

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

MICHAEL WARD, )  
Appellant, )  
v. )  
STATE OF ALASKA, BOARD )  
OF REGISTRATION FOR )  
ARCHITECTS, ENGINEERS )  
& LAND SURVEYORS )  
Appellee. )  
\_\_\_\_\_ )

Case No. 3AN-11-8665CI

**Order on Administrative Appeal**

On June 6, 2011, Appellant Michael Ward appealed the administrative decision by Appellee Board of Registration for Architects, Engineers & Land Surveyors (Board) denying his application for registration as an engineer in Alaska by comity pursuant to AS 08.48.191(b) and 12 AAC 36.105.<sup>1</sup> After the Board initially denied his application in August 2010, an administrative law judge recommended the Board “exercise its discretion to approve his application” based on Appellant’s subsequent showing, by a preponderance of the evidence, that he satisfies the “good character” requirement for registration as an engineer.<sup>2</sup> Without explanation, the Board rejected the judge’s recommendation and issued a final decision denying Mr. Ward’s application.<sup>3</sup> For the following reasons, the Court SETS ASIDE the Board’s decision and REMANDS for further findings.

<sup>1</sup> Appellant’s Notice of Appeal and Statement of Points, filed June 6, 2011.

<sup>2</sup> R. at 000286, Op. by Judge Friedman in OAH No. 10-0455-AEL (Feb. 11, 2011).

<sup>3</sup> R. at 000294, Appellee’s Final Decision in OAH No. 10-455-AEL (May 5, 2011).

## Statutory Background

The Board administers and is empowered to regulate the registration process for licensing engineers in Alaska.<sup>4</sup> The Board has regulated standards of professional conduct for registered engineers focusing on a dedication to “the safety, health, property, and welfare of the public.”<sup>5</sup> The governing statutes provide that engineers seeking registration, whether applying by examination or comity, “must be of good character and reputation.”<sup>6</sup> When applying for registration by comity, the applicant must satisfy this requirement “in the opinion of the board . . . based on verified evidence.”<sup>7</sup>

If the Board denies the application, an applicant can appeal the denial and request a hearing.<sup>8</sup> After the hearing, an administrative law judge issues a proposed decision while the Board retains discretion to make a final decision.<sup>9</sup> The Board then issues a final decision adopting the judge’s proposed decision, revising and adopting it, or rejecting it.<sup>10</sup> Rejections and revisions must be done in writing noting the basis for the final decision, and any affected findings and reliance on testimony and evidence must be specifically identified.<sup>11</sup> Judicial review is available within 30 days of the Board’s final decision.<sup>12</sup>

---

<sup>4</sup> AS 08.48.011, .101.

<sup>5</sup> 12 AAC 36.210.

<sup>6</sup> AS 08.48.171.

<sup>7</sup> AS 08.48.191(b).

<sup>8</sup> AS 44.62.370.

<sup>9</sup> AS 44.64.060(e).

<sup>10</sup> *Id.*

<sup>11</sup> AS 44.64.060(e)(4)-(5).

<sup>12</sup> ALASKA R. APP. PROC. 602(a)(2).

## Facts and Proceedings

On January 11, 2010, Appellant Michael Ward submitted his application to the Board for registration as an engineer by comity.<sup>13</sup> When asked if he had ever been convicted of a felony or misdemeanor, Mr. Ward checked “yes” and, on the requested separate sheet, he outlined that he had a DUI conviction in 1999, two 2001 convictions, one for breach of peace and a DUI, a 2002 conviction for driving without privileges and a 2003 conviction for delaying an officer.<sup>14</sup> In February 2010, Mr. Ward pleaded guilty to 2009 DUI and controlled substance charges, which he voluntarily disclosed to the Board in May 2010.<sup>15</sup> He also provided the Board with requested paperwork detailing his convictions.<sup>16</sup> The Board denied his application at its August 2010 meeting and sent a letter to Mr. Ward describing the basis for its decision:

“Specifically, the board determined that your application does not meet the requirements of AS 08.48.171 because of excessive citations for driving under the influence (DUI). AS 08.48.171 states in part that ‘An applicant for registration as an architect, engineer, land surveyor, or landscape architect must be of good character and reputation.’”<sup>17</sup>

Mr. Ward appealed this decision. Prior to the hearing, Mr. Ward offered to enter into a two-year term of probation should his application be accepted, where any conviction related to controlled substances or alcohol in any jurisdiction

---

<sup>13</sup> R. at 000057-60, Application For Engineer or Land Surveyor by Examination or Comity (Jan. 11, 2010).

