

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
ARNOLD M. ADCOCK, also known as)	DNS-RMA Docket No. 04-0001
ARNOLD ADCOCK,)	
)	
Respondent)	Decision

Decision Summary

[1] In this Decision, I determine that the Debarring Official, Federal Crop Insurance Corporation, and Risk Management Agency, had the authority and ample evidence to debar Respondent Arnold M. Adcock. The actions and omissions of Respondent Adcock constitute a cause of so serious or compelling a nature that it affects the present responsibility of Respondent Adcock. 7 C.F.R. § 3017.800(d); formerly 7 C.F.R. § 3017.305(d). I affirm the two-year period of debarment, concluding that it is commensurate with the seriousness of Respondent Adcock's acts and omissions.

Procedural History

[2] The Suspending Official, Federal Crop Insurance Corporation, and Risk Management Agency, suspended Arnold M. Adcock, also known as Arnold Adcock (herein frequently referred to as "Respondent Adcock") on January 8, 2003; upheld the suspension on May 23, 2003; and then, after taking into account the length of the suspension, the Debarring Official, Federal Crop Insurance Corporation, and Risk Management Agency, debarred Respondent Adcock on January 6, 2004, for a period "not to exceed two years."

[3] Respondent Adcock's one-page appeal of his debarment was timely filed on February 5,

2004. Respondent Adcock failed to attach any portion of the Debarment Decision he was appealing, and he neglected to identify any agency, such as the Federal Crop Insurance Corporation or the Risk Management Agency, so more than two weeks were lost in the process of completing the record. Nevertheless, the Administrative Record (Agency Record and Debarment Decision) were timely filed and served upon Respondent Adcock. The Debarring Official's Response to Respondent's Appeal was timely filed on March 11, 2004. Respondent Adcock's Reply was diverted for irradiation, a routine security procedure, and the irradiation so blackened the pages that no words are discernible. Accordingly, Respondent Adcock's replacement Reply, received April 13, 2004, is accepted as timely filed.

[4] The debarment decision may be vacated only if I determine that it is (1) not in accordance with law; (2) not based on the applicable standard of evidence; or (3) arbitrary and capricious and an abuse of discretion. *See*, 7 C.F.R. § 3017.890, entitled "How may I appeal my debarment?"

[5] Respondent Adcock's appeal must specify the basis of the appeal (7 C.F.R. § 3017.890). Respondent Adcock stated 4 specific reasons for appealing his debarment, and he added, "Once again, I am asking that all information be fairly investigated and reviewed."

[6] Following a thorough review of the Administrative Record (herein frequently referred to as "AR"), having 13 tabs, and the parties' other filings herein, I determine that the evidence fully supports the Federal Crop Insurance Corporation and Risk Management Agency Debarment Decision issued January 6, 2004 (herein frequently referred to as "Debarment Decision"). I essentially adopt as my own, the Findings of Fact of the Debarment Decision, none of which was specifically challenged on appeal by Respondent Adcock. Further, I determine that no relief can

be granted to Respondent Adcock for any of the 4 specific reasons itemized in his appeal.

Findings Of Fact

[7] In 1989, Respondent Adcock was a contract adjuster for IGF Insurance Company (IGF). He remained in that position until 1997, when he became a full-time employee of IGF. In 2001, American Agrisurance, Inc. (AmAg) acquired IGF, and Respondent Adcock was employed as its state supervisor for the State of Louisiana. Respondent Adcock remained in that position until terminated, as a result of the Suspension, on January 9, 2003. (AR, Tab 4, pp. 1-2).

[8] For the 2002 crop year, AmAg employed Victor Smith (Smith) as a loss adjuster. Respondent Adcock was Smith's supervisor during that crop year. (AR, Tab 4, p. 2).

[9] In the spring and summer of 2002, AmAg assigned Smith to duties in the State of Kansas. When this re-assignment occurred, Respondent Adcock instructed Smith to deliver his active files and claims in process to Anita Hendrix (Hendrix), a contract adjuster for AmAg. (AR, Tab 4, p. 2).

