

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
1511 PONTIAC AVENUE
CRANSTON, RHODE ISLAND 02920**

IN THE MATTER OF:

Arkadiusz Czerw,

Respondent.

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DBR No.: 18DP001

DECISION

I. INTRODUCTION

This matter arose pursuant to an Order to Show Cause why License Should not be Denied, Notice of Pre-hearing Conference, and Appointment of Hearing Officer (“Order to Show Cause”) issued to Arkadiusz Czerw (“Respondent”) by the Department of Business Regulation (“Department”) on January 29, 2018. Pursuant to R.I. Gen. Laws § 5-8-1 *et seq.*, the Respondent applied for registration (“Registration”) to practice professional engineering which the Department denied pursuant to its Order to Show Cause. The parties agreed that this matter could be decided on stipulated facts and exhibits and briefs. Briefs were timely filed by April 5, 2018. The Department was represented by counsel and the Respondent was *pro se*.

II. JURISDICTION

The Department has jurisdiction over this matter pursuant R.I. Gen. Laws § 5-8-1 *et seq.*, R.I. Gen. Laws § 42-14-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 230-RICR-100-00-2 *Rules of Procedure for Administrative Hearing*.

III. ISSUE

Whether the Respondent’s application for said Registration should be granted.

IV. MATERIAL FACTS AND TESTIMONY

The parties agreed to the following facts:

1. Respondent filed his *Application for Registration to Practice Professional Engineering By Comity* (“Application”) with the Department’s Division of Design Professionals, which was received by the Department on November 10, 2017. Stipulated Exhibit One (1).
2. Respondent admits that the Application contains a National Council of Examiners for Engineering and Surveying (“NCEES”) record which is a group of documents verified and retained by NCEES itself. Stipulated Exhibit 1(b).
3. The Application’s NCEES record was submitted to the Rhode Island Board of Licensing for Professional Engineers (“Board”) on May 11, 2017.
4. Respondent’s NCEES record does not contain a complete transcript from Raritan Valley Community College (“RVCC”), the institution from which he transferred to the New Jersey Institute of Technology (“NJIT”). Stipulated Exhibit 1(c).
5. A NCEES-issued record is separate from a NCEES-issued *Credential Evaluation* or *Certificate of Qualifications*, as referred to in R.I. Gen. Laws § 5-8-11(b)(1)(i)(B), which is a formal evaluation of an applicant’s credentials as compared to the NCEES Engineering Education Standard. Stipulated Exhibit Nine (9).
6. Respondent has a 1998 Bachelor of Science degree in Mechanical Engineering Technology from NJIT. Stipulated Exhibit 1(c).
7. Respondent passed the *Fundamentals in Engineering* exam in 1998, and the *Principles and Practice of Engineering* exam in 2005. Stipulated Exhibit 1(b) and (d).
8. According to NCEES, the *Fundamentals in Engineering* exam is the only nationally normed examination that serves as an Outcomes Assessment Tool. Stipulated Exhibit Six (6).
9. The Accreditation Board of Engineering and Technology (“ABET”) is a national accreditation organization, and its accreditation process is carried out by four accreditation commissions: Applied and Natural Science Accreditation Commission (“ANSAC”), Computing Accreditation commission (“CAC”), Engineering Accreditation Commission (“EAC”), and Engineering Technology Accreditation Commission (“ETAC”).
10. A Bachelor of Science degree in Engineering and a Bachelor of Science degree in Engineering Technology are similar but separate areas of study, and are accredited by separate ABET commissions. Stipulated Exhibit Two (2).
11. New Jersey Institute of Technology’s Bachelor of Science in Mechanical Engineering Technology program is accredited by the ETAC and is not accredited by the EAC. Stipulated Exhibit Three (3).

12. Respondent admits that he does not have a Master's Degree in Engineering.

13. Respondent admits that he received the Board's December 21, 2017 letter informing him that his Application was denied, the reasons for the denial, and the process by which the denial could be appealed. Respondent sent a letter received by the Division on January 10, 2018, requesting a hearing of the Board's denial of his Application, and making arguments that support his position. Stipulated Exhibits Four (4) and Five (5).

