

**BEFORE THE WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS**

IN RE: Earl F. McKinney

CASE NO. C2006-01

FINAL OPINION AND ORDER

Pursuant to a hearing held before the West Virginia State Board of Registration for Professional Engineers, Leonard J. Timms, P.E., presiding, on the 8th day of May, 2006, the Board hereby makes the following Findings of Fact and Conclusions of Law:

1. The hearing on Complaint 2006-1 was duly noticed on April 6, 2006. Exhibit 1.
2. Respondent was served with this Complaint by certified mail dated January 30, 2006. Exhibit 2.
3. Respondent never responded to the Complaint except for the communication from his counsel upon receipt of the Notice of Hearing. Exhibit 7.
4. Upon receipt of the communication from Respondent's counsel, Counsel for the Board, Debra L. Hamilton, attempted to informally resolve this matter. Exhibit 8.
5. Neither Respondent nor his counsel communicated with this Board or its Counsel after the communication of April 11, 2006 (Exhibit 7).
6. Respondent did not attend the hearing, did not request a hearing or any continuance of the hearing, and did not provide any information regarding his failure to attend.
7. Respondent's failure to attend the hearing was without good cause.
8. Complaint 2006-01 is based primarily on disciplinary action taken by the Kentucky State Board of Licensure and Land Surveyors (KBELS) which resulted in the

revocation of Mr. McKinney's professional engineering license in the State of Kentucky (Exhibit 3, Final Order) and the imposition of a fine in the amount of \$1,000.00 (Exhibit 3, Findings of Fact, Conclusions of Law, and Recommended Order, Section IV., ¶ 2).

9. Exhibit 3 is a final adjudication since Respondent availed himself of all avenues of appeal up to the Supreme Court of the State of Kentucky, and KBELS' action was affirmed throughout the appellate process. Exhibits 4-6.
10. The charges which were proven against Respondent McKinney, as set forth in Exhibit 3, Part III. Conclusions of Law, Part C, ¶ 31 and as testified to by Robert W. Fentress, PLS, Assistant Director of KBELS, are the same or substantially equivalent to grounds for discipline under West Virginia Engineering law (W. Va. Code §30-13-1 *et seq.*).
11. Respondent McKinney holds WV PE license number 8685.
12. Respondent McKinney did not notify this Board of KBEL's disciplinary action.
13. Based on materials provided by Deputy Director Fentress to the Board's investigator, Don Johnson, a list was compiled of some of the engineering work performed by Respondent McKinney in the State of West Virginia. Exhibit 9.
14. Respondent McKinney used the seal reflecting his P.E. license on a Certificate of Compliance, which certificate indicates the signature of an. Exhibit 2 (Attachment to Complaint).
15. The Board finds there is insufficient evidence regarding the Certificate of Compliance to make any finding regarding whether Respondent misused his professional seal on that document, but, inasmuch as the Certificate is dated

September 7, 1999, the Board finds that Respondent has performed engineering work in the State of West Virginia in addition to the work listed in Exhibit 9.

16. There is a preponderance of evidence that Respondent failed to provide information on work performed in West Virginia despite this Board's requests for additional information.
17. The extent to which Respondent has violated West Virginia engineering law cannot be proved at this time due to Respondent's failure to provide requested information to this Board.

CONCLUSIONS OF LAW

18. The Board is a state entity created by West Virginia Code §30-13-1 *et seq.* and is empowered to regulate the practice of professional engineering pursuant to West Virginia Code §30-13-1 *et seq.*
19. West Virginia Code §30-13-22 (c) authorizes the Board to proceed with a hearing without the attendance of respondent.
20. Under the Board's procedural rules with regard to reciprocal discipline, a final adjudication in the jurisdiction of another state conclusively establishes the conduct of the person disciplined and requires the person so disciplined to notify the West Virginia Board of Registration for Professional Engineers. 7 C.S.R. 2-4.7.
21. West Virginia Code §30-13-21(a)(5) authorizes this Board to take disciplinary action against any professional engineer who has been disciplined by another state if at least one of the grounds for discipline is the same or substantially equivalent to grounds for discipline contained in W. Va. Code §30-13-1 *et seq.*

