OAH 8-1900-21565-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY
REHABILITATION REVIEW PANEL

In the Matter of the Application of John Richardson for Qualified Rehabilitation Consultant Registration Renewal (Reinstatement)

RECOMMENDATION ON MOTION FOR SUMMARY DISPOSITION

This matter came before Administrative Law Judge Eric L. Lipman on October 3, 2011, for oral argument on Mr. Richardson's Motion to Dismiss and the Department's Motion to Compel the Production of Responses and Documents.

Jackson Evans, Assistant Attorney General, appeared on behalf of the Minnesota Department of Labor and Industry (Department). Mark A. Karney, Attorney at Law, appeared on behalf of the Applicant, John Richardson.

STATEMENT OF ISSUES

1. Does the Office of Administrative Hearings (OAH) have subject-matter jurisdiction over this contested case?

2. Was Mr. Richardson's application for renewal of his Qualified Rehabilitation Consultant registration "deemed to be granted" under Minn. Stat. § 15.992?

3. Should Mr. Richardson be directed to produce responses to the Department's Interrogatory Numbers 2, 3, 7, 9 and 10 and Requests for Production of Documents Numbers 2 and 3?

For the reasons detailed in the Findings, Conclusions and Memorandum below the Administrative Law Judge concludes that OAH has jurisdiction in this matter, that Mr. Richardson's application for renewal of his Qualified Rehabilitation Consultant registration was "deemed to be granted" under Minn. Stat. § 15.992 and that the Department's request for discovery materials is mooted.

FINDINGS OF FACT

Based upon the filing of the parties, the following facts are not genuinely disputed:

1. Rehabilitation providers are registered under Minn. Stat. § 176.102 (2010). The statute recognizes three types of rehabilitation providers: a Qualified Rehabilitation Consultant (QRC), a QRC firm, and a registered rehabilitation vendor.[1]

2. A QRC is a professional who provides vocational rehabilitation services to injured employees in the State of Minnesota. The role of the rehabilitation provider is to provide vocational guidance and related assistance so as to restore an employee to suitable gainful employment.[2]

3. John Richardson is a 1986 graduate of the University of Minnesota and holds a bachelors of science in psychology.[3]

4. Mr. Richardson first obtained his QRC registration in 1986.[4]

5. In the years since he obtained his QRC registration, Mr. Richardson has been targeted for regulatory discipline on several occasions. Many of these complaints related to the claimed failure of Mr. Richardson to maintain respectful and appropriate professional boundaries – and were resolved by Mr. Richardson submitting a written apology for his behavior to the person who submitted the complaint.[5]

6. As part of the settlement of an action by the Department in 2008, Mr. Richardson voluntarily surrendered his QRC registration. The stipulation of settlement provided in part:

> Respondent has agreed to informal disposition of this matter without a hearing as provided under Minnesota Statute Section 14.59, Minnesota Statute 176.102 subd. 3a, and Minn. Rules Part 5220.1806
>
> ….
>
> No later than April 15, 2008, Respondent will voluntarily withdraw his QRC registration with the state of Minnesota for a period of two calendar years. After that time, Respondent may re-register as a QRC subject to the requirements of Minn. Stat § 176.102 and Minn. R. Ch. 5220. Respondent will not need to complete a QRC internship upon re-registration provided that Respondent meets the register requirements set out in Minn. Stat. 176.102 and Minn. R. Ch. 5220.[6]

---

[1] Minn. Stat. § 176.102; Minn. R. 5220.0100, subp. 28.

[2] *In the Matter of the QRC Firm Registration of PAR, Incorporated*, OAH 8-1900-21251-2.

[3] *Id.,* slip op. at 4.

[4] *Id.*.

[5] *Id.* at 5.

[6] Exhibit C, Department's Memorandum of Law ("Department's Ex. C").