<sup>14</sup> *Id.* at 000060-61.

<sup>15</sup> Appellant’s Reply Brief at 2, filed Nov. 25, 2011; Appellee’s Brief at 3, filed under seal Nov. 7, 2011.

<sup>16</sup> Appellant’s Reply Brief at 2.

<sup>17</sup> R. at 000003, Letter to Appellant from Appellee Exec. Admin. Richard V. Jones (Aug. 9, 2010).

would result in his license being immediately forfeited.<sup>18</sup> In a preliminary ruling, the administrative law judge found the Board “must show a nexus between Mr. Ward’s criminal history and the practice of the profession in engineering” which Mr. Ward would have to disprove or otherwise show “he is of good character as his character relates to the practice of the profession of engineering.”<sup>19</sup>

In February 2011, following a hearing, the administrative law judge issued his opinion regarding Mr. Ward’s appeal.<sup>20</sup> He found the Division of Corporations, Business and Professional Licensing successfully demonstrated a nexus existed between Mr. Ward’s convictions and the practice of engineering as “they show poor judgment, an inability to comply with rules of proper behavior, and a disregard for the safety and welfare of others.”<sup>21</sup> Mr. Ward did not disprove this nexus, but did successfully prove, by a preponderance of the evidence, that he had sufficiently good character and reputation that the Board should, in its discretion, approve his application notwithstanding his convictions. Mr. Ward had provided additional evidence on appeal concerning his character and conduct as a professional engineer, including eight persuasive letters of character reference addressing his recovery, community service and superior professional conduct.<sup>22</sup>

In consideration of the arguments and evidence, the judge found Mr. Ward met his burden of demonstrating good character, that his convictions were “lapses

---

<sup>18</sup> R. at 000281-82, Letter to AAG Dan Branch from Appellant (Oct. 25, 2010).

<sup>19</sup> R. at 000295, Ruling in Limine on Good Character Evidence, OAH No. 10-0455-AEL (Jan. 10, 2011), citing *Kenai Peninsula Bd. of Education v. Brown*, 691 P.2d 1034, 1040-41 (Alaska 1984).

<sup>20</sup> R. at 000286-93, Op. by Judge Friedman.

<sup>21</sup> *Id.* at 000290.

<sup>22</sup> See R. at 000199-205, 000207-11.

in judgment” which he acknowledges as serious and “has taken steps to reform.”<sup>23</sup> The judge encouraged the Board to “exercise its discretion to approve his application to be a registered civil engineer in Alaska.”<sup>24</sup> On May 5, 2011, without explanation, the Board rejected the judge’s decision and issued a final denial of Mr. Ward’s application.<sup>25</sup>

On June 6, 2011, Mr. Ward filed his Notice of Appeal in this matter and his Statement of Points a few weeks later. In late October, he filed his brief.<sup>26</sup> Mr. Ward highlighted his arguments and evidence presented at the hearing demonstrating his good character and reputation, noting he had no addiction indicators and had taken steps to acknowledge and reform his behavior.<sup>27</sup> He also highlighted the administrative law judge’s findings that he had satisfactorily shown good character and reputation to merit registration and asked the Court to affirm those findings and compel the Board to approve his application.<sup>28</sup>

In November 2011, the Board was allowed to file its brief under seal.<sup>29</sup> It described the issue on appeal as “whether the Board acted reasonably” in finding Mr. Ward “lacked the requisite character” under AS 08.48.171 for registration.<sup>30</sup> The Board implied it was influenced by evidence volunteered by Mr. Ward detailing additional traffic offenses, which the application specifically excluded

---

<sup>23</sup> R. at 000293, Op. by Judge Friedman.

<sup>24</sup> *Id.*

<sup>25</sup> R. at 000294, Appellee’s Final Decision.

<sup>26</sup> Appellant’s Brief, filed Oct. 20, 2011.

