

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
JOHN O. PASTORE CENTER, BLDG. 68-69
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF:	:	
	:	
SCOTT SMITH	:	DBR Nos. 15DP007
<i>RESPONDENT.</i>	:	
	:	

DECISION

Hearing Officer: Ellen R. Balasco, Esq.

Hearing Held: February 17, 2016

Appearances: For the Department of Business Regulation: Jenna Algee, Esq.

For Respondents: Respondent appeared *pro se*, by teleconference.

I. INTRODUCTION

The above-cited matter was assigned to the undersigned Hearing Officer on December 23, 2015, pursuant to a Notice of Appointment of Hearing Officer and Pre-Hearing Conference, and for Appeal to the Director of the Engineering Board’s denial of license to practice engineering in Rhode Island. (“Notice”). The filing of Department’s Notice was based on the Rhode Island Board of Registration for Professional Engineers’ decision to deny the license application filed by the Respondent on August 7, 2015.

The Board denied Respondent’s application because his engineering technology degree did not satisfy the minimal educational requirements under the statute. The Board’s decision to deny the Respondent application, issued on September 16, 2015, was based on

the applicant having a degree in engineering technology, as opposed to one in engineering, which would disqualify him for licensing in this jurisdiction, pursuant to the requirements set forth in R.I. Gen. Laws § 5-8-11. Notice of the denial was provided in writing to the Respondent on September 22, 2015 and the Respondent filed a request for appeal to the Director of the Department of Business Regulation on September 30, 2015, in accordance with the provisions of R.I. Gen. Laws §§ 5-8-14(d) and Section 130.20.4 of the *Rhode Island Rules & Regulations For Licensure For Engineers*.

II. ISSUE PRESENTED

Whether the Rhode Island Board of Registration for Professional Engineers' erred in denying Respondent's application for registration as a professional engineer.

III. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws §§ 42-14-1, *et seq.*, 42-35-1, *et seq.* and R.I. Gen Laws § 5-8-11.

IV. MATERIAL FACTS AND TESTIMONY

The Respondent participated in the hearing by teleconference, as he is a resident of and was located in the State of California at the time and date set for hearing. After having been sworn, the Respondent testified that he objects to the Board's denial of his application as he feels that he does meet the qualification standards for engineering practice in the State of Rhode Island. He holds a bachelor's degree in Engineering Technology and he is currently licensed in thirteen other states. He admitted that he does not hold a bachelor's degree in

Engineering, and has never held a certificate of registration for engineering in the State of Rhode Island.

The Respondent bases his argument on a previous version of R.I. Gen. Laws § 5-8-11, and presents (through counsel for the Department) a document marked as Respondent's Exhibit #3 Public Law Chapter 304, based on House Bill H-6532A, having an effective date of enactment in the 1991 Legislative session. In this prior version of the current statute, subsection 1(B)(1)(iv) allowed "long-established practice" to serve as qualification for registration as a professional engineer. The Respondent argues that, because he does meet the qualifications set forth in this prior version of a current law, that his application should have been granted. He acknowledges that this law was not, however, in effect at the time he filed his application, and that the "long-established practice" subsection does not exist in the current law.

When questioned, the Respondent admitted that there are significant differences in Engineering Technology and Engineering curriculums, including calculus-based theoretical math and science course inclusions in the latter. For accreditation, engineering and engineering technology programs are reviewed and accredited by two separate commissions, as well.

Counsel for the Department called as a witness Lois Marshall, employed by the Department as Board Administrator for the Board of Registration for Professional Engineers, who testified that she has held that position for the past eighteen (18) years. She stated that the Board's decision to deny the Respondent's application was based on the fact that he did not meet the education requirements for registration, as he does not hold an ABET-EAC accredited four year engineering degree. The Respondent's degree is in Engineering Technology.

She indicated that the only applicants holding Engineering Technology degrees who would qualify for licensure in this State must also hold a Masters degree in Engineering (since the law was changed to reflect this requirement in 2014). There are currently no engineers registered in Rhode Island who hold this combination of degrees. In fact, there are no currently registered engineers in this state who hold a four year degree in Engineering Technology. She further testified that the Board has never applied laws which were no longer in effect (i.e. “grandfathering”) for any applicant during her eighteen years with the Board.

Ms. Marshall testified that she was aware that there are other states which accept a degree in Engineering Technology for qualifying education toward registration, but that Rhode Island is not one of these states.

At counsel for the Department’s request, administrative notice was taken of a paper published by the Accreditation Board for Engineering and Technology, Inc. (“ABET”), which is a not-for-profit, non-governmental accrediting agency for programs in applied science, computing, engineering, and engineering technology. It is this agency that accredits educational programs to assist State boards in setting licensing standards in those areas. The paper noticed is titled “Engineering vs. Engineering Technology”, and it describes the difference between the two educational curriculums for each of the degrees. This paper provided significant background information to the undersigned Hearing Officer for use in comprehending that difference, and in deliberating the validity of the Board’s license denial in this matter.

