

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YVETTE BOWMAN,)	
)	
Petitioner,)	
)	
vs.)	Case No. 00-3492
)	
FLORIDA ENGINEERS MANAGEMENT)	
CORPORATION,)	
)	
Respondent.)	
_____)	

RECOMMENDED ORDER

On November 20, 2000, a formal administrative hearing was held in this case in Tampa, Florida, before Jeff B. Clark, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Yvette Bowman, pro se
3401 North Lakeview Drive
Apartment 216
Tampa, Florida 33618

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

STATEMENT OF THE ISSUES

Whether Petitioner is entitled to credit for her answers to questions 55 p.m. and 56 p.m. on the Fundamentals of Engineering portion of the engineering licensure examination given on April 15, 2000.

PRELIMINARY STATEMENT

On April 15, 2000, Petitioner, Yvette Bowman, sat for the Engineering Intern Examination. After she reviewed the test results (she had a raw score of 105, a passing score was 107) by letter to the Board of Professional Engineers dated August 1, 2000, she requested a review of five questions. By e-mail messages dated August 7 and August 14, 2000, Petitioner requested a formal hearing challenging five questions. On August 17, 2000, the Florida Board of Professional Engineers forwarded the petition for formal hearing (examination challenge) to the Division of Administrative Hearings.

On August 22, 2000, an Initial Order was forwarded to Petitioner and Respondent, Florida Engineers Management Corporation. The final hearing was initially scheduled for October 10, 2000. On a Motion for Continuance by the Respondent, the final hearing was rescheduled for November 10, 2000.

Petitioner, Yvette Bowman, testified on her own behalf; Respondent presented one witness, Frank Hutchison, P.E., an examination preparation consultant for the Council of Examiners for Engineering and Surveying, who was accepted by the Administrative Law Judge as an expert witness. Petitioner had initially challenged five questions; at the opening of the hearing, Petitioner announced that she was withdrawing her

challenge to three of the five questions, leaving questions 55 p.m. and 56 p.m. subject to challenge; these two questions were ethical questions.

Petitioner offered no exhibits; Respondent offered Exhibit Nos. 1, 2, 3, 4, 9, 10, and 13, which were admitted into evidence. At the conclusion of the evidentiary portion of the hearing, the parties were advised of their right to file proposed recommended orders and a deadline of 10 days after the filing of the transcript was established. The Transcript of the hearing was filed with the Division of Administrative Hearings on December 11, 2000. A Proposed Recommended Order was received from Respondent and was considered.

Examination questions (Exhibits 9 and 10) are sealed and not available for public investigation pursuant to Section 456.014(2), Florida Statutes. The Transcript of the hearing which contains certain specific references to the examination questions is also sealed.

FINDINGS OF FACT

Upon consideration of the oral and documentary evidence received at the hearing, the following relevant findings of fact are made:

1. The examination for licensure of an engineer in the State of Florida is administered by the Florida Engineers Management Corporation, a not-for-profit corporation, created

under Section 471.038, Florida Statutes. A written examination is authorized by Rule 61G15-21.001, Florida Administrative Code.

2. Respondent contracts with the National Council of Examiners for Engineering and Surveying to provide engineering licensure examinations. This practice is approved by Section 455.217, Florida Statutes, and Rule 61G1 5-21.005, Florida Administrative Code. The National Council of Examiners for Engineering and Surveying develops standardized tests given for licensure throughout the United States and ensures that the questions are not ambiguous through a number of methodologies.

3. A candidate for licensure as an engineer intern must attain a "scaled" score of 70 to pass the examination. On the examination taken by Petitioner, the minimum "raw" score required to attain a "scaled" score of 70 was 107; Petitioner's "raw" score was 105.

4. Petitioner had initially challenged five questions; at the hearing, Petitioner withdrew her challenge to three questions; the two remaining challenged questions (55 p.m. and 56 p.m.) were "ethical" questions, i.e., they dealt with questions of engineering ethics.

5. The challenged questions were multiple-choice questions. The test gives the following directions: "Each of the questions or incomplete sentences below is followed by four suggested answers or completions. Select the one that is the

best in each case and then fill in the corresponding space on the answer sheet." (Emphasis added.)

6. The challenged question 55 p.m. deals with an engineer hired to prepare a report on the design, manufacture, and assembly of a structure. The report contains references to "shoddy workmanship."

7. Petitioner states that while she agreed that answer A [the graded "correct" answer] is correct, she believed that the inclusion of the word "also" in answer B included answer A in answer B by reference and therefore she chose B as her answer.

8. Petitioner acknowledges that the word "also" in answer B could be referring to language in the question rather than in answer A.

9. Answer A specifically refers to "engineering issues" which the engineer is "qualified to assess"; answer B indicates that the references to "shoddy workmanship" are "personal opinions" and "not professional opinions".

10. An engineer is obligated by his license not to give an opinion for which he does not have expertise. An engineer should not render a personal opinion in a report in which the engineer gives a professional opinion.

11. The challenged question 56 p.m. deals with an engineer who lacks expertise dealing with space frames but designed structures which included same.

12. Regarding challenged question 56 p.m., the Petitioner acknowledged that answer A (the graded "correct" answer) could have been the correct answer as well as the answer she chose, answer D.

13. Answer D indicates that the engineer was unethical because he did not refer that matter to the Registration Board.

14. An engineer should not contact the Registration Board and report to the Board that someone has asked him to do something unethical; it is incumbent upon an engineer to practice engineering ethically without the input of the Board.

15. In both instances in answering the challenged questions the Petitioner failed to provide the "best" answer and at hearing acknowledged that the graded "correct" answer by the National Council of Examiners for Engineering and Surveyors was a "correct" answer even though she chose a different answer.

CONCLUSIONS OF LAW

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

17. The burden of proof is on the party asserting the affirmative of an issue before an administrative tribunal. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 2d DCA 1981). To succeed in her challenge to the examination, Petitioner must establish, by a

preponderance of the evidence, that the examination was somehow faulty, was arbitrarily or capriciously worded, or that she was arbitrarily or capriciously denied credit through a grading process devoid of logic or reason. Harac v. Department of Professional Regulation, 484 So. 2d 1333, 1338 (Fla. 3d DCA 1986); State ex rel Glaser v. J.M. Pepper, 155 So. 2d 383 (Fla. 1st DCA 1963) ; State ex rel I.H Topp v. Board of Electrical Contractors for Jacksonville Beach, Florida, 101 So. 2d 583 (Fla. 1st DCA 1958).

18. Petitioner failed to satisfy her burden regarding having correctly answered challenged questions 55 p.m. and 56 p.m.

RECOMMENDATION

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

RECOMMENDED that the Florida Engineers Management Corporation enter a final order denying Petitioner's challenge to questions 55 p.m. and 56 p.m.

DONE AND ENTERED this 27th day of December, 2000, in
Tallahassee, Leon County, Florida.

JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of December, 2000.

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.