

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND
LAND SURVEYORS**

In the Matter of)
)
 ROBERT ANDERSON) OAH No. 09-0603-AEL
_____)

DECISION

I. Introduction

Robert Anderson applied for registration as a civil engineer by examination in Alaska. At its regular meeting of August 27-28, 2009, the Board of Registration for Architects, Engineers and Land Surveyors considered Mr. Anderson’s application and voted to deny it. Mr. Anderson requested a hearing. A hearing was held on January 20, 2010, and continued on January 25, 2010.

Mr. Anderson unknowingly submitted information on his application that was false. A series of unusual and improbable circumstances led the division to suspect that Mr. Anderson had deliberately submitted false information in an attempt to deceive the board. The more thorough examination of events provided by the hearing has shed a great deal of light on details of the case that were previously somewhat obscure, and revealed that it is more likely than not that Mr. Anderson sincerely believed the information to be true when he submitted it. Mr. Anderson also provided credible evidence of good character and reputation.

Because Mr. Anderson did not deliberately make a materially false statement in connection with an application for registration, and because he has demonstrated good character and reputation and met the prescribed requirements for education, training and experience, his application for registration should be granted.

II. Facts

The facts below are derived from the testimony of the witnesses and the written record as noted. Witnesses at the hearing included: Mr. Anderson; Dena Lopez, who was an associate pastor at Mr. Anderson’s church in Fernley, Nevada in 1998 and 1999 and a friend of Mr. Anderson’s; Jennifer Anderson, who is Mr. Anderson’s sister; Kent Hamilton, a coworker of Mr. Anderson’s; Ryan Bloom, Mr. Anderson’s current employer; Richard “Vern” Jones, Executive Administrator for the AELS Board and former licensing examiner; Investigator John Savage from the Division of Corporations, Business, & Professional Licensing; and Ginger

Morton, former executive administrator for the AELS Board. The testimony of these witnesses, along with Mr. Anderson's testimony, established the following facts.

Mr. Anderson graduated from high school in Susanville, California in 1983 and served in the Navy from 1984 through 1988. After being discharged from the Navy, Mr. Anderson began attending community college in 1989 in Susanville, California, where he lived with his wife, who had also gone to high school in Susanville. After about two years of taking classes at a community college, Mr. Anderson attended one semester at California State University in Chico. He then enrolled in the University of Nevada, Reno ("UNR"). While going to school, Mr. Anderson worked intermittently for the Nevada National Guard as an engineering technician and project manager.

Because UNR was over a hundred miles from Susanville, in 1998 Mr. Anderson and his wife bought a large and very comfortable four-bedroom home in Fernley, Nevada, which is a short distance outside of Reno. At the old house in Susanville, the Andersons had lived next door to Mr. Anderson's wife's parents. When the family moved to Nevada, Mr. Anderson's parents-in-law bought the Susanville house as an investment and rented it out.

In 1999, Mr. Anderson started working for Lumos & Associates, a civil engineering firm in Reno, in addition to going to school. Mr. Anderson's position was as an engineering technician inspecting highway construction projects between Reno and Carson City on contract to the Department of Transportation. This work was performed at night. Mr. Anderson would typically start work at 6 p.m., and usually get off work at 6 in the morning. While the hours varied, most nights Mr. Anderson worked ten to twelve full hours, and he did this seven days per week. During this period, Mr. Anderson's wife did not work, staying home to take care of the couple's three children.

Perhaps not too surprisingly, the strain of this arrangement began to result in the deterioration of Mr. Anderson's marriage in the fall of 1999. Mr. Anderson's wife began staying out nights and drinking heavily. At some point Mr. Anderson became aware that his wife was having affairs with multiple other men. Although it was Mr. Anderson's desire to salvage the marriage and keep his family intact, his wife eventually took their three kids and moved back to her parents' house in Susanville. After a few months passed, the tenant in the house next door moved out, and Mr. Anderson's wife and the children moved back into the house they had occupied before moving to Fernley. In addition to working and going to school, Mr. Anderson now began making the 111-mile trip back to Susanville to spend time with his children, and to

continue his effort to save his marriage. At some point, Mr. Anderson's wife disclosed that she was pregnant, and that Mr. Anderson was not the baby's father.

Because living alone in a four-bedroom house was unpleasant and made little financial sense, Mr. Anderson moved to a smaller residence in Fernley and rented the large house out. Mr. Anderson's neighbor at his new house was Dena Lopez, who had also counseled Mr. Anderson as the associate pastor at their church and had met with Mr. Anderson's wife. Ms. Lopez testified that Mr. Anderson was calm by nature, but that during this period he was frequently distraught. Ms. Lopez observed Mr. Anderson's wife at the house to pick up and drop off the kids, and Ms. Lopez described her behavior as "aggressive" and fraught with drama. There was apparently a visitation schedule, but the children were often not delivered when they should have been, or were taken when Mr. Anderson had arranged to spend time with them. Ms. Lopez testified that the children would sometimes come over to her house to stay, and occasionally she or her husband found it necessary to intervene in situations at Mr. Anderson's house. Based on her observations of the stress Mr. Anderson was under, Ms. Lopez considered it extremely likely that Mr. Anderson would neglect other areas of his life at that time, and she was impressed by the degree to which Mr. Anderson was able to keep up with his work schedule and day-to-day demands, under the circumstances, while still making time for his children.

