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Before The
State Of Wisconsin
Wisconsin Examining Board of Architects, Landscape Architects,
Professional Engineers, Designers and Land Surveyors

In the Matter of the Application for Licensure of
MICHAEL N. PARK, Applicant

FINAL DECISION AND ORDER

Order No. 0003640

Division of Legal Services and Compliance Case No. 14 ENG 005

The State of Wisconsin, Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Wisconsin Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 16 day of January, ~~2014~~ 2015

Joseph Eberle
Member

Wisconsin Examining Board of Architects,
Landscape Architects, Professional Engineers,
Designers and Land Surveyors



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application for Licensure of
MICHAEL N. PARK, Applicant

PROPOSED DECISION AND ORDER
DHA Case No. SPS-14-0046

Division of Legal Services and Compliance Case No. 14 ENG 005

The parties to this proceeding for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Michael N. Park
6348 Maywick Drive, Apt. 203
Madison, WI 53718

Wisconsin Examining Board of Architects, Landscape Architects,
Professional Engineers, Designers and Land Surveyors
Professional Engineer Section
P.O. Box 8366
Madison, WI 53708-8368

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Andrea E. Brauer
Department of Safety and Professional Services
Division of Legal Services and Compliance
P. O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

On January 27, 2014, the Professional Engineer Section of the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (Section) denied Applicant Michael N. Park's application for a certificate of registration as a Professional Engineer. The Section denied Mr. Park's application because it determined that his prior conviction for Resisting or Obstructing an Officer is substantially related to the practice of professional engineering.

A prehearing conference was held in this matter on May 29, 2014 and a status conference was held on September 3, 2014. On September 23, 2014, a motion for summary judgment was

filed by the Department of Safety and Professional Services, Division of Legal Services (Division). Mr. Park filed a response on October 15, 2014.

UNDISPUTED MATERIAL FACTS

1. On or about January 17, 2014, Michael Park submitted an application for certificate of registration as a professional engineer. Mr. Park included with his application materials a judgment of conviction, which showed that on November 30, 2012, he was convicted of Resisting or Obstructing an Officer, Ozaukee County Case Number 2012CM000441, in violation of Wis. Stat. § 946.41(1), a misdemeanor. Mr. Park also enclosed the criminal complaint, which stated the incident occurred shortly after 4:00 a.m. on February 4, 2012, when police responded to an emergency call regarding an injury at a personal residence. (Vance Aff., ¶¶3-6; Exs. A, B, C, D to Vance Aff.)

2. At that time, Mr. Park explained to a police officer that the injured individual, CB, had tripped on an end table and hit his head on the floor, and emergency services were called when he began vomiting a short while later. However, the next day, Mr. Park admitted to another individual¹ that in fact, the injury was caused when CB was punched in the face and fell to the pavement, at which time he became unconscious. Mr. Park further admitted emergency services were not called until about two hours after the injury occurred. (Vance Aff., ¶6, Ex. D to Vance Aff.)

3. Mr. Park asserts that the incident on February 4, 2012 involved a confrontation between two of his long-term childhood friends and that he broke up the confrontation between the two and ultimately called for medical help. (Vance Aff., Ex. B; Park's October 15, 2014 response to the Division's motion for summary judgment)

4. On January 27, 2014, the Section denied Mr. Park's application on the basis that this conviction for Resisting or Obstructing an Officer substantially relates to the practice of engineering. (Vance Aff., ¶7, Ex. E to Vance Aff.)

5. Mr. Park has not yet taken the Principles and Practice of Engineering Examination. It is the Section's policy to consider the full application before exam completion to save applicants time by making a predetermination as to whether they otherwise qualify for the credential. If the Section grants eligibility to take the examination, the certificate of registration is automatically issued upon successful completion of the examination. (Vance Aff., ¶¶8-9)

6. The Division stipulates that Mr. Park may take the Principles and Practice of Engineering Examination should he so choose. The Division also stipulates that should Mr. Park take and pass the examination, the only impediment to registration is the conviction for Resisting or Obstructing an Officer. He otherwise possesses the necessary qualifications. (Division's Memorandum in Support of its Motion for Summary Judgment, p. 3)

¹ The Division asserts the individual who Mr. Park informed of this fact was a police officer. However, the criminal complaint upon which the Division relies does not support this assertion. The criminal complaint suggests that Mr. Park told CB's father, not a police officer.

