

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HENRY A. VIDAL,)
)
 Petitioner,)
)
 vs.) Case No. 97-3354
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION, BOARD)
 OF PROFESSIONAL ENGINEERS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case by video teleconference on November 4, 1997, at Miami, Florida, before Errol H. Powell, a duly designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Henry A. Vidal, pro se
5832 Alton Road
Miami Beach, Florida 33140

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 ISSUES

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

PRELIMINARY STATEMENT

In October 1996, Henry A. Vidal (Petitioner) took the

Principles and Practice part of the Electrical Engineer Examination (Examination). The minimum score required to pass the Examination was 70. The Department of Business and Professional Regulation, Board of Professional Engineers (Respondent) notified Petitioner that he did not successfully complete the Examination, having received a score of 67. By letter dated March 25, 1997, Petitioner requested a formal hearing. On July 17, 1997, this matter was referred to the Division of Administrative Hearings.

At hearing, Petitioner testified in his own behalf, presented the testimony of one witness (an expert) and entered two exhibits into evidence. Respondent presented the testimony of one witness (an expert) and entered five exhibits into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The parties filed post-hearing submissions which have been duly considered.

FINDINGS OF FACT

1. In October 1996, Henry A. Vidal (Petitioner) took the Principles and Practice part of the Electrical Engineer Examination (Examination).

2. A minimum score 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 not successfully completed the Examination, having received a score of 67.

3. The Examination is a national examination and is graded by national examiners.

4. Petitioner challenges questions numbered 131 and 133 on the Examination. A scoring plan is used for grading each question.

5. For question numbered 131, the highest score achievable is 10. According to the scoring plan, correctly solving any one part of the problem in the challenged question earns a score of 2; correctly solving any two parts, earns a score of 4; correctly solving any three parts, earns a score of 6; correctly solving any four parts, earns a score of 8; and correctly determining five specific items, even though the solution need not be perfect, earns a score of 10.

6. Petitioner received a score of 4 on question numbered 131.

7. Regarding question numbered 131, under the scoring plan, Petitioner is not entitled to any additional points. Even though Petitioner may have indicated his knowledge of the problem in the challenged question, he failed to solve the problem correctly, e.g., omitting a component and miscalculating. Petitioner solved two parts correctly, earning a score of 4.

8. For question numbered 133, the highest score achievable is 10. According to the scoring plan, there are ten parts to the problem in the challenged question and correctly solving one or two parts, earns a score of 2; correctly solving three or four

parts, earns a score of 4; correctly solving five or six parts,

earns a score of 6; correctly solving seven or eight parts, earns a score of 8; and correctly solving nine or ten parts, earns a score of 10.

9. Petitioner received a score of 8 on question numbered 133.

10. Regarding question numbered 133, under the scoring plan, Petitioner is not entitled to any additional points. Even though Petitioner may have indicated his knowledge of the problem in the challenged question, he failed to solve the problem correctly, e.g., using the incorrect quantity. Petitioner solved eight parts correctly, earning a score of 8.

11. The examiners for the Examination re-graded Petitioner's answers to questions numbered 131 and 133. Petitioner was denied additional credit for the challenged questions by the examiners.

12. Petitioner's answers were not arbitrarily or capriciously graded.

13. The grading process was not devoid of logic and reason. The scoring plan was properly used.

14. Questions numbered 131 and 133 are not beyond the scope of knowledge that is required of a candidate for licensure as an electrical engineer and are capable of being answered by such a candidate for licensure.

15. Considering the proof, the opinions of Respondent's expert were more persuasive. The evidence presented was

insufficient to warrant additional credit to Petitioner on questions numbered 131 and 133.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Section 120.569 and Subsection 120.57(1), Florida Statutes.

17. The burden of proof is upon the Petitioner to show by a preponderance of evidence that the Examination was faulty, that questions on the Examination were worded arbitrarily or capriciously, that his answers to the questions 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).

18. Petitioner challenges the grading of his answers to the challenged questions. Petitioner has failed to demonstrate that his answers were arbitrarily or capriciously graded or that the grading process was devoid of logic and reason, and, therefore, Petitioner has failed to satisfy his burden of proof.

19. 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.

20. Petitioner is not entitled to additional credit for the challenged questions.

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 the examination challenge of Henry A. Vidal and denying him licensure.

DONE AND ENTERED this 27th day of March, 1998, in Tallahassee, Leon County, Florida.

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of March, 1998.

COPIES FURNISHED:

Henry A. Vidal, pro se
5832 Alton Road

Miami Beach, Florida 33140

R. Beth Atchison
Assistant General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Lynda L. Goodgame, General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Angel Gonzalez, Executive Director
Department of Business and
Professional Regulation
Board of Professional Engineers
1940 North Monroe Street
Tallahassee, Florida 32399-0792

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.