14. Respondent is licensed in New Jersey (2006) and New York (2008) as a Professional Engineer, the former by a combination of examination, experience, and education, and the latter by endorsement. Respondent's license is in good standing in both jurisdictions.

15. The current Rhode Island Rules and Regulations for Licensure for Engineers was revised and adopted in 2014, and imposed the additional minimum requirement for licensure applicants, as listed in § 142.2.1.3 and § 142.2.1.4, having obtained a Bachelor's degree in science, mathematics or engineering technology that they also have a Master's Degree in engineering from a college or university that is ABET/EAC accredited for its BS Degree programs.

V. DISCUSSION

A. Legislative Intent

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 (R.I. 1994). If a statute is clear and unambiguous, "the Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Oliveira v. Lombardi*, 794 A.2d 453, 457 (R.I. 2002) (citation omitted). The 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. DEM*, 553 A.2d 541 (R.I. 1989) (citation omitted). 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 (R.I. 1998).

B. Standard of Review for an Administrative Hearing

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, the initial burdens of production and persuasion rest with the

moving party. 2 Richard J. Pierce, *Administrative Law Treatise* § 10.7 (2002). Unless otherwise specified, a preponderance of the evidence is generally required in order to prevail. *Id.* See *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989) (preponderance standard is the “normal” standard in civil cases). This means that for each element to be proven, the fact-finder must believe that the facts asserted by the proponent are more probably true than false. *Id.* When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. v. Carbone*, 898 A.2d 87 (R.I. 2006).

C. Relevant Statutes and Regulation

R.I. Gen. Laws § 5-8-1 provides as follows:

Registration required for practice of engineering. In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering in this state is declared to be subject to regulation in the public interest. It is unlawful for any person to practice, or to offer to practice, engineering in this state, as defined in the provisions of this chapter, or to use in connection with his or her name or otherwise assume, or advertise any title or description tending to convey the impression that he or she is an engineer, unless that person has been registered or exempted under the provisions of this chapter. The right to engage in the practice of engineering is deemed a personal right, based on the qualifications of the individual as evidenced by his or her certificate of registration, which is not transferable.

R.I. Gen. Laws 5-8-2(a) contains the following definition:

(a) "Accredited program" means specific engineering curricula within established institutions of higher learning that have both met the criteria of, and have been designated by, the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, Inc. (ABET-EAC).

R.I. Gen. Laws § 5-8-11 provides as follows:

General requirements for registration or certification.

(a) *Engineer or engineer-in-training.* To be eligible for registration as a professional engineer or certification as an engineer-in-training, an applicant must be of good character and reputation and shall submit five (5) references with his or her application for registration, three (3) of which references shall be registered engineers having personal knowledge of his or her engineering experience, or in the case of an

application for certification as an engineer-in-training, by three (3) character references.

(b) The following shall be considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer or for certification as an engineer-in-training, respectively:

(1) As a professional engineer:

(i) *Registration by endorsement.*

(A) A person holding a current certificate of registration to engage in the practice of engineering, on the basis of comparable written examinations, issued to him or her by either a proper authority of a state, territory, or possession of the United States, the District of Columbia, or of any foreign country, and whose qualifications meets the requirements of this chapter, based on verified evidence may, upon application, be registered without further examination.

(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.

(“Regulation”) provide in part as follows:

§ 140.2.1 Professional Engineer

§ 140.2.1.1 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). All such applicants shall be required to verify such information furnished to the Board in a form satisfactory and approved by the Board.

§ 140.2.1.2 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).

§ 140.2.1.3 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). In order to satisfy the requirements of this provision, the applicant must demonstrate that for each of the twelve (12) years submitted for experience purposes that the applicant was directly employed within the engineering profession and was principally employed in the engineering profession during each of the years submitted.

§ 140.2.1.4 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 with six 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.