[10] Smith delivered his active files and claims in process to Hendrix. Subsequently, Hendrix contacted Respondent Adcock with regard to inaccuracies she noted in the claims being handled by Smith. Respondent Adcock reviewed the file materials, including that Stand Reduction Appraisal Worksheets (Worksheets). (AR, Tab 5, pp. 1-2).

[11] Respondent Adcock noticed that all of the surviving plants reportedly counted by Smith were in multiples of ten. All of the insureds involved were using a 38" row width, which meant the appraisal should include a 138' row length for a 1/100-acre appraisal. (AR, Tab 5, p. 2).

[12] Smith had used the "Guarantee" rather than the "APH" in the Base Yield column of every

Worksheet. Using the “Guarantee” resulted in incorrect numbers for the Appraisal for Sample and Total. Using the “APH” would result in an increase in the potential appraised and a corresponding decrease, sometimes substantial, in the insured’s claim. (AR, Tab 5, pp. 2-4).

[13] Respondent Adcock believed that some of the Worksheets had incomplete or incorrect information, such as the Unit Number, Claim Number, FSA Farm Number, Field Number, and Number of Acres Appraised. (AR, Tab 4, pp. 2-3).

[14] Respondent Adcock contacted Smith by telephone in Kansas and told Smith that he would have to fix and correct the appraisals. (AR, Tab 5, p. 2).

[15] Respondent Adcock telefaxed the Worksheets to Smith in Kansas and instructed Smith to correct and complete the forms. (AR, Tab 5, p. 2).

[16] The Federal Crop Insurance Corporation federally reinsured the policies in question.

[17] Respondent Adcock stated in his March 21, 2003, statement that Smith never told him how he arrived at the plant counts he used in his appraisals. (AR, Tab 6, p. 3).

[18] Respondent Adcock stated that he encouraged Smith to correct his appraisals and plant counts so the revised appraisals would be fair to the insured producer. (AR, Tab 6, p. 3).

[19] Smith apparently made mistakes during an appraisal involving the Base Yield calculation. Smith became concerned by Respondent Adcock’s instructions as to how these mistakes should be corrected. Acting on his concerns, Smith began tape recording the telephone conversations between Respondent Adcock and himself. (AR, Tab 1, p. 2).

[20] On July 31, 2002, Smith provided the Risk Management Agency’s Southern Regional Compliance Office (SRCO) with an audiotape of the recorded conversations. After listening to portions of the audiotape, SRCO decided to have a certified court reporter transcribe the

audiotape. (AR, Tab 1, p. 2).

[21] The taped conversations took place between July 1 and July 19, 2002. At the time of the recording Smith was in Kansas and Respondent Adcock was in Louisiana. (AR, Tab 1, p. 3).

[22] Federal law allows a person to tape record a conversation over the telephone when such person is a party to the conversation. See 18 U.S.C. § 2511(2)(c). In addition, both Kansas and Louisiana allow such conduct as well. See State of Louisiana v. Vaughn, 431 S.2d 763, 767 (1983) and State of Kansas v. Roudybush, 235 Kan. 834, 845 (1984).

[23] In one conversation Respondent Adcock instructed Smith to prepare inaccurate appraisals. He said, “. . . make the appraisals to come out. Don’t let them be any more than what you’ve got on these sheets right here. So you’re going to have to work this stuff backwards.” (AR, Tab 2, p. 65, lines 6-9).

[24] Working backwards means to determine what you want the appraisal to be and then inserting the number that will give you the result you desire. Sometimes this is called working a claim right to left. (AR, Tab 1, p. 5).

[25] Respondent Adcock stated that Smith should change his production numbers so that they end in odd numbers, because by ending in zero, like 10, 20, or 30, it would subject the claim to increased scrutiny by “federal people.” (AR, Tab 2, p. 66, lines 2-9).

[26] Respondent Adcock was accepting of Smith preparing false and inaccurate appraisals. He said, “If y’all made up some appraisals, that’s all right, you know . . . End them in odd numbers, don’t end them in no zero.” (AR, Tab 2, p. 66, lines 13-15).

