

BEFORE THE IOWA ENGINEERING AND LAND SURVEYING EXAMINING BOARD

IN THE MATTER OF:

MICHAEL BEARDEN,

RESPONDENT.

Case No. 21-03

DIAL No. 24DBELS0003

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
DECISION AND ORDER**

On April 22, 2024, the Iowa Engineering and Land Surveying Examining Board (Board) found probable cause to file a Notice of Hearing and Statement of Charges charging Michael Bearden (Respondent) with 1) four counts of deceptive practices in violation of 193C Iowa Administrative Code (IAC) 9.3(3), and 2) two counts of having been convicted of a felony, in violation of 193C IAC 9.3(8). The charges were amended on August 1, 2024, eliminating count one.

The hearing was held on September 12, 2024. A record was made pursuant to 193 IAC 7.14, in which Board members Mindy Bryngelson and James Sweeney explained their past relationship to the Respondent. Following questioning by Assistant Attorney General Lindsey Browning, Mindy Byngelson withdrew from participation. James Sweeney determined his withdrawal was unnecessary.

The hearing was held before the following members of the Board: Rose Gillen, public member, Chairperson; James Sweeney, PE; J. Brian Morrissey, PE/PLS; Todde Folkerts, PE/PLS; and Jack Jones, public member. Assistant Attorney General Lindsey Browning and Angela Stuedemann represented the state of Iowa. Respondent Michael Bearden did not appear for hearing. The hearing was open to the public, pursuant to Iowa Code section 272C.6(1). Administrative Law Judge Emily Kimes-Schwiesow assisted the Board in conducting the hearing and was instructed to prepare the Board's decision in accordance with their deliberations.

THE RECORD

The record includes the testimony of Ashley Thompson, Detective Trevor Killian and State's Exhibits 1-7.

FINDINGS OF FACT

1. Respondent is an Iowa licensed professional engineer, holding license no. P11984. On May 17, 2021, Respondent notified the Board that criminal charges had been filed against him in Tama County District Court. The charges, entered on April 29, 2021, included 1) theft in the first degree, a class C felony, (b) theft in the second degree, a class D felony, (c) fraudulent practice in the third degree, an aggravated misdemeanor, and (d) campaign finance violation, a serious misdemeanor. (State Exhibits 2-4)
2. The matter was assigned to Investigator Ashley Thompson. Ms. Thompson gathered records related to the self-report, including the Tama County Sheriff's Office incident report. Tama County District Court records include the guilty plea and acceptance of guilty plea filed on June 17, 2021, and deferred judgment entered on August 26, 2021. (State Exhibits 1, 4-6; Thompson testimony).
3. Tama County Detective Trevor Killian testified at hearing regarding his involvement in the initial investigation. On May 12, 2020, law enforcement received a call for service reporting that approximately \$8,000 was missing from the Tama County Republican Party's checking account. The Respondent was the treasurer of the Tama County Republican Party, and had written seven checks to himself from an account belonging to the Tama County Central Committee. The checks totaled \$7,720.75, and resulted in an overdraft. Detective Killian obtained a subpoena for bank records and contacted the county attorney. The Iowa Division of Criminal Investigation assisted with completing the investigation, which ultimately led to the criminal charges filed in Tama County District Court on April 29, 2021. (State Exhibit 1, 4; Killian testimony)
4. The Respondent was personally served with the Notice of Hearing and Statement of Charges and initial continuance on May 14, 2024. The matter was continued again, and the charges were subsequently amended to eliminate the first count on August 1, 2024. Notice of the amended Notice of Hearing and Statement of Charges was emailed to the Respondent on August 9, 2024, and sent via regular mail on August 26, 2024. (Return of Service 5/15/24; Boes 8/26/24 letter regarding service)

CONCLUSIONS OF LAW

I. Failure to Appear

193 Iowa Administrative Code 7.3 provides that the Board shall file a statement of charges following a finding of probable cause. Delivery of the notice of hearing constitutes commencement of the contested case proceeding. A notice of hearing shall

be served upon the licensee by personal service as in civil actions, by restricted certified mail with return receipt requested, or by signed acknowledgment accepting service.¹ In this case, the Respondent was served by personal service.

193 Iowa Administrative Code 7.27 provides that if a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and enter a decision in the absence of the party.