V. DISCUSSION

The Rhode Island Supreme Court has consistently held that it effectuates legislative intent by examining a statute in its entirety and giving words their plain and ordinary meaning.

In re Falstaff Brewing Corp., 637 A.2d 1047, 1049 (R.I. 1994). See *Parkway Towers Associates v. Godfrey*, 688 A.2d 1289 (R.I. 1997). The Rhode Island Supreme Court has also established that it will not interpret legislative enactments in a manner that renders them nugatory or that would produce an unreasonable result. See *Defenders of Animals v. Dept. of Environmental Management*, 553 A.2d 541 (R.I. 1989) (citing *Cocchini v. City of Providence*, 479 A.2d 108, 111 (R.I. 1984)). In cases where a statute may contain ambiguous language, the Rhode Island Supreme Court has consistently held that the legislative intent must be considered. *Providence Journal Co. v. Rodgers*, 711 A.2d 1131, 1134 (R.I. 1998). The statutory provisions must be examined in their entirety and the meaning most consistent with the policies and purposes of the legislature must be effectuated. *Id.*

In precedent established by the Rhode Island courts, there should be deference to the agency's construction of a statute, the enforcement of which is in the agency's charge, where the construction is reasonable and consonant with the general scheme of regulation in the statute, and not clearly wrong. See, *Asadorian v. Warwick School Committee*, 691 A.2d 573, 577 (R.I.1997).

To qualify for registration as a professional engineer in Rhode Island, a first-time applicant must meet at least one of the criteria combinations clearly and plainly outlined in R.I.

Gen Laws § 5-8-11(1):

(B) A person holding a certificate of qualification issued by the National Council of Examiners for Engineering and Surveying, whose qualifications meet the requirements of this chapter, may, upon application, be registered without further examination, provided he or she is qualified.

(ii) Graduation from an accredited program, experience and examination. A graduate of or senior enrolled in an ABET-EAC accredited **engineering curriculum** of four (4) years or more approved by the board as being of satisfactory standing, shall be admitted to an examination in the fundamentals of engineering. Upon passing this examination and obtaining a specific record of a

minimum of four (4) years of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering, the applicant may be admitted to an examination in the principles and practice of engineering. The graduate having a specific record of twelve (12) years or more of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering, shall be admitted to an examination in the principles and practice of engineering. Upon passing that examination, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he or she is qualified.

(iii) *Graduation from a non-accredited program, experience, and examination.* A graduate of or senior enrolled in an **engineering curriculum** of four (4) years or more other than those approved by the board as being of satisfactory standing shall be admitted to an examination in the fundamentals of engineering. Upon passing this examination and obtaining a specific record of a minimum of four (4) years of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering, the applicant may be admitted to an examination in the principles and practice of engineering. Upon passing these examinations, the applicant shall be granted a certificate of registration to practice engineering in this state, provided he or she is qualified.

(iv) *Teaching.* Engineering teaching in a college or university offering an ABET-EAC accredited engineering curriculum of four (4) years or more may be considered as engineering experience.

(v) *Engineers previously registered.* Each engineer **holding a certificate of registration and each engineer-in-training under the laws of this state** as previously in effect shall be deemed registered as an engineer or engineer-in-training as appropriate under this chapter. (Emphasis added).

Section 140.2.1.1 through 140.2.1.4 of the *R.I. Rules and Regulations for Licensure for Engineers-2014* similarly sets forth the qualifications for registration as a professional engineer.

The first in that list is “By endorsement without further examination. Acceptable evidence of registration in good standing by comparable written examination in another State, territory or possession of the United States, the District of Columbia, or of any foreign country and/or a certificate of qualification from the NCEES showing the applicant to have qualifications meeting the requirements of the statutes, as defined in R.I. Gen. Laws § 5-8-11(1)(a).”

The Respondent in this matter presented a document marked as Respondent's Exhibit #4, a National Council of Examiners for Engineering and Surveying Summary Sheet ("NCEES"). This document shows a check mark next to "Does not qualify" and clearly illustrates that the basis for that designation is that he lacks an EAC/ABET Engineering degree.

The second criteria listed in the regulations is "By graduation, experience and examination. Graduates of engineering schools in an ABET/EAC approved four-year engineering curriculum, with four years of active engineering practice indicating experience of a grade and character satisfactory to the Board and passing an NCEES examination in the fundamentals of engineering and passing an NCEES examination in the principles and practice of engineering, as defined in R.I. Gen. Laws § 5-8-11(1) (b)." Again, by his own admission, the Respondent does not meet this qualifying criteria.

Section 140.2.1.3 states "Graduates of engineering schools in an ABET/EAC approved four-year engineering curriculum, with twelve (12) years or more experience of a grade and character, satisfactory to the Board, and passing an NCEES examination in the Principles and Practice of Engineering, as defined in R.I. Gen. Laws § 5-8-11(1)(b)." Again, and for the same reasons, this Respondent fails to meet this qualification.

