

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMANUEL WORKU,)
)
 Petitioner,)
)
 vs.) Case No. 00-3490
)
 FLORIDA ENGINEERS MANAGEMENT)
 CORPORATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 30, 2000, by video teleconference in Tallahassee and Miami, Florida, before Susan B. Kirkland, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Amanuel Worku, pro se
18492 Northwest 52nd Path
Miami, Florida 33055

For Respondent: Douglas Sunshine, Esquire
Florida Engineers Management Corporation
1208 Hays Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to credit for his answers to questions 42 and 81 of the morning session of the

Fundamentals of Engineering Examination portion of the engineering licensure examination given on April 15, 2000.

PRELIMINARY STATEMENT

By letter dated August 18, 2000, to the Florida Board of Professional Engineers (Board), Petitioner, Amanuel Worku (Worku), requested an administrative hearing, challenging questions 42 and 81 of the Fundamentals of Engineering Examination portion of the engineering licensure examination given on April 15, 2000. Worku received a failing raw score of 108 that converted to a failing scaled score of 69.

On August 21, 2000, the Board referred the case to the Division of Administrative Hearings for assignment to an Administrative Law Judge. The final hearing was scheduled for October 13, 2000. On October 2, 2000, Respondent, Florida Engineers Management Corporation, filed an Amended Motion for Continuance. The motion was granted, and the final hearing was rescheduled for November 30, 2000.

At the final hearing, Petitioner testified in his own behalf. Petitioner's Exhibits 1 and 2 were admitted in evidence. Respondent called Frank Hutchinson as its witness. Respondent's Exhibits 1-8 were admitted in evidence.

The parties agreed to file proposed recommended orders within ten days of the filing of the transcript, which was filed on December 21, 2000. Petitioner filed his Proposed

Recommended Order on December 14, 2000, and Respondent filed its Proposed Recommended Order on December 27, 2000. The parties' Proposed Recommended Orders have been considered in rendering this Recommended Order.

FINDINGS OF FACT

1. Worku took the Fundamentals of Engineering Examination portion of the examination for licensure to practice as an engineer intern on April 15, 2000. The examination is a national multiple-choice examination developed and administered by the National Council of Examiners for Engineers and Surveyors (NCEES).

2. The examination is divided into a morning session and an afternoon session. The questions in the morning session are worth one raw point each. The questions in the afternoon session are worth two raw points each.

3. Worku challenged questions 42 and 81, which were on the morning session of the examination. Worku received 56 raw points for the morning session and 52 raw points for the afternoon session for a total raw score of 108 on the examination. Based on the NCEES' Score Conversion Table, a raw score of 108 converts to a score of 69. A converted score of 70, which equates to a raw score of 109-113, is a passing score.

5. Question 81 asked the examinee to identify the geometric shape that was given by an equation provided in the question. Each examinee was given a reference manual during the examination. The manual contains general formulas for the types of geometric shapes listed as possible answers to question 81. The equation given in question 81 was for a specific shape and was not listed among the general formulas in the reference manual.

6. Worku felt that because the general equation was not used that the equation was stated incorrectly. However, the equation was stated correctly. The equation differed from the equation listed in the reference manual because it was for a special shape of the geometric figure. Worku did not answer question 81 correctly.

7. Question 42 dealt with recrystallization as it relates to metal. The question asks the examinee to pick the answer which explains the reference to the term "recrystallization" in the question. Worku contends that there are two correct answers to question 42 and that the answer which he provided is one of the correct answers.

8. The answer which Worku provided is not a correct answer. It refers to the process of annealing, which is the process of decreasing the toughness of a metal. Recrystallization can be a part, but is not always part of

annealing. Recrystallization and annealing are not synonymous terms; thus Worku is not entitled to credit for question 42.

CONCLUSIONS OF LAW

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

10. A person seeking to be licensed by the Board to practice as an engineer intern in Florida must take and pass a licensure examination. Section 471.015, Florida Statutes, and Rule 61G15-21.001, Florida Administrative Code.

11. An examinee has the burden to establish that his failing score was a product of arbitrary or otherwise improper or erroneous grading. See Harac v. Department of Professional Regulation, 484 So. 2d 1333 (Fla. 3rd DCA 1986).

12. Rule 61G15-21.004(1), Florida Administrative Code, requires a minimum score of 70 on a scale of 100 to pass the Engineering Fundamentals Examination. Worku failed to establish that the scoring was arbitrary, improper, or erroneous. Worku earned a score of 69 and did not pass the Engineering Fundamentals Examination.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a Final Order be entered

finding that Amanuel Worku failed the Engineering Fundamentals Examination with a score of 69.

DONE AND ENTERED this 5th day of January, 2001, in Tallahassee, Leon County, Florida.

Susan B. Kirkland
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of January, 2001.

COPIES FURNISHED:

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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.