendations only, and that the final decision on the extent of sanction to be imposed would be made by the director.

The director observed that the stronger sanction was warranted as a deterrent because he believed that if presented with an opportunity, petitioner might do it again. Petitioner objects to this comment, contending that there is no support in the record for it. The observation pertained to future conduct, and was therefore not a finding of fact or conclusion of law. To support the director's prediction, the agency points to the facts that the underlying violations were based upon nineteen separate fraudulent acts extending

over a five month period, that the monetary loss exceeded \$6,000, and that petitioner did not voluntarily come forward -- he was caught as the result of an audit. I am not persuaded that the director's comment was without foundation.

Again, the sanction to be imposed is exclusively within the discretion of the director. In this case, a finding of violation of either subsection 1016(1)(f) or 1016(1)(h) would be sufficient, under the express terms of the statute, to support both the imposition of a fine and the imposition of a suspension of up to twelve months. The six months suspension was well within that provided by statute. There is no basis to argue abuse of discretion or arbitrary or capricious action on the part of the director.

I conclude there is no basis to disturb the imposition of a six months license suspension on the petitioner in this case.

Conclusion

For reasons stated, the final order of the Director of the Department of Insurance is affirmed in all respects. Costs are awarded to the respondent.

Dated this 10th day of June, 2009



Sr. Judge D. Duff McKee

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of June, 2009, I mailed (served) a true and correct
copy of the within instrument to:

THOMAS A. DONOVAN
IDAHO ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE, ID 83720-0043

LARRY M. DUNN
DUNN LAW OFFICE
619 W GROVE ST
BOISE, ID 83702

J. DAVID NAVARRO
Clerk of the District Court

By: _____

Deputy Court Clerk

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AUG 29 2008

**Department of Insurance
State of Idaho**

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

STATE OF IDAHO

In the Matter of:)	
)	Docket # 18-2404-07
EDWARD E. CAIN)	
Resident Bail Producer)	FINDINGS OF FACTS, CONCLUSIONS
)	OF LAW, AND FINAL ORDER ON
License No. AG061468)	PETITION FOR REVIEW OF
)	PRELIMINARY ORDER
_____)	

I. Introduction, Procedural History, and Issues Presented.

A. Introduction and Procedural History

The Idaho Department of Insurance (Department) is seeking revocation of Edward E. Cain's (Cain) Resident Bail Producer License No. AG061468 because of misrepresentations he made to the Idaho Department of Labor over a four month period stating that he was not employed; and as a result of these misrepresentations, Cain received unemployment benefits. A Notice of Violation was filed on October 12, 2007. On November 2, 2007 Cain timely requested a hearing.

Hearing Officer Christian D. Brown, Esq. was appointed as the hearing officer on November 19, 2007. The parties submitted a stipulation of facts on February 13, 2008, and a supplemental stipulation of facts on March 12, 2008. Oral argument was held before the hearing officer on March 21, 2008, who filed a Preliminary Order on June 12, 2008.

The Hearing Officer ordered that a fine should be imposed but concluded that the evidence presented did not justify the revocation of Cain's resident bail license.

The Department filed a Motion for Reconsideration and the Respondent Cain timely filed an objection thereto. The hearing officer rejected the Department's claim and sustained his earlier preliminary order in his Order on Motion for Reconsideration of the Preliminary Order filed July 14, 2008.

The Department filed a Petition for Review of the Preliminary Order with the undersigned on July 22, 2008 and Respondent Cain judiciously objected to the Department's Petition.

Neither party has requested oral argument or further documentary submissions. Upon review of the record, memoranda, exhibits, and decisions rendered herein, this matter is ready for consideration and decision.

B. Findings of Facts.

1. The Idaho Department of Insurance issued Cain a resident bail bond producer license on February 17, 1998. The license number is AG061468. Cain currently holds this license.
2. From the initial date of issue of Cain's license as identified above, other than matter set forth in the above-entitled action, the Department has not filed an administrative action or made any formal findings of wrongdoing on behalf of Cain.
3. In late October 2004, Cain applied for and legally received for a time unemployment benefits from the Idaho Department of Labor.
4. Cain was advised of the lawful duty to disclose to the Idaho Department of Labor any employment for which he had been engaged prior to receiving any unemployment benefits.
5. Commencing on or about December 18, 2004 through April 30, 2005, Cain made 19 separate weekly claims for unemployment insurance benefits and received weekly payments in the amount of \$325.00 in the form of unemployment benefits.
6. During said time period, Cain had affirmatively represented weekly to the Department of Labor that he was not employed.
7. From December 18, 2004 through April 30, 2005, Cain had received a total of \$6,175.00 in unemployment benefits.
8. During the period of time from December 18, 2007 until April 30, 2005, Cain was in fact employed and working for Acme Bail Bonds and/or Surex, LLC as a bail

enforcement or recovery agent and not in the capacity of a bail bond agent selling bonds.