Lastly, the regulation includes "Graduates with a Bachelor's degree in a science, mathematics, or engineering technology curriculum and an MS Degree in engineering from a college or university that is an ABET/EAC accredited institution for their BS Degree programs" and also includes passage of an NCEES examination and six years of active engineering practice. Though this Respondent meets three of these requirements, he does not possess the required MS degree for qualification under this section.

As he clearly does not fall within any of the qualifying criteria set forth in either the current statutory law or this state's rules and regulations, the Respondent relies solely on the argument that for a brief period in the legislative history of Rhode Island (from enactment in 1991 to expiration at midnight June 30, 1993) there existed a provision in the law under which he may have qualified for registration. This argument is without merit in the instant appeal, as Mr. Smith's application was filed twenty-two (22) years after the expiration of that version of the law.

Counsel for the Department cited in her argument the Rhode Island Supreme Court appeal of *Smith v. Lamoureaux*, 103 R.I. 265 (R.I. 1968) regarding an appellant's burden of persuasion. In it, the Court held that "No principle is more firmly established in this jurisdiction than that on such an appeal it is the burden of the appellant to persuade this court that in reaching his decision the trial justice either misconceived or overlooked material evidence, citing *Santilli v. Morelli*, 102 R.I. 333, 230 A.2d 860 (1967).

In this Respondent's appeal of the Board's decision, he presents no evidence other than that he is of the opinion that a law no longer in effect in the jurisdiction should be applied retroactively to his application. The Board, in applying R.I. Gen Laws 5-8-11, interprets the statute to require both either a four year degree in engineering, or a degree in engineering technology in addition to an MS Degree in engineering to obtain registration as a professional engineer in this state. There is no compelling reason to reject the Board's interpretation of the statute.

Though no cases have been decided precisely on the issue in this matter in Rhode Island, the Court of Appeals of South Carolina, in *Ruocco V. S.C. State Bd. Reg. For Prof.*

Engineering 314 S.C. 111 (S.C. Ct. App. 1994) held that that State's Board had rightfully determined that an engineering technology degree is insufficient to satisfy the statutory educational requirements, and concluded that a degree in engineering technology from Virginia Polytechnic Institute and State University (VPI) did not meet the requirements for a related engineering science curriculum sufficient to qualify under the applicable standard. The educational standards described in that case are virtually identical to those in effect in Rhode Island at the time of the Respondent's application.

VI. FINDINGS OF FACT

After hearing the testimony offered at hearing, and due consideration of the documentary evidence presented by the Respondent and the Department in this matter, the undersigned Hearing Officer makes the following findings of fact:

1. On or about August 7, 2015, the Respondent filed an application for registration as a professional engineer with the Board.
2. On or about September 16, 2015, the Board denied that application based on the Respondent lacking the requisite education to qualify him for registration as a professional engineer in this state.
3. On September 30, 2015, the Respondent requested a hearing to appeal the Board's decision to the Director.
4. A hearing was held on February 17, 2016, with the Respondent participating by teleconference.
5. The facts contained in Section IV and V are reincorporated by reference herein.

VII. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, and the relevant statutes, regulations and case law cited herein, the Respondent has failed to meet his burden in establishing that the Rhode Island Board of Registration for Professional Engineers acted in violation of statutory provisions, in excess of its stutory authority, proceeded unlawfully or erroneously in view of the evidence in the record.

VIII. RECOMMENDATION

Based on the above analysis, the Hearing Officer recommends that the Director of the Department affirm the Board's decision in this matter, and dismiss the Respondent's appeal.

DATE: 5/6/16



Ellen R. Balasco, Esq.
Hearing Officer

ORDER

I have read the Hearing Officer's Recommendation in this matter, and I hereby take the following action with regard to the Recommendation:

ADOPT

REJECT

MODIFY

Dated: 5/6/16

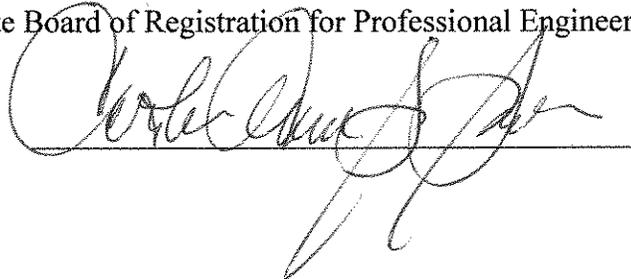


Macky McCleary
Director

THIS ORDER CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-1 *ET SEQ.* AS SUCH, THIS DECISION MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MAY BE COMPLETED BY FILING A PETITION FOR REVIEW IN SAID COURT.

CERTIFICATION

I hereby certify on this 6th day of May, 2016 that a true copy of the within Decision was sent by first class mail, postage prepaid to Scott Smith at P.O. Box 290067, Phelan, CA 92329, and by electronic mail to Respondent at sjsmith2824@yahoo.com and to the following at the Department of Business Regulation: Jenna Algee, Esq., Lois Marshall, Board Administrator for the State Board of Registration for Professional Engineers.



A handwritten signature in black ink, appearing to read "Charles A. Marshall", is written over a horizontal line. The signature is cursive and somewhat stylized.