[27] Again, in this conversation Respondent Adcock told Smith he should change the ending

number to a number besides zero since it will look more realistic and not send up a red flag.

Respondent Adcock also said, "You're going to have to lower your counts down to come up with what you originally told the [farmer]." (AR, Tab 2, p. 67, lines 16-18).

[28] Respondent Adcock continued by stating "You've got to redo every one of these to where – you've got to put the counts in there against what your APH is where they'll come down to what you have down here." (AR, Tab 2, p. 68, lines 4-6).

[29] Further, Respondent Adcock stated, "Today - by catching it here, we can change it today between me and you, because I'm going to let you do it. But, really, by the counts you've got down there, by right we ought to charge him the extra bushels ... [*w]hich would be the right thing, you know, for the company*, but because it ain't right for the farmer ... that's too many bushels." (Emphasis added). (AR, Tab 2, p. 68, line 25 through p. 69, line 8).

[30] Ultimately Respondent Adcock told Smith, "the right thing to do is [to give the farmer the appraisal amount that you told him earlier], so you're going to have to back down." (AR, Tab 2, p. 70, lines 1-3).

[31] Respondent Adcock acknowledges that Smith made errors by stating, ". . . in good faith you told [the farmer the appraisal amount]. You just made a mistake. In good faith you told him that's what the thing was. You just made a mistake in working it." (AR, Tab 2, p. 69, lines 18-21).

[32] During his conversation with Smith, Respondent Adcock admitted that he had to do the same thing last year, creating production numbers, due to a mistake that he made on a claim. (AR, Tab 2, p. 78, lines 3-5; p. 79, lines 5-15).

[33] Respondent Adcock explained to Smith in detail how to falsify an appraisal. He said,

“You’ve just got to bring your counts down – you know, you want counts that end in an odd number. Don’t let them be in zero. It’ll be all right to put a zero in there. You have 10 plants every now and then or 30 plants, but you need some 37 plants and 33 plants and 69 plants.”

(AR, Tab 2, p. 73, lines 15-20).

[34] Respondent Adcock instructed Smith to invent the dates that he performed the appraisals by stating “you’re going to have to come up with the dates that you were there or close to it anyway.” (AR, Tab 2, p. 80, lines 5-7).

[35] Prior to the correction of the Worksheets, Smith terminated his employment with AmAg. (AR, Tab 5, p. 2 - 3).

[36] As a result of Smith’s termination of employment, Respondent Adcock instructed Hendrix to correct the Worksheets originally completed by Smith using the surviving plant counts that were taken by Smith, but using the “APH” rather than the “Guarantee” for the Base Yield. This correction resulted in an increase of the appraised potential and a corresponding decrease of the insured’s claim. (AR, Tab 5, pp. 3-4).

[37] In Respondent Adcock’s January 20, 2003, submission in opposition to the Suspension, he includes 32 pages of Worksheets for various producers. These are copies of allegedly handwritten Worksheets prepared by Smith, with the corrections made by Hendrix and copies of the computer generated Worksheets prepared by Hendrix. (AR, Tab 5, pp. 5-36). Only 2 out of 18 handwritten Worksheets contain the partial signature of Smith. Smith’s signature does not appear on the remaining 16 handwritten Worksheets.

[38] By letter dated March 21, 2003, Respondent Adcock submitted additional information in support of his opposition to the Suspension. Enclosed with this letter was an AmAg Quality

Control Evaluation Report (Evaluation Report) signed and dated on February 17, 2003 (after Respondent Adcock received the Suspension), by Kelly Gwin. (AR, Tab 7).

[39] The Evaluation Report completed by Kelly Gwin evaluated Smith's performance in the adjustment of a corn policy, policy number 17-067-1011246-02. The review indicated that appraisals were not accurately calculated, because Smith used the "Guarantee" rather than the "APH" to calculate the loss. (AR, Tab 7, pp. 3-4).

[40] Respondent Adcock indicated that Hendrix made corrections to Smith's appraisals by using his incorrect plant count and using the "APH" rather than the "Guarantee" used by Smith. (AR, Tab 5, p. 3). This resulted in a decrease in the insured's indemnity.