D. Arguments

The Department argued that the Respondent cannot be registered as a professional engineer despite being registered in other states as a professional engineer because he does not possess a college degree from an ABET-EAC accredited program. The Department relied on R.I. Gen. Laws § 5-8-11(b) and § 140.2 of the Regulation which allow an engineer to be registered in Rhode Island

¹ The new cite for this regulation as part of the codification of Rhode Island’s regulations will be 430-RICR-00-00-1.

without examination if that applicant meets all qualifications of Rhode Island law. The Department relied on prior case law in support of its position.

The Respondent argued that he applied for registration by endorsement and the Respondent argued that this chapter only refers to the endorsement section and that the 2014 change to the Regulation is irrelevant. The Respondent argued that the Department cannot apply all requirements to an application.

E. Whether the Respondent Should be Licensed

The parties agreed that the Respondent's undergraduate degree was not an ABET-EAC accredited degree. The Respondent is registered as a professional engineer in other states and applied in Rhode Island for a registration by endorsement. The language of the statutory provision for applying by endorsement states that an applicant registered in another state (or country) on the basis of a comparable written examination and whose qualifications meet the requirements of this chapter (in other words, the statute) may be registered without examination. Thus, an applicant who is registered as a professional engineer does not need to take the examination only if the applicant took a comparable examination to be registered **and** if the applicant meets all qualifications of the chapter (statute).

The Respondent argued that the endorsement section of the statute does not specifically require an ABET accreditation. It is true that endorsement section of the statute does not specifically refer to an ABET accredited degree; however, the section refers to an applicant "whose qualifications meets the requirements of this chapter." Thus, the inquiry becomes what are the requirements of the chapter which requires reading and including **all** relevant sections of the licensing statute that establish the licensing criteria.

As provided for in R.I. Gen. Laws § 5-8-3,² the Board promulgated regulations for the registration of engineers. Section 140.2 of the Regulation sets out four (4) classes of applicants including “by endorsement without further examination.” This classification tracks R.I. Gen. Laws § 5-8-11(b)(1)(i) which provides for application by endorsement without examination. The other types of applications are 1) by graduation, experience, and examination; 2) graduates of ABET/EAC approved four-year engineering curriculum [see R.I. Gen. Laws § 5-8-11(b)(1)(ii)]; and 3) graduates with bachelor’s degrees in science, mathematics, or engineering technology and an ABET-EAC accredited master’s degree.

The statute and Regulation provide for a methodology of application: application by endorsement. The statute requires that all qualifications of the chapter be met when applying by endorsement which means that there are other qualifications besides those in the statutory endorsement section. The other qualifications of this chapter are found in the other classes of applications. Thus, an applicant must meet the experience and education requirements as well in order to waive the examination. The education requirements set forth by statute and Regulation are either an ABET-EAC approved four (4) year course **or** a science, math, engineering technology undergraduate degree combined with a master’s degree that is ABET-EAC.

In *Spinard v. State*, 1999 R.I. Super. LEXIS 122, an out-of-state applicant for a professional engineering registration in Rhode Island applied by endorsement and argued that as he was registered in another state, he was entitled to registration without examination. His application

² R.I. Gen. Laws § 5-8-3 provides in part as follows:

Board – Creation – Duties – Composition – Appointments – Terms.

(a) The duty of the board of engineers is to administer those provisions of this chapter that relate to the regulation of professional engineering and the registration of professional engineers.

(b) Subject to the approval of the director, the board of engineers shall establish any rules and regulations for the conduct of its own proceedings; for examination of applicants; for registration of professional engineers and engineers-in-training; for continuing education requirements.

was rejected for failing to meet the experience qualifications set forth in what the Court referred to as “the other sub-parts of the section which pertain to education, experience, and examination.” The Court found that the endorsement path to registration only relieved an applicant of the examination, but not the education and experience requirements contained in the other parts of the statute.³

Similarly, in this matter, the Respondent has not met the education requirements. The education requirement is part of all of the qualifications set forth in the chapter. In *In the Matter of: Scott Smith*, DBR No. 15DP007 (5/6/16), the Board faced with the same facts and same statute and same Regulation as in this matter denied a professional engineer applicant with an engineering technology degree registered in other states but without an ABET-EAC Master’s Degree for failing to meet the education requirements.⁴

VI. FINDINGS OF FACT

1. This matter arose pursuant to an Order to Show Cause issued to the Respondent by the Department on January 29, 2018.

2. Pursuant to R.I. Gen. Laws § 5-8-1 *et seq.*, the Respondent applied by endorsement

³ In *Spinard*, the Court stated that it would defer to the agency’s construction of the professional engineering licensing statute. The statutory endorsement provision clearly indicates that there are other requirements for licensing contained within the statute. However, an agency’s acquiescence to a continued practice is entitled to great weight in determining legislative intent. It is a well-recognized principle that a longstanding, practical and plausible interpretation given a statute of doubtful meaning by those responsible for its implementation without any interference by the Legislature should be accepted as evidence that such a construction conforms to the legislative intent. Thus, if it was found that the statute was unclear, the Board’s long standing interpretation (as upheld by *Spinard*) is entitled to deference. *Trice v. City of Cranston*, 297 A.2d 649 (R.I. 1972).

⁴ The Respondent argued that the *Scott Smith* administrative decision was inapplicable to his case as that applicant had not provided proof of taking the examination. He based that reasoning on that applicant’s argument that a 1991 version of the professional engineering licensing statute allowed some “grandfathering” rights for those who had practiced for a long time. That decision rejected the argument as to grandfathering rights since it was no longer in the statute at the time of that applicant’s application to the Department. However, the applicant’s reliance on an outdated experience provision does not mean that he had not taken the examination as indicated by the administrative decision finding that he complied with three (3) requirements (technology degree, passage of the examination, and six (6) years of experience) but not the fourth requirement of an ABET-EAC master’s degree that were set forth in § 140.2.1.4 of the Regulation. See p. 7 of that administrative decision.

to register as a professional engineer.

3. The parties filed stipulated facts and exhibits and briefs were timely filed by April 6, 2018.

4. All other facts stated in Sections IV and V are fully incorporated herein as findings of fact.

VII. CONCLUSIONS OF LAW


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

2. The Respondent's education did not meet the requirements of R.I. Gen. Laws § 5-8-11 and the Regulation.

VIII. RECOMMENDATION

Based on the foregoing, the Hearing Officer recommends that the Respondent's Application be denied.

Date: April 23, 2018



Catherine R. Warren
Hearing Officer

ORDER

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

☒ ADOPT
☐ REJECT
☐ MODIFY

Dated: 4/20/18


Elizabeth M. Tanner, Esquire
Director

NOTICE OF APPELLATE RIGHTS

THIS ORDER CONSTITUTES A FINAL DECISION OF THE DEPARTMENT OF BUSINESS REGULATION PURSUANT TO R.I. GEN. LAWS § 42-35-12. PURSUANT TO R.I. GEN. LAWS § 42-35-15, THIS ORDER MAY BE APPEALED TO THE SUPERIOR COURT SITTING IN AND FOR THE COUNTY OF PROVIDENCE WITHIN THIRTY (30) DAYS OF THE MAILING DATE OF THIS DECISION. SUCH APPEAL, IF TAKEN, MUST BE COMPLETED BY FILING A PETITION FOR REVIEW IN SUPERIOR COURT. THE FILING OF THE COMPLAINT DOES NOT ITSELF STAY ENFORCEMENT OF THIS ORDER. THE AGENCY MAY GRANT, OR THE REVIEWING COURT MAY ORDER, A STAY UPON THE APPROPRIATE TERMS.

CERTIFICATION

I hereby certify that on this 27 day of April, 2018, that a copy of the within decision was sent by first class mail, postage prepaid to Mr. Arkadiusz Czerw, 106 Hockenbury Drive, Glen Gardner, NJ 08826 and by electronic delivery to Sara Tindall-Woodman, Esquire, Department of Business Regulation, Pastore Complex, 1511 Pontiac Avenue, Cranston, R.I.

