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STATE OF WISCONSIN
BEFORE THE PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

THEOPHILUS E. GREEN, Psy.D.,

Respondent

ORDER DENYING PETITION FOR REHEARING

A hearing was held in the above-captioned matter on August 18, 1999, at which respondent did not appear. The administrative law judge filed his Proposed Decision on August 30, 1999, finding that Dr. Green was in default in the matter for his failure to file an Answer to the Complaint and his failure to appear at the hearing; that he had failed to notify the board of disciplinary action taken against his license to practice psychology in Illinois, in violation of sec. Psy 5.01(29), Code; and by reporting distorted, erroneous and/or misleading information to the board, in violation of secs. Psy 3.02(7) and Psy 3.02(29), Code. The ALJ recommended that respondent's license be revoked.

The board considered the Proposed Decision on October 13, 1999. The board accepted the ALJ's findings, conclusions and recommended order in their entirety, but added a provision to the Order by which respondent was assessed the costs of the proceeding. On October 28, 1999, respondent filed his Petition for Rehearing asking that the entire matter be set aside or set for rehearing. Attorney for Complainant filed his response to the petition on November 8, 1999, and the board considered the matter on that date.

Based upon the petition and upon all other information of record herein, the board orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that the Petition for Rehearing of Theophilus E. Green, Psy.D., in the above-captioned matter be, and hereby is, denied.

DISCUSSION

Under sec. 227.49(2), Stats., a rehearing may be granted only on the basis of some material error of law, some material error of fact, or the discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence. The petition in this case cites to what are claimed to be errors of law and fact, none of which are supported in the record.

First, respondent alleges that the prosecutor misled the ALJ regarding respondent's request for a postponement of the hearing because he represented that there was no reason stated for the request. The record establishes that respondent left a voice mail on the prosecutor's office voice mail at 8:30 on the night before the hearing. Respondent never contacted the ALJ, but the prosecutor notified the ALJ on the morning of the hearing that he had received the voice mail message. The ALJ quite properly denied the request.

Second, respondent claims that the findings made by the Illinois Department of Professional Regulation were never litigated and should not therefore have been the subject of findings by the Wisconsin board. As set forth on the Final Decision and Order, "The Director [of the Illinois Department of Professional Regulation] adopted the Findings of Fact, Conclusions of Law and Recommendations to the Director made by the Clinical Psychologists Licensing and Disciplinary Committee on December 5, 1997, following a hearing on the allegations which was attended by Respondent."

Next, respondent claims that his objections to the Proposed Decision were timely and that it was error not to have considered them. Respondent is in error. The last day for filing objections was September 13, 1999, and the objections were not mailed until that date. Under Wisconsin law, the objections were filed when they were received, not when they were mailed.

Respondent claims that the prosecutor and the ALJ were aware that he was represented by counsel and failed to direct communications to him. The prosecutor has responded that he was never notified that respondent was represented, and he has filed a summary of the contents of various memoranda, correspondence and conversations with respondent verifying that no such notification had been received.

For his fifth and seventh bases, respondent merely repeats his assertion that the matter in Illinois is still in litigation.

Finally, respondent argues that the Order revoking his license is unduly harsh and not merited by the facts. This is not a claim of factual or legal error, and the board disagrees that the ordered discipline is not fully justified.

Dated this 16th day of November, 1999.

STATE OF WISCONSIN PSYCHOLOGY EXAMINING BOARD

by _____

Stephen F. Seaman, Ph.D., Chairman