

BEFORE THE ENGINEERING AND LAND SURVEYING EXAMINING BOARD
OF THE STATE OF IOWA

FILED 1/27/10 (Date)

J.E.S.L.E.B.

Signature, Executive Officer

IN THE MATTER OF:

Case No. 09-09

DIA NO. 09DOCEL003

Roy A. Hunt, PE
PE #14168 14186

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER

Respondent

On September 4, 2009, the Iowa Engineering and Land Surveying Examining Board (Board) filed a Notice of Hearing and Statement of Charges against Roy A. Hunt, PE (Respondent) charging him with failure to satisfy the continuing education requirements for continued licensure as a professional engineer in Iowa, in violation of Iowa Code sections 272C.2(1), (2); 542B.18; and 193C IAC 3.4 and 193C IAC chapter 7. The hearing was initially scheduled for November 5, 2009 with a telephone prehearing conference scheduled for October 23, 2009 at 1:00 p.m. Respondent failed to participate in the telephone prehearing conference. The hearing was later continued by the Board.

The hearing was held on January 14, 2010 at 1:35 p.m. in the Board conference room, 1920 S.E. Hulsizer, Ankeny, Iowa. Respondent was personally served with the Notice of Hearing and Statement of Charges and the Notice of Hearing Continuance on December 3, 2009 but failed to appear for hearing. Assistant Attorney General Pamela Griebel represented the state. The following members of the Board presided at the hearing: Craig Johnstone, PE/LS, Board Chair; Jerry Shellberg, PE/LS; Christy VanBuskirk, PE; Gary Benjamin, PE; Marlee Walton, PE/LS; and Ruth Ohde, public member. A certified court reporter recorded the hearing. After hearing the testimony and examining the exhibits, the Board convened in closed executive session to deliberate its decision, pursuant to Iowa Code section 21.5(1)(f)(2009). Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing and was instructed to draft the Decision and Order, consistent with deliberations, for the Board's review.

THE RECORD

The record includes the Notice of Hearing and Statement of Charges, Notice of Hearing Continuance, State's Prehearing Conference Report, the testimony of Jennifer Morrison, and State Exhibit 1, pp. 1-31.

FINDINGS OF FACT

1. On December 18, 1997, Respondent was issued Iowa Professional Engineer License Number 14168. (State Exhibit 1, p.11; Testimony of Jennifer Morrison)
2. All professional engineering licenses are renewed biennially. Licensees are required to have 30 professional development hours in order to renew the license. However, in November 2006 a computer error or "glitch" allowed Respondent to renew his engineering license online even though he only had a total of 18 professional development hours. The computer glitch was later corrected. (Testimony of Jennifer Morrison; State Exhibit 1, p. 11)
3. Respondent's license was due to expire on December 31, 2008. On January 12, 2009, Respondent filed an application to renew his license. This was considered a timely application so long as Respondent paid the \$25.00 late fee. Respondent submitted his license fee and a total of 19 professional development hours. Respondent also checked the "Out-Of-State Affidavit," which provides that the applicant is deemed to have complied with the Iowa continuing education requirements so long as the applicant holds a current license to practice in his state of residence and that state has a MANDATORY continuing education requirement. Respondent listed California as his state of residence. However, California does not have a mandatory continuing education requirement. Therefore, Respondent was still required to submit 30 professional development hours in order to renew his Iowa license.¹ (Testimony of Jennifer Morrison; State Exhibit 1, p. 6)
4. On February 26, 2009, the Board's Executive Officer sent Respondent a letter informing him that his renewal application had been denied for failure to submit the required number of professional development hours. The letter offered Respondent a consent agreement with penalty, or in the alternative, an

¹ See 193C IAC 7.8(4).

opportunity for a contested case hearing. Typically when licensees are offered the consent order they will respond to the Board and admit that they were short, pay the penalty, and make up the missing professional development hours or report that they made a mistake filling out the application and submit proof of the missing professional development hours. Respondent, however, did not respond to the Board's letter. (Testimony of Jennifer Morrison; State Exhibit 1, p. 7)

5. The Board sent Respondent a second letter on May 12, 2009. Respondent was notified that if he did not reply by June 1, 2009 the matter would be referred to the Board's Disciplinary Committee for recommended disciplinary action. Respondent did not reply to this letter. (Testimony of Jennifer Morrison; State Exhibit 1, p. 10)

6. As of the date of hearing, Respondent had not submitted the missing professional development hours (11) required for the renewal of his license in January 2009. (Testimony of Jennifer Morrison)

CONCLUSIONS OF LAW

The Board is required by statute to establish continuing education requirements as a condition for license renewal.² The Board has adopted rules governing continuing education at 193C Iowa Administrative Code (IAC) chapter 7. Each licensee is required to meet the continuing education requirements of 193C IAC chapter 7 as a condition of license renewal.³ The continuing education requirement for biennial licensure renewal is 30 professional development hours for an active licensee in engineering. The number of professional hours that may be carried forward into the next biennium shall not exceed 15.⁴ When a licensee appears to be in violation of mandatory continuing education requirements of 193C IAC chapter 7, the board may offer the licensee an opportunity to sign a consent order in lieu of holding a contested case hearing under 193 IAC 7.40. While the terms of the consent order will be tailored to the specific circumstances at issue, the consent order will typically impose a penalty between \$50 and \$250, depending on the severity of the violation, and will establish deadlines for compliance.⁵

² Iowa Code sections 272C.2(1),(2)(2009).

³ 193C IAC 7.1.

⁴ 193C IAC 7.5(1).

⁵ 193C IAC 3.4(10).

The preponderance of the evidence established that Respondent Roy A. Hunt failed to submit the required number of professional development hours (PDH) when he filed his renewal application in January 2009. Respondent was required to submit 30 professional development hours but only submitted 19 hours. Respondent has failed to respond to the Board's letters concerning the 11 hour shortage in his professional development hours and failed to appear for hearing. Respondent has failed to satisfy the continuing education requirements for continued licensure as a professional engineer, in violation of Iowa Code section 272C.2(1) and (2), 542B.18, and 193C IAC 7.5(1) and 3.4(9).

ORDER

IT IS THEREFORE ORDERED that professional engineer license number 14168, issued to Respondent Roy A. Hunt, is hereby SUSPENDED effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that Respondent Roy A. Hunt shall pay a civil penalty of \$500, within 30 days of the issuance of this Decision and Order.

IT IS FURTHER ORDERED, pursuant to Iowa Code section 272C.6 and 193 IAC 7.41, that Respondent shall pay \$75.00 within thirty (30) days of receipt of this decision for fees associated with conducting the disciplinary hearing.

IT IS FURTHER ORDERED that the license suspension shall continue until Respondent establishes through an audit that he has completed the required number of professional development hours to renew his license in January 2009 and until he pays the \$500 civil penalty and the \$75.00 hearing fee.

If Respondent does not comply with the terms of this Decision and Order prior to the expiration of the current biennial period on December 31, 2010, he will be required to show an additional 30 professional development hours before his license may be renewed.

Dated this ²⁷ day of ~~JANUARY~~, 2010.


Craig Johnstone, LS/PE
Chairperson

Iowa Engineering and Land Surveying Examining Board

cc: Pamela Griebel
Assistant Attorney General
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Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing becomes final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 7.32 (17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for the party's failure to appear or participate in a contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate. 193 IAC 7.27(3), (4).

Judicial review of the commission's action may be sought in accordance with the Iowa administrative procedure act, from and after the date of the commission's order. If a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the commission's final decision. 193 IAC 7.37.