

FILED 9/9/05 (Date)

JELSEB

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

Signature, Executive Officer

IN THE MATTER OF:) CASE NO. 04-06
) DIA NO. 05DOCEL001
)
DOUGLAS L. CARPER) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) DECISION AND ORDER

TO: DOUGLAS L. CARPER

On March 16, 2005, the Iowa Engineering and Land Surveying Examining Board (Board) filed a Statement of Charges against Douglas L. Carper (Respondent), charging him with failure to comply with a Board order, in violation of Iowa Code section 272C.3(2)(a)(2003, 2005). A telephone prehearing conference was held on June 17, 2005. The state submitted a Prehearing Conference Report and Proposed Exhibits 1-6. The hearing procedure was explained to the Respondent.

The hearing was held on June 30, 2005 at 1:30 p.m. in the Board conference room, 1920 S.E. Hulsizer, Ankeny, Iowa. The Respondent appeared and was self-represented. Assistant Attorney General Pamela Griebel represented the state. The following members of the Board presided at the hearing: Susan M. Long, PE, Board Chair; Lyle TeKippe, PE/LS; Dennis Osipowicz, PE/LS; Forrest M. Holly, PE; and Susan Albright, public member. Administrative Law Judge Margaret LaMarche assisted the Board in conducting the hearing. The Respondent elected to have a closed hearing, in accordance with Iowa Code section 272C.6(1). A certified court reporter recorded the testimony. 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)(2005). The Administrative Law Judge was instructed to prepare a Decision and Order, consistent with deliberations, for Board review.

THE RECORD

The record includes the Prehearing Conference Report, the Respondent's testimony, and the following exhibits:

State Exhibit 1: Statement of Charges and Settlement Agreement and Consent Order, filed 4/19/04
State Exhibit 2: Second Statement of Charges, 8/11/04
State Exhibit 3: Findings of Fact, Conclusions of Law, Decision and Order, 10/7/04
State Exhibit 4: Notice of Hearing, Statement of Charges, 3/16/05; Service, 4/25/05
State Exhibit 5: Reinstatement Timeline
State Exhibit 6: Correspondence to and from the Respondent

Respondent Exhibit A: Certificate of Completion, 40 hour Ethics Course, issued 6/17/05

FINDINGS OF FACT

Licensure and Disciplinary History

1. On July 24, 1984, the Board issued the Respondent professional engineering license number 10472. The Respondent's engineering license lapsed on December 31, 1999. The Respondent continued to certify engineering documents, providing a false expiration date for his license and falsely stating that he was duly licensed in the state of Iowa. (State Exhibit 3)

2. On March 3, 2004, the Board filed a Statement of Charges against the Respondent charging him with practicing professional engineering while his license was lapsed. On April 19, 2004, the Board and the Respondent entered into a Settlement Agreement and Consent Order to resolve the pending Statement of Charges. Pursuant to the terms of the Settlement Agreement and Consent Order, the Respondent was reprimanded and was also required to:

- By April 1, 2004, verify the list of all engineering documents that he certified in Iowa since December 31, 1999.
- By May 1, 2004, ensure and verify by affidavit that all engineering documents certified while his license was lapsed were re-certified by a licensed engineer.
- By May 1, 2004, pay a civil penalty of five hundred dollars (\$500).
- Prior to license reinstatement, complete the 40 PDH correspondence course offered by the Murdough Center for

Engineering Professionalism, College of Engineering, Texas Tech University as a condition of reinstatement of licensure, in addition to meeting the requirements of 193C IAC 3.5(1).

(State Exhibit 2)

3. The Respondent failed to comply with the terms of the Settlement Agreement and Consent Order. Specifically, he did not provide the verified list of engineering documents by April 1, 2004 and did not pay the \$500 civil penalty by the May 1, 2004 deadline. He failed to complete the 40-hour ethics course.

