

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MAHMOOD DAVOODI, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-3103  
 )  
 BOARD OF PROFESSIONAL )  
 ENGINEERS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Errol H. Powell, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing on November 8, 2010, by videoconference in Tallahassee and Lauderdale Lakes, Florida. Due to the unavailability of Judge Powell, the case has been reassigned to Administrative Law Judge Robert E. Meale, who has prepared this recommended order, using the existing record, pursuant to section 120.57(1)(a), Florida Statutes.

APPEARANCES

For Petitioner: Kristine M. Johnson  
Kristine M. Johnson, P.A.  
10620 Griffin Road  
Cooper City, Florida 33328

For Respondent: Michael T. Flury  
Assistant Attorney General  
Office of the Attorney General  
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STATEMENT OF THE ISSUE

The issue is whether Petitioner is qualified for certification of qualification for licensure as a professional engineer by endorsement, pursuant to section 471.015(3), Florida Statutes.

PRELIMINARY STATEMENT

On August 27, 2009, Petitioner applied for licensure as a professional engineer by endorsement. On November 30, 2009, Respondent issued a Notice of Denial. On March 26, 2010, Respondent issued an Amended Notice of Denial. Petitioner timely requested a hearing.

At the hearing, Petitioner called three witnesses and offered into evidence one exhibit: Petitioner Exhibit 1; Respondent offered into evidence one exhibit: Respondent Exhibit 1. The parties filed two joint exhibits: Joint Exhibits 1-2. All exhibits were admitted.

The court reporter filed the transcript on November 23, 2010. The parties filed proposed recommended orders by December 13, 2010.

FINDINGS OF FACT

1. In 1982, Petitioner earned a bachelor's degree in construction engineering from Florida International University. Petitioner does not have a doctorate in engineering.

2. On June 24, 2009, the state of North Carolina issued Petitioner a license as a professional engineer. This is his only professional engineer license.

3. Because Petitioner had over 20 years' progressive experience on engineering projects acceptable to the North Carolina State Board of Examiners for Engineers and Surveyors, he was eligible for a professional engineer license by, among other things, passing Part II of the National Council for Examiners of Engineering and Surveying (NCEES), which is also known as the Principals and Practices Examination. Due to his experience, North Carolina did not require Petitioner to pass Part I of the NCEES, which is also known as the Fundamentals Examination.

4. By application dated August 27, 2009, Petitioner applied for Florida licensure by endorsement as a professional engineer. Ultimately, Respondent declined to certify to the Florida Engineers Management Corporation the application for licensure by endorsement because Petitioner had not passed Part I of the NCEES.

5. Except for not having passed Part I of the NCEES examination (or, if applicable, not having met one of the other two alternatives set forth in section 471.015(5) (a), as discussed in the Conclusions of Law), Petitioner otherwise meets the education and experience requirements set forth in section

471.013(1), Florida Statutes, for certification for licensure by endorsement.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat.

7. Petitioner bears the burden of proving his entitlement to licensure by endorsement. Dep't of Transp. v. J. W. C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Espinoza v. Dep't of Bus. and Prof'l Reg., 739 So. 2d 1250 (Fla. 3d DCA 1999).

8. Section 471.015, Florida Statutes, provides, in part:

(1) The management corporation shall issue a license to any applicant who the board certifies is qualified to practice engineering and who has passed the fundamentals examination and the principles and practice examination.

(2) The board shall certify for licensure any applicant who satisfies the requirements of s. 471.013. The board may refuse to certify any applicant who has violated any of the provisions of s. 471.031.

(3) The board shall certify as qualified for a license by endorsement an applicant who:

(a) Qualifies to take the fundamentals examination and the principles and practice examination as set forth in s. 471.013, has passed a United States national, regional, state, or territorial licensing examination that is substantially equivalent to the fundamentals examination and principles and practice examination required by s. 471.013,

and has satisfied the experience requirements set forth in s. 471.013; or

(b) Holds a valid license to practice engineering issued by another state or territory of the United States, if the criteria for issuance of the license were substantially the same as the licensure criteria that existed in this state at the time the license was issued.

\* \* \*

(5) (a) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination when such applicant:

1. Has held a valid professional engineer's license in another state for 15 years and has had 20 years of continuous professional-level engineering experience;

2. Has received a doctorate degree in engineering from an institution that has an undergraduate engineering degree program which is accredited by the Accreditation Board for Engineering Technology; or

3. Has received a doctorate degree in engineering and has taught engineering full time for at least 3 years, at the baccalaureate level or higher, after receiving that degree.

(b) The board shall deem that an applicant who seeks licensure by endorsement has passed an examination substantially equivalent to the fundamentals examination and the principles and practices examination when such applicant has held a valid professional engineer's license in another state for 25 years and has had 30 years of continuous professional-level engineering experience.

9. Among other things, for a license not by endorsement, Florida statutes require applicants to pass Parts I and II of the NCEES--section 471.015(1); possess a degree from a school

approved by Respondent with an approved four-year engineering curriculum and four years' active, responsible engineering experience--sections 471.015(2) and 471.013(1)(a)1.; and demonstrate good moral character--sections 471.015(2) and 471.013(2)(a).