9. Cain lied 19 separate times to the Idaho Department of Labor between the dates of December 18, 2004 and April 30, 2005 when he represented that he was unemployed.
10. From December 18, 2007 until April 30, 2005, Cain was in need of additional funds and needed extra funds to pay his bills.
11. Cain's employer, Acme Bail Bonds and/or Surex, LLC reported to the Idaho Department of Labor that it had paid Cain earnings in the sum of \$770.00 per week from December 25, 2004 to April 30, 2005.
12. On December 12, 2005, a member of the staff at the Department of Labor, Melisa Huyck, contacted Cain, asking him if he knew he was not eligible for the money received while employed and receiving income.
13. Cain told the Department's staff member that he needed the money and that he had bills to pay.
14. The Idaho Department of Labor filed a lien (Lien Docket No.: T-274750) on January 23, 2006 with the Idaho Secretary of State's Office for the unemployment benefits overpayment.
15. On or about August 27, 2007, the Department received a letter from Larry M. Dunn, attorney for Cain, pursuant to Idaho Code § 41-1021(2) that informed the Department of Cain's criminal prosecution.
16. Mr. Dunn's letter to the Department included copies of certain court documents verifying the nature of the criminal prosecution.
17. On June 4, 2007, Cain had been charged in the District Court, Boise County, State of Idaho with a felony crime of Misrepresentation to Obtain Unemployment Benefits, in violation of Idaho Code § 72-1371(1).
18. The felony charge were amended on July 30, 2007 and reduced to misdemeanor violations of Idaho Code § 72-1373.
19. On July 30, 2007, Cain entered a guilty plea before the Magistrate Judge, District Court, Boise County, State of Idaho admitting to having submitted a false statement in violation of Idaho Code § 72-1373, and sentence was imposed.
20. Cain reimbursed the Idaho Department of Labor the sum of \$6,175.00 representing the amount of benefits he received wrongfully plus a lawful penalty in the amount of \$1,543.75.
21. The lien filed by the Idaho Department of Labor noted hereinabove was released by the Idaho Department of Labor effective January 9, 2007.

C. Issues Presented.

1. Whether Cain violated Idaho Code § 41-1016(1)(d), (f), or (h)?; and if so,
2. What is the appropriate penalty relating to the facts of this case?

II. Conclusions of Law and Final Order.

In making conclusions with regard to the foregoing matter, the Director of the Idaho Department of Insurance "shall exercise all of the decision-making power that he would have

had if the agency head had presided over the hearing.” Idaho Code § 67-5245(7).

The Department’s original *Notice of Violation and Right to Hearing* served on the Respondent, seeks revocation of Cain’s Resident Bail bond producer license on the basis that Cain violated Idaho Code §§ 41-1016(1)(d),(f), and (h).

Section 41-1016(1) sets out the penalty for certain violations, stating therein that

[t]he director may impose an administrative penalty not to exceed [\$1,000.00] ... and may suspend for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued under [chapter 10] ...if the director finds that as to the licensee .. any one (1) or more of the following causes or violations exist[.]

Section 41-1016(1). The statute identifies subparts (a) through (n) as certain violations. Among these sections, the Department claims Cain violated subsections (d), (f), and (h) and the Department claims such violations are the bases for revocation of Cain’s bail bond producer’s license. Idaho Code § 41-1016(1)(d),(f), and (h).

Subsection (d) states that a violation of Section 41-1016 includes “[i]mproperly withholding, misappropriating or converting any moneys or properties received in the course of doing insurance business.” Idaho Code § 41-1016(1)(d) (emphasis here).

In reviewing a statute and its application, “[t]he literal words of the statute provide the best guide to legislative intent, ... therefore, the interpretation of a statute must begin with the literal words of the statute.” *Ameritel Inns, Inc. v. Pocatello-Chubbuck Auditorium*, —Idaho—, —P.3d—, (Idaho 2008) (2008-ID-0724.154, p. 3).

