

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GIOVANNI L. CAMPODONICO,)
)
 Petitioner,)
)
 vs.) Case No. 01-0257
)
 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 March 16, 2001, at sites located in Miami and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Giovanni L. Campodonic, pro se
9970 Southwest 88th Street
Apartment No. 11
Miami, Florida 33176

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

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner successfully completed the Civil/Sanitary Engineer Examination on April 14, 2000, of the Board of Professional Engineers.

PRELIMINARY STATEMENT

On April 14, 2000, Giovanni L. Campodonico (Petitioner) took the Civil/Sanitary 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)¹ notified Petitioner that he did not successfully complete the Examination, having received a score of 69. Petitioner challenged the score that he received, specifically, challenging questions numbered 120, 124, and 211, and requested a hearing. On January 17, 2001, this matter was referred to the Division of Administrative Hearings.

At hearing, Petitioner testified in his own behalf and entered three exhibits (Petitioner's Exhibits numbered 1-3) into evidence. One of Petitioner's exhibits (Petitioner's Exhibit numbered 4) was rejected. Respondent presented the testimony of one witness (an expert) and entered 13 exhibits (Respondent's Exhibits numbered 1-13) 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 ten days following the filing of the transcript. The

Transcript, consisting of one volume, was filed on April 5, 2001. The parties timely filed their post-hearing submissions, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. On April 14, 2000, Petitioner took the Examination.
2. The minimum score required to pass the Examination was 70. Respondent notified Petitioner that he had not successfully completed the Examination, having received a score of 69.
3. The Examination is a national examination and is graded by national examiners, i. e., the National Council of Examiners for Engineering and Surveying (NCEES). A separate scoring plan is used for grading each essay question. A separate scorer is used for each essay question, generally scores a given question for all of the Examination. The identity of the candidate/examinee by name is not revealed; the candidate/examinee is given a number and is identified by the number given to him/her.
4. By letter dated September 19, 2000, Petitioner notified Respondent that he was challenging essay questions numbered 120, 124, and 211 on the Examination and that he was requesting a re-scoring of those questions. Petitioner completed a Request for Review of Examination Item form for each question and included,

from his point of view, why he should be afforded additional credit and what score he should receive for each question.

5. Petitioner's Examination was returned to the NCEES for review and rescoring. NCEES' rescorer used the same scoring plan that was used for the Examination. NCEES' rescorer recommended that Petitioner receive no additional points for questions numbered 120, 124, and 211 and included a detailed rationale for the recommended score of each challenged question. NCEES determined that Petitioner was not entitled to additional credit and further determined that Petitioner's total raw score of 47, equivalent to a total score of 69, would not be changed.

6. The maximum score achievable for each essay question was ten points, with points subtracted for various reasons as provided in the scoring plan. The score for each essay question was rounded to the next highest even number, resulting in a score of 0, 2, 4, 6, 8, or 10.

7. For question numbered 120, Petitioner received a score of eight points. Petitioner challenges only one part of question numbered 120, regarding his computation of the ultimate bearing capacity for a given footing.

8. For question numbered 120, Petitioner ignored the correction in the requirement for the mid-height water table. He quoted an equation from a reference material but failed to include the correction for the water table in his equation.

Furthermore, even though Petitioner incorrectly calculated the effective weight of the soil, he failed to include in the question what he had calculated.

9. The scoring plan for question numbered 120 requires a two-point reduction if the correction for the water table is ignored.

10. Petitioner failed to correctly answer the challenged portion of question numbered 120. Petitioner should receive a score of eight points and, therefore, should not receive any additional points.

11. For question numbered 124, Petitioner received a score of 6 points. Petitioner challenges only one part of question numbered 124, regarding his determination of the maximum sight distance obtainable in the given situation. Petitioner contends that the challenged part was improper, arbitrary, subjective, and open to interpretation.

12. The challenged part of question numbered 124 asked the candidate to determine the maximum distance from the eye to the top of a six-inch high object on the road. It is clear that the challenged part asked for the determination as to how far one can see in a straight line before something obstructs one's view. In making the determination, no additional factors were to be considered, such as what the headlight factor was, or what the ability of a car to stop was, or what the conditions of the

road were, or any other factor. Petitioner assumed additional factors. He assumed the sight distance for a sag vertical curve as a stopping sight distance.

13. In calculating the distance, Petitioner made no reference to the obstruction in the calculation formula. His answer had a numerical difference from the correct answer of more than ten percent. The difference was 69 percent.

14. The challenged part of question numbered 124 was not arbitrary, capricious, improper, subjective, or open to interpretation.