<sup>27</sup> *Id.* at 3-4.

<sup>28</sup> *Id.* at 5-7.

<sup>29</sup> Order to Maintain Appellee Brief and Excerpt of Record Under Seal (Nov. 18, 2011).

<sup>30</sup> Appellee’s Brief at 1, 5.

from disclosure, and the 2009 charges he was also not required to mention.<sup>31</sup> It argued the administrative law judge's role was to "develop a recommended decision" under AS 44.64.060(d) and highlighted the judge's assessment of Mr. Ward's criminal history as it related to the Board's determination of his character.<sup>32</sup> The Board argued its decision that three DUI convictions in ten years, including the severity of these convictions and his associated actions, reasonably supports its finding that Mr. Ward lacked good character, a finding which was not alleviated by the administrative law judge's opinion to the contrary.<sup>33</sup>

On November 25, 2011, Mr. Ward filed his reply brief, again asserting that the Board did not use its discretion properly since its denial was not supported by the findings.<sup>34</sup> He described his consistent efforts to make full disclosure and claimed the Board neglected to contact his references and made uninformed judgments about his "apparent pattern of alcohol abuse" which contradicted the evidence by licensed counselors.<sup>35</sup> He noted that, at the hearing, the Director acknowledged other applicants had been approved with repeat DUI offenses and that the Board had never before denied an application due to DUI convictions.<sup>36</sup> He further claims he is registered in 10 other states with similar qualification

---

<sup>31</sup> *Id.* at 2-3; R. at 000060, Application.

<sup>32</sup> Appellee's Brief at 3-5.

<sup>33</sup> *Id.* at 7-9.

<sup>34</sup> Appellant's Reply Brief at 1.

<sup>35</sup> *Id.* at 2-3.

<sup>36</sup> *Id.* at 4-5.

statutes to Alaska.<sup>37</sup> Finally, he argues that AS 44.64.060 requires the Board to provide a more detailed explanation for its final decision (instead of none).<sup>38</sup>

Oral argument was not requested by either party.

### Standard of Review

In an administrative appeal, the Court exercises its independent judgment on the evidence to find whether there was a prejudicial abuse of discretion.<sup>39</sup> “Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”<sup>40</sup> The Court applies a “substitution of judgment” test for statutory and regulatory interpretation issues which do not require agency expertise.<sup>41</sup> For example, whether the Board can deny Mr. Ward’s application without explanation would be evaluated using this test.<sup>42</sup> Even if the denial “has a reasonable basis in law,” the Court substitutes “its own judgment for that of the agency” to “independently consider the meaning of the statutes.”<sup>43</sup>

Where agency expertise is implicated, however, the Court applies a “substantial evidence” test.<sup>44</sup> For example, whether the Board can support its authorized discretionary denial of Mr. Ward’s application would be evaluated

---

<sup>37</sup> *Id.* at 5.

<sup>38</sup> *Id.* at 6.

<sup>39</sup> AS 44.62.570(b)-(c).

<sup>40</sup> AS 44.62.570(b).

<sup>41</sup> *Borkowski v. Snowden*, 665 P.2d 22, 27 (Alaska 1983).

<sup>42</sup> See *Union Oil Co. of Calif. v. Dep’t of Revenue*, 560 P.2d 21, 23 (Alaska 1977) (“[T]he knowledge and expertise of the agency is not conclusive of the intent of the legislature in passing a statute.”).

<sup>43</sup> *Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co.*, 746 P.2d 896, 903-04 (Alaska 1987).

<sup>44</sup> See *Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors*, 205 P.3d 326, 332 (Alaska 2009).

using this test.<sup>45</sup> If the denial has a reasonable basis in law and is supported by substantial evidence, meaning “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,” the Court must uphold it, even if it ultimately disagrees.<sup>46</sup>

### Decision on Appeal

As noted by the administrative law judge, the Board can consider Mr. Ward’s convictions and his conduct to make a determination on his application.<sup>47</sup> The Board has the authority to regulate conduct by engineers and has specific regulations noting such conduct must respect “the safety, health, property, and welfare of the public.”<sup>48</sup> As the Board notes in its brief, “[a] person who drives under the influence shows ‘a reckless disregard of consequences, a needless indifference to the rights and safety and even the lives of others.’”<sup>49</sup> Mr. Ward’s convictions could reasonably cast doubt on his ability to comply with the code of professional conduct. Further, engineers must also be willing to report violations,<sup>50</sup> and Mr. Ward’s conduct during one of his offenses could reasonably cast doubt on his ability to comply with that regulation.<sup>51</sup>

Viewing the evidence from the Board’s perspective, the Court finds “relevant evidence as a reasonable mind might accept” to support a legitimate

---

<sup>45</sup> See *Alaska Bd. of Nursing v. Platt*, 169 P.3d 595, 601 (Alaska 2007).