Some time later the renters of the larger house in Fernley stopped paying rent and left the house in very poor condition. When the house slipped into foreclosure, Ms. Lopez and her husband agreed to buy the house out of foreclosure and resell it in order to salvage Mr. Anderson's equity in the place as a favor to Mr. Anderson. Mr. Anderson's wife had agreed to the arrangement, but when Ms. Lopez drove out to California with paperwork to close the deal, Mr. Anderson's wife refused to honor her earlier agreement, and demanded payment of money that had not been contemplated by the parties. In order to salvage the deal, Ms. Lopez agreed to pay Ms. Anderson some money. Although his own credit and his interest in the equity were at stake, Mr. Anderson objected to the new deal, which he viewed as taking unfair advantage of Ms. Lopez's generosity. Mr. Anderson risked losing his equity altogether by insisting on terms that were fair to Ms. Lopez. Ms. Lopez testified that she viewed this act as typical of Mr. Anderson's character; while he might not stand up enough for himself, he always looks out for the interests of others. Ms. Lopez testified that she has always known Mr. Anderson to be honest, possibly to a fault.

In the fall of 1999, Mr. Anderson was in what he believed was his final semester at the University of Nevada. At the end of this semester, Mr. Anderson successfully completed all of the classes required by the Department of Civil and Environmental Engineering for a bachelor of science in civil engineering. The University of Nevada required 130 semester hour credits for graduation; with the transfer credit from the previous institutions included, Mr. Anderson had credit for 163 semester hours. After successfully finishing the last classes of the civil engineering degree track, Mr. Anderson obtained a form from the university to apply for graduation. Mr. Anderson completed the form and returned it to the university with a check for a graduation fee, which Mr. Anderson recalled to be \$100.

The whole time he had been living in Fernley, Mr. Anderson had never updated his address with the university from his old Susanville address. Since his in-laws owned the old house and lived next door and the mailboxes for both houses were in a single cluster, Mr. Anderson never had any trouble receiving whatever mail the university sent him.

After his wife left and went back to Susanville, getting his mail from her became very difficult for Mr. Anderson. Mr. Anderson began finding out that he was being turned over to collection agents for unpaid bills he had never seen. At the time, making sure that he got all of his mail from his wife was not the foremost of Mr. Anderson's concerns. Besides still working long hours, Mr. Anderson was driving the approximately 111 miles between Fernley and Susanville on a regular basis to see his children. According to Ms. Lopez and Mr. Anderson's sister, Mr. Anderson's wife was making special efforts to complicate Mr. Anderson's life at this point, and Mr. Anderson's principal goals seemed to be keeping relations as smooth as possible and to keeping in touch with his children as much as possible.

When he applied for graduation, Mr. Anderson never saw any response from the university. Mr. Anderson assumed that the university had sent his degree certificate and any related mail to the Susanville address, and that his wife had either put it away somewhere or possibly thrown it out. Mr. Anderson graduated after the fall term and did not plan to participate in commencement ceremonies the following spring. Though he had not actually seen the university's response to his application for graduation and did not have a degree certificate in his possession, Mr. Anderson believed that, after working on it for ten years, his postsecondary education was finally complete. Mr. Anderson turned his full attention to his work and his family.

Despite his desire to salvage his marriage, the situation did not improve and Mr. Anderson eventually divorced. Although his wife's fourth child was not Mr. Anderson's, that child's biological father was never an active parent, and Mr. Anderson assumed the role of father for that child and treated him the same as his other children. Mr. Anderson continued working for Lumos & Associates until 2001, when he accepted a job offer from DOWL Engineers and moved to Alaska. In November of 2003 Mr. Anderson went to work for Alaska Testlab, where he worked until January of 2006. In February of 2006, Mr. Anderson went to work for EMC Engineering, LLC. Mr. Anderson has worked on projects that required him to be in the bush for prolonged periods. In recent years he has spent large amounts of time in Guantanamo Bay, where as project engineer for EMC he has supervised reconstruction of the airport. Mr. Anderson called in for his hearing by telephone from Guantanamo Bay. Mr. Anderson has recently remarried. His two older children have moved to Anchorage to be near him; the younger two, including the one that is not biologically his, remain in California, but Mr. Anderson maintains contact and close relationships with them.