The Department’s line of reasoning would have the Director stretch subsection 41-1016(1)(d) to encompass the incidental fact that Cain was employed as a resident bail bond agent while filing false claims with Idaho’s Department of Labor for unemployment benefits.

The Director is compelled by the plain meaning and wording of this statute that the wrongful “withholding, misappropriating or converting” monies or properties must be in the

course of *doing insurance business*. In other words, there must be a nexus between the wrongful acts as alleged and that such acts were “in the course of doing insurance business.” The findings herein do not demonstrate that the misappropriation of unemployment benefits—as illicit as they may be—is related to the course of doing insurance business. Therefore, as to Section 41-1016(1)(d), Cain did not violate said subsection (d) and accordingly the Department’s claim related thereto shall be dismissed.

With regard to subsection (f), it is a violation of Section 41-1016(1) when a producer has been,

convicted of or pleading guilty to any felony, or to a misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public.

Idaho Code § 1016(1)(f). As the record clearly reveals, Cain admitted in open court to a misdemeanor violation of Idaho Code § 72-1373 for making a false statement. *See*, Exhibit C. This charge was based on the fact that “Cain made 19 weekly claims for unemployment insurance benefits and received 19 payments of \$325.00, which Cain was not entitled to receive.” *Stipulation of Facts*, p. 2, para. 5.

As this matter involved a misdemeanor, the Director must consider whether the violation and basis therefore, evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public.

The 19 false claims were submitted to the State of Idaho Department of Labor. The claims required Cain to represent to the Department that he was **not employed or earning wages** from December 18, 2004 through April 30, 2005, when factually he was employed and earning an income.

Cain’s false claims evidence a lack of good moral character and honesty when he

FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND FINAL ORDER ON PETITION
FOR REVIEW OF PRELIMINARY ORDER -- 5

repetitively filed false claims, and demonstrate a lack of integrity and financial responsibility when he received his recurring illicit benefits. After receipt of a lien filed by the Idaho Department of Labor, Cain did refund the ill-gained benefits and paid an appropriate penalty.

Further, as Cain possesses a resident bail bond producer's license, and that the bail bond business requires particular diligence with regard to character, integrity and honesty, Cain's misconduct raises a serious question of his ability to provide acceptable service to the consuming public.

The Director concludes that Cain's acts are in violation of Idaho Code § 41-1016(1)(f) and an appropriate penalty shall be imposed.

Finally, the Department further claims that Cain violated Idaho Code § 41-1016(1)(h) by using "fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, or being a source of injury and loss to the public or others, in the conduct of business in this state or elsewhere." (emphasis here).

As concluded hereinabove, Cain's false claims and receipt of ill-gained benefits demonstrate dishonest practices, untrustworthiness and financial irresponsibility. The further inquiry here is to determine whether Cain may be a source of injury and loss to the public or others, and whether these imprudent acts on Cain's part are done so "in the conduct of business in this state or elsewhere."

Cain's disregard for the truth when filing the false claims and use of the unemployment benefits demonstrates a source of injury to the taxpayers of the state of Idaho and in turn demonstrates an injury and loss to the public.

Further, the Director notes that subsection 1016(1)(h) differs from subsection 1016(1)(d) as distinguished hereinabove with regard to the issue and term of "business."

The Respondent Cain argues that his illicit acts did not occur “in the conduct of business in this state or elsewhere.” In other words, Cain argues that he was not conducting “business” when he made the false claims. Subsection (h) mentions the term “business” in general and not in the sense of doing “insurance business.”

As noted hereinabove, when interpreting a statute, “[t]he literal words of the statute provide the best guide to legislative intent, ... therefore, the interpretation of a statute must begin with the literal words of the statute.” *Ameritel Inns*, supra. “The language of the statute must be given its plain, obvious and rational meaning.” *In the matter of the Hospitalization of Daniel W.*, —Idaho—, —P.3d— (2008 Idaho) (ID-R0421.001, p. 4). If the wording is ambiguous, then the analysis here will look to the rules of construction for guidance and the reasonableness of proposed interpretations may be considered. *In the matter of Hospitalization of Daniel W*, Id., p. 4.

The term “business” as used in the context of Section 41-1016(1) is not ambiguous and it can be given its plain, obvious and rational meaning. Regardless, the field of meaning will be plowed here.

