

Iowa Department of Inspections and Appeals
 Division of Administrative Hearings
 Wallace State Office Building – Third Floor
 Des Moines, Iowa 50319

IN THE MATTER OF)	Docket No. 13IID010
)	
DEBRA BAUER,)	
)	
Respondent,)	PROPOSED DECISION
)	
National Producer No. 6860490.)	

The parties to this proceeding are the Iowa Insurance Division and Respondent Debra Bauer. A contested case hearing was held on August 26, 2013. Attorney Michelle Engler represented the Division. Christopher Meinecke, Rebecca Muhl, Annette Snyder and Rita Reiling testified on behalf of the Division. Attorney Heather Carlson represented Respondent Debra Bauer. Bauer appeared and testified. Exhibits A through E and 1 through 6 were admitted into the record.

FINDINGS OF FACT

Meinecke has owned Meinecke-Richards Insurance Agency in Maquoketa, Iowa for 28 years. Meinecke-Richards has four employees, including Meinecke. Meinecke-Richards accepts customer payments in the office. All of the employees handle customer payments.

Bauer has been a licensed insurance producer in Iowa since 1981. Bauer worked for Meinecke-Richards for two years, from November 2010 through November 2012.

On November 21, 2012, Meinecke-Richards discovered 14 instances where Bauer used agency funds to pay for her own and her daughter's insurance premiums, as follows:

Date Withdrawn	Policy No.	Amount	Ins. Co.	Insured Name
8/22/11	W132837MN	\$98.03	Iowa Mutual	Kevin & Debra Bauer
9/16/11	W132837MN	\$103.33	Iowa Mutual	Kevin & Debra Bauer
10/19/11	W132837MN	\$103.33	Iowa Mutual	Kevin & Debra Bauer
12/19/11	W132837MN	\$103.33	Iowa Mutual	Kevin & Debra Bauer
3/16/12	W132837MN	\$103.33	Iowa Mutual	Kevin & Debra Bauer
5/18/12	W132837MN	\$103.33	Iowa Mutual	Kevin & Debra Bauer
6/15/12	W132837MN	\$103.33	Iowa Mutual	Kevin & Debra Bauer
9/17/12	W238284MN	\$95.03	Iowa Mutual	Kevin & Debra Bauer
9/17/12	W238284HO	\$100.00	Iowa Mutual	Kevin & Debra Bauer

Date Withdrawn	Policy No.	Amount	Ins. Co.	Insured Name
10/12/12	W238284MN	\$95.03	Iowa Mutual	Kevin & Debra Bauer
11/7/12	43839546-7	\$100.00	Progressive	Aubrey Bauer
11/14/12	W238284HO	\$100.00	Iowa Mutual	Kevin & Debra Bauer
11/14/12	43839546-7	\$100.00	Progressive	Aubrey Bauer
11/19/12	W238284MN	\$95.03	Iowa Mutual	Kevin & Debra Bauer

(Exhibit B). The premiums totaled \$1,403.10.

Meinecke called Bauer into his office and showed her the above transactions. He told Bauer Meinecke-Richards did not have any deposits to offset the uploaded premiums. Bauer responded she must have made an error and stated she intended to upload the premiums from her personal bank account. Bauer told Meinecke she believed her personal information was saved in her favorites at work, as it is at her home.

Meinecke did not believe Bauer. He testified it is impossible to pull money to pay an Iowa Mutual Insurance Company premium without entering the routing and account numbers for each transaction. Meinecke reported Iowa Mutual requires the information be entered each time as a safety mechanism. Meinecke told Bauer her explanation was impossible and she responded that she did it at home and it worked without having to enter her bank routing and account numbers for each transaction.

Bauer reached into her purse and offered to reimburse the agency for the premiums. Meinecke informed Bauer he was terminating her employment for misappropriation of agency funds. Meinecke reported Bauer recanted the offer to reimburse the agency and wanted to verify the funds were not taken from her account.

Bauer filed a claim for unemployment insurance benefits. Meinecke-Richards contested her claim. Iowa Workforce Development issued a decision on December 20, 2012, finding Bauer was ineligible for unemployment insurance based on the incidents.

