

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES R. EASON,)
)
 Petitioner,)
)
 vs.) Case No. 97-3779
)
 BOARD OF PROFESSIONAL)
 ENGINEERS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on October 30, 1997, in Brooksville, Florida, before Donald R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph M. Mason, Jr., Esquire
Post Office Box 1900
Brooksville, Florida 34605-1900

For Respondent: Edwin A. Bayo, Esquire
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's request for license by endorsement as a professional engineer should be granted.

PRELIMINARY STATEMENT

This matter began in March 1997 when Petitioner, James R.

Eason, licensed as a professional engineer with the State of Georgia, filed his application for licensure by endorsement as a professional engineer with Respondent, Board of Professional Engineers. By letter dated July 1, 1997, Respondent advised Petitioner that his application had been denied on the ground the Principles and Practice portion of his examination "[would] not be recognized" because his score "was 67% with five points awarded for Veterans Preference" and that "the awarding of points for Veterans Preference" was not allowed under Florida law.

Thereafter, Petitioner requested a formal hearing to contest the agency's action. The matter was referred by Respondent to the Division of Administrative Hearings on August 13, 1997, with a request that an Administrative Law Judge be assigned to conduct a hearing. By notice of hearing dated September 10, 1997, a final hearing was scheduled on October 30, 1997, in Brooksville, Florida. On October 27, 1997, the case was transferred from Administrative Law Judge P. Michael Ruff to the undersigned.

At final hearing, Petitioner testified on his own behalf. Respondent offered one exhibit which was received in evidence. The parties also filed a Stipulation of Undisputed Facts.

There is no transcript of hearing. Proposed findings of fact and conclusions of law were filed by Respondent on November 17, 1997, and they have been considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

Based upon all of the evidence, the following findings of fact are determined:

1. Petitioner, James R. Eason (Petitioner), is the pavement management coordinator for the Hernando County Public Works Department. He is a registered professional engineer in the State of Georgia, having received Professional Engineering Registration Number 17320 in 1988.

2. In March 1997, Petitioner filed an application with Respondent, Board of Professional Engineers (Board), seeking licensure by endorsement as a professional engineer in this state. On July 1, 1997, the Board issued its preliminary decision in the form of a letter advising Petitioner that his application had been denied. As grounds, the Board stated that Petitioner had received a raw score of 67 with five points awarded for Veterans Preference on the Principles and Practice portion of the examination. The letter further explained that a raw score of 70 or above was required in order for his score on the Georgia examination to be recognized in the State of Florida and that "Chapter 471, F.S. does not provide for awarding of points for Veterans Preference." The denial of the application prompted Petitioner to bring this action.

3. Petitioner is a graduate of, and holds a bachelor's degree in civil engineering from, the Georgia Institute of Technology. He has a record of four years active engineering experience of a character indicating competence to be in

responsible charge of engineering. The parties have also stipulated he is of good moral character, and he has never been under investigation in another state for any act which would constitute a violation of Chapters 455 or 471, Florida Statutes.

4. Petitioner passed the Fundamentals portion of the professional engineering examination administered in 1973 by the State of Georgia. He obtained a score of more than 70.

5. In April 1988, Petitioner took the Principles and Practice portion of the examination. A grade of 70 was required to pass the Georgia examination. Petitioner received a grade of 67 on the initial scoring of the Principles and Practice portion of the examination, plus a five-point Veterans Preference credit, for a total grade of 72. The Veterans Preference credit is provided by Georgia law to all candidates who are members or former members of the Armed Forces of the United States and meet certain service requirements. In Petitioner's case, he had served eight years on active duty as a member of the United States Naval Reserve, and he was honorably discharged as a Lieutenant on July 3, 1969, upon expiration of his active duty commitment. At least ninety days of his active duty military service was during wartime or at a time when military personnel were committed by the President of the United States.

6. The examination administered by the State of Georgia in April 1988 was a national examination published by the National Council of Examiners for Engineering and Surveying, and it was identical to the examination administered by the State of Florida at that time. Florida, like Georgia, requires a grade of 70 to pass the examination, but it does not provide a Veterans Credit for service to candidates who are members or former members of

the Armed Forces of the United States. Therefore, in the State of Georgia, a veteran can pass the examination with a raw score as low as 65. To this extent, the two examinations are not substantially equivalent.