Respondent was properly served with the notice of hearing and statement of charges but failed to appear for hearing. The Board was authorized to proceed in his absence.

II. Conviction of a felony

Iowa Code section 542B.21 provides, in relevant part:

542B.21 Suspension, revocation, or reprimand. The board shall have the power by a five-sevenths vote of the entire board to suspend for a period not exceeding two years, or to revoke the certificate of licensure or, or to reprimand any licensee who is found guilty of the following acts or offenses:

...

5. Conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. A copy of the record of conviction or plea of guilty is conclusive evidence.

193C IAC 9.3 provides, in relevant part:

9.3 The board has authority pursuant to Iowa Code chapters 10A, 542B, 17A, and 272C to impose discipline for violations of those chapters and the rules promulgated thereunder and may initiate disciplinary action against a licensee holding an active, inactive or lapsed license on any of the grounds identified in Iowa Code section 542B.21.

...

9.3(8) Conviction of a felony includes the conviction of a felony under the laws of the United States, of any state or possession of the United States, or of any other country. ...

¹ 193 Iowa Administrative Code (IAC) 7.6(2).

The preponderance of the evidence established that the Respondent violated Iowa Code section 542B.21(5), as defined by 193C IAC 9.3(8), when he was convicted of two felony crimes in Tama County District Court. There is no dispute that when serving as the treasurer of the Tama County Republican Party, Respondent wrote multiple checks to himself totaling over \$7,000. Detective Killian testified at hearing regarding the investigation, which resulted in criminal charges against the Respondent in Tama County District Court. On June 17, 2021, the District Court accepted the Respondent's plea of guilty to four crimes, which included theft in the first degree, a class C felony, and theft in the second degree, a class D felony. On August 26, 2021, a deferred judgment was entered.

III. Sanction

The Respondent's two felony convictions for theft call into question his ability to uphold the ethical requirements of an engineer in the state of Iowa. Respondent failed to appear for hearing, leaving the Board with no evidence of his potential rehabilitation or remorse. As a result, the Board determined an immediate revocation of Respondent's professional engineer license was necessary.

DECISION AND ORDER

IT IS THEREFORE ORDERED that license no. P11984, issued to Respondent Michael Bearden, is hereby REVOKED, effective immediately upon service of this Decision and Order.

IT IS FURTHER ORDERED that Respondent's professional engineer license may not be reinstated unless he fully complies with the requirements of 193 IAC 7.38, and establishes that the reason for the revocation no longer exists and that it is in the public interest for his license to be reinstated.

Pursuant to 193 IAC 7.30(3), within 15 days of the Respondent's receipt of the Decision and Order, Respondent must notify in writing all current clients of the fact that his license has been revoked. Such notice will advise clients to obtain alternative professional services. Within 30 days of receipt of the board's Decision and Order, the licensee will file with the board copies of the notices sent. Compliance with this requirement will be a condition for an application for reinstatement.

RESPONDENT IS HEREBY NOTIFIED that this Decision and Order, when fully executed, is a permanent public record and will be made available for inspection and copying in accordance with the requirements of Iowa Code chapter 22.

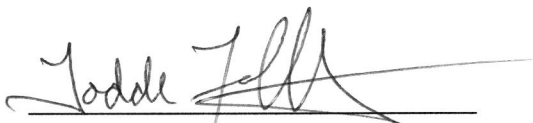
Appeal Rights/Motion to Vacate

In accordance with 193 Iowa Administrative Code 7.27(3), this decision becomes final agency action, unless, within 15 days after the date of notification or mailing of this decision, a motion to vacate is filed and served on all parties or an appeal of the decision on the merits is timely initiated within the time provided by 193 Iowa Administrative Code 7.32 (17A). A motion to vacate shall state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated will be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact attached to the motion.

Appeal on the Merits

In accordance with the provisions of Iowa Code section 17A.16 a party may file an application for rehearing within twenty (20) days after the issuance of this decision. In accordance with Iowa Code section 17A.19(3) any petition for judicial review must be filed within thirty (30) days after an application for rehearing has been denied or deemed denied. If a party does not file an application for rehearing any petition for judicial review must be filed within thirty (30) days after the issuance of this decision.

Dated this 14th day of NOVEMBER, 2024.



Todde Folkerts, Vice Chairperson

Iowa Engineering and Land Surveying Examining Board