Mr. Anderson's effort to achieve registration as a civil engineer in Alaska has been a long process. Registration as a civil engineer in Alaska can be accomplished by several different combinations of education and qualifying work experience, along with passage of two examinations. The first exam, the Fundamentals of Engineering or "FE" exam, is a multi-state exam. A passing score on the FE exam does not expire with the passage of time. Mr. Anderson passed the FE exam in Nevada in 1999. The remaining exam that Mr. Anderson needed to pass before he could be registered in Alaska was the Principles and Practice of Civil Engineering, or the "PE" exam. In order to sit for this exam, applicants who do not yet possess degrees must have completed three years of credit hours in an engineering curriculum and eight years, or 96 months, of work experience.¹ Applicants with a B.S. degree in the branch of engineering applied for need only four years, or 48 months, of work experience.²

On August 3, 2005, Mr. Anderson first applied for registration as a professional engineer by examination.³ Mr. Anderson provided his full work history and list of professional references, and correctly indicated that he passed the F.E. exam in Nevada in 1999. The section of the form for education is headed "TECHNICAL EDUCATION." Below this heading is a notice stating that "Official transcripts are required and must be sent directly to the board office

¹ 12 AAC 36.063. These requirements will change effective July 1, 2010.

² *Id.*

³ Exhibit 1, page 66.

from the university, unless verified through NCEES Council Records” (underline in original).⁴ Mr. Anderson indicated that he had attended the University of Nevada. In appropriate spaces for indicating the years attended he wrote that he attended from 1995 to 1999. In the space for “degree received” Mr. Anderson wrote “Bachelors of Civil Engineering.”

When he first applied to register by examination, Mr. Anderson listed work experience totaling 92 months as of August 3, 2005.⁵ With this amount of experience, Mr. Anderson would immediately qualify if he had a B.S. degree. With the amount of credit he had but no degree, he would have qualified just four months later at the end of November, 2005. Because the P.E. exam is offered in October and April, having a degree in August was not a substantial advantage for an applicant with 92 months of work experience.

There was some discussion at the hearing about whether the 23 months of work Mr. Anderson claimed while he worked for the Nevada Air National Guard could have properly been considered. Mr. Jones testified that the board did not consider the Guard time, because Mr. Anderson was going to school during that time, but it approved him to sit for the PE exam because even without the Guard time Mr. Anderson had over 48 months of experience, which was enough to qualify with a degree. After reviewing in detail the months that Mr. Anderson was in school and the months that he worked full-time for the Guard, such as during the summer months, Mr. Jones agreed that it appeared to him that Mr. Anderson was entitled to credit for 22 months of full-time experience with the Guard, though he properly declined to speak for the board on the matter.

It thus appears that Mr. Anderson was probably correct in his belief that he was qualified for registration based on work experience and coursework before the beginning of 2006. The question need not be answered at this point, because there is no dispute that Mr. Anderson now has far more work experience and education than necessary to qualify. These calculations do show that Mr. Anderson had little or nothing to gain by falsely claiming to have his degree, because by the beginning of 2006 he could have qualified based on just his work experience, or at the very least he believed he could qualify this way, and there was a reasonable basis for this belief.

On August 5, 2005, the division sent Mr. Anderson a letter stating that it had received his application, but that his file was incomplete. The letter detailed the verification of work experience needed, stated that verification of passing the FE examination in Nevada would be

⁴ Exhibit 1, page 67.
OAH No. 09-0603-AEL

needed, and stated that verification of a board-approved Arctic engineering class would be required. Among these, the letter also stated that “before final approval can be given, we need the following information: **Official College Transcripts (BSCE for U. of NV)**” (bold in original).⁶ On January 19, 2006, the division sent Mr. Anderson a similar letter, again stating that “before final approval can be given, however, we need the following information.” This was followed by three bullet points indicating that the division still needed partial payment of fees, verification of FE exam, and “**Official Transcripts (BSCE from U. of NV)(must be submitted directly from school)**” (bold in original).⁷ The division sent a similar letter on February 13, 2006.⁸

Mr. Anderson’s application to sit for the exam was approved early in 2006, pending submission of additional fees, verification of passing the FE exam, and receipt of an official transcript from the University of Nevada. Mr. Anderson was also advised that a license would not be issued until he had completed an approved Arctic engineering course.⁹ Mr. Anderson was scheduled to take the exam on April 21, 2006.

When the time came to take the exam, Mr. Anderson did not feel that he was adequately prepared, and he therefore did not appear to take the exam. As it turned out, construction activity near the exam site had interfered with some other applicants’ ability to take the exam, and along with these students Mr. Anderson was scheduled to take the next exam on October 27, 2006, with additional fees being waived. In the fall of 2006 Mr. Anderson was working on a project in Bethel, and he was therefore unavailable to take the exam in October of 2006. In November of 2006, Mr. Anderson was approved to take the next exam in April of 2007. In the three months before that exam, Mr. Anderson studied and reviewed for the test for some period of time nearly every day in order to be fully prepared for the exam.