7. Among other things, Petitioner pointed out at hearing that he needed only three points to achieve a passing grade on the Principles and Practice portion of the examination. Therefore, he concluded that the awarding of that amount of extra points for being a veteran amounted to only a single standard deviation, and thus the extra points were immaterial in relation to the overall score. However, the Board does not construe this three-point deficiency as being "immaterial," and had Petitioner received the same score in Florida, he would not have passed the examination.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Section 120.57(1), Florida Statutes.

9. As the party seeking licensure as a professional engineer, Petitioner must prove by the preponderance of the evidence that he is entitled to the requested relief. See, e. g., Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

10. Section 471.015(3), Florida Statutes, provides in relevant part as follows:

(3) The Board shall certify as qualified for a license by endorsement an applicant who:

* * *

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

11. The Board interprets the term "substantially the same" to mean that the out-of-state examination must be equal to the Florida examination in all material respects. One such respect is that the raw scores attained by an out-of-state candidate must be equal to those required to achieve a passing grade in Florida. This means that a raw score of at least 70 is required on each part. See Rule 61G15-21.004(2), Florida Administrative Code. This interpretation of the law, while not favorable to Petitioner's cause, falls within the range of possible interpretations and is not clearly erroneous. See, e.g., Board of Medical Examiners v. Durrani, 455 So. 2d 515, 517 (Fla. 1st DCA 1984).

12. The parties have stipulated that the criteria for licensure in both Georgia and Florida in 1988 were the same, that is, a candidate must have received a grade of 70 or above on the Principles and Practice portion of the examination. They have further stipulated that Petitioner received a raw score of 67. Since he failed to obtain a raw score of at least 70, he did not pass an examination substantially equivalent to the Florida examination. Compare Stephen A. Cohen v. State Bd. of

Accountancy, DOAH Case No. 80-2332 (Bd. of Accountancy, September 11, 1981); Freedman v. State Bd. of Accounting, 370 So. 2d 1168 (Fla. 4th DCA 1979); Sutto v. Board of Medical Registration and Examiners, 180 N.E. 2d 533 (Ind. 1962)(the term "substantially equivalent" means "that which is equal in essential and material

elements"). This being so, Petitioner's request for licensure by endorsement must be denied.

13. In reaching the above conclusion, the undersigned has given careful consideration to Petitioner's arguments. Among others, he points out that while there is no provision in Florida law, and specifically Chapter 471, Florida Statutes, which provides for the awarding of Veterans Preference points on a professional licensure examination, under the principles of comity, the State of Florida is required to recognize the points awarded by the State of Georgia. In the absence of any supporting authority for this proposition, however, the contention has been rejected.

14. Petitioner also contends that under a string of federal cases interpreting patent law, the doctrine of equivalency does not require complete identity for every purpose and every respect. See, e.g., Ziegler v. Phillips Petroleum Co., 483 F.2d 858 (5th Cir. 1973). By analogy, he asserts that a score of 67 is so close to a 70, that is, it is no more than one standard deviation, that the addition of veterans points is insufficient to rise to the level of a substantial difference. This interpretation, however, is contrary to the permissible interpretation accorded the statute by the Board.

15. Petitioner further contends that he is entitled to licensure under the terms of Section 471.015(1), Florida Statutes, which requires that the Board "license any applicant

who . . . has passed the (national) licensing examination."

Subsection (3)(a) of the same statute, however, requires that the national examination be "substantially equivalent to the examination required by s. 471.013." Because the Georgia examination varies in a material respect from the Florida examination by allowing a veteran to receive a passing grade with a raw score as low as 65, the Georgia examination cannot be said to be "substantially equivalent."

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Board of Professional Engineers enter a Final Order denying Petitioner's request for licensure by endorsement as a professional engineer.

DONE AND ORDERED this 25th day of November 1997, in Tallahassee, Leon County, Florida.

DONALD R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of November, 1997.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within fifteen days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the Board of Professional Engineers.