The Respondent has proffered his interpretation of the term “business.” He proposed that Subsection (h) of Section 41-1016(1) is not applicable to the Cain matter because—like Subsection (d) reviewed above—Subsection (h) is limited to the business of insurance [Tr. p. 26 ll. 2-23], and that the Department of Insurance is charged with regulating the business of insurance and nothing else and that conduct that “occurs outside the business of insurance doesn’t really come within their purview.” Tr. p. 27, ll. 1-9. This proposed interpretation would mollify Cain’s problem with the Department, but it is inconsistent with the plain dictates of Title 41, Idaho Code. Here is why.

The Director is charged with administering and enforcing Title 41, Idaho Code. Idaho Code 41-210. A license is required in order to sell, solicit, or negotiate insurance in the State of Idaho. Idaho Code § 41-1004. “Before approving the application, the director shall find that the applicant: ... [h]as not committed any act that is a ground for denial, suspension or revocation of the license as set forth in title 41, Idaho Code.” Idaho Code § 41-1007. The Director may deny a license on the grounds set forth in Idaho Code § 41-1016. Also, the Director may revoke or suspend a license already issued. *See*, Idaho Code §§ 41-1008 and 41-1016. Having been convicted of any felony (whether or not the felony is related to the business of insurance) is a basis for denying a license. Idaho Code § 41-1016(1)(f). Where an applicant has been convicted of a “misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility” is another basis of denying an application for licensure. Idaho Code § 41-1016(1)(f). The Subsection (f) does not require the misdemeanor be related to the business of insurance.

Idaho Code § 41-1021 requires producers to report to the director any administrative action in another jurisdiction or by another governmental agency. It also requires the producer to report “any criminal prosecution” of the producer in any jurisdiction. These requirements are not limited to prosecutions relating to the business of insurance. *See*, Idaho Code § 41-1021.

It is also noted that good faith, honesty, and equity are matters of concern in the practice of the business of insurance. *See*, Idaho Code § 41-113. A person’s character is not donned like clothing to be later removed dependent upon time and circumstances. Character is an ethical quality of a person. Therefore, when someone makes application for licensure to engage in the business of insurance in the State of Idaho, that person’s conduct (or misconduct as the case may be) whether directly related to the business of insurance, is an issue to be considered by the

Director.

Turning back to the term “business,” subsection 41-1016(1)(h) uses the phrase “in the conduct of business in this state or elsewhere.” (Emphasis here). The term “business” is not modified by the additional word “insurance” as seen in Subsection 41-1016(1)(d) where it states “in the course of doing insurance business.” (See, analysis regarding Subsection 41-1016(1)(d), *supra*). (Emphasis here). As these subsections (d) and (f) of Section 41-1016(1) were passed by the same Legislature, it is unreasonable to claim this distinction was an oversight on the Legislature’s part. 2001 Idaho Sess. Laws 1056.

The question turns to the general term “business” as used in Subsection 41-1016(1)(h) and how it is defined. The term “business” has been defined as “Employment, occupation, profession, or commercial activity engaged in for gain or livelihood. *Black’s Law Dictionary*, 5th Ed., p. 179. This definition provides for its public character as a commercial, professional, or employment venture.

The term “business” has also been defined as, “[a]ctivity or enterprise for gain, benefit, advantage or livelihood.... [or] [t]hat which habitually busies or occupies or engages the time, attention, labor, and effort of persons as a principal serious concern or interest or for livelihood or profit.” *Black’s Law Dictionary*, Id., p. 179 (citations omitted). This definition provides a general definition which includes activities for gain or benefit, or where a person engages his or her time, attention, and effort for livelihood or profit.

In general, the term “business” not only involves a commercial enterprise or interest, but also employment, or some other endeavor whether in private or in public, with which a person is principally and seriously concerned.

It cannot be earnestly reputed that Cain was not involved in business in the general sense.

First, Cain was doing business with the State of Idaho when he applied for unemployment benefits. Second, Cain's false claims were repetitive and meant to gain an advantage by receipt of unemployment benefits for 19 weeks. Third, the repeated misrepresentations were clearly an activity on Cain's part that engaged his time, attention, and effort to receive a livelihood in the form of unemployment benefits. Fourth, Cain received a substantial illicit profit in the form of unemployment benefits from the taxpayers of the State of Idaho.

