

**BEFORE THE STATE OF NEW MEXICO
BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS
AND PROFESSIONAL SURVEYORS**

IN THE MATTER OF:

**John J. Towner, PE
License #10592,**

Case No. 7-PE-06-11-2015

Respondent.

DECISION & ORDER OF THE BOARD

On September 25, 2018, the above captioned matter came properly for hearing before Hearing Officer Karl E. Tonander, P.E. at the New Mexico Regulation and Licensing Department, 5500 San Antonio Drive Northeast, Albuquerque, New Mexico. The New Mexico Board of Licensure for Professional Engineers and Professional