[41] Respondent Adcock stated that he and the insureds would not have had a problem if Smith had performed the appraisals using the "APH" instead of the "Guarantee" in the Base Yield computation. (AR, Tab 6, p. 3).

[42] Respondent Adcock contends that he did not advise or instruct Smith, or any other loss adjuster to: (1) submit false, misleading, and incorrect appraisal and claim information; (2) incorrectly lower production counts on an appraisal so that the final figures would equal an incorrect amount that was originally told to the producer; or (3) work an appraisal "backwards" and instruct such person on how this could be done. (AR, Tab 4, p. 4).

[43] On May 23, 2003, the Suspending Official issued a Decision Regarding the Opposition to the Notice of Suspension. (AR, Tab 8).

[44] On May 2, 2003, the Risk Management Agency's Southern Regional Compliance Office requested debarment action against Respondent Adcock. (note: Exhibit 1, Transcript is located at AR, Tab 2). (AR, Tab 9).

[45] The Risk Management Agency's Southern Regional Compliance Office received a signed written statement from a second loss adjuster regarding a rice replant claim incident he had with Respondent Adcock (claim number 02-7622). (AR, Tab 9, at Exhibit 2, pp. 1-4).

[46] On May 23, 2002, the loss adjuster met with a producer to inspect his fields. There were an estimated 93 acres on this particular unit of the field. The producer indicated to the loss adjuster that he had originally planted at a seed rate of three bushels per acre. The producer stated that the partial replant was at a rate of 1.5 bushes per acre over part of an estimated 29 acres. According to the loss adjuster, claim number 02-7622 did not qualify for a replant payment. (AR, Tab 9, at Exhibit 2, p. 1).

[47] The loss adjuster documented his determination on an Adjuster's Special Report and read it to the producer. The producer signed the Adjuster's Special Report agreeing with the loss adjuster's determination. The producer also signed a Withdrawal of Claim form. (AR, Tab 9, at Exhibits 2, 3, and 4).

[48] The loss adjuster stated that on June 9, 2002, he gave the rice replant claim (claim number 02-7622) to Respondent Adcock. According to the loss adjuster, Respondent Adcock appeared upset that the claim had not been paid and told the loss adjuster that he would take of it. (AR, Tab 9, at Exhibit 2, p. 1).

[49] According to the loss adjuster's statement, Respondent Adcock removed the Withdrawal of Claim form and the Adjuster's Special Report from the producer's record. Respondent Adcock told the loss adjuster that the claim would be reworked. (AR, Tab 9, at Exhibit 2, p. 1).

[50] The loss adjuster stated that on June 10, 2002, Respondent Adcock called him and said that loss adjuster Kelly Gwin (Gwin) had the claim and would work it. (AR, Tab 9, at Exhibit 2,

p. 2).

[51] On February 12, 2003, Compliance Investigator Mack Senn, of the Southern Regional Compliance Office, met with and interviewed the producer in connection with the rice replant. The producer signed a written statement stating that the first adjuster had told him that the claim was not a payable claim, as he had not put out enough seed for the replant. The producer also stated that he understood why he was not due a replant payment and signed the Adjuster's Special Report acknowledging that he understood. (AR, Tab 9, at Exhibit 5).

[52] The producer stated that the loss adjuster asked him if he wanted to withdraw his claim, and he agreed. The producer signed a Withdrawal of Claim form and stated that he thought that was the final decision on the claim. (AR, Tab 9 at Exhibit 5, p. 3).

[53] During the interview with Risk Management Agency representatives, the producer stated that a few days later Respondent Adcock called him and told him that he did have a payable claim and that the first loss adjuster had made a mistake. (AR, Tab 9, at Exhibit 4 and Exhibit 5, p. 3).

[54] According to the producer's statement, Respondent Adcock told him that the replant claim was a payable loss and explained that he had all the paperwork ready and all Respondent Adcock needed was the producer's signature. (AR, Tab 9, at Exhibit 5, pp. 1-3).

