

PROCEDURAL HISTORY

On or about October 21, 2016, the Petitioner filed an application for written consent to engage in the business of insurance. By letter dated June 13, 2017, the Department of Banking and Insurance ("Department" or "Respondent") denied the application based on the Petitioner's violation of 18 U.S.C. §2252A (a)(5)(B) (one count of possession of child pornography) and because the Petitioner remains on supervised released until August 2026.

On June 22, 2017, the Petitioner requested a hearing. On July 6, 2017, this matter was transmitted to the Office of Administrative Law ("OAL") as a contested case pursuant to N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

On September 22, 2017, the Respondent filed a motion for Summary Decision. The Petitioner's response was filed on November 19, 2017. The Respondent's reply was filed on December 7, 2017. Oral argument was held on February 21, 2018.

By order dated May 16, 2018, the ALJ denied the motion for Summary Decision on the basis that issues of material fact exist and that the record should be fully developed at an evidentiary hearing as to the Petitioner's rehabilitation.

An evidentiary hearing was held on October 4, 2018. On December 19, 2018, post-hearing briefs were filed by both parties. On January 7, 2019, the Respondent filed a reply. On February 7, 2019, the record was reopened to allow the Petitioner to file a complete version of the Residential Drug Abuse Program ("RDAP") Treatment Summary that had been marked as Exhibit P-1 into evidence, as the marked version was incomplete. On February 20, 2019, a complete version of the RDAP Treatment Summary was submitted. On February 27, 2019, the Petitioner filed a supplemental brief. On March 20, 2019, the Respondent notified the ALJ that they would not be submitting a supplemental summation and the record was closed.

On April 29, 2019, the ALJ issued the Initial Decision, wherein the ALJ concluded that based on the documentary and testimonial evidence provided, DeMaio has failed to demonstrate adequate evidence of rehabilitation and thus has failed to meet his burden, necessary to overturn the Department's decision.

EXCEPTIONS

The Petitioner filed exceptions dated May 12, 2019 ("Petitioner's Exceptions"). In his exceptions, the Petitioner argues that the ALJ failed to give adequate weight to the Petitioner's rehabilitation at the time of the hearing and that the record should be expanded to include additional documentation of his treatment progress. Petitioner's Exceptions at 1. Furthermore, while the Petitioner agrees that a conviction for possession of child pornography may be considered a crime of moral turpitude by some, it should not be disqualifying for licensure as the crime does not involve theft or fraud. Id. at 2.

The Department filed a Reply to the Petitioner's Exceptions on May 14, 2019 ("Reply"). The Department argued that the record cannot be expanded to include proof of treatment progress pursuant to N.J.A.C. 1:1-18.4(c). Reply at 2. Furthermore, the Department argues that the Petitioner has failed to provide any basis for expansion of the record or why these documents were not provided at the October 4, 2018 hearing. Ibid. Lastly, the Department points out that the Commissioner has previously denied licensure in similar circumstances, where the applicants' conviction for crimes of moral turpitude reflected adversely on the occupation of an insurance producer. Id. at 3-4.

DETERMINATION AND ORDER

After having carefully reviewed the Initial Decision, the Exceptions and Responses thereto, and the entire record herein, I find that the findings and determinations made by the ALJ in the

Initial Decision appropriately addressed the outstanding issue of the Petitioner's rehabilitation pursuant to the documentary and testimonial evidence provided.

As it relates to the exceptions filed by the Petitioner, wherein the Petitioner requests the opportunity to expand to record to allow proof of his treatment progress for his child pornography offense, the Petitioner did not provide a basis for reopening the record. In addition, pursuant to N.J.A.C. 1:1-18.4(c), "evidence not presented at a hearing shall not be submitted as part of an exception, nor shall it be incorporated or referred to within exceptions." In order to expand the record after an initial decision has been filed, the Petitioner must file a motion to reopen, addressed to the agency head. N.J.A.C. 1:1-18.5. Further, motions shall be accompanied by all necessary supporting affidavits and briefs or supporting statements. N.J.A.C. 1:1-12.4. Such motion has not been made at this time nor have the necessary supporting documentation been provided.

Similarly, while the Petitioner acknowledges that possession of child pornography is a crime of moral turpitude, the Petitioner argues that the crime is not a sufficient bar to licensure as the conviction does not involve theft or fraud. This assertion is incorrect. The Commissioner has previously denied licensure in circumstances where an applicant's conviction for crimes of moral turpitude reflected on the occupation of an insurance producer, as is the case in the instant matter. See Anderson v. Karpinski, 95 N.J.A.R. 2d (INS) 61 (1995) (an applicant's felony conviction for indecent sexual contact with a child in the second degree constituted a crime of moral turpitude which reflected adversely on the occupation of an insurance producer and precluded fitness for licensure); Fortunato v. Monteiro, 92 N.J.A.R. 2d (INS) 22 (1992) (license was revoked for conviction of a crime of aggravated assault, which was seen as a crime of moral turpitude that reflected adversely on Monteiro's fitness for licensure).

Accordingly, I hereby ADOPT the ALJ's Initial Decision as my Final Decision.


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Accordingly, I hereby ADOPT the ALJ's Initial Decision as my Final Decision.

THEREFORE, IT IS on this ^{4th} 10 day of June, 2019 ORDERED that Petitioner Michael J. DeMaio Jr.'s application for written consent to engage in the business of insurance pursuant to 18 U.S.C. §§1033 and 1034 is DENIED.



Marlene Caride
Commissioner

AR DeMaio FO/Final Orders - Insurance