Meinecke keeps a paper log for customer accounts. He testified he did not discover the discrepancies for a period of time because he does not balance the account by individual checks. Meinecke checks the account monthly, but not by individual check.

Meinecke reported this was not the first issue with honesty he noticed with Bauer. When her son turned 16 she did not report he had started driving to the insurer. One year later, when her son turned 17, Bauer added him to her Iowa Mutual policy. At that time she listed her son as being 16, and gave an incorrect date of birth for her son.

Meinecke-Richards informed the Division Bauer had been terminated from her employment based on misappropriation or conversion of agency funds for her personal use. The Division requested Bauer respond to the allegations.

In her response to the Division Bauer averred she was unaware she was paying insurance premiums through Meinecke-Richards' agency account until Meinecke

approached her. Bauer reported she believed the funds were coming out of her personal checking account. Bauer averred she had the companies set up in her "Favorites" on her work computer as she had on her home computer. Bauer stated that when she learned of the problem she went home and checked from her personal account.

Bauer contends upon further investigation she learned that when she signed in from her home computer she would sign in as an insured and when she entered a payment amount she would hit upload and an express money transfer would occur, withdrawing funds from her bank account. Bauer avers she further learned that when she signed in at work, she would sign in as the agency and when she entered a payment amount and hit upload, an express money transfer would occur, withdrawing funds from the agency's account for each transaction. Bauer alleges she was unaware the funds were being withdrawn from the agency account for her premiums and her daughter's premiums. Bauer believed the funds were coming from her personal bank account.

Bauer reported from November 2010 through November 2012, 15 monthly premiums for her personal insurance and her daughter's insurance were uploaded from her home computer, totaling \$1,545 and 14 monthly premiums were uploaded from her work computer, totaling \$1,403. Bauer paid the \$1,403 to Meinecke-Richards. Bauer contends she was unaware the premiums were coming from the agency account.

In April 2013, the Division filed a Statement of Charges against Bauer, alleging she violated Iowa Code section 522B.11h because she engaged in fraudulent, coercive and dishonest practices demonstrating a lack of character and incompetence in the conduct of business in Iowa when she misappropriated agency funds for her personal use.

Bauer testified she has been insured with Iowa Mutual for six or seven years. She pays her automobile insurance monthly and her homeowner's insurance is escrowed. Bauer's daughter also has an automobile insurance policy through Progressive that Bauer pays monthly.

Bauer reported she paid the monthly Iowa Mutual and Progressive premiums at home and at work. She testified she used a similar procedure to pay the premiums at work and home. Bauer reported she saved her personal information in her favorites at work and at home. Bauer noted there was nothing on the website at work to indicate whether she was entering a payment from her personal account or the agency account. Bauer testified she did not notice the errors because she does not balance her bank account on a regular basis.

Muhl is a Customer Service Supervisor with Iowa Mutual. Iowa Mutual has used the Bill Matrix System since August 2009. Muhl reported an insured can access the Bill Matrix System at home by entering the insured's policy and bank account information. Muhl testified the Bill Matrix System will not save the bank account information. Muhl reported each time an insured logs on, the insured must enter the bank routing and account numbers. Bauer testified Muhl's statement is incorrect. She contends the website retained her personal information.

Agencies working with Iowa Mutual have access to the both the Bill Matrix and E-Z Pay Systems. When an agency logs onto Iowa Mutual's website, the agency enters a user id and password unique to the agency. Agencies such as Meinecke-Richards have two ways of submitting payments to Iowa Mutual, through the E-Z Pay and Bill Matrix Systems. Mulh reported the agent has to select one option or the other. If an agent is working in the E-Z Pay System there is no time-out mechanism.

With the E-Z Pay system, the agency sweeps funds from the agency account to Iowa Mutual. With the insured's e-payment system or the Bill Matrix System, the funds are swept directly from the insured's credit card, debit card, paypal, or bank account to Iowa Mutual. If an insured wants the payment to come from the insured's bank account, the insured must provide the insured's bank routing and account numbers with each transaction.

Muhl testified unlike the insured's Bill Matrix e-payment system, the agency's bank account information is saved in the E-Z Pay system.

In January 2012, while working for Meinecke-Richards, Bauer also worked as a custodian for Central Schools.

