

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JERMADO EMMANUEL TURNER, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-4175  
 )  
 DEPARTMENT OF BUSINESS AND )  
 PROFESSIONAL REGULATION, BUREAU )  
 OF TESTING, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal hearing in this case on Friday, December 22, 2000, in Orlando, Florida.

APPEARANCES

For Petitioner: Jermado Emmanuel Turner  
6511 John Aldan Way  
Orlando, Florida 32818

For Respondent: Charles F. Tunnickliff, Esquire  
Department of Business and  
Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399-0792

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to credit for his answers to questions 41 and 48 on the February 2000 Construction, Building Contractor (Contract Administration) examination.

PRELIMINARY STATEMENT

On February 9, 2000, Petitioner, Jermado Emmanuel Turner, sat for the February 2000 Construction, Building Contractor (Contract Administration) examination.

He received a failing grade of 68 percent and after informal review, by letter of May 22, 2000, Petitioner formally challenged two questions on the examination.

On September 28, 2000, the Department of Business and Professional Regulation, Bureau of Testing, forwarded the petition for formal hearing (examination challenge) to the Division of Administrative Hearings.

On October 9, 2000, an Initial Order was forwarded to Petitioner and Respondent. Final hearing was scheduled for December 22, 2000, in Orlando, Florida.

Petitioner, Jermado Emmanuel Turner, testified on his own behalf and offered seven exhibits. All were admitted into evidence. Petitioner's wife, Mrs. Cheri Turner, was present but did not testify.

Respondent presented three witnesses, each of whom was an expert witness. Respondent offered seven exhibits. All were admitted into evidence.

At the end 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 January 16, 2000. A Proposed Recommended Order was received from the Respondent and was considered.

Pursuant to Section 456.014(2), Florida Statutes, examination questions (Respondent's Exhibit 5) are sealed and not available for public investigation.

#### FINDINGS OF FACT

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

1. The examination for licensure of a general contractor in the State of Florida is administered by the Department of Business and Professional Regulation, Division of Technology, Licensure and Testing. Chapter 455.217, Florida Statutes. A written examination is authorized by Rule 61G4-16.001, Florida Administrative Code.

2. Respondent contracts with Professional Testing, Incorporated, 1200 East Hillcrest Street, Orlando, Florida, which develops tests for the Florida Construction Industry Licensing Board. This practice is approved by Section 455.217, Florida Statutes. Professional Testing, Incorporated, ensures that questions and answers are not ambiguous through a number of methodologies.

3. Petitioner has been an "original" candidate for the construction, building contractor examination twice. The examination has three sections: business finance, project management, and contract administration. A candidate may retake any section three times before the entire examination has to be retaken.

4. One of the questions Petitioner is challenging is the same question he had on the June 1999 examination, that is, the "S mortar" question. This question was repeated on the August 1999 and the February 2000 examination.

5. The copies of the "S mortar" question and answers on the August 1999 and February 2000 examinations which were accepted into evidence were identical.

6. Petitioner maintains that the August 1999 examination question and answers accepted into evidence is not the same as the one he had on his examination.

7. Petitioner agrees that the answer he gave, 20.74, was an incorrect answer and that 46.67 (the "graded correct" answer) was correct.

8. Petitioner maintains that the 20.74 answer he gave on the February 2000 examination was a result of having been advised that 46.67 was an incorrect answer on the August 1999 test.

9. Petitioner examined his original answer sheet form both examinations (August 1999 and February 2000) at the hearing.

10. Petitioner's original answer for the August 1999 examination showed his answer to be "B", an incorrect answer, not the "graded correct" answer "C" (which was 46.67).

11. The second challenged question is question 48 which deals with a "critical activity list" also called a "critical activity interval" or "critical path."

12. Petitioner's answer is 106 days; the "graded correct" answer is 86 days.

13. Question 48 asked the test taker to identify "the latest day work must begin on the roofing activity."

14. One-hundred and six is the number of days the roof must be completed by (not when work must begin). Since this roofing activity takes 21 days it must begin on the 86th day to be complete on the 106th day.

15. The psychometrician expert witness testified that both questions (and answers) were within acceptable statistical ranges as valid. That opinion is accepted.

#### CONCLUSIONS OF LAW

16. The Division of Administrative 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 his 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 he 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 his burden regarding the challenged questions 41 and 48.

#### RECOMMENDATION

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

RECOMMENDED that the Department of Business and Professional Regulation, Bureau of Testing, enter a final order denying Petitioner's challenge to questions 41 and 48.

DONE AND ORDERED this 30th day of January, 2001, in  
Tallahassee, Leon County, Florida.

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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 30th 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.