7. On April 15, 2008, Mr. Richardson requested that his registration be placed on inactive status. The Department adjusted its records so as to denote that Richardson's QRC registration was "inactive."[7]

8. On April 20, 2010, Richardson completed an application to reactivate his QRC registration.[8]

9. The Richardson application for renewal of his QRC registration bears a date stamp from the Department of April 21, 2010.[9]

10. On June 14, 2010, counsel for Mr. Richardson wrote to the Department inquiring as to the status of Mr. Richardson's application.[10]

11. On June 21, 2010, Jeanne Gehrman, a Rehabilitation Provider Registration Specialist with the Department wrote a reply to counsel. She stated:

> Re: John Richardson, Application for Reinstatement of QRC Registration
>
> Dear Mr. Karney:
>
> I am writing in response to your June 14, 2010 letter, which was received by the Department on June 16, 2010, in which you request an update on the status of Mr. Richardson's application for re-registration. The Department is reviewing Mr. Richardson's application. Mr. Richardson will be notified in writing as soon as a determination is made.
>
> Sincerely,
>
> Jeanne Gehrman
> Rehabilitation Provider Registration Specialist.[11]

12. On June 30, 2010, Mr. Richardson served a Complaint upon the Department asserting that the Department did not issue a QRC registration to him as required by law. Mr. Richardson sought declaratory relief from the state courts.[12]

---

[7] Department's Exs. D and K.

[8] Department's Ex. F.

[9] *Id*.

[10] Richardson's Motion to Dismiss, Ex. 3.

[11] Department's Ex. G.

[12] Richardson's Motion to Dismiss, Ex. 3; *Richardson v. Minnesota Department of Labor and Industry,* Case No. 62-CV-10-7591.

13. On July 22, 2010, the Department wrote to Mr. Richardson asserting that it was not approving his application to reactivate his QRC registration. The Department asserts that Mr. Richardson's misconduct following the April 15, 2008 settlement make him unfit for renewal of registration.[13]

14. On August 20, 2010, Mr. Richardson appealed the denial of renewal of his QRC license.[14]

15. At the time Mr. Richardson appealed the denial of his application for re-registration, a parallel licensing action was underway against the QRC firm registration held by Mr. Richardson's company – PAR, Incorporated.[15]

16. On April 6, 2011, the undersigned issued a report including Findings of Fact, Conclusions and a Recommendation *In the Matter of the QRC Firm Registration of PAR, Incorporated*, OAH 8-1900-21251-2.[16]

17. On August 15, 2011, the Honorable Elena L. Otsby issued an Order on the parties' cross-motions for summary judgment in *Richardson v. Minnesota Department of Labor and Industry,* Case No. 62-CV-10-7591. The District Court declined to "exercise subject-matter jurisdiction over Plaintiff's declaratory judgment action." The Court preferred to have the agency "make the decision" by having this process continue through the Minnesota Administrative Procedures Act.[17]

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Mr. Richardson's appeal of the Department's denial to reactivate QRC Registration Number 656 sought a "proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing." The appeal was thus a "contested case" and appropriate for referral to OAH.[18]

2. The Administrative Law Judge and the Rehabilitation Review Panel have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 176.102.

---

[13] *See,* Letter of Jocelyn Olson (September 7, 2010).

[14] *See,* Letter of Mark Karney (August 20, 2010).

[15] *See,* First Prehearing Order, *In the Matter of the QRC Firm Registration of PAR, Incorporated*, OAH 8-1900-21251-2.

[16] Findings of Fact, Conclusions and a Recommendation, *In the Matter of the QRC Firm Registration of PAR, Incorporated*, OAH 8-1900-21251-2.

[17] Order on Motions for Summary Judgment, *Richardson v. Minnesota Department of Labor and Industry,* Case No. 62-CV-10-7591, slip op. at 1 and 6 (August 15, 2011).

[18] *See,* Minn. Stat. § 14.02, subd. 3.

3. Mr. Richardson's April 21, 2010 application for renewal of his QRC registration was not a "request" under Minn. Stat. § 15.99. The application did not relate to "zoning, septic systems, watershed district review, soil and water conservation district review, or the expansion of the metropolitan urban service area …."[19]

4. Mr. Richardson's April 21, 2010 application for renewal of his QRC registration was an application for "maintenance of a business license" as those terms are used in Minn. Stat. §§ 15.991 and 116J.70, subd. 2.[20]

5. Mr. Richardson's April 21, 2010 application for renewal of his QRC registration was subject to the statutory timelines for final action set forth in Minn. Stat. § 15.992, subd. (1). This statute provides:

> Deadline for action. Unless a shorter period is provided by law, all state agencies that must act on a customer's application for a license shall take final action on it within 60 days after the customer's submission of a completed application to the responsible agency or within 60 days after the customer has been provided with a work plan under section 15.991, subdivision 2, paragraph (c), whichever is later. <u>If action on the application is not completed within 60 days, the license is deemed to be granted</u>. The time period specified in this subdivision does not begin to run until the customer has completed any required application in complete, correct form and has provided any additional required information or documentation.[21]

6. Minn. Stat. § 116J.70, subd. 2a includes a series of business and occupational licenses that are exempted from the definition of "license" under Minn. Stat. § 116J.70, subd. 2, and the processing time-lines under Minn. Stat. § 15.992.[22]

7. A QRC registration is not a business or occupational license that is exempted from the definition of "license" under Minn. Stat. § 116J.70, subd. 2, or the processing time-lines under Minn. Stat. § 15.992.[23]

8. Pursuant to Minn. Stat. § 645.15, "[w]hen the last day of the period falls on Saturday, Sunday, or a legal holiday, that day shall be omitted from the computation" of days within which the Department needed to render its final action on the application. Accordingly, the 60th day following the submission of Mr. Richardson's application for renewal of his QRC registration was June 21, 2010.[24]

---

[19] *See,* Minn. Stat. § 15.99, subd. 1 (c) and (d).

[20] Minn. Stat. §§ 15.991 and 116J.70, subd. 2.

[21] Minn. Stat. § 15.992, subd. 1.

[22] *See,* Minn. Stat. §§ 15.99 and 116J.70, subd. 2a.

[23] *Id*.

[24] Department's Ex. F and Minn. Stat. § 645.15.

9. Whether Mr. Richardson's application for renewal of his QRC registration was received by the Department on April 20 or April 21, 2010 is not a material issue of fact. Under operation of Minn. Stat. § 645.15, the 60th day following an application submitted on either April 20 or April 21, 2010, would be June 21, 2010.

10. The Department was not entitled to defer final action on Mr. Richardson's application beyond June 21, 2010, because none of the grounds for extending the evaluation period – as set forth in Minn. Stat. § 15.992, subd. (2) – apply.[25]

11. The Department's attempt to extend the time period for final action on Mr. Richardson's application beyond June 21, 2010 was not legally effective under Minn. Stat. § 15.992, subd. 2 (1). Ms. Gehrman's notification letter of June 21, 2010 did not state "that a longer time is needed to protect against serious and significant harm to the public health, safety, or welfare," nor did it "specif[y] the additional time needed" to complete the review.[26]

12. On June 22, 2010, Mr. Richardson's application for renewal of his Qualified Rehabilitation Consultant registration was "deemed to be granted" pursuant to Minn. Stat. § 15.992.

Based upon these Conclusions, the written submissions of the parties, the affidavits and other documents filed in this matter, and the argument of counsel, the Administrative Law Judge makes the following:

RECOMMENDATION

(1) The Commissioner should GRANT-IN-PART Mr. Richardson's Motion for Summary Disposition.

(2) The Commissioner should DENY AS MOOT the Department's Motion to Compel.

(3) The Commissioner should DISMISS the Notice and Order for Hearing in this matter.

Date: October 12, 2011.

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

[25] Department's G and Minn. Stat. § 15.992, subd. 2.

[26] *Id*.

NOTICE

This report is a recommendation, not a final decision. The Rehabilitation Review Panel will make the final decision after a review of the record. The Review Panel may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Panel shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Review Panel must consider the exceptions in making a final decision. At the end of the exceptions period, the record will close Parties should contact Dr. Joseph Sweere, Chairman, Rehabilitation Review Panel, Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

If the Rehabilitation Review Panel fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Review Panel must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the action to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Review Panel, or upon the expiration of the deadline for doing so. The Review Panel must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

In this case, John Richardson appeals the Department's denial of his application for reinstatement as a Qualified Rehabilitation Consultant.

Subject-Matter Jurisdiction over the Denial of License Renewal

As an initial matter, Mr. Richardson asks that this tribunal stay its hand – alternatively asserting that OAH does not have the power to resolve this matter, or, even if it did, that it should wait until Mr. Richardson has exhausted his appeals in the parallel litigation through the state courts.

The Administrative Law Judge does not agree. Mr. Richardson's appeal of the Department's denial of his application for reactivation of his QRC registration triggered a "contested case"[27] and the Rehabilitation Review Panel acted appropriately in issuing a Notice and Order for Hearing in this matter.