The Director concludes that Cain's acts are in violation of Idaho Code § 41-1016(1)(h) and an appropriate penalty shall be imposed.

The remaining issue before the Director is to determine an appropriate remedy, if any, with regard to Cain's violations of Sections 41-1016(1)(f) and (h).

The law provides that the Director may impose an administrative penalty not to exceed \$1,000 and may suspend "for not more than twelve (12) months or may revoke or refuse to issue or continue any license issued" under Chapter 10, Title 41, Idaho Code. Section 41-1016(1).

The Department argues that Cain is mature and that his illicit acts are not simply oversights or youthful indiscretions; the proximity in time; the deliberate and continuous misrepresentations over 19 separate occurrences; the felonious nature of the misrepresentations even though Cain was convicted of a misdemeanor; the lack of notice to the Department of Labor before the deception was revealed by an audit; the acknowledgment to a Department of Labor staffer of wrongdoing; and that due to the nature of insurance and bail bonds in particular that licensed bail bond producers need to be truthful and reliable.

The Department also argued and cited a number of cases involving revocations of bail agent licenses particularly cited in Exhibits H, I, and J.

The Respondent Cain argues that the Department allowed an earlier applicant unrelated

to the instant case to obtain insurance, or sought revocation, or reinstated or granted a license in cases involving similar circumstances or criminal activities as cited in Exhibits 1,2,3, and 4. Cain notes that he has fully refunded the original benefits paid to him plus the legal penalty. He also notes that with regard to his actions as a resident bail bond producer the Department has not taken administrative action against him. Finally, Cain argues that to impose revocation would be an abuse of discretion.

Both the Department and Cain have submitted prior Department enforcement cases as a genre of *stare decisis* with the hope that these cases direct the outcome of the Cain matter with regard to the same principles of law and similar facts. On the principle of *stare decisis*, Idaho's high Court has stated:

The doctrine of stare decisis is grounded on public policy and, as such, is entitled to great weight and must be adhered to, unless the reasons therefore have ceased to exist, are clearly erroneous, or are manifestly wrong and mischievous or unless more harm than good will result from doing so. . . . So, where the court has decided a question of law in another case and a like state of facts is subsequently presented, the rule of stare decisis applies and will not be easily changed.

Union Pacific Land Resources Corp. v. Shoshone County Assessor, 140 Idaho 528, 533, 96 P.3d 629, 634 (Idaho 2004). Even if the doctrine of *stare decisis* arguably applies to this setting, it is not necessarily binding upon this case, “because regulatory bodies perform legislative as well as judicial functions in their proceedings, they are not so rigorously bound by the doctrine of *stare decisis* that they must decide all future cases in the same way as they have decided similar cases in the past.” *McNeal v. Idaho Public Utilities Com’n*, 142 Idaho 685, 690, 132 P.3d 442, 447 (Idaho 2006). The Director, as the agency head of a regulatory body, is bound to make findings on substantial, competent evidence and is to explain the reasoning employed to reach its conclusions. *Rosebud Enterprises v. Idaho Public Utilities Commission*, 128 Idaho 609, 618, 917 P.2d 766, 775 (Idaho 1996).

The Respondent asks the Director to sustain the Hearing Officer's decision to impose a \$1,000.00 penalty.

The Director has carefully reviewed the prior cases presented by both parties hereto and does not find them persuasive or binding upon the facts of the instant case. These cases involved various acts of misrepresentation and providing false and misleading answers, and criminal acts such as theft, grand larceny, drug possession and use, and illegal use of premium moneys among other illicit activities. The disparity between the facts of these cases and the application of law of the State of Idaho, preserve the legal principle that the review of cases, findings and conclusions, and the issue of the amount and degree of penalty, including administrative fine, revocation or suspension is a matter of discretion on the part of the Director within the purview of Title 41, Idaho Code.

It is the duty of the Director to make findings based upon reasonable and competent evidence and to explain the reasons for the basis of his conclusions.

Therefore, when a person is issued a resident bail bond producers license, that person is entrusted with other people's lives, their personal issues, including finances, accompanying problems, family matters, finances, assets, and personal and familial needs. In particular, a bail bond producer is entrusted with the special care of people who are confronted with the stressful issues of jail time, collateral, and bond transactions.