On June 18, 2007, the division sent Mr. Anderson a letter reading in part:

Congratulations! You have **PASSED** the National Council of Engineers and Surveyors (NCEES) Principles and Practices of Civil Engineering (PE) examination given on April 20, 2007. NCEES no longer provides a numerical score.

You have now met all requirements for registration as a professional engineer in Alaska except the following items. Your new registration will be issued upon receipt of the items listed below.

⁵ Exhibit 1, page 68.

⁶ Exhibit 1, page 65.

⁷ Exhibit 1, page 64.

⁸ Exhibit 1, page 63.

⁹ Exhibit 1, page 63.

- Successful completion of a board-approved arctic engineering course (12 AAC 36.110): If you have completed this course, please indicate the place and date below and return a copy of this letter to us:

Location of Arctic Class: _____

Date Completed: _____

- **Fees:** We have received \$245 from you. The total required is \$365.00. Please remit the balance of \$120.00. Current fees are as follows: Application fee \$50; registration fee \$295; wall certificate fee \$20.
- **Transcripts** from the University of Nevada (transcripts must come directly from the school).
- **Verification of FE** examination (must come directly from the State Board where taken).¹⁰

Mr. Anderson paid the remainder of the fees, but had some trouble getting the rest of the required information to the division. Mr. Anderson downloaded a form from UNR and submitted it to the university several times before the division received the transcript. When Mr. Anderson asked the State of Nevada to verify that he had passed the FE exam, that state's licensing authority notified the division that Mr. Anderson had been previously licensed in Kentucky. After Mr. Anderson made inquiries, the Nevada licensing agency realized it had information for two Robert L. Andersons, and that it had delivered information for the wrong person. Through Mr. Anderson's efforts the division finally received all the correct documents.

When the division received Mr. Anderson's transcript, it was immediately apparent that Mr. Anderson did not have a BS in civil engineering, or a degree of any kind for that matter. The transcript showed the 90 credits Mr. Anderson had earned at University of Nevada, but it did not show any of the credit that had transferred to UNR from the previous colleges Mr. Anderson had attended. Because the university had accepted credit from the previous schools, Mr. Anderson believed that his transcript would in some way reflect that earlier credit. Because the transcript had been sent directly from the school, Mr. Anderson did not have a copy and was not aware that the transcript only included the 90 credits earned at UNR.

On January 22, 2008, Ginger Morton sent a fax to the university attempting to verify whether Mr. Anderson had been awarded a degree.¹¹ The university responded that it could only release that information to Mr. Anderson. At some point, Ms. Morton had a phone conversation with Mr. Anderson, and said she had been unable to verify that Mr. Anderson had a degree at all. At that point Mr. Anderson suggested that it might be better for him to qualify based on his work

¹⁰ Exhibit 1, page 54.
OAH No. 09-0603-AEL

experience alone. Something about the manner or tone in which Mr. Anderson suggested this made Ms. Morton suspicious. Ms. Morton was unaware that Mr. Anderson had earned any more credit than that shown on his University of Nevada transcript, which would equal roughly three years of college, while Mr. Anderson (who had not seen the transcript) believed that it also showed the transfer credit from the previous institutions. Ms. Morton soon came to believe that Mr. Anderson's representation that he had a degree was an intentional lie, in spite of the fact that Mr. Anderson did in fact have enough work experience to qualify for registration even without a degree. On November 18, 2008, Ms. Morton sent the following email message to Investigator John Savage:

Hi John:

Attached are relevant documents regarding Mr. Anderson's application for a PE Civil registration by exam. His application indicates he has a BS in civil engineering (highlighted) however the transcript does not so indicate (unless I am missing something here). As you can see I contacted the University of Nevada and they could not provide the info requested. He has passed the FE and PE exams and has the requisite amount of work experience. Even if he doesn't have a bachelor's degree I believe he is qualified for registration, however, I question the fact that he might have lied on his application.

Go get 'em John!!

Investigator Savage wrote a letter to Mr. Anderson on December 2, 2008, stating that Ms. Morton had been unable to obtain verification of Mr. Anderson's degree. Investigator Savage requested that Mr. Anderson provide a copy of his degree along with a separate written authorization for the university to release all transcripts and educational documents. Frustrated with the division's inability to get evidence of his degree from the University, Mr. Anderson then went to the University of Nevada campus himself to try to solve the problem.

After visiting several offices on campus, Mr. Anderson learned for the first time that he had never actually been granted a degree from the university. While he had more than enough credit to graduate and had completed all the requirements of his major, Mr. Anderson later learned that he had not met two requirements of all students for graduation at U of N: he had not taken Political Science 100, which is a one-credit survey of the Nevada constitution, and he was short one liberal arts diversity class.