22. West Virginia Code §30-13-21(a)(1) allows disciplinary action against any professional engineer who has “(p)erpetrated any fraud or deceit in obtaining or attempting to obtain or renew” his license, which are grounds substantially equivalent to the grounds set forth in KBEL’s Charges 1, 2 and 4 proven against Respondent McKinney.
23. West Virginia Code §30-13-21(a)(10) prohibiting the use of a professional engineer’s seal unless the work has “been prepared or completely checked by the professional engineer or under ... (his) direct supervision or control” are grounds substantially equivalent to the grounds set forth in KBEL’s Charges 5 and 9 proven against Respondent McKinney.
24. The statutory and regulatory violations in Kentucky’s Code of Professional Practice and Conduct are the same as or substantially equivalent to those contained in West Virginia’s Rules of Professional Responsibility. 7 CSR 1-12.
25. Among its other powers, the Board has the power to levy fines and assess costs. W. Va. Code §30-13-21(d)(4) and 7 CSR 1-15.
26. Fraud or deceit is an action which would subject a person to discipline by the Board, including license revocation and a civil penalty up to \$15,000. 7 CSR 1-15.1.
27. Misuse of a seal is an action that would subject a person to discipline by the Board, including license revocation and a civil penalty up to \$5,000.00. 7 CSR 1-15.1.
28. Failure to provide timely information to the Board is an action that would subject a person to discipline by the Board, including license revocation and a civil penalty up to \$1,000.00. 7 CSR 1-15.1.
29. Each day of continued violation constitutes a separate offense. 7 CSR 1-15.3.

30. Any civil penalty assessed as a result of a hearing must be paid within fifty (50) days of this Order. W. Va. Code §30-13-22(f).
31. This Final Opinion and Order is a matter of public record.
32. Orders of the Board may be enforced in the Circuit Court of Kanawha County. Code §30-13-9 (c) and 7 C.S.R. 2-5.2.

ORDER

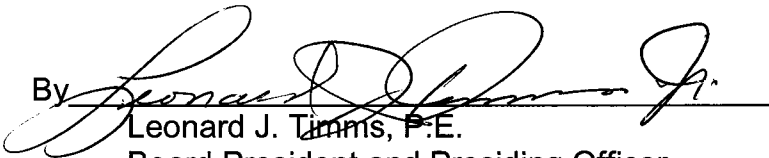
On the basis of the foregoing the Board hereby **ORDERS** the following:

33. Respondent McKinney's license to practice engineering in the State of West Virginia is hereby permanently revoked, and Respondent McKinney shall surrender same to the Board immediately upon receipt of this Order.
34. Respondent McKinney shall provide this Board with a complete list of work performed in West Virginia from 1995 to date, together with the remuneration therefor, indicating which if any projects are not completed.
35. Respondent McKinney shall cease and desist from performing any engineering work on currently pending projects, making appropriate arrangements for the termination and/or transfer of such work.
36. Respondent McKinney shall comply with any reasonable requests by the Board for additional information regarding any of the West Virginia projects listed by Respondent as required by Paragraph 34.
37. Respondent McKinney shall comply with Paragraph 34 within five (5) days of receipt of the certified mail enclosing this Order as reflected on the return receipt thereof.

38. Respondent McKinney shall pay a civil penalty of \$250.00 per day for every day Respondent fails to provide the information required by Paragraph 34 up to a maximum civil penalty of Five Thousand Dollars (\$5,000.00).
39. Respondent shall be notified by certified mail of any civil penalty imposed hereunder and shall make the required payment within fifty (50) days from the date of entry of this Order.
40. Any civil penalties imposed hereunder shall be made payable to the WV P.E. Board, which shall transfer same forthwith to the general revenue fund of the State of West Virginia.
41. Respondent McKinney shall pay administrative costs in the amount of One Thousand Dollars (\$1,000.00) within fifty (50) days from the date of entry of this Order, which amount shall be made payable to the WV P.E. Board and deposited to the appropriate Board account to cover the costs of this enforcement action.
42. A copy of this Final Opinion and Order shall be served upon Respondent and his counsel by certified mail within five days after entry by the presiding officer.

WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL ENGINEERS

By


Leonard J. Timms, P.E.
Board President and Presiding Officer

Date:

