

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR & INDUSTRY

In the Matter of the Residential
Certificate of Exemption Application of
Bret Stephen Gardner

**FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION**

This matter came on for a Prehearing Conference before Administrative Law Judge Steve M. Mihalchick at 1:30 p.m. on May 11, 2006, at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota.

Michael J. Tostengard, Assistant Attorney General, 1200 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared for the Department of Labor and Industry. No one appeared for Respondent Bret Stephen Gardner, nor did Respondent contact the Administrative Law Judge to request a continuance of this matter.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Nancy Leppink, Deputy Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner 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. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

STATEMENT OF ISSUE

By failing to disclose his full criminal history, did Respondent submit an application for a Certificate of Exemption which contained a false or misleading statement in violation of Minn. Stat. § 326.91, subd. 1(1)?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On March 27, 2006, the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges in this matter was served by first class mail upon Bret Stephen Gardner, 353 Michigan Street, St. Paul, MN 55102, the last known address on file with the Department. It notified Respondent of the prehearing conference scheduled for May 11, 2006. The mailing was not returned to the Department.

2. On May 11, 2006, Respondent failed to appear at the prehearing conference or to notify the Department or the Administrative Law Judge that he was unable to appear.

3. The Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges informed Respondent that if he failed to appear at the prehearing conference the allegations against him, set forth in the Notice, could be taken as true, and a default order could be issued.

4. Because Respondent failed to appear, he is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are taken as true and incorporated into these Findings of Fact.

6. Respondent caused injury or harm to the public.

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

CONCLUSIONS

1. The Department of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 326.91.

2. The Department has given proper notice of the prehearing conference in this matter and has fulfilled all relevant procedural requirements of law and rule.

3. Respondent, having made no appearance at the prehearing conference and not requesting any continuance or relief, is in default. Pursuant to Minn.

R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges are hereby taken as true.

4. Pursuant to Minn. Stat. § 326.91, subd. 1, the Commissioner may by order deny, suspend, or revoke any license or may censure an applicant, and may impose a civil penalty as provided for in Minn. Stat. § 45.027, subd. 6, if the Commissioner finds that the order is in the public interest, and that the applicant has acted in violation of any of the fourteen subitems in Minn. Stat. § 326.91, subd. 1.

5. Respondent submitted an application for a Certificate of Exemption which contained a false or misleading statement in violation of Minn. Stat. § 326.91, subd. 1(1) by failing to disclose his full criminal history.

6. Respondent's conduct constitutes grounds for the Department to take disciplinary action under Minn. Stat. §§ 326.91, subd. 1, and 45.027, subs. 6 and 7.

7. Disciplinary action is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner take disciplinary action against Respondent.

Dated: May 24, 2006

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default