Upon learning that he did not have a degree, Mr. Anderson inquired whether it was still possible for him to complete the requirements of his degree. The university advised him that, despite the passage of time, all of his credit was still valid toward a degree. Mr. Anderson filled

out a form to apply for readmission, and he is now taking the one-credit Political Science 100 class and a three-credit English literature class through a distance learning program at the university that will complete his graduation requirements.

On January 7, 2009, Mr. Anderson wrote back to Investigator Savage that

I attempted to acquire a copy of my diploma as requested in your letter dated December 2, 2008. I went to the University of Nevada, Reno (UNR) campus and talked with the personnel at the Admissions and Records office and was told they had forwarded all the information available to your office. During this conversation I came to find out that a diploma was never issued to me.

To explain how this could happen I will have to tell you a little about my past. While I was finishing up my education at UNR I was having difficulties with my marriage. Upon completion of my last semester in 1999 I separated from my then wife and moved. I was under the impression that my application for graduation was processed and all records sent to my old address and hence my ex-wife. As it turned out this did not happen.

I am attempting to get a diploma and have to work through the process that is made difficult by my presence on the Guantanamo Bay, Cuba, Naval Station for work. It is my intention to obtain a diploma but am not sure how long this will take.¹²

On January 16, 2009, Investigator Savage wrote back to Mr. Anderson in part as follows:

On January 15, 2009, this information was reviewed by a member of the AELS Board who opined that the investigation can be closed with the issuance of this Advisory letter and that you should be cautioned that all information submitted to the State of Alaska on future applications must be truthful and verified prior to submission.

This letter is a private communication between you and the Division of Professional Licensing. As this letter is not considered a licensing action a copy of it will not be placed in your application file. You are not required to notify anyone that you received this letter. A copy of this letter will be retained by the Division for use as evidence, should you ever submit an application for registration in the future which contains any false or misleading information.¹³

In spite of this letter's assurance that the matter was being closed with an advisory letter, Ms. Morton drafted a memo to the board stating in part, "I believe Mr. Anderson was trying to receive a PE registration by providing fraudulent information on his application, in violation of state statute."¹⁴ Ms. Morton explained in the memo that Mr. Anderson was qualified even without a degree, but she concluded, "however, there is still the issue of fraudulent information provided under oath on his application so the board will need to discuss this as well."¹⁵

Ms. Morton emailed a draft of this memo to Investigator Savage, stating "I'm attaching a memo I am giving to the board at the meeting next week. Let me know what you think. I think I

¹² Exhibit 1, page 46.

¹³ Exhibit 2, page 11.

¹⁴ Exhibit 1, page 45.

sound a bit jaded, but I think the guy tried to pull a fast one and don't want to see him get away with it.”¹⁶ Investigator Savage responded,

Ginger, it sounds right on the mark. No matter how you slice it, dice it, or whatever, it was still falsifying his application. 12 AAC 36.210. Professional Conduct (a)(9). I bet if his resumes were ever questioned at the long list of places he has worked since 1999, Anderson would also be in violation of 12 AAC 36.230 Solicitation of Employment. (c). I know he is not a registrant yet but you get the idea. You take care Ginger and may the force be with you.

Ms. Morton then forwarded the memo to the board. At its regular meeting on February 12-13, 2009, the board denied Mr. Anderson's application. On March 11, 2009, Ms. Morton wrote a letter to Ms. Anderson stating in part,

Under AS 08.48.201(a)(2) an applicant for registration as a professional engineer must submit an application that contains “statements made under oath, showing the applicant's education and detailed summary of the applicant's technical experience”. The Board has determined that the assertion in your application that you possess a bachelors degree in civil engineering was false. In fact, you have earned only 90 semester credits toward a bachelors degree. As you misrepresented your qualifications to the Board, and do not meet the requirements of 12 AAC 36.063(a)(3), the Board denied your application for registration as a civil engineer in Alaska.¹⁷

On April 25, 2009, Mr. Anderson sent an email to Ms. Morton stating, “Hi Ginger, I was hoping to get some advice on my PE application. I am assuming I will need to submit another application but do not know if I need to gather references again or retake the PE exam. If you could help me out with any answers I would appreciate it.”¹⁸ On May 13, 2009, Ms. Morton responded,

Robert:

Sorry for the delay in responding.

What you can do at this point is reapply. You will not need to take the PE exam. We can use the work experience verifications previously submitted.

What you need to remember is that the board denied your application because you provided fraudulent information on your application – you indicated that you had a Bachelors of Civil Engineering, which you do not. The board has discretion to deny an applicant a license pursuant to AS 08.48.171 which states that an applicant must be of good moral character and reputation. Because you were previously denied registration because of providing false information on your application, I cannot predict what the board will do.¹⁹

¹⁵ *Id.*

¹⁶ Exhibit 1, page 44.