This is not to say that, for prudential reasons, Administrative Law Judges should not suspend OAH proceedings because of parallel proceedings in the state courts. In fact, comity, avoiding inconsistent judgments and respect for sister tribunals were hallmarks of this case. In June of this year, proceedings in this docket were suspended so as to avoid the potential of an inconsistent judgment with the cross-motions for summary judgment then pending before Judge Otsby of the Ramsey County District Court. Returning the courtesy, in August of this year, the District Court declined to exercise jurisdiction so as to permit proceedings in this docket to continue.

With the threat of inconsistent judgments removed, the undersigned will address the applicability of the time limits of Minn. Stat. § 15.992. Mr. Richardson does not make clear why it is desirable or necessary to await the state appellate courts' resolution of his appeals. Moreover, after the District Court made it clear that it wished the OAH to address the legal questions that were common to both of the proceedings initiated by Mr. Richardson, an exercise of jurisdiction by OAH is appropriate.

Mr. Richardson's Motion for Summary Disposition

Mr. Richardson asserts that he made an application for a business license – namely, reactivation of a QRC registration that had been on inactive status – and that this application was deemed granted because the Department did not take final action on his application within 60 days of submission.

The Department makes two arguments in opposition to a grant of summary disposition. It asserts that Minn. Stat. § 15.992 does not apply to a request for a reactivation of a license. Further, even if Minn. Stat. § 15.992 does apply in such

[27] *See,* Minn. Stat. § 14.02, subd 3 ("'Contested case' means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing").

situations, the Department's June 21, 2010 notice that it would need more than 60 days to render final action on the application was effective in extending the time for decision until July 22, 2010.

Summary Disposition Standards

Summary disposition is the administrative equivalent of summary judgment.[28] Summary disposition is appropriate when there is no genuine dispute as to the material facts of a contested case and one party necessarily prevails when the law is applied to those undisputed facts.[29]

The moving party carries the burden of proof and persuasion to establish that there are no genuine issues of material fact which would preclude disposition of the case as a matter of law.[30] Further, when considering a motion for summary disposition, the tribunal must view the facts in the light most favorable to the non-moving party.[31]

Issuance or Maintenance of a Business License

The Department argues that it did not need to render final action on Mr. Richardson's application for reactivation of his QRC registration within 60 days. It asserts that reactivation of an inactive registration is neither the initial "issuance" of the registration nor the "maintenance" of a registration as those terms are used in Minn. Stat. § 116J.70, subd. 2. This statute states:

> Subd. 2. Business license. "Business license" or "license" means any permit, registration, certification, or other form of approval authorized by statute or rule to be issued by any agency or instrumentality of the state of Minnesota as a condition of doing business in Minnesota. <u>The term also includes, when applicable, the substantive and procedural criteria governing the qualifications for, and issuance and maintenance of, a business license</u>.[32]

To the three-part structure of the statute – which regulates the issuance of new licenses, governs renewals of earlier licenses or confers an exemption – the Department's argument suggests that a fourth, slightly-submerged category was intended by the Legislature: reactivation of a license that did not follow immediately after a prior period of licensure. As to this category, the argument continues, the Legislature

---

[28] *See, Pietsch v. Mn. Bd. of Chiropractic Examiners*, 683 N.W.2d 303, 306 (Minn. 2004).

[29] *See, Sauter v. Sauter,* 70 N.W. 2d 351, 353 (Minn. 1955); *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. App. 1988).

[30] *See, Theile v. Stich*, 425 N.W. 2d 580, 583 (Minn. 1988).

[31] *See, id; Ostendorf v. Kenyon,* 347 N.W.2d 834, 836 (Minn. App. 1984).

[32] *See,* Minn. Stat. § 116J.70, subd. 2 (emphasis added).

remained silent; neither mandating prompt action by the agency nor an explicit exemption from the timing requirements.

This argument is not well taken. In the view of the Administrative Law Judge, the Legislature intended to wholly occupy the field of state business licensing when enacting 116J.70. Under this statute such authorizations are either newly issued, renewed or exempt from classification.[33] Implying a fourth and incompletely-defined category of licensure is at odds with the plain meaning of the statute.