The public policy of this state is eloquently stated in Idaho Code § 41-113, where it is noted that practice of insurance in Idaho affects the public interest and it requires all persons to be actuated by good faith, honesty, and equity in all insurance matters. The duty to preserve the integrity of the business of insurance rests on the producer as well as the insurer and the insured. Idaho Code § 41.113.

Cain was dishonest and misrepresented the facts when he applied for, and received unemployment benefits from the Idaho Department of Labor. He personally benefited from his misrepresentation of the facts when seeking benefits. He was engaged in business with the State of Idaho when he made application and submitted his weekly false claims. The Respondent's gain was not an indiscretion or incidental and minimal, but he received immediate and substantial pecuniary gain for an unabated period of 19 weeks.

These dishonest acts raise the issue of right judgment, good character and integrity. Character is the measure of what a person actually does; not necessarily what other people believe or say regarding that person. In this case, the Director finds that during the period of time he made false claims for unemployment benefits; Cain lacked the character necessary to be engaged in the conduct of the business of insurance in the State of Idaho. Cain's actions greatly concern the Director, because if Cain is willing to misrepresent a claim to the State of Idaho for his private benefit, what will prevent him as a bail bond producer in the private recesses of his office or a person's home from self-dealing when the opportunity to misappropriate other people's premium or collateral meets with Cain's monetary needs to pay his personal bills.

A monetary penalty is appropriate in this case, but such a penalty does not provide an answer to the Legislature's—and the public's—call for honesty, integrity, and good faith in the practice of insurance. If it presents itself again, under the present circumstances, the Director believes Cain will take the opportunity to do the irresponsible act. However, as noted above with regard to Cain's practice as a bail bond producer, Department has taken no administrative action against Cain since his license was issued over ten years ago. In addition, he has entirely refunded all the unemployment benefits wrongfully received plus the legal penalty.

In consideration of the record, and of the facts and law in this matter, and in the effort to

fulfill the mandate regarding the public interest required by law, the Director shall order the Cain's resident bail bond producers license no. AG061468 to be suspended for a period of six (6) months.

ORDER

NOW THEREFORE, based on the foregoing findings and conclusions, and the record in this case and good cause appearing therefore, pursuant to the above-cited code sections and Idaho Code § 41-117 and other applicable statutes, the Director does hereby ORDER:

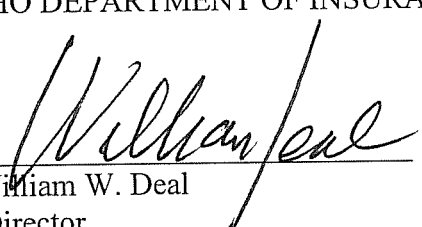
1. The claim that Cain violated Section 41-1016(1)(d) is hereby dismissed;
2. That Cain violated Idaho Code §§ 41-1016(1)(f) and (h);
3. Edward E. Cain shall pay to the Idaho Department of Insurance an administrative penalty in the sum of One Thousand Dollars (\$1,000.00).
4. That Idaho resident bail bond producer license of Edward E. Cain (License No. AG061468), is hereby SUSPENDED for a period of six months or until such time as the \$1,000.00 fine is paid in full, whichever is later;
5. That Edward E. Cain shall promptly surrender and return resident bail bond producer license No. AG061368 to the Idaho Department of Insurance during the term of the suspension.

IT IS SO ORDERED.

Dated this 29TH day of August, 2008.

IDAHO DEPARTMENT OF INSURANCE

By


William W. Deal
Director

CERTIFICATE OF SERVICE

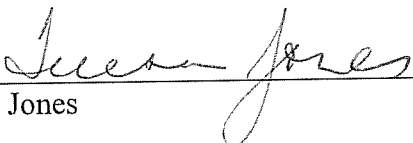
I HEREBY CERTIFY that I will on this 24th day of August 2008, cause a true and correct copy of the foregoing to be served upon the following by the designated means:

Larry M. Dunn
DUNN LAW OFFICE
619 W. Grove Street
Boise, ID 83702

- ☒ first class mail
- ☐ certified mail
- ☐ hand delivery
- ☐ via facsimile

Thomas Donovan, Esq.
Deputy Attorney General
Idaho Department of Insurance
700 State Street, 3rd Floor
Boise, Idaho 83720

- ☐ first class mail
- ☐ certified mail
- ☒ hand delivery
- ☐ via facsimile



Teresa Jones