¹⁷ Exhibit 1, page 37.

¹⁸ Exhibit 1, page 34.

¹⁹ Exhibit 1, page 34.

On August 17, 2009, Mr. Anderson submitted a new application for registration.²⁰ In the boxes for “Technical Education” Mr. Anderson listed the University of Nevada Reno, California State University, Chico, and Lassen Community College, with the respective years attended for each school.²¹ In the boxes for “date of graduation” and “degree received,” Mr. Anderson wrote “N/A” for each school. Mr. Anderson attached a letter to this application explaining the previous application and why he had indicated he had a degree when he did not. Mr. Anderson wrote in part,

I am asking that the Board look beyond my mistake in not verifying I had obtained a diploma. I did not attempt to deceive the Board or knowingly make a false claim but believed I had completed all the requirements to receive a B.S. in Civil Engineering. I understand it was my responsibility to verify I had this degree and in hindsight I wish I had. I am an honorable person with high moral standards who would never knowingly make false statements and I have learned a valuable lesson that I will never repeat.

If you have any questions or would like to discuss this further I would be happy to address any concerns.²²

In spite of the fact that all of the information on Mr. Anderson’s application was complete, truthful and accurate, and that Mr. Anderson had met all requirements for registration, and that the division had previously advised Mr. Anderson that the issue regarding his inaccurate previous application had been closed, the board again denied Mr. Anderson’s application. On September 1, 2009, Ms. Morton wrote a letter to Mr. Anderson advising him that “after careful consideration, the board voted to deny your application.” The letter stated that the board had denied Mr. Anderson’s application pursuant to AS 08.48.171 and 12 AAC 36.210(a)(9) and quoted those laws, but it did not specifically state what action or deficiency had resulted in the board’s decision that Mr. Anderson was not eligible for registration. Mr. Anderson then requested the hearing in this case.

Mr. Anderson currently works for EMC Engineering, LLC, where he has been employed since February, 2006. EMC has been in business eight years and employs 47 people. Kent Hamilton, a coworker at EMC, is a professional engineer who has been working as an engineer since 1997. Mr. Hamilton began working with Mr. Anderson over the phone in 2005 when Mr. Anderson was at a different company that was working with EMC, and he worked with Mr. Anderson on several projects after Mr. Anderson joined EMC. While most of their contact is professional, Mr. Hamilton sometimes socializes with Mr. Anderson. Mr. Hamilton testified that

²⁰ Exhibit 1, pages 28-32.

²¹ Exhibit 1, page 29.

²² Exhibit 1, page 27.

Mr. Anderson is honest and fair and that “he’s a great friend, he’s a good person.” Mr. Hamilton testified that Mr. Anderson has a reputation in the profession for honesty and for the quality of his work, and that he knows EMC was thrilled when Mr. Anderson agreed to work for the company.

Ryan Bloom is the owner of EMC Engineering and has been a professional engineer since 1997. Mr. Bloom has known Mr. Anderson for six to seven years. Asked about Mr. Anderson’s character, Mr. Bloom testified

He’s pretty much my right hand man. He has been for the past several years. I have never known him to lie, cheat or steal. I trust him with multimillion dollar projects, that’s why he’s out in Guantanamo Bay, Cuba. He’s done somewhere between fifty and seventy-five million dollars worth of Q.C. work as my quality control manager guy out there, so I would say I trust him explicitly.

Mr. Bloom testified that Mr. Anderson is hard-working and very good at what he does, but not the type of person who likes to talk about himself. Mr. Bloom testified that when Mr. Anderson found out he did not have a degree from the University of Nevada,

He came up to my office. He was pretty devastated. He didn’t know how, he didn’t know why. He speculated that, you know, paperwork got lost during his tumultuous times, he was getting divorced right around that time I believe. So he thought maybe a ball had been dropped, but he, in the many years that I have known him prior to this, there was no indication that he knew that he didn’t have a degree. He thought he did, he honestly thought he did. We all did.

Mr. Bloom testified that Mr. Anderson’s lack of a degree and the board’s inquiry into his character in no way affects his regard for Mr. Anderson and will not influence his employment of Mr. Anderson.

III. Discussion

The only issues in this case are whether Mr. Anderson is of good character and reputation, and whether he deliberately made a false statement in his application. According to AS 08.48.171,

An applicant for registration as an architect, engineer, land surveyor, or landscape architect must be of good character and reputation and shall submit evidence satisfactory to the board of the applicant's education, training, and experience....

According to 12 AAC 36.210(a)(9), a registrant

may not deliberately make a materially false statement or deliberately fail to disclose a material fact requested in connection with an application for registration or renewal of a registration issued under AS 08.48.