[55] In his signed statement, the producer stated that Gwin visited the farm and asked him to sign paperwork regarding his replant. The producer said that Gwin did not inspect the field nor did he do any counts and that he only asked the producer to sign the documents. These documents were recorded under a new claim number, 13099. (AR, Tab 9, at Exhibit 5, p. 2).

[56] The producer stated that Gwin also told him that the replant claim was a payable loss.

(AR, Tab 9, at Exhibit 5, pp. 2-3).

[57] By notice letter dated August 28, 2003, Respondent Adcock was advised of a proposed three-year debarment, by the Debarring Official, Ross J. Davidson, Jr. (AR, Tab 10).

[58] Respondent Adcock stated that the reason for changing an appraisal was based on errors found. The loss adjuster working the claim should have corrected any errors made. (AR, Tab 11, p. 1).

[59] Respondent Adcock stated that to help jog the loss adjuster's memory of what occurred that he went as far as to explain that in the past he himself had used the wrong chart in determining an appraisal and his supervisor returned the packet for correction. (AR, Tab 11, p. 1).

[60] Respondent Adcock stated that he discussed this loss adjuster's errors with his supervisor Bob Jandreau (Jandreau). According to Respondent Adcock, Jandreau told him that there was no problem with the loss adjuster making the necessary corrections. If errors had been made, the claim form should be revised. (AR, Tab 11, p. 1).

[61] With regard to the rice replant, Respondent Adcock stated that he received a call from the agent, who stated that the producer had found additional tickets that would qualify him for a replant payment on his rice crop. (AR, Tab 11, p. 1).

[62] Respondent Adcock stated that when additional tickets were found, the company opens an additional claim record. (AR, Tab 11, p. 1).

[63] Respondent Adcock stated that his supervisor, Jandreau, told him to send a different loss adjuster to visit the producer. (AR, Tab 11, p. 1).

[64] Respondent Adcock stated that it's the loss adjuster who makes the field visit and

determines whether the producer qualifies for a replant. (AR, Tab 11, p. 1).

[65] Respondent Adcock stated that he reviewed claims in excess of \$20,000. Since the rice replant claim in question was under \$20,000, he did not see or review either packet prepared by the first loss adjuster or Gwin. (AR, Tab 11, p. 2).

[66] Respondent Adcock stated that he never knowingly filed or approved any fraudulent claim. (AR, Tab 11, p. 2).

[67] Respondent Adcock submitted three letters from individuals in the crop insurance industry that supported him. (AR, Tab 11, pp. 3-5).

Discussion

[68] Regarding farmers' claims, I find that Respondent Adcock chose an approach to correct Smith's errors that would still yield the same bottom line, so as not to frustrate the farmers' expectations. Respondent Adcock states in his Reply that all 6 farmers had destroyed their crop, based on the initial appraisal by Smith.

[69] According to Respondent Adcock, Smith's initial appraisal was not only erroneous, but also obviously fabricated, based on all Smith's "counts" ending in zero. Even assuming that Respondent Adcock is absolutely correct about Smith's initial appraisal, Respondent Adcock's approach to correct Smith's errors is still unlawful and unacceptable.

[70] Respondent Adcock's appeal, filed February 5, 2004, states in part: "Victor Smith did not have to report what I had told him to do, because I called my supervisor, Bob Jandreau, within hours of my conversation with Mr. Smith, telling him exactly what I told Smith. In September, I met with Mr. Ford, who was the head of compliance for American Agrisurance. I told him exactly what I had told Smith. My report to both of these men was the same and I was unaware

that Mr. Smith had recorded our conversation.”

[71] I conclude from these statements that Respondent Adcock is showing that he did not hide his actions that led to his debarment; that he, Respondent Adcock, never intended wrongdoing. My impression is confirmed by Respondent Adcock’s Reply, received April 13, 2004. Respondent Adcock asserts that he never intended to defraud anyone.

[72] Respondent Adcock’s Reply, reflecting on the impact of debarment, which keeps him from farming since he cannot have crop insurance, states: “And, it is especially cruel if the punishment is awarded to one who had no intention of doing any wrongdoing, or profiting himself in any way. If there was wrongdoing, it was only an honest effort to correct an error made against a farmer who himself had a loss through no fault of his own.”