15. According to the scoring plan, Petitioner's answer for question numbered 124 requires a two point reduction.

16. Petitioner failed to correctly answer the challenged portion of question numbered 124. Petitioner should receive a score of six points and is, therefore, not entitled to receive any additional points.

17. For question numbered 211, Petitioner received a score of four points. Petitioner challenges the question to the extent that he asserts that he answered 75 percent of the question correctly and, therefore, should receive a score of at least six points.

18. Question numbered 211 is a two-part question. Petitioner admits that he made numerical errors in his solution and that he failed to answer the second part of the question.

19. Petitioner contends that he had insufficient time to answer the second part and that, if he had sufficient time, he would have performed re-calculations and would have been able to demonstrate his understanding of the principles of pumps in series and pumps in parallel. Regardless of Petitioner's contention, his failure to answer the second part of the question was what was before the scorer and re-scorer and was reasonably determined to demonstrate that he failed to understand the development of a pump curve for pumps in series. Failure to demonstrate understanding of the development of a pump curve for pumps in series constitutes, according to the scoring plan, a fundamental error.

20. Because of his errors in the solution and his failure to answer one part, the scoring plan requires that Petitioner receive a score of four points.

21. Petitioner should receive a score of four points and is, therefore, not entitled to receive any additional points.

22. Petitioner's answers were not arbitrarily or capriciously graded. The grading was not devoid of logic and reason. The scoring plan was properly used.

23. At hearing, Petitioner demonstrated a great deal of knowledge regarding the challenged questions. However, he failed to demonstrate such knowledge on the Examination.

24. Petitioner's score on the Examination should not be changed and, therefore, should remain at 69. Petitioner has not obtained the minimum score required to pass the Examination.

CONCLUSIONS OF LAW

25. 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.

26. Petitioner, as the applicant, has the ultimate burden of proof to establish that he is entitled to licensure as a professional engineer. Florida Department of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981).

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

28. Petitioner challenges the grading of his answers to questions numbered 120, 124, and 211. He failed to satisfy his burden and, therefore, failed to demonstrate that he is entitled to additional points. Petitioner's total score remains at 69, and he has failed to obtain the minimum score required to pass the Examination, which is 70.

29. The undersigned is not persuaded by Respondent's argument that Petitioner, even if he was entitled to additional credit, could not be granted additional credit by Respondent because, by its own rule, Respondent must accept the grading by NCEES of the Examination without modification. Rules 61-11.012(1) and 61-11.010(1)(a), Florida Administrative Code. Regardless, the undersigned has determined that Petitioner is not entitled to additional credit.

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 finding Giovanni L. Campodonico ineligible for licensure.

DONE AND ENTERED this 4th day of May, 2001, 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
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of May, 2001.

ENDNOTE

1/ The Respondent in this case is the Department of Business and Professional Regulation, Board of Professional Engineers, not the Florida Engineers Management Corporation, as asserted by Respondent's counsel. Section 471.005, Florida Statutes, provides in pertinent part:

(1) "Board" means the Board of Professional Engineers.

(2) "Board of directors" means the board of directors of the Florida Engineers Management Corporation.

* * *

(4) "Department" means the Department of Business and Professional Regulation.

* * *

(9) "Management corporation" means the Florida Engineers Management Corporation.

Section 471.038, Florida Statutes, provides in pertinent part:

(1) This section may be cited as the "Florida Engineers Management Corporation Act."

(2) The purpose of this section is to create a public-private partnership by providing that a single nonprofit corporation be established to provide administrative, investigative, and prosecutorial services to the board and that no additional nonprofit corporation be created for these purposes.

(3) The Florida Engineers Management Corporation is created to provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455 and this chapter. . . . The provisions of s. 768.28 apply to the management corporation, which is deemed to be a corporation primarily acting as an instrumentality of the state, but which is not an agency within the meaning of s. 20.03(11). The management corporation shall:

* * *

(b) Provide administrative, investigative, and prosecutorial services to the board in accordance with the provisions of chapter 455, this chapter, and the contract required by this section.

* * *

(i) Operate under an annual written contract with the department which is approved by the board. . . .

* * *

(4) The management corporation may not exercise any authority specifically assigned

to the board under chapter 455 or this chapter, including determining probable cause to pursue disciplinary action against a licensee, taking final action on license applications or in disciplinary cases, or adopting administrative rules under chapter 120.

COPIES FURNISHED:

Giovanni L. Campodonico
9970 Southwest 88th Street
Apartment No. 11
Miami, Florida 33176

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

William Woodyard, General Counsel
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-0792

Jim Rimes, Executive Director
Board of Professional Engineers
Department of Business and
Professional Regulation
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.