On August 11, 2004, the Board filed a second Statement of Charges against the Respondent, charging him with failure to comply with a Board Order. At a Board hearing on September 23, 2004, the Respondent submitted a personal check for the overdue \$500 civil penalty and provided a notarized letter from an engineer who had recertified the Respondent's engineering documents. The Respondent still had not completed the 40-hour ethics course but told the Board that he had ordered the course materials and expected to complete it within a few weeks. (State Exhibits 2, 3)

4. On October 7, 2004, the Board issued a Decision and Order, which was served on the Respondent by certified mail on October 22, 2004. The Board's Decision and Order indefinitely suspended the Respondent's engineering license and required the Respondent to:

- Within 15 days, notify all current clients that his license had been suspended;
- No later than January 1, 2005, pay a \$500 civil penalty;
- As soon as possible but no later than January 1, 2005, complete the 40-hour ethics course;
- Within 30 days, pay a \$75 hearing fee.

The Board further ordered that the Respondent's license suspension would continue for at least six months after the Board received written verification of his completion of the ethics course. After verifying his completion of the ethics course and serving the additional six-month suspension, the Respondent was permitted to file a petition for reinstatement,

provided that he had complied with all of the other requirements of the Decision and Order in a timely manner. (State Exhibit 3)

Current Charges

5. On November 19, 2004, the Respondent wrote to the Board's Executive Officer. He enclosed the \$75.00 hearing fee but stated that he was having difficulty paying the \$500 civil penalty because his salary had decreased by \$20,000-\$30,000 since 2003. He did not request an extension of time to pay the civil penalty. The Respondent also reported that he had not done any engineering work in Iowa since July 2004 and that he was more than halfway through the ethics course. (Testimony of Respondent; State Exhibit 6, p. 2)

On December 2, 2004, the Board's Executive Officer requested written confirmation from the Respondent that he did not have any Iowa clients that needed to be notified of his license suspension. She also informed the Respondent that the Board would review the status of his case at its next regularly scheduled meeting on March 3, 2005. (State Exhibit 6, p. 3)

6. The Respondent did not pay the \$500 civil penalty nor did he complete the 40-hour ethics course prior to the January 1, 2005 deadline. On January 20, 2005, the Board's Executive Officer wrote to the Respondent and summarized his noncompliance with the Board's Decision and Order. This letter was sent to the Respondent's last address of record but was returned marked "not here, unknown address." (State Exhibit 6, pp. 4-6) The same letter was sent to the Respondent's home address by restricted certified mail on February 8, 2005, and the Respondent eventually signed for it on February 25, 2005. (State Exhibit 6, pp. 2, 7-9)

7. On March 16, 2005, the Board filed a third Statement of Charges against the Respondent for failure to comply with the Board's October 7, 2004 Decision and Order. The Statement of Charges and Notice of Hearing were sent to the Respondent by restricted certified mail, but were returned marked "unclaimed" after the Respondent failed to claim the mail, despite two notices from the post office. The Respondent was eventually served with the Statement of Charges and Notice of Hearing by certified mail on April 25, 2005. (State Exhibit 4)

8. On April 4, 2005, the Respondent finally replied to the Board's February 8, 2005 letter and provided his new business address in South Dakota. The Respondent enclosed a check for the \$500 civil penalty, which was more than four months late. The Respondent reported that he had been doing contract work for Landmark Survey Company in Elk Point, South Dakota for six months and that Landmark hired him on a full-time basis on January 31, 2005.

The Respondent blamed email problems and delays for his failure to complete the 40-hour ethics course. The Respondent told the Board that he should have everything but the course's final exam completed by April 10th. (State Exhibit 6, p. 10; Testimony of Respondent)

9. At the hearing on June 30, 2005, the Respondent submitted a copy of his Certificate of Completion of the 40-hour ethics course, which was issued to him on June 17, 2005, nearly six months after the January 1, 2005 deadline established by the Board. (Testimony of Respondent; Respondent Exhibit A)

10. The Respondent is currently working as a drafter in the state of South Dakota under the supervision of a licensed engineer. The majority of his employer's engineering work is in the state of California. He is not licensed as an engineer in South Dakota and is still interested in pursuing reinstatement of his Iowa license. (Testimony of Respondent)

CONCLUSIONS OF LAW

Iowa Code section 272C.3(2)(a)(2003, 2005) provides that each licensing board may impose one or more of the following as licensee discipline:

- a. Revoke a license, or suspend a license either until further order of the board or for a specified period, upon any of the grounds specified in ...542B.21... or upon failure of the licensee to comply with a decision of the board imposing licensee discipline.