[73] Respondent Adcock was not justified in attempting to arrange overpayments to farmers, even though the farmers may have relied, to their detriment, on Smith’s erroneous initial appraisal. Even if Respondent Adcock’s intent may have been well-meaning with regard to protecting the farmers, his approach obviously works to the disadvantage of those who pay the crop insurance claims, potentially impacting upon the integrity of the Federal program. The Federal Crop Insurance Corporation federally reinsured the policies in question. *See* paragraph [16].

[74] Even if Respondent Adcock’s motive was to benefit insured farmers, to prevent further financial harm to those farmers, and not to gain financial benefit for himself, by his actions he proved himself unreliable, and especially unreliable to process crop insurance claims.

Respondent Adcock proved himself ready and willing to falsify appraisal and claim information so that farmers would receive the insurance payments they were expecting, even if the farmers

were not entitled to those payments.

[75] Respondent Adcock's appeal states, "Punishment for this exceeds the mistakes I made. I lost over \$16,000 separation pay and have been out of work since January 10, 2003. This has placed a terrible hardship on my nine year old daughter, my wife, and myself. This ruling also keeps me from farming since I cannot have crop insurance. I am 61 years old. All I have done in my life is farm and work as a crop insurance adjuster." Respondent Adcock shows that the financial ramifications to him and his family have been severe. In his Reply, he indicates, "Respondent's life and those of his family are directly and dramatically affected by the case at hand. It does matter that a family is deprived of a livelihood by this decision. Lives are indeed affected."

[76] While I have compassion for Respondent Adcock in these dire circumstances, I find that the Debarment Decision is properly balanced, with the debarment not to exceed two years taking Respondent Adcock into account, while protecting, as required, the public interest and the integrity of the Federal program.

Conclusions

[77] Respondent Adcock instructed Smith to correct Smith's erroneous initial appraisal by re-working the appraisal backwards, to achieve again the erroneous bottom line. *See*, Findings of Fact.

[78] The cause for debarment has been established by a preponderance of the evidence. 7 C.F.R. § 3017.850.

[79] The Federal Crop Insurance Corporation and Risk Management Agency Debarment Decision issued January 6, 2004, is fully supported by the evidence contained in the

Administrative Record. AR, Tabs 1-13.

[80] That Debarment Decision was (a) in accordance with law; (b) based on the applicable standard of evidence; and (c) was not arbitrary, was not capricious, and was not an abuse of discretion. 7 C.F.R. § 3017.890.

[81] The Manager of the Federal Crop Insurance Corporation (FCIC) is the suspending official and the debarring official. 7 C.F.R. § 400.456(d). The Administrator of the Office of Risk Management also serves as Manager of the Federal Crop Insurance Corporation. 7 U.S.C. § 6933(c)(2). Ross J. Davidson, Jr., who serves both as the Manager of the Federal Crop Insurance Corporation and the Administrator of the Risk Management Agency, is both the suspending official (7 C.F.R. § 3017.1010), and the debarring official (7 C.F.R. § 3017.935).

[82] The Federal Crop Insurance Corporation federally reinsured the policies in question. *See* paragraph [16].

[83] The actions and omissions of Respondent Adcock described in the Findings of Fact constitute a cause of so serious or compelling a nature that it affects the present responsibility of Respondent Adcock. 7 C.F.R. § 3017.800(d); formerly 7 C.F.R. § 3017.305(d).

[84] Debarment is not for the purposes of punishment. I find that the debarment on January 6, 2004, of Respondent Adcock for a period “not to exceed two years,” is necessary and appropriate, to exclude from Federal programs a person who is not presently responsible and to protect the public interest. 7 C.F.R. § 3017.110.

Order

[85] The debarment of Arnold M. Adcock, also known as Arnold Adcock, Respondent, is affirmed, for a period not to exceed two years from January 6, 2004, that is, ending no later than

January 5, 2006.

Administrative Finality

[86] This Decision is final and is not appealable within the United States Department of Agriculture. 7 C.F.R. § 3017.890.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 6th day of May 2004

Jill S. Clifton
Administrative Law Judge