As the applicant, Mr. Anderson has the burden of proving these matters by a preponderance of the evidence.²³

Mr. Anderson is a person of good character and enjoys a good reputation both personally and professionally.

Aside from the possibility that he may have intentionally provided false information in his application, there is no evidence in the record maligning Mr. Anderson's character and reputation. It is true that the witnesses testifying about Mr. Anderson's character were friends or, in one case, a relative of Mr. Anderson, and might therefore be expected to show some bias in his favor. Ms. Lopez described her relationship with Mr. Anderson now as more in the nature of acquaintances, as they have drifted apart after Mr. Anderson moved to Alaska. Even taking possible bias into account, Ms. Lopez and Mr. Anderson's sister, who testified about Mr. Anderson's personal character, sounded credible. These witnesses spoke openly and did not seem constrained in describing what they saw as Mr. Anderson's shortcomings. These witnesses had never observed Mr. Anderson to act dishonestly, even when it would be in his interest to do so.

Mr. Bloom and Mr. Milton, while they considered themselves friends with Mr. Anderson, were colleagues first. These witnesses, being professionals in the field, can be expected to provide unbiased testimony for the board. They also both had an earnest tone that lent credibility to their testimony. Both of these witnesses testified that they have known Mr. Anderson to be honest in all situations, and that he enjoys a reputation in the profession for honesty and competence.

The preponderance of the evidence showed that Mr. Anderson is a kind person who looks out for the interests of others, who loves his children and cares for them (regardless of whether they are biologically his), and who is hard-working, industrious and honest. Mr. Anderson's employers hold him in high regard, value his work, and trust him to work independently on multi-million dollar projects in remote areas. In the last twenty years, Mr. Anderson has not been charged with any public offense, including any traffic or parking violations.

Aside from the suggestion that Mr. Anderson may have deliberately tried to mislead the board by providing false information, the evidence solidly reflects that Mr. Anderson is of good character and enjoys a good reputation both among his friends and family and among his professional peers.

²³ AS 44.62.460(e).
OAH No. 09-0603-AEL

Mr. Anderson did not deliberately make a materially false statement in connection with an application for registration.

There is only one item of evidence that suggests that Mr. Anderson deliberately made the false statement that he possessed a degree when he did not, and that is the simple undisputed fact that Mr. Anderson said he had a degree the first time he applied, when in fact he did not. This is an obviously suspicious circumstance at first glance, but several facts make it unlikely that Mr. Anderson was intentionally claiming to have the degree he lacked.

The first fact suggesting that Mr. Anderson's act was not deliberate is that Mr. Anderson had no motive to lie. Mr. Anderson believed at the time of his first application that he had enough work experience and education to his credit that he could register by examination as of the end of December, 2005, without a degree. When he filled out his application form, Mr. Anderson could have left the boxes for "date of graduation" and "degree received" blank, and his application most likely would have sailed through without any questions or problems. He would have received his license more than four years ago, and there would be no grounds to question his honesty or integrity. It is very difficult to imagine why an applicant in Mr. Anderson's situation would intentionally make a false claim to have a degree. Even for a person of extreme vanity, puffing his resume up for some licensing examiners, and possibly board members, that he would not likely meet in person does not make much sense. The evidence showed that Mr. Anderson is not egotistical by nature, and that he also is simply too intelligent to take the high risk of getting caught in a serious lie when there is nothing to gain by it. Mr. Anderson does not seem to be one to lie or cheat under any circumstances, but he is smart enough that if he were to engage in some serious deception it would probably be for some purpose or gain.

Second, it was repeatedly made very clear to Mr. Anderson that an attempt to falsely claim to have a degree would fail. The original application form itself stated on its face, in underlined print, that official transcripts were required to prove the applicant's education, and that they must be sent directly from the university. Every letter sent to Mr. Anderson, and there were a number of them, stated that transcripts showing his degree would need to be sent directly from the university before Mr. Anderson's application would be approved. Usually this was stated in bold type. To any applicant thinking of getting registered by falsely claiming to have a degree, it is made clear from the beginning that such a scheme would not work.

While several of the division's witnesses speculated that Mr. Anderson may have simply been hoping the division and the board would drop the ball and overlook his lack of a degree, the division's ongoing diligence in demanding proof of the degree since the first application in 2005

made it highly likely that someone who knew he lacked a degree would have given up this approach long before Mr. Anderson did. Again, it is also unlikely that, in the face of continual notices that such a scheme would not work, a person would continue for years to knowingly perpetuate a false claim of having a degree when he was aware of another valid and perfectly legitimate path to registration. The idea that Mr. Anderson would keep claiming to have a degree that he knew he didn't have, and keep trying to get the university to send proof of a degree it had never issued, simply makes no sense.