DISCUSSION AND CONCLUSIONS OF LAW

Standards governing summary judgment.

“The summary judgment procedure as provided in s. 802.08, Stats., shall be available to the parties upon approval by the division or the administrative law judge.” Wis. Admin. Code § HA 1.10(2).

Pursuant to Wis. Stat. § 802.08, summary judgment “shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Wis. Stat. § 802.08(2). “When a motion for summary judgment is made and supported as provided in this section [§ 802.08], an adverse party may not rest upon the mere allegations or denials of the pleadings but the adverse party’s response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue for trial.” Wis. Stat. § 802.08(3). “If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against such party.” *Id.*

“A motion for summary judgment may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and a variety of outside material.” *Tews v. NHI, LLC*, 2010 WI 137, ¶ 49, 330 Wis. 2d 389, 793 N.W.2d 860 (citation omitted). On a motion for summary judgment, the facts are construed in favor of the non-moving party. *DeHart v. Wis. Mut. Ins. Co.*, 2007 WI 91, ¶ 7, 302 Wis. 2d 564, 734 N.W.2d 394.

As a matter of law, the circumstances of Mr. Park’s conviction for Resisting or Obstructing an Officer do not substantially relate to the circumstances of the practice of engineering.

Wisconsin Stat. § 443.09(2) states: “Subject to ss. 111.321, 111, 322 and 111.335, no person who has an arrest or conviction record is eligible for registration as . . . a professional engineer.” Wisconsin Stat. §§ 111.321 and 111.322 generally prohibit employers from discriminating on the basis of a conviction record. However, Wis. Stat. § 111.335(1)(c)1. further provides that “it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing” an individual who “[h]as been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.” Accordingly, the issue in this case is whether the circumstances of Mr. Park’s conviction for Resisting or Obstructing an Officer substantially relate to the circumstances of the practice of engineering.

The Division contends that, as a matter of law, Mr. Park’s conviction meets these standards. The Division asserts that the circumstances of the conviction “reveal character qualities inconsistent with the expectations of the responsibility associated with the practice of professional engineering.” (Division’s Memorandum in Support of its Motion for Summary Judgment, p. 6) The Division notes that Mr. Park failed to call for emergency services for two hours after CB was injured and lied to police about the source of the injury in a manner which could have seriously harmed CB. The Division states that Mr. Park “exhibited dishonesty and failure to take accountability for his own actions in a way that places his personal interests above the safety of another” and that he “demonstrated a lack of respect for legitimate authority.” (*Id.*)

In linking the conviction to the practice of engineering, the Division states that as an engineer, Mr. Park would “have the responsibility to draft reports and designs that prioritize the safety of others over competing interests.” (*Id.*, p. 6) In this capacity, the Division states, Mr. Park “would undoubtedly face pressure from financially interested parties to make designs that prioritize cost reduction over quality, to an extent that may create safety risks.” (*Id.*, pp. 6-7) The Division argues that the behavior underlying Mr. Park’s conviction shows he “may not have the necessary resolve to resist those pressures despite risk to the safety of others” and that his lack of respect for authority “also creates a risk that he may falsely certify as to aspects of his reports when doing so would be in his personal interest.” (*Id.*, p. 7)

The Division has not met its burden of establishing, as a matter of law, that the circumstances of the conviction *substantially* relate to the circumstances of professional engineering. Contrary to the Division’s assertion, the undisputed facts do not show that Mr. Park falsely reported to the officers out of any particular “personal interest,” as that phrase is commonly understood. In both his application and in his subsequent summary judgment response, Mr. Park asserts that the assault involved a conflict between two long-term childhood friends, which was why he did not immediately accurately report what occurred, and that he broke up the confrontation between the two and called for medical help. Even if Mr. Park’s conduct may be construed as putting his “personal interests” above the needs of others, the Division has failed to satisfy the “substantial” relationship requirement. So tenuous is the connection between the circumstances of the offense and the likelihood that Mr. Park would create false reports or draft unsafe plans for financial reasons that to adopt the Division’s position would eviscerate the statutory prohibition against employment discrimination based on prior convictions.