10. For a license by endorsement, Florida statutes impose one of two sets of requirements: 1) the requirements of section 471.013 for sitting for Parts I and II of the NCEES, passing the "substantial. . . equivalent" of Parts I and II of the NCEES, and four years' active, responsible engineering experience, as required by section 471.013(1)(a)1. or 2) holding a valid professional engineer license issued by another state, if the criteria for issuance were "substantially the same" as the Florida criteria. These are the provisions of section 471.015(3)(a) and (b), respectively.

11. Section 471.015(5)(a) directs Respondent to deem that an applicant has passed an exam "substantially equivalent" to Part I of the NCEES, if the applicant has held a professional engineer license for 15 years and has had 20 years' acceptable experience, has a doctorate degree in engineering from a school with an accredited undergraduate engineering program, or has a doctorate degree in engineering and has taught undergraduate engineering fulltime for three years or more.

12. Although the Joint Pre-hearing Stipulation states that Petitioner is seeking licensure by endorsement under section 471.015(3)(a) and (b), his post-hearing filing seems to rely exclusively on section 471.015(3)(b). Petitioner does not qualify under section 471.015(3)(a) because he has not taken an exam that is the substantial equivalent of Part I of the NCEES, nor does he have the requisite education or licensing history that would allow him not to take Part I, as provided by section 471.015(5)(a). For the same reasons, discussed below, Petitioner may not claim substantial compliance with one of the substitutes authorized by section 471.015(5)(a) for Part I of the NCEES because he lacks a doctorate degree or 15 years' licensing history.

13. As to section 471.015(3)(b), the issue is whether the criteria for the issuance of a North Carolina license are "substantially the same" as the criteria for the certification for issuance of a Florida license. "Substantially the same" means that the North Carolina criteria are not materially different from the Florida criteria. Eason v. Dep't of Bus. and Prof'l Reg., 732 So. 2d 1136 (Fla. 5th DCA 1999) (other state's points for veterans' preference, on which applicant relied for passing grade, rendered scoring of Part II of the NCEES materially different from the Florida criterion, which does not add extra points for veterans).

14. If section 471.015(5)(a) also applies to section 471.015(3)(b), the lack of merit to Petitioner's argument would be obvious. If the legislature relieved certain highly educated or long-licensed persons from the obligation of taking Part I of the NCEES, it would make no sense to allow someone without the same level of education or licensing history not to take Part I, merely by claiming that his passing Part II is "substantially the same" as passing Parts I and II.

15. Even if there were some difference in meaning between two things that are substantially equivalent and two things that are substantially the same, such that section 471.015(5)(a) would not apply to section 471.015(3)(b), Petitioner's argument still lacks merit. Essentially, Petitioner interprets the "substantially the same" language in section 471.015(3)(b) to read out of the licensing requirements one of the relatively few criteria imposed upon an applicant for a professional engineer license--here, that an applicant pass Part I of the NCEES. But the licensing criteria of another state are not "substantially the same" as Florida's criteria, if the other state does not require one of Florida's criteria, such as good moral character, extensive education, meaningful experience, or passing both parts of the NCEES.

16. Petitioner provides no guidance as to which of Florida's criteria may be omitted by the other state, if its



licensing criteria are still to be considered "substantially the same" as Florida's criteria. To prevail in this case, Petitioner must argue that passing Part II is "substantially the same" as passing Parts I and II of the NCEES, a bachelor's degree is "substantially the same" as a doctorate, or two years' licensing history is "substantially the same" as 15 years' licensing history (ignoring a possible issue in the quality of the experience also required under this substitute criterion).

17. Providing no test for materiality, Petitioner's argument seems to be that the other state may omit a single Florida licensing criterion and still impose "substantially the same" criteria. Under this approach, another applicant for licensure by endorsement may argue that another state's licensing scheme is "substantially the same" as Florida's scheme, even though the other state does not require good moral character, extensive education, meaningful experience, or perhaps passing Part II of the NCEES.

18. The only practical interpretation of the "substantially the same" language is that the other state's licensing criteria must: 1) include all of Florida's licensing criteria, and 2) if not exactly the same as Florida's licensing criteria, the other state's licensing criteria may be no more than insubstantially or immaterially different. Thus, an applicant may not obtain licensure by endorsement, if he

obtained a license in another state that did not require good moral character--or something "substantially the same," such as "a lack of moral turpitude." Likewise, an applicant may not obtain licensure by endorsement, if he obtained a license in another state that did not require a four-year degree from an approved school with an approved engineering curriculum--or something "substantially the same," such as a four-year degree from a school not approved by Respondent, but insubstantially or immaterially different from schools that have been approved by Respondent. See Gaudet v. Board of Prof'l Eng'rs, 900 So. 2d 574 (Fla. 4th DCA 2004).

19. The failure of North Carolina to require Petitioner to pass Part I of the NCEES means that its licensing criteria were not "substantially the same" as the licensing criteria of Florida. Because Petitioner also lacks a doctorate or 15 years' licensing history (with the requisite professional experience in terms of quantity and quality), he is not entitled to certification of qualification for licensure by endorsement without passing Part I of the NCEES.

#### RECOMMENDATION

It is

RECOMMENDED that the Board of Professional Engineers enter a final order denying Petitioner's application for certification of qualification for licensure by endorsement.

DONE AND ENTERED this 11th day of July, 2011, in  
Tallahassee, Leon County, Florida.



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ROBERT E. MEALE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of July, 2011.

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 must be filed with the agency that will issue the final order in this case.