Finally, it appears highly likely that if Mr. Anderson had been aware that he had not been granted a degree back in 1999, he would have made the effort to finish his education. Mr. Anderson had been steadily working on obtaining his degree for ten years. It was a personal and professional goal of his, in a profession in which he is very active. Mr. Anderson had completed the most difficult parts of his obtaining his degree, including all the requirements for his major. When he finally did find out that the degree had never been granted, Mr. Anderson immediately signed up for the missing classes, which are offered by correspondence, even though he now qualifies for licensure without a degree by virtue of his work experience. When one looks at the pattern of Mr. Anderson's education and career, it seems almost certain that, had Mr. Anderson known at the end of 1999 that he still lacked a degree, and that the only thing standing between him and graduation was a one-credit 100-level political science class and a three-credit English elective, Mr. Anderson would have immediately signed up for the classes and completed his degree in the spring of 2000. It is more likely than not that, had Mr. Anderson's wife been forwarding his mail, Mr. Anderson would have been informed of the deficiency in his transcript and taken the relatively easy steps necessary to graduate at the time.

The only other suggestion that Mr. Anderson's false claim to have a degree was deliberate was Ms. Morton's testimony that during a telephone conversation she had with Mr. Anderson, something in his tone made her suspicious. While such suspicious are legitimate and appropriate basis for the further investigations that were pursued in this case, the board should not be influenced by this information for several reasons. First, it is impossible to know exactly what was said in this conversation, or to objectively evaluate the tone or manner that gave rise to Ms. Morton's suspicion. Ms. Morton's report of this conversation is not exactly hearsay, as it is not being offered to prove the truth of any matter that Mr. Anderson asserted, but it should not be relied on for the same reason that hearsay evidence is often not relied on. In determining whether Mr. Anderson is and has been telling the truth, the appropriate course is to place him

under oath, hear his story directly, subject him to cross examination on the record, evaluate his credibility, and examine any evidence discrediting him. This is what took place in the hearing. Mr. Anderson's story, while unusual, turned out to be believable and to make sense under the circumstances.

A second reason to discount her suspicion is that Ms. Morton developed her suspicion while under the false impression that Mr. Anderson had only 90 credits toward his degree. Even at the time of the hearing, Ms. Morton was not aware that the university had accepted Mr. Anderson's transfer credits from his previous institutions, or even that he had attended previous institutions. Given this fact, it is not surprising that Ms. Morton had trouble believing that Mr. Anderson genuinely thought he had a degree, when he only had (as far as she knew), about three years of education to his credit, rather than about five years.

It is fair to note that it was Ms. Morton's job to detect anomalies in the many applications that come before the division and, when they could not be explained, to alert the board. Ms. Morton's email messages, memos, and testimony show that she was an enthusiastic member of an energetic team that took very seriously its duty of monitoring the profession for unethical conduct. Ms. Morton's testimony showed that she is passionate about her beliefs and is the kind of person who does not conceal her feelings about whatever subject is at hand.

Diligent as the licensing examiners and investigators were in this case, they did not have all the information before them, just as the board had very limited information when it made the decision to deny Mr. Anderson's application. As the division pointed out in argument, a hearing is a part of the application process. When the board does not have adequate information to explain an anomalous situation, the hearing is the applicant's opportunity to present necessary additional information and to explain situations that appear unusual.

Mr. Anderson has now provided a very complete account of what happened in his case and why. Although the case initially appeared suspicious, the very bright light shed on the matter at the hearing shows that Mr. Anderson did not deliberately provide false information. When he wrote in that he had a degree from UNR, Mr. Anderson was not trying to gain anything by falsehood; he was merely writing in what he thought was the correct answer to the question before him. Believing he had a degree when he did not might be regarded as careless or negligent, but it does not rise to "deliberate" and certainly not "fraudulent" as one memo to the board suggested.

It should further be noted that any carelessness or negligence in submitting information that was not correct appears to be substantially out of character for Mr. Anderson. As his attorney pointed out, some people who find themselves facing the circumstances that Mr. Anderson had to deal with in 1999 sometimes end up in extreme trouble. Mr. Anderson continued to be a good father, advanced his career, and rebuilt his life. Had external circumstances not been so challenging to Mr. Anderson at the time, it is likely that, consistent with his general character, he would have carefully followed up with the university and obtained his degree. Mr. Anderson does not appear to be one to neglect important details.

IV. Conclusion

Mr. Anderson has not deliberately made a false statement in connection with an application for registration. Mr. Anderson has demonstrated good character and reputation. He has met all of the prescribed requirements for education, training and experience for registration as a civil engineer. Mr. Anderson's application for registration should be granted.

DATED this 9th day of February, 2010.

By: *Signed* _____
Dale Whitney
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Board of Registration for Architects, Engineers and Land Surveyors and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 12th day of February, 2010.

By: *Signed* _____
Signature
Richard D. Heieren
Name
Chair, B.R.A.E.L.S.
Title