

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ABRAHAM INLONG,)
)
 Petitioner,)
)
 vs.) CASE NO. 96-0031
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION, BOARD)
 OF PROFESSIONAL ENGINEERS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on April 10, 1996, in Miami, Florida, before Errol H. Powell, a duly designated Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Harold M. Braxton, Esquire
9100 South Dadeland Boulevard
One Datran Center, Suite 400
Miami, Florida 33156-7815

For Respondent: R. Beth Atchison
Assistant General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0750

STATEMENT OF THE ISSUE

The issue for determination at final hearing is whether the Petitioner is eligible for licensure by the Board of Professional Engineers.

PRELIMINARY STATEMENT

In April 1995, Abraham S. Inlong (Petitioner) took the Electrical Engineer part of the Professional Engineering Examination. A minimum grade of 70 was required to pass. The Department of Business and Professional Regulation, Board of Professional Engineers (Respondent) notified Petitioner that he had failed the Electrical Engineer part having received a grade of 69.10. By letter dated November 15, 1995, Petitioner challenged two problems on the examination and requested a formal hearing.

On January 5, 1996, this matter was referred to the Division of Administrative Hearings. A hearing was scheduled pursuant to written notice.

At hearing, Petitioner testified on his own behalf and entered four exhibits into evidence, with one exhibit being testimony by deposition. Respondent presented the testimony of two witnesses and entered seven exhibits into evidence. Also, at hearing, Petitioner withdrew his challenge to one of the two problems.

A transcript of the hearing was ordered. At the request of the parties, the time set for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The parties submitted proposed findings of fact which are addressed in the appendix to this recommended order.

FINDINGS OF FACT

1. In April 1995, Abraham S. Inlong (Petitioner) took the Electrical Engineer part of the Professional Engineering Examination (Examination).

2. A minimum grade of 70 is required to pass the Examination. The Department of Business and Professional Regulation, Board of Professional Engineers (Respondent) notified Petitioner that he had failed the Examination, having received a grade of 69.10.

3. The Examination is a national examination and is graded by national examiners. Respondent issues licenses to practice professional engineering in the State of Florida and administers the Examination on behalf of the State.

4. Petitioner challenges, the answer selected by the national examiners to Problem 433, Question 6 of the Examination, which is A. Respondent selected D as the answer, which states that A, B, and C are all correct.

5. As part of the instructions for candidates taking the Examination, the candidates were to choose the best answer. The best answer is the correct answer.

6. Respondent's response to Problem 433, Question 6 was regraded by the national examiners. They denied Respondent any additional credit.

7. The best and correct answer to Problem 433, Question 6 is the answer identified by Respondent as the answer by the national examiners, i. e., A. The answer selected by Petitioner is not the best and correct answer.

8. A diagram is part of the challenged problem and question. The diagram is clear and unambiguous.

9. The scope of knowledge required for the challenged problem and question is not beyond the knowledge reasonably expected from a candidate for licensure.

10. The challenged problem and question contain sufficient information for a candidate for licensure to select the best and correct answer. Additional information was unnecessary, including whether the system was balanced or unbalanced.

11. The challenged problem and question are clear and unambiguous.

12. The challenged problem and question are not devoid of logic and reason.

13. The challenged problem and question are valid.

14. Statistics indicate that 60 percent of the candidates for licensure (candidates), who took the Examination, answered Problem 433 correctly and that 48 percent of the candidates answered Problem 433, Question 6 correctly.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Subsection 120.57(1), Florida Statutes.

16. The burden of proof is upon Petitioner to show by a preponderance of evidence that the Examination was faulty, or problems and questions worded arbitrarily or capriciously, that his answers were arbitrarily or capriciously graded, or that the grading process was devoid of logic and reason. Harac v. Department of Professional Regulation, Board of Architecture, 484 So.2d 1333, 1338 (Fla. 3d DCA 1986); State ex rel. Glaser v. Pepper, 155 So.2d 383 (Fla. 1st DCA 1963); State ex rel. Topp v. Board of Electrical Examiners for Jacksonville Beach, 101 So.2d 583 (Fla. 1st DCA 1958).

17. Petitioner has failed to satisfy his burden of proof.

18. Rule 61-11.012, Florida Administrative Code, provides in pertinent part:

(1). . . If the examination being challenged is an examination developed by or for a national board, council, association, or society (hereinafter referred to as national organization), the Department shall accept the development and grading of such examination without modification.

19. Petitioner is not entitled to credit for the challenged problem and question.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Business and Professional Regulation, Board of Professional Engineers, enter a final order dismissing Abraham S. Inlong's examination challenge and denying him licensure.

DONE AND ENTERED this 1st day of August, 1996, in Tallahassee, Leon County, Florida.

ERROL H. POWELL, Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of August, 1996.

APPENDIX TO RECOMMENDED ORDER, CASE NO. 96-0031

The following rulings are made on the parties' proposed findings of fact:

Petitioner's Proposed Findings of Fact

1. Partially accepted in findings of fact 1 and 2.
2. Partially accepted in finding of fact 4.
3. Partially accepted in findings of fact 4 and 8.
4. Partially accepted in finding of fact 7.
5. Rejected as being not supported by the greater weight of the evidence, not supported by the more credible evidence, argument, or a conclusion of law.
6. Rejected as being not supported by the greater weight of the evidence, not supported by the more credible evidence, argument, or a conclusion of law.
7. Rejected as being not supported by the greater weight of the evidence, not supported by the more credible evidence, argument, or a conclusion of law.
8. Rejected as being not supported by the greater weight of the evidence, or not supported by the more credible evidence.
9. Rejected as being not supported by the greater weight of the evidence, or not supported by the more credible evidence.

Respondent's Proposed Findings of Fact

1. Partially accepted in finding of fact 1.
2. Partially accepted in finding of fact 2.
3. Partially accepted in finding of fact 2.
4. Partially accepted in finding of fact 2.
5. See Preliminary Statement.
6. See Preliminary Statement.
7. Partially accepted in finding of fact 4.
8. Partially accepted in finding of fact 4.
9. Partially accepted in finding of fact 7.
10. Partially accepted in finding of fact 11.
11. Partially accepted in finding of fact 10.
12. Partially accepted in finding of fact 9.
13. Partially accepted in finding of fact 10.
14. Partially accepted in finding of fact 10.
15. Partially accepted in findings of fact 9 - 12.
16. Partially accepted in finding of fact 12.
17. Partially accepted in finding of fact 6.
18. Rejected as being subordinate, argument, or a conclusion of law.
19. Partially accepted in finding of fact 8.
20. Partially accepted in finding of fact 14.
21. Partially accepted in finding of fact 13.
22. Rejected as being subordinate, or unnecessary.
23. Rejected as being subordinate, or unnecessary.
24. Rejected as being subordinate, or unnecessary.

NOTE--Where a proposed finding has been partially accepted, the remainder has been rejected as being subordinate, irrelevant, unnecessary, not supported by the greater weight of the evidence, not supported by the more credible evidence, argument, or a conclusion of law.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this recommended order. All agencies allow each party at least ten days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.