<sup>46</sup> See *id.* (citations omitted).

<sup>47</sup> See R. at 000289-91, Op. by Judge Friedman.

<sup>48</sup> AS 08.48.101(a); 12 AAC 36.210.

<sup>49</sup> Appellee Brief at 8, quoting *Lupro v. State*, 603 P.2d 468, 475 (Alaska App. 1983).

<sup>50</sup> 12 AAC 36.210(a)(6).

<sup>51</sup> See R. at 000290, Op. by Judge Friedman.



determination that Mr. Ward has failed to show he is of sufficiently good character and reputation as it relates to the profession of engineering in Alaska.<sup>52</sup> A decision to deny Mr. Ward's application could have a reasonable basis in law and there appears to be substantial evidence to support one. However, the Court cannot evaluate the basis for or evidence supporting a decision where none is provided. The Board's decision does not appear to have been made in accordance with the statute governing final decisions following an administrative hearing.

The Board is entitled to, in its discretion, reject the findings and opinion of the administrative law judge in making its final decision.<sup>53</sup> The Court may find an abuse of that discretion "if the agency has not proceeded in the manner required by law."<sup>54</sup> The statute governing administrative hearing procedures outlines the Board's options following a proposed decision by the administrative law judge.<sup>55</sup> To reject a factual finding by the administrative law judge, the Board must

in writing, reject modify or amend a factual finding in the proposed decision by specifying the affected finding and identifying the testimony and other evidence relied on by the agency for the rejection, modification, or amendment of the finding, and issue a final agency decision.<sup>56</sup>

To reject a legal finding by the administrative law judge, the Board must

in writing, reject, modify, or amend an interpretation or application in the proposed decision of a statute or regulation directly governing

---

<sup>52</sup> See *Handley v. Dep't of Revenue*, 838 P.2d 1231, 1234 (Alaska 1992) (applying "substantial evidence" test to permanent fund dividend application denial).

<sup>53</sup> AS 44.64.060(e).

<sup>54</sup> AS 44.62.570(b).

<sup>55</sup> See AS 44.64.060(e).


<sup>56</sup> AS 44.64.060(e)(4).

the agency's actions by specifying the reasons for the rejection, modification, or amendment, and issue a final agency decision.<sup>57</sup>

The Board is also authorized to adopt the proposed decision, remand for further proceedings or revise its determination and adopt the proposed decision as revised.<sup>58</sup> Unlike a rejection, these options do not specifically require the agency to make a decision in writing or provide a detailed basis for it.

In making its decision, the Board used the space allocated for "Non-Adoption Option B" which allows the Board to revise its determination and adopt the proposed decision as revised; however, it did neither of these things but rather rejected the proposed decision and affirmed its initial determination.<sup>59</sup> As such, the Court finds the final agency decision was a prejudicial abuse of discretion as it was not made in the manner required by law. The Board's decision of May 5, 2011, is therefore set aside and the matter is remanded to the agency to make a final determination which complies with the applicable statutes. The Board has 45 days from the date of this order, or until the next regularly scheduled meeting, to submit its determination to the Court for review or else the administrative law judge's proposed decision will be considered a final decision.

So ordered this 18th day of May 2012.

  
*[Signature]*  
Pat Douglass, Judge

<sup>57</sup> AS 44.64.060(e)(5).

<sup>58</sup> AS 44.64.060(e)(1)-(3).

<sup>59</sup> See R. at 000294, Appellee's Final Decision.

I certify that on 5/18/12  
a copy of this document was sent/faxed to  
the attorneys of record or other

*Michael Ward*  
*Dan Branch*

*[Signature]*