The prohibition against employment discrimination based on prior convictions serves to rehabilitate offenders. As stated by our Supreme Court, “[S]ociety has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process.” *County of Milwaukee v. LIRC*, 139 Wis. 2d 805, 821, 407 N.W.2d 908 (1987). The Court further stated, “It is highly desirable to reintegrate convicted criminals into the work force, not only so that they will not remain or become public charges but to turn them away from criminal activity and hopefully to rehabilitate them.” *Id.* at 823. Of course, that interest is balanced by the competing interest of not forcing employers to “assume risks of repeat conduct by those whose conviction records show them to have the ‘propensity’ to commit similar crimes. . . .” *Id.* In the instant case, however, the risk to employers has not been established because the Division has not shown that the circumstances of the offense and the profession of engineering are substantially related.

I also note that this event occurred two years ago, that Mr. Park states he has learned from his mistake and has paid his due, that he would definitely tell law enforcement the truth were something like this to occur again, and that he would have done more to prevent the confrontation in the first place.

Finally, I note that this decision in no way serves to justify Mr. Park’s conduct. Lying to police officers is a serious offense, particularly where someone has suffered injuries, is in need of medical help, and accurate information may be critical. Rather, this decision only addresses

the question of whether the circumstances of the offense substantially relate to the profession of engineering. I conclude they do not.

Accordingly, the Division is denied summary judgment, and Mr. Park granted summary judgment, on this issue. *See* Wis. Stat. § 802.08(6) (“If it shall appear to the court that the party against whom a motion for summary judgment is asserted is entitled to a summary judgment, the summary judgment may be awarded to such party even though the party has not moved therefor.”) As a result, Mr. Park’s application may not be denied outright because of his prior conviction.

The parties have stipulated that Mr. Park may be issued a certificate of registration under certain agreed-upon terms and limitations.

The parties agree that if this tribunal rejects the Division’s request to deny the application outright due to Mr. Park’s prior conviction (as it has), then it should instead allow Mr. Park to receive a limited certificate of registration as a professional engineer under the following terms. First, Mr. Park must pass the Principles and Practice of Engineering Examination. Once he does so, the Section shall issue him a certificate of registration that requires him to: (1) complete six hours of education on the topic of ethics within 90 days of issuance of the certificate of registration; and (2) submit four quarterly reports, beginning 90 days after Mr. Park commences work as a professional engineer, for the Section’s review. The quarterly reports must include an assessment of Mr. Park’s work performance and describe the circumstances of the employment. After submission of four quarterly reports, the limitations shall be lifted and Mr. Park will be granted a full certificate of registration.

Because the parties have stipulated to issuance of a certificate of registration under the foregoing terms, and because such terms are appropriate under the circumstances here, they are adopted by this tribunal.

ORDER

ACCORDINGLY, IT IS HEREBY ORDERED that Michael Park shall be granted a limited certificate of registration under the following conditions:

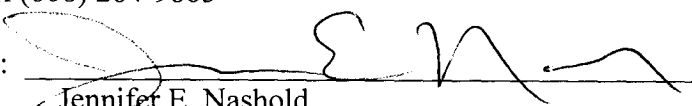
- (1) Mr. Park must pass the Principles and Practice of Engineering Examination.
- (2) If Mr. Park passes the Principles and Practice of Engineering Examination, the Section shall issue him a certificate of registration that requires him to: (a) complete six hours of education on the topic of ethics within 90 days of issuance of the certificate of registration; and (b) submit four quarterly reports, beginning 90 days after Mr. Park commences work as a professional engineer, for the Section’s review.
- (3) The quarterly reports described in paragraph (2), above, shall include an assessment of Mr. Park’s work performance and describe the circumstances of the employment.

IT IS FURTHER ORDERED that after Mr. Park completes the requirements set forth in paragraphs 1-3, above, the limitations shall be lifted and Mr. Park shall be granted a full certificate of registration.

Dated at Madison, Wisconsin on this 25th day of November, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____


Jennifer E. Nashold
Administrative Law Judge