

Final Order No. BPR-2007-05496 Date: **7-16-07**

FILED

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Brandon M. Nuhala

FILED
2007 JUL 18 A 10:36
DIVISION OF
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
BOARD OF PROFESSIONAL ENGINEERS

FLORIDA ENGINEERS MANAGEMENT
CORPORATION,

Petitioner,

vs.

FMEC CASE NO.: 03-0168
DOAH CASE NO.: 05-1189PL
LICENSE NO.: PE40276

JEREMIAH J. WALKER,

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 June 21, 2007, in Tallahassee, Florida, on a Mandate from the First District Court of Appeal of Florida. Petitioner was represented by John J. Rimes, III. Respondent was represented by Pamela S. Moine, Esquire.

Upon Mandate from the First District Court of Appeal of Florida, the Board makes the following findings and conclusions.

Findings of Fact

1. 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.

FILED
Florida Engineers Management Corporation
Clerk

CLERK
DATE

Debra J. [Signature]
7/16/07

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 approved and adopted and incorporated herein by reference.

Disposition

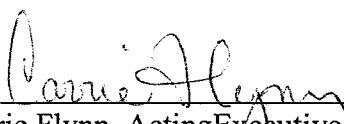
Upon Mandate from the First District Court of Appeal

IT IS HEREBY ORDERED AND ADJUDGED that this matter be Dismissed.

This Final Order shall take effect upon being filed with the Clerk of the Department of Business and Professional Regulation.

DONE AND ORDERED this 12 day of July, 2007.

BOARD OF PROFESSIONAL ENGINEERS

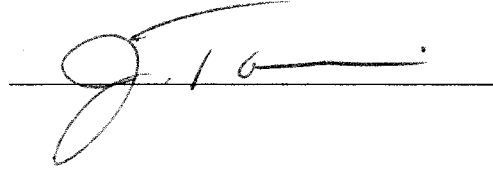


Carrie Flynn, Acting Executive Director
for Henn Rebane, PE., Chair

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 Patrick Creehan, 2507 Callaway

Road, Suite 200, Tallahassee FL 32303 and Michael T. Flury, Department of Legal Affairs, PL-01 The Capitol, Tallahassee FL 32399-1050 this 17th day of JULY, 2007.

A handwritten signature in black ink, appearing to be "M. Flury", written over a horizontal line.

F:\Users\ADMIN\Michael Flury\Engineering\06.20.07 Board Meeting\MANDATE - Walker.wpd

MANDATE FILED

From

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

2007 JUL 18 A 10:36
DIVISION OF
ADMINISTRATIVE
HEARINGS

To Paul J. Martin, Executive Director, Department of Business and Professional Regulation

WHEREAS, in that certain cause filed in this Court styled:

JEREMIAH J. WALKER, P. E.

Case No : 1D06-948

v.

Lower Tribunal Case No : 03-0168.

BOARD OF PROFESSIONAL
ENGINEERS

The attached opinion was issued on December 29, 2006.

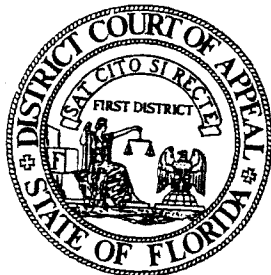
YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable EDWIN B. BROWNING, JR., Chief Judge

of the District Court of Appeal of Florida, First District,

and the Seal of said Court done at Tallahassee, Florida,

on this 17th day of January 2007.



Jon S. Wheeler

JON S. WHEELER, Clerk
District Court of Appeal of Florida, First District

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JEREMIAH J. WALKER, P.E.,

Appellant,

v.

BOARD OF PROFESSIONAL
ENGINEERS,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED.

CASE NO.: 1D06-0948

FILED
2007 JUL 19 4:10 PM
ADMINISTRATIVE
HEARINGS
Florida Board of
Professional Engineers

Opinion filed December 29, 2006.

An appeal from an order of the Department of Business and Professional Regulation.

Gregory R. Miller, United States Attorney, and Pamela A. Moine, Assistant United States Attorney, Pensacola, for Appellant.

Bruce A. Campbell, Tallahassee, for Appellee.

PER CURIAM.

Jeremiah J. Walker, P.E., appeals a final order of the Board of Professional Engineers (Board), appellee, which rejects various findings of fact made in the recommended order of the Administrative Law Judge (ALJ), rejects the ALJ's conclusion that negligence was not proven, and substitutes the Board's conclusion

that negligence had been proven justifying a reprimand of Walker's license.¹ Because competent substantial evidence supports the findings of the ALJ, we reverse.

As this court explained in Heifetz v. Department of Business Regulation, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)(citations omitted and emphasis added):

Factual issues susceptible of ordinary methods of proof that are not infused with policy considerations are the prerogative of the hearing officer as the finder of fact. It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence. If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

Accord Packer v. Orange County School Bd., 881 So. 2d 1204, 1207 (Fla. 5th DCA 2004); Tedder v. Florida Parole Comm'n, 842 So. 2d 1022, 1025 (Fla. 1st DCA 2003).

¹In its final order, the Board approved certain exceptions to the recommended order filed by Florida Engineers Management Corporation (FEMC). See section 471.038(3)(b), Florida Statutes (2005), providing that FEMC shall provide prosecutorial services to the Board. In addition to its exceptions, FEMC also provided the Board with certain documents that were not part of the record and were not considered by the ALJ. On appeal, the Board correctly concedes that it was improper for it to have considered evidence outside of the record. See Hodge v. Dep't of Prof'l Regulation, 432 So. 2d 117, 118 (Fla. 5th DCA 1983).

Here, competent substantial evidence supports the findings of fact made by the ALJ. Florida courts are in agreement that when competent substantial evidence in the record supports the ALJ's findings of fact, "the agency may not reject them, modify them, substitute its findings, or make new findings." Gross v. Dep't of Health, 819 So. 2d 997, 1001 (Fla. 5th DCA 2002).

REVERSED and REMANDED with instructions that the ALJ's recommended order be adopted as the final order of the Board.

WEBSTER, VAN NORTWICK, AND PADOVANO, JJ., CONCUR.