Moreover, to the extent that the Department's reading of the term "maintenance" does not permit any break in periods of licensure it is an overly narrow construction – and one without an apparent policy purpose. When construing the term "maintain," the state courts have been far more generous. As the Court of Appeals has noted:

> "[T]o maintain" is defined as:
>
> 1. To keep up or carry on; continue * * * 2. To keep in an existing state; preserve or retain * * * 3. To keep in a condition of good repair or efficiency * * * 4a. To provide for; support * * * b. To keep in existence; sustain * * * 5. To defend or hold against criticism or attack * * * 6. To declare to be true; affirm * * * [or] 7. To adhere or conform to; keep * * *.[34]

In the context of Minn. Stat. § 116J.70, subd. 2, the best reading of the term "maintenance" includes the continuation of an earlier licensing status.

Likewise important, reading Minn. Stat. § 116J.70, subd. 2 in this fashion tracks the ways in which the Department approached the settlement agreement with Mr. Richardson: Under that agreement, Mr. Richardson's QRC registration was surrendered to the Department, marked as "inactive" in the agency's records and subject to renewal after a period of two years.[35] Renewal of an earlier-issued, but now inactive registration, is license "maintenance" under Minn. Stat. § 116J.70, subd. 2.

Challenges to the June 21, 2010 Notice of Extension

Alternatively, the Department asserts that even if the timelines set forth in Minn. Stat. § 15.992 apply to Mr. Richardson's renewal application, it properly extended the time for final agency action until July 22, 2010. As the Department argues, because Mr. Gehrman wrote to Mr. Richardson before the expiration of the initial 60-day period,

---

[33] *See,* Minn. Stat. § 116J.70, subds. 2 and 3.

[34] *Wood v. Diamonds Sports Bar & Grill, Inc.,* 654 N.W.2d 704, 708 (Minn. App. 2002) (citing American Heritage Dictionary 1055 (4th ed.2000)); *See also, Cochrane v. Tudor Oaks Condominium Project,* 529 N.W.2d 429, 433 (Minn. App. 1995) ("To 'maintain' an action is to uphold, continue on foot, and keep from collapse a suit already begun, or to prosecute a suit with effect"); *State, Northern Tp. v. Waughtral*, 1993 WESTLAW 328750, slip op. at *2 (Minn. App.1993) (Unpublished).

[35] *See,* Minn. Stat. § 116J.70, subd. 2 and 3.

and noted that the application was still under review, the timeline for decision was extended for as long as the Department needed to complete its evaluation. It asserts that the time extension provision of Minn. Stat. § 15.992, subd. 2 (1) applies in this instance. Moreover, the Department contends that the provisions of Minn. Stat. § 15.992, subd. 5, shield it from any later review of the words that Ms. Gehrman used in the June 21, 2010 extension notice.

Minn. Stat. § 15.992 reads:

> Subdivision 1. **Deadline for action**. Unless a shorter period is provided by law, all state agencies that must act on a customer's application for a license shall take final action on it within 60 days after the customer's submission of a completed application to the responsible agency or within 60 days after the customer has been provided with a work plan under section 15.991, subdivision 2, paragraph (c), whichever is later. If action on the application is not completed within 60 days, the license is deemed to be granted. The time period specified in this subdivision does not begin to run until the customer has completed any required application in complete, correct form and has provided any additional required information or documentation.
>
> Subd. 2. **Longer time limits**. An agency may provide for a longer time for the conclusion of action on an application, by itself and by another agency or agencies, if:
>
> (1) the agency states in writing to the customer that a longer time is needed to protect against serious and significant harm to the public health, safety, or welfare, states the reason why, and specifies the additional time needed;
>
> (2) the agency states in writing to the customer that a longer time is needed to comply with state or federal requirements, states the requirements, and specifies the additional time needed; or
>
> (3) an agency that must take action on an application is a multimember board that meets periodically, in which case the agency must complete its action within 60 days after its first meeting after receipt of the application, or within a longer period established under clause (1) or (2).
>
> Subd. 3. **Exclusions**. This section does not apply to an application requiring one or more public hearings or an environmental impact statement or environmental assessment worksheet.
>
> Subd. 4. **Compliance**. When a license is deemed granted under subdivision 1, this section does not limit the right of an agency to suspend,

limit, revoke, or change a license for failure of the customer to comply with applicable laws or rules.

Subd. 5. **Limit on review**. A decision of an agency under subdivision 2 that a time longer than 60 days is needed to complete action on an application is not subject to judicial review.