The preponderance of the evidence established that the Respondent violated Iowa Code section 272C.3(2)(a)(2003, 2005) when he failed to comply with the Board's October 7, 2004 Decision and Order. Pursuant to the terms of that disciplinary

order, the Respondent was required to pay a civil penalty of \$500 and verify completion of the 40-hour ethics course by January 1, 2005. The Respondent did not pay the civil penalty until April 4, 2005 and did not complete the ethics course until June 17, 2005. Once again, it appears that the Respondent has essentially ignored the deadlines established in the Board's Order and chose instead to set his own agenda for compliance. Once again, the Respondent has shown a continuing pattern of disregard for the Board's requirements. The Respondent's violation of the Board's Decision and Order requires the imposition of additional, progressive disciplinary sanctions. The Board has fully considered the full range of disciplinary options under 193C IAC 9.4 and 9.5, including revocation, but has decided to give the Respondent one final opportunity to demonstrate that he is capable of fully complying with the Board's requirements.

ORDER

IT IS THEREFORE ORDERED that the Respondent's professional engineering license (number 10472) shall continue to be **INDEFINITELY SUSPENDED**. The indefinite suspension will continue for a **minimum period of one year** from the date of issuance of this Decision and Order.

IT IS FURTHER ORDERED that the Respondent may not apply for reinstatement of his Iowa engineering license until the minimum one year period of suspension has been served **and** until he has **fully and timely** complied with the following schedule for completing a minimum of 45 hours of continuing education:

A. By January 1, 2006, Respondent must submit verification* to the Board of his completion of a minimum of fifteen (15) hours of continuing education;

B. By April 1, 2006, Respondent must submit verification to the Board of his completion of an additional fifteen (15) hours of continuing education;

C. By July 1, 2006, Respondent must submit verification to the Board of his completion of an additional fifteen (15) hours of continuing education.

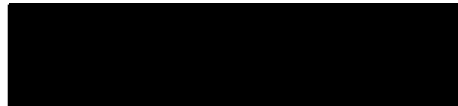
* The submitted verification must satisfy the audit requirements found at 193C IAC 7.8(2). The 45 credits may be used by the

Respondent to satisfy the continuing education requirements for reinstatement, if the credits otherwise satisfy the requirements of 193C IAC 3.5(1). However, the 40-hour ethics course completed by the Respondent on June 17, 2005 may not be used for reinstatement of his engineering license.

The Respondent will have the opportunity to file a reinstatement application only *after* he has fully and timely complied with all of the above requirements. However, compliance with this Decision and Order does not guarantee that the Board will grant the Respondent's reinstatement application. If the Respondent applies for reinstatement, the burden of proof will be on him to establish, by a preponderance of the evidence, that the reason for the indefinite suspension no longer exists and that it is in the public interest for his engineering license to be reinstated. 193 IAC 7.38.

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

Dated this *8th* day of *September*, 2005.


Susan M Long, P.E.
Chairperson
Iowa Engineering and Land Surveying Examining Board

cc: Pamela Griebel
Assistant Attorney General
Department of Justice
Hoover Building (LOCAL)

Douglas Carper
Landmark Survey Company, Inc.
P.O. Box 689
105 E. Main Street
Elk Point, South Dakota 57025 (CERTIFIED)

Judicial review of the Board's action may be sought in accordance with the terms of the Iowa administrative procedure Act, from and after the date of this final order. 193 IAC 7.37.