In February 2013, Bauer applied for a position with Cleveland Insurance Group. On her application, Bauer reported she worked for Meinecke-Richards from November 2010 through November 2012. She listed her reason for leaving "work at school." (Exhibit E).

Reiling works for Cleveland. She interviewed Bauer. Cleveland contacted Bauer's references and prior employers, but did not reach Meinecke-Richards. Bauer did not report Meinecke-Richards had terminated her employment.

Cleveland uses Snyder as a consultant for employment matters. Snyder works for a number of employers in the Quad City area. Snyder received information from another client, Ascentra Credit Union, that a credit union member had left a detailed message stating Bauer had been discharged for theft from Meinecke-Richards. Bauer had been working at the credit union for Cleveland. Snyder told the credit union there may not be any truth to the allegation and she stated she would find out more information.

Snyder contacted Meinecke. He was hesitant to speak with her, but stated Bauer used agency funds to pay for premiums multiple times without paying for the premiums.

Snyder contacted Cleveland and inquired what Bauer had disclosed on her employment application. Cleveland responded Bauer had reported she left for another position. Snyder asked whether Cleveland had performed due diligence and she learned Cleveland had called once, but had not heard back from Meinecke-Richards before it hired Bauer.

Cleveland terminated Bauer's employment on July 15, 2013 for falsifying her application. Snyder delivered the termination notice to Bauer. Snyder reported that

when she met with Bauer she did not deny she had failed to report she had been terminated by Meinecke-Richards. Bauer was a good employee and did not receive any discipline while she worked for Cleveland.

CONCLUSIONS OF LAW

The Iowa Legislature created the Division to regulate and supervise the conducting of the business of insurance in the state of Iowa.¹ The Insurance Commissioner is the chief executive officer of the Division.² A person must obtain an insurance producer license from the Insurance Commissioner to sell, solicit and negotiate insurance in Iowa.³

The Division contends Bauer's producer license should be revoked because she violated Iowa Code section 522B.11*h*. The Division may place on probation, suspend or revoke a producer's license and impose a civil penalty for "using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere."⁴

Bauer avers she did not know she was paying her own premiums and her daughter's premiums with agency funds at work. Bauer contends she saved her personal bank account information in her favorites for the Iowa Mutual website at work and at home. Meinecke and Muhl testified it is impossible for an insured to save personal bank account information on the Iowa Mutual website. This raises an issue of credibility. There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness' appearance, conduct, age, intelligence, memory and knowledge of facts.
4. The witness' interest in the trial, their motive, candor, bias and prejudice.⁵

Bauer's testimony is not reasonable and consistent with the other evidence I believe. Muhl has worked for Iowa Mutual for many years. Iowa Mutual received all premiums for Bauer's policies. Muhl has no personal interest in this proceeding. It is not necessary to rely on Bauer's other bad acts, including the misrepresentation of her son's age and her untruthfulness on her employment application with Cleveland.

Bauer transferred funds from Meinecke-Richards's account to pay for her own and her daughter's insurance premiums without compensating Meinecke-Richards. The Division has proven Bauer engaged in fraudulent, coercive and dishonest practices

¹ Iowa Code § 505.1 (2013).

² *Id.*

³ *Id.* §§ 522B.2., .5.

⁴ *Id.* § 522B.11(1)*h*.

⁵ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996).

demonstrating incompetence, untrustworthiness, a lack of character, and financial irresponsibility in the conduct of business in Iowa by misappropriating agency funds for her personal use. Bauer did not accept responsibility for her actions. Her license should be revoked.

ORDER

Bauer's insurance producer's license is hereby REVOKED. The Insurance Division shall take any steps necessary to implement this decision.

Dated this 12th day of September, 2013.



Heather L. Palmer
Administrative Law Judge
515-281-7183

cc: Debra Bauer
Heather Carlson
Michelle Engler
Irene Vega

Notice

An adversely impacted party may appeal a proposed decision to the commissioner within 30 days after the issuance of the proposed decision.⁶ The appeal must be filed with the commissioner's office in writing. The commissioner's office is at 601 Locust St., Fourth Floor, Des Moines, Iowa 50309. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.

⁶ 191 IAC 3.27.