The Department's argument falters because Ms. Gehrman's letter of June 21, 2010 did not state "that a longer time is needed to protect against serious and significant harm to the public health, safety, or welfare," nor did it "specif[y] the additional time needed" to complete the review. The notice letter did not satisfy the requirements of Minn. Stat. § 15.992, subd. 2 (1).

Further, the Department's claim that the sufficiency of its notice may not be questioned is likewise unavailing. While it is true that under Minn. Stat. § 15.992, subd. 5 state tribunals are not to review an agency's claim that it needs more time to scrutinize a license application, no one has questioned the Department's professed need for additional time. Instead, the issue in this case is whether the Department satisfied the other requirements that condition an extension of time.

Exempting the "decision of an agency … that a time longer than 60 days is needed" from review does not shield the agency from inquiries into whether it provided the declarations which pre-condition an extension of time. In the – admittedly different – context of "requests" under Minn. Stat. § 15.99, the state courts routinely inquire whether the agencies that seek extensions of time have satisfied the statutory conditions for extending the deadline to complete final agency action.[36] A similar rule of decision is appropriate here.

In order to claim an extension of time under Minn. Stat. § 15.992, subd. 2 (1), the Department needed to assert "that a longer time is needed to protect against serious and significant harm to the public health, safety, or welfare" and "specif[y] the additional time needed" to complete its review. Because the Department did neither of these actions in its June 21 notice, its extension of time was ineffective and Mr. Richardson's application was deemed to be granted on the following day.

Mr. Richardson is entitled to judgment as a matter of law.

---

[36] *Compare generally, American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 314 (Minn. 2001) ("Minn. Stat. § 15.99, subd. 3(f). The statute does not limit the application of subdivision 3(f) to extenuating circumstances-it merely requires that the reasons be stated"); *Demolition Landfill Services, LLC v. City of Duluth*, 2000 WESTLAW 1015893, slip op. at * 2 (Minn. App. 2000) (Unpublished) ("A proper extension of the 60-day review deadline requires four things: (1) written notice of the extension, (2) given before expiration of the deadline, (3) stating the reasons for the extension, and (4) indicating the anticipated length of the extension…. The City of Duluth complied with only two of the requirements, omitting the other two entirely").

The Department's Motion to Compel

While Mr. Richardson's responses to the Department's requests for responses to interrogatories and production of documents were inadequate, because it is not appropriate to proceed to an evidentiary hearing on the Department's denial of Mr. Richardson's application, the Department's motion to compel is mooted.[37]

Conclusion

The Administrative Law Judge is mindful that Mr. Richardson engaged in misconduct following the entry of the 2008 stipulation of settlement.[38] Had the Department denied Mr. Richardson's application in a timely manner, the denial would have had solid support in the record. Yet, this is not our case. Mr. Richardson's registration was deemed granted on the 61st day following submission of his application.

The solution that the Legislature provided for such regulatory quandaries is for the agency to exercise its right "to suspend, limit, revoke, or change a license for failure of the customer to comply with applicable laws or rules."[39]

E. L. L.

---

[37] *See*, Minn. R. 1400.6700, subp. 2 (In proceedings on a motion to compel "the party seeking discovery shall have the burden of showing that the discovery is needed for the proper presentation of the party's case"); Minn. R. Civ. P. 26.02(a) (stating that discovery may be obtained only on matters "relevant to a claim or defense of any party"); *Neudecker v. City of Bloomington*, 2006 WESTLAW 2806847, slip op. at *3 (Minn. App. 2006) (Unpublished) (the district court did not abuse its discretion by denying appellant's motion to compel discovery from the city, following an entry of summary judgment in favor of the city); *Milsap v. Special School Dist. No. 1*, 1999 WESTLAW 391859, slip op. *4 (Minn. App. 1999) (Unpublished) ("The district court did not abuse its discretion in finding Milsap's motion for discovery moot when the court had determined this case was barred by *res judicata* and collateral estoppel").

[38] *See,* Conclusions Nos. 7, 9, 11, 13, 14, 19 – 21, 23 and 26, *In the Matter of the QRC Firm Registration of PAR, Incorporated*, OAH 8-1900-21251-2.

[39] *See,* Minn. Stat. § 15.992, subd. 4.