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Request of Jason Kapinos for a Hearing
Pursuant to M.G.L. c. 176H, §14

Docket No. G2019-01

Order on Pre-Paid Legal Casualty, Inc.'s Motion to Dismiss

On March 8, 2019, Jason Kapinos (“Kapinos”) or (“Petitioner”), submitted a written claim to the Division of Insurance (“Division”) requesting a hearing, pursuant to M.G.L. c. 176H, §14, on a dispute with Pre-Paid Legal Casualty, Inc. (“PLC, Inc.”) arising from the alleged cancellation of his membership in Legal Shield, a legal services product that PLC, Inc. offers.¹ Pursuant to c. 176H, §14, requests for hearings on disputes between an insurer and any person whose insurance contract has been cancelled must be submitted in writing to the Commissioner of Insurance (“Commissioner”) within 30 days after the dispute arises and hearings shall be held within 30 days after the Commissioner receives the request. On March 13, an order issued identifying the procedural rules applicable to requests for hearings under c. 176H, §14, setting dates for the parties to file documents relating to the dispute with the Division and to provide them to each other, and scheduling a hearing for April 8, 2019 (the “March 13 Order”).

On March 27, 2019 the Division received documents from PLC, Inc. responding to the March 13 Order. Among the records supplied is a six-page list of contacts between PLC, Inc. and Kapinos, both by telephone and e-mail, dated between November 6, 2018 and February 14, 2019 and communications to PLC, Inc. from its Provider Law Firm. On April 4, 2019, counsel for PLC, Inc. filed a notice of appearance.

¹ On March 5, Kapinos sent an e-mail to the Division’s Consumer Service Section asking for the address to which he could send a request for a hearing on a dispute with a legal services plan. In that e-mail, he refers to the event triggering his inquiry as a rescission.

On the afternoon of April 4, 2019 Kapinos, by e-mail to PLC, Inc. and the Division's Consumer Service Section, notified them that he needed to cancel and reschedule the hearing scheduled for April 8, 2019.² He stated that he would provide additional relevant information in writing by mail. No further information was provided. On April 5, 2019, an order issued denying Kapinos's request, noting that the applicable statute requires a hearing to be held within thirty days after the Commissioner receives the written request for that hearing. At 5:51 a.m. on April 8, 2019, Kapinos sent a lengthy e-mail to the Division, asserting that he was unable to find counsel to represent him who was familiar with rescission of a prepaid legal service plan. Ultimately, he indicated that he wanted a hearing but refused to attend on April 8, referring, in addition to difficulty in finding legal counsel, to unspecified "additional obstacles."

Kapinos did not supply additional documents requested in the March 13 Order and did not appear at the hearing. Counsel for PLC, Inc. was present, and his client was present by telephone. On April 12, 2019, PLC, Inc., pursuant to 801.CMR 1.01 (7)(g)(2) and (3), moved to dismiss Petitioner's claim for a c.176H, §14 hearing with prejudice. The grounds for the motion were that Kapinos, in his March 8, 2019 request for a hearing, asked for a hearing within 30 days and subsequently, without a showing of good cause, failed to attend the hearing that was scheduled on March 13, 2019, in compliance with that statutory framework, and affirmed on April 5, 2019.

PLC, Inc. points out that the hearing was scheduled, at petitioner's request, within the statutory time frame, a period that provided ample time to locate counsel. It further argues that, in proceedings of this type, Kapinos is not entitled to representation and, without good cause to do so, willfully chose not to appear, despite the denial of his request to reschedule the hearing.³ PLC, Inc. concludes that Kapinos intentionally failed to comply with the Presiding Officer's orders and to prosecute his claim, and asks that his request for a hearing be denied with prejudice.⁴

PLC, Inc. served the motion on Kapinos by first class mail and also forwarded it to him by electronic mail. Pursuant to 801.CMR 1.01 (7)(g)(2), by order dated April 12, 2019 (the

² The e-mail was promptly forwarded to me.

³ The Standard Adjudicatory Rules of Practice and Procedure ("Standard Rules"), at 801 CMR 1.01.(3) (a), specifically allow individuals to represent themselves.

⁴ PLC, Inc. points out that it contacted Kapinos by e-mail on April 1, 2019 to ask if he would agree to conduct the April 8 hearing by telephone; he would not agree to do so and insisted that the hearing date be changed.

“April 12 Order”), Kapinos was instructed, within ten days, to show cause why his claim for a hearing should not be dismissed for lack of prosecution. By the close of business on April 22, Kapinos had not responded to the April 12 Order. On April 23, the Division received a response to that Order that Kapinos had sent by electronic mail on April 22, at 11:57 p.m.

The Standard Adjudicatory Rules of Practice and Procedure (“Standard Rules”) prescribe time limits for filings with the Agency. 801 CMR 1.01 (4)(b) provides that papers filed by an electronic medium shall be deemed filed on the date received by the Agency or the Presiding Officer during usual business hours but not later than 5:00 p.m. Papers received after usual business hours shall be deemed filed on the following business day. Kapinos filed his response to the April 12 order by electronic medium (e-mail).⁵ The heading shows that it was sent to the Presiding Officer at 11:57 p.m. on April 22, well after 5:00 p.m., the close of the Agency’s usual business hours. It was received, stamped and deemed filed on the following day, April 23, 2019.

If a Party fails to respond within ten days to an order requiring that Party to show cause why the claim should not be dismissed for failure to prosecute, 801.CMR 1.01 (7)(g)(2) permits a Presiding Officer to dismiss the claim with or without prejudice.⁶ On the record in this matter, Petitioner’s claim is untimely and is dismissed with prejudice.

So ordered this 17th day of May, 2019.

Jean F. Farrington
Presiding Officer

Sent by first-class-mail to:

Jason Kapinos, 96 Hawks Circle, Westfield, MA 01085-1576
Todd Bennett, Esq., Bennett and Belfort, 24 Thorndike Street, Cambridge, MA 02141

⁵ His cover letter also stated that the originals would follow by priority mail.

⁶ The section also permits dismissal if the Party’s response fails to establish such cause. The document that the Division received on April 23 is a motion to continue the hearing for 270 days.