

STATE OF MINNESOTA

**BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE,
GEOSCIENCE AND INTERIOR DESIGN**

In the Matter of the Professional Engineering
License Application of Michael P. Opela, Sr.

**ORDER DENYING RESPONDENT'S
REQUEST FOR REHEARING
AND RECONSIDERATION**

This came before the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") on Respondent Michael P. Opela, Sr.'s ("Respondent") petition for a rehearing. Assistant Attorney General Chris Kaisershot advocated for the portion of the Board opposing Respondent's application for licensure and petition for rehearing, Assistant Attorney General Bernard Johnson advised the decision-making portion of the Board, and Respondent appeared on his own behalf.

Based on all the files, records, and proceedings herein, the Board hereby issues the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. On January 11, 2010, Respondent submitted an application to the Board for licensure as a professional engineer by comity, and listed "structural" as his claimed engineering discipline. Respondent indicated that he had been licensed as a professional engineer by the State of Arizona since June 2004.

2. Respondent's educational background generally disqualified him from licensure as a professional engineer in Minnesota because he did not graduate from an ABET-accredited engineering curriculum and, instead, received a Bachelor of Science in Accounting from

Mankato State University (“MSU”). Likewise, Respondent’s transcript from MSU did not list the minimum number of engineering science and design credits as required in an ABET-accredited degree. *See* Minn. Rule 1800.2500, subp. 2a(A) (2009).

3. In order to further evaluate Respondent’s purported competence and qualification, the Board offered Respondent the opportunity to take an oral examination pursuant to Minn. Rule 1800.2600, subp. B (2009). Respondent did not pass the oral examination.

4. The above-entitled administrative action was commenced to allow Respondent the opportunity to show cause why his license application should not be denied. Thereafter, the parties submitted cross-motions for summary disposition to Administrative Law Judge Steven Mihalchick (“ALJ”).

5. The ALJ recommended that Respondent’s application should be denied at this time and that he should be allowed to reapply to retake the oral examination.

6. On August 11, 2011, the Board issued an order denying Respondent’s application for licensure as a professional engineer. As part of that order, the Board rejected the ALJ’s conclusions concerning Respondent’s ability to retake the oral examination to the extent the ALJ suggested or otherwise held that any such reexamination must occur as part of Respondent’s license application submitted on January 11, 2010. In addition, the Board specified as follows:

Upon this Order becoming final, the Board shall process any new application from Respondent under the applicable law. Other than filing a new application, Respondent may request that the Board consider any application materials currently on file with the Board in lieu of submitting duplicate copies of documents already on file.

The Board’s order is attached hereto and incorporated herein by reference.

7. On August 15, 2011, Respondent sent a letter to the Board that stated, in part, as follows: “Pursuant to Minnesota [Rule] 1400.8300 please consider this my petition for rehearing.” Respondent’s letter did not articulate any reasons why he believed that rehearing

was necessary. As such, the Board invited Respondent to further explain why he believed a rehearing was necessary.

8. On September 22, 2011, Respondent provided a one-page letter to the Board in support of his request for a rehearing. Respondent contended that “[t]he evidence in the record does not support the boards [sic] final order” and “[t]he final order is contrary to law.”¹ Respondent also repeated seven arguments that the Board had previously considered and rejected, as well as incorrectly stated that the Board did not address the rule related to reexamination.

9. Any Finding of Fact herein, which should more properly be deemed a Conclusion of Law, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Board has reviewed the entire evidentiary record in this matter and concludes that it would be inappropriate to remand the matter back to the Office of Administrative Hearings for a rehearing or to otherwise grant any request for reconsideration of this matter.

2. The so-called “facts” identified by Respondent in support of his petition are largely reiterations of the legal conclusions that the Board previously considered and rejected when it issued the order denying his license application on August 11, 2011.

3. Minnesota Rule 1400.8300 (2011) is inapplicable in this case because it is not a Board rule and, instead, is limited to those cases where the ALJ’s decision “is binding on the agency.” Moreover, even if it applied, none of the factors set forth in that rule would justify a rehearing in this matter.

¹ See also Minn. Rule 1400.8300, supb. F (“In ruling on a motion for reconsideration or rehearing in cases where the judge's decision is binding on the agency, the judge shall grant reconsideration or rehearing if it appears that to deny it would be inconsistent with substantial justice and any one of the following has occurred: . . . F. *the decision is not justified by the evidence, or is contrary to law . . .*” (emphasis added).

4. The Board's Order denying Respondent's application for licensure is not contrary to any applicable law or regulation.

5. The evidentiary record in this matter supports the order denying Respondent's application for licensure as a professional engineer.

6. Respondent has failed to show any compelling circumstances to justify his petition for rehearing or to otherwise grant reconsideration of this matter.²

7. Any Conclusion of Law herein, which should more properly be deemed a Finding of Fact, is hereby adopted as such.

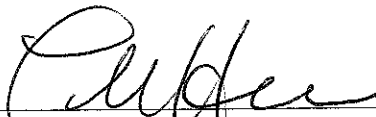
8. This order is in the public interest.

ORDER DENYING REHEARING AND RECONSIDERATION

Upon consideration of the foregoing Facts and Findings and Conclusions of Law, and based upon all the files, records, and proceedings herein, it is hereby ORDERED that Respondent's request for a rehearing or to otherwise reconsider the Board's August 11, 2011 order is hereby DENIED.

Dated this 14th day of October, 2011

**MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN**


By: Lisa Hann, L.S.
Board Vice Chair

² See also Minn. R. Prac. 115.11 (2011) (motions to reconsider in district court are granted "only upon a showing of compelling circumstances"); Minn. R. Civ. P. 59.01 (2011) (grounds for new trial in district court)

STATE OF MINNESOTA

**BOARD OF ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE ARCHITECTURE,
GEOSCIENCE AND INTERIOR DESIGN**

In the Matter of the Professional Engineering
License Application of Michael P. Opela, Sr.

**ORDER DENYING RESPONDENT'S
APPLICATION FOR LICENSURE AS A
PROFESSIONAL ENGINEER**

This matter came before Administrative Law Judge Steve M. Mihalchick ("ALJ") on cross-motions for summary disposition on April 18, 2011. Assistant Attorney General Christopher Kaisershot appeared on behalf of the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board"), and Respondent Michael P. Opela, Sr. ("Respondent") appeared on his own behalf without counsel.

The ALJ's Recommended Order on Cross-Motions for Summary Disposition ("Recommended Order") was issued on May 18, 2011. By letter dated June 2, 2011, the parties were informed of their right to file exceptions and argument to the Recommended Order on or before June 24, 2011. Thereafter, following Respondent's request for an extension, the filing deadline was continued until July 18, 2011. This matter came before the Board for oral argument at its regularly scheduled meeting on August 4, 2011.

Based on all the files, records, and proceedings herein, the Board hereby issues the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The Legislature established the Board as the State agency with the authority to regulate professional engineers, among other professions.¹ The Board is authorized to make rules that fix standards for determining the qualification of any applicant, “which shall not exceed the requirements contained in the curriculum of a recognized school of . . . engineering.”²

2. Civil engineers are involved in the design and construction of numerous structures, including bridges, tunnels, roads, railway, dams, pipelines, major buildings, and the like. Structural engineering is a field of civil engineering dealing with the analysis and design of structures that support or resist loads in relation to physical laws and empirical knowledge. Engineers must ensure that their designs comport with specifications and criteria predicated on safety, serviceability, and performance.

3. On January 11, 2010, Respondent submitted an application to the Board for licensure as a professional engineer by comity, and listed “structural” as his claimed engineering discipline. Respondent indicated that he had been licensed as a professional engineer by the State of Arizona since June 2004.

4. The Board may issue an order denying an application for licensure if the applicant fails to meet any requirement for the issuance of the applicant’s license.³ Any proceeding required before the Board may issue such an order must occur in accordance with chapter 14.⁴

¹ See, e.g., Minn. Stat. § 326.04 (2010).

² Minn. Stat. § 326.06 (2010).

³ Minn. Stat. § 326.111, subd. 4(a)(8) (2010).

⁴ Minn. Stat. § 326.111, subs. 1(c), and 4(d) (2010)

5. Since submitting his application to the Board, Respondent has repeatedly argued that his license application must be granted as a matter of law and, moreover, that he should not be subject to any oral examination.⁵

6. In this case of cross-motions for summary disposition, there are no disputes as to the material facts. The issues in this case are whether, as a matter of law, Respondent is entitled to be granted a professional engineer license and, if not, whether he is entitled to retake an oral examination as part of his pending application.⁶

7. The applicable law directs the Board to issue a license on a comity application under the following circumstances:

To any person who holds an unexpired certificate of registration or license issued by proper authority in the District of Columbia, any state or territory of the United States, or any foreign country, *in which the requirements for registration or licensure of . . . engineers . . . at the time of registration or licensure in the other jurisdiction, were equal, in the opinion of the board, to those fixed by the board and by the laws of this state*, and in which similar privileges are extended to the holders of certificates of registration or licensure issued by this state.⁷

⁵ See Affidavit of Doreen Frost (“Frost Aff.”), Exs. 4, 5, 9, and 14; Respondent’s Memorandum in Support of Motion for Summary Disposition (“Respondent’s Mem.”), p. 4 (“The board has no basis in law to deny Mr. Opela’s application for licensure by comity.”); Respondent’s Memorandum in Response to the [Board’s] Motion for Summary Disposition and Supporting Arguments for Granting Mr. Opela’s Motion for Summary Disposition (“Respondent’s Response Mem.”), p. 3 (“Mr. Opela continues to assert that he qualifies without the need for the oral exam”); Affidavit of Michael P. Opela, Sr. (“Opela Aff.”), ¶ 30 and Ex. 1 (“Flow chart depicting Mr. Opela’s qualification for licensure as a matter of law.”).

⁶ See, e.g., Respondent’s Mem., p. 7 (“Whether Mr. Opela has [met] the requirements for comity in the State of Minnesota is entirely a question of law, and there are no questions of fact that need to be addressed in order to resolve this legal issue.”).

⁷ Minn. Stat. § 326B.10, subd. 1(a)(2) (2010) (emphasis added).

An applicant for licensure as a professional engineer by comity “shall satisfy the Minnesota licensing requirements that were in effect at the time of the applicant’s original licensure in the other state.”⁸

8. Among other prerequisites, and at all times since Respondent became licensed as a professional engineer in Arizona in June of 2004, the following educational background has been required for all professional engineer license applicants in Minnesota:

A. Education:

(1) graduation from an ABET-accredited engineering curriculum;⁹

(2) graduation from an engineering curriculum that receives ABET accreditation within five years of the applicant's graduation;

(3) has a non-ABET-accredited or nonengineering bachelor's degree with the minimum number of engineering science and design credits as required in an ABET-accredited degree (32 semester or 48 quarter credit hours of engineering science and 16 semester or 24 quarter credits of engineering design);

(4) has a graduate degree from an engineering program where the bachelor's degree in that discipline of engineering is ABET-accredited, even though the applicant's bachelor's degree was earned in a nonengineering program; or

(5) graduation from an engineering curriculum that has ABET accreditation and a graduate degree in engineering from an institution with an ABET-accredited bachelor's curriculum in that discipline of engineering.¹⁰

9. The Board’s longstanding interpretation of its licensing requirements precludes licensure as a professional engineer to any person, on a comity application or otherwise, whose educational background does not satisfy the above-referenced requirements.

⁸ Minn. Rule 1800.2500, subp. 1 (2009).

⁹ The abbreviation “ABET” means “Accreditation Board for Engineering and Technology.” See Minn. Rule 1800.2500, subp. 2A (2009).

¹⁰ Minn. Rule 1800.2500, subp. 2a(A) (2009).

10. Under the Board's existing rules, if an applicant for licensure as a professional engineer "does not hold a degree from an approved engineering curriculum," he or she may be afforded the opportunity to appear for an oral examination.¹¹

11. On March 12, 2010, in order to further evaluate Respondent's purported competence and qualification, the Board offered Respondent the opportunity to take an oral examination pursuant to Minn. Rule 1800.2600, subp. B (2009).¹²

12. Respondent's oral examination occurred on July 21, 2010. The oral examination was written, proctored, and graded by two Board members, James Grube and David Krech, both of whom are professional engineers licensed in the State of Minnesota. Respondent did not achieve a passing score of 70% because he was only able to correctly respond to 26 out of 60 questions (*i.e.*, 43%).¹³

13. Respondent requested to retake the oral examination as part of his pending application and, moreover, insisted that he should be allowed to repeatedly take the examination until he finally passed it.¹⁴ The Board declined Respondent's request to retake the oral examination as part of his pending application.¹⁵

¹¹ Minn. Rule 1800.2600, subp. B (2009).

¹² Frost Aff., Ex. 6; *see also* Minn. Rule 1800.0800, subp. B (2009).

¹³ Frost Aff., Ex. 23; *see also id.* at Exs. 21-22. The examination data is nonpublic data. Minn. Stat. § 13.34 (2010). The Board's responsible authority has determined that disclosing this data to Respondent or the public would compromise the objectivity, fairness and integrity of the examination process, including future oral examinations. Frost Aff., ¶ 28.

¹⁴ Frost Aff., Exs. 24-25; *see also* Respondent's Response Mem., p. 5 ("Mr. Opela is entitled to retake the oral exam . . . until it is passed as a matter of law.").

¹⁵ Frost Aff., Ex. 26.

14. To the extent that the ALJ's Memorandum contains additional facts, the Board adopts those facts and incorporates them herein.

15. Any Finding of Fact herein, which should more properly be deemed a Conclusion of Law, is hereby adopted as such.

CONCLUSIONS OF LAW

1. At all relevant times in Minnesota, applicants for licensure as a professional engineer or registration as an engineer in-training were required to possess, among other requirements, engineering-based educational backgrounds.¹⁶

2. Respondent's educational background generally disqualifies him from licensure as a professional engineer in Minnesota because he did not graduate from an ABET-accredited engineering curriculum and, instead, received a Bachelor of Science in Accounting from Mankato State University ("MSU"). Likewise, Respondent's transcript from MSU does not list the minimum number of engineering science and design credits as required in an ABET-accredited degree.

3. In Arizona, persons may qualify for licensure as an engineer or registration as an engineer in-training solely by experience (or by a combination of education and experience).¹⁷

4. The Board adopts the ALJ's conclusions that Arizona's requirements for licensure as a professional engineer are not equal to Minnesota's requirements for licensure as a professional engineer.

¹⁶ Minn. Stat. § 326.10, subs. 1(a)(2) and 7 (2010), Minn. Rule 1800.2500, subs. 1 and 2a (2009). Likewise, persons with "a verified professional engineering record of 20 years or more" cannot become licensed as an engineer in Minnesota without "meeting one of the educational requirements of part 1800.2500, subpart 2a." Minn. Rule 1800.2800 (2009).

¹⁷ See, e.g., Ariz. Stat. §§ 32-122, subd. A(2), and 32-122.01, subd. A(2), and Ariz. Admin. Code §§ R4-30-201, R4-30-202, subd. D.

5. Respondent's credentials do not automatically qualify him for licensure by comity in Minnesota because the requirements for licensure as an engineer in Arizona in 2004 were not equal to those fixed by the laws and regulations in Minnesota. While Respondent apparently qualified for licensure in Arizona with sufficient experience to offset his lack of engineering education, Respondent's credentials have never qualified him for licensure as a professional engineer in Minnesota. The State of Arizona has inferior standards for licensure as a professional engineer as compared to the State of Minnesota.¹⁸

6. Respondent did not produce any probative evidence to challenge the substance, content, or format of the oral examination. Respondent's general complaints that the oral examination was somehow unfair or deficient are insufficient to create a fact issue to necessitate a hearing.¹⁹

7. The Board rejects the ALJ's conclusions concerning Respondent's ability to retake the oral examination to the extent the ALJ suggested or otherwise held that any such reexamination must occur as part of Respondent's pending license application.

8. The rule concerning retaking examinations provides as follows:

An applicant who does not receive a passing grade in an examination may make application to retake that examination. The application shall be accompanied by a reexamination fee as required under part 1800.0500, subpart 7. The board may

¹⁸ Minn. Stat. § 326.10, subd. 1(a)(2) (2010); *see also* Minn. Rule 1800.2500, subp. 1 (2009) ("An applicant for licensure [by comity] shall satisfy the Minnesota licensing requirements that were in effect at the time of the applicant's original licensure in the other state.").

¹⁹ *See, e.g., Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) ("Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial."); *see also* *Opela Aff.*, ¶ 36 ("It basically re-examined me on subject I have already passed when I was originally licensed and was not an oral exam.").

require an applicant failing an examination four or more times to submit evidence of improved qualifications before an additional retake examination is permitted.²⁰

Nothing in this rule allows or requires multiple examinations on the same application; rather, the rule plainly references a new application for each attempt to retake an examination.

9. The Board has the authority to issue an order on Respondent's pending license application at this time.

10. Any Conclusion of Law herein, which should more properly be deemed a Finding of Fact, is hereby adopted as such.

11. This Order is in the public interest.

²⁰ Minn. R. 1800.0900, subp. 4 (2009).

ORDER DENYING LICENSE APPLICATION

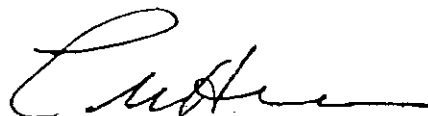
Upon consideration of the foregoing Facts and Findings and Conclusions of Law, and based upon all the files, records, and proceedings herein, the Board hereby issues the following Order:

A. Respondent's application for licensure as a professional engineer submitted to the Board on January 11, 2010, is hereby denied; and,

B. Upon this Order becoming final, the Board shall process any new application from Respondent under the applicable law. Other than filing a new application, Respondent may request that the Board consider any application materials currently on file with the Board in lieu of submitting duplicate copies of documents already on file.

Dated this 10 day of August, 2011

**MINNESOTA BOARD OF
ARCHITECTURE, ENGINEERING,
LAND SURVEYING, LANDSCAPE
ARCHITECTURE, GEOSCIENCE
AND INTERIOR DESIGN**



By: Lisa Hann, L.S.
Board Vice Chair

