

Final Order No. BPR-2006-00627 Date: 1-31-06  
**FILED**

Department of Business and Professional Regulation  
AGENCY CLERK  
Sarah Wachman, Agency Clerk

By: Brandon M. Nichol

STATE OF FLORIDA  
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT  
CORPORATION,

Petitioner,

vs.

FEMC CASE NO.: 03-0168  
DOAH CASE NO.: 05-1189PL  
LICENSE NO.: PE 40276

JEREMIAH J. WALKER, P.E.,

Respondent.

**FINAL ORDER**

THIS CAUSE came before the BOARD OF PROFESSIONAL ENGINEERS (Board) pursuant to Sections 120.569 and 120.57(1), Florida Statutes, on December 8, 2005, in Tallahassee, Florida, for the purpose of considering the Administrative Law Judge's Recommended Order and Petitioner's Exceptions to the Recommended Order, and Respondent's Response to Exceptions (copies of which are attached hereto as Exhibits A and B, respectively) in the above-styled cause. Petitioner was represented by Douglas D. Sunshine. Respondent was represented by Pamela S. Moine, Esquire.

Upon review of the Recommended Order, the argument of the parties and after a review of the complete record in this case, the Board makes the following findings and conclusions.

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Florida Engineers Management Corporation  
Clerk

CLERK Jessie Baker  
DATE 1-31-2006

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

### RULINGS ON EXCEPTIONS

1. Petitioner's Exception 1 to paragraph 9 of the Recommended Order is rejected.

2. Petitioner's Exception 2 to paragraph 10 of the Recommended Order is rejected.

3. Petitioner's Exception 3 to paragraph 11 of the Recommended Order is approved and the following sentence is deleted: "A careful reading of the Certificate of Completion, as submitted, reveals that it addresses only the completion of Independence Road." As stated in Petitioner's Exceptions, this finding is not supported by competent substantial evidence. Further, under generally accepted engineering principles, a public authority cannot be expected to search submitted documentation for errors. The standard does not place the burden on the agency to discover such errors. It is the responsibility of the engineer signing part IV of the form at issue to indicate whether the project was complete.

4. Petitioner's Exception 4 to paragraph 33 of the Recommended Order is rejected in part and approved in part. The exception concerning the expertise of Mr. Mallett is rejected. To the extent that paragraph 33 finds that "procedures used at Hurlburt Field and military construction projects in general" constitute exceptions to generally accepted engineering principles or state regulatory requirements, the exception is approved. The form signed by Respondent was not an internal form

of the United States military; the form is a regulatory form used by the State of Florida. Therefore, because the opinion of Mr. Mallett was based on a standard that was not established in the record, and that does not relieve a professional engineer from performing according to proper standards, the following sentence is stricken: "This opinion is accepted as fact."

5. Petitioner's Exceptions 5 and 6 to paragraph 43 of the Recommended Order are approved. Paragraph 43 is stricken because the undisputed evidence was that Respondent executed Part IV of the Certificate of Completion, and the form was submitted to DEP. The fact that Respondent did not have direct dealings with DEP is irrelevant to Respondent's duty of care. As an engineer, Respondent was responsible for the content of the form, and any errors it contained, or was obligated to note on the form that he didn't accept responsibility for certain information contained therein. Paragraph 43 is replaced with the following language: FEMC proved that Respondent was negligent in the practice of engineering as alleged in the Administrative Complaint, in violation of Section 471.033(1)(g), Florida Statutes.

#### **FINDINGS OF FACT**

1. With the exception of the amendments contained in the ruling on Petitioner's Exceptions, the findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction of this matter pursuant to Section 120.57(1), Florida Statutes, and Chapter 471, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are rejected. The Board concludes that Respondent violated Section 471.033(1)(g), Florida Statutes, by committing negligence in the practice of engineering.

#### DISPOSITION

The license of JEREMIAH J. WALKER is hereby REPRIMANDED.

The licensee shall pay an administrative fine of \$1,000.00 within 30 days. The fine shall be made payable to the Florida Board of Professional Engineers and sent to the Board at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.

The licensee is placed on probation for a period of two years.

Respondent shall successfully complete a Board-approved course in Engineering Professionalism and Ethics within one year of the date the Final Order is filed. Prior to that date, Respondent shall submit to the Board a Certificate of Completion. It is the Respondent's responsibility to notify the Board that he has completed the course in a timely manner.

Respondent shall successfully complete the Study Guide which has been prepared by the Board of Professional Engineers and which will be furnished to Respondent, regarding the Engineering Practice Act, Chapter 471, Florida Statutes, and the Rules of the Board of Professional Engineers. Respondent shall complete and return the Study Guide within thirty days of the date on which a Final Order is filed, to the Board of Professional Engineers at 2507 Callaway Road, Suite 200, Tallahassee, Florida 32303.

**RULING ON MOTION TO ASSESS COSTS**

The Board reviewed the Petitioner's Motion to Assess Costs and imposes the costs associated with this case in the amount of \$3,090.24. Said costs are to be paid within four months from the date this Final Order is filed.


**RULING ON MOTION FOR STAY**

Respondent's *ore tenus* motion for a stay of this Final Order in the event the Order is appealed is GRANTED.

This Final Order shall take effect upon being filed with the Clerk of the FLORIDA ENGINEERS MANAGEMENT CORPORATION.


DONE AND ORDERED this 27<sup>th</sup> day of January, 2006.

BOARD OF PROFESSIONAL ENGINEERS

  
Paul J. Martin, Executive Director  
for Henn Rebane, P.E., Chair

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided by U.S. Mail to JEREMIAH J. WALKER, c/o Pamela A. Moine, Esquire, 21 East Garden Street, Suite 400, Pensacola FL 32502; to Harry L. Hooper, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by interoffice delivery to Douglas D. Sunshine, FLORIDA ENGINEERS MANAGEMENT CORPORATION, 2507 Callaway Road, Suite 200, Tallahassee FL 32303 and Lee Ann Gustafson, Department of Legal Affairs, PL-01 The Capitol, Tallahassee FL 32399-1050 this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

  
Paul J. Martin, Executive Director  
for Henn Rebane, P.E., Chair

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE FLORIDA ENGINEERS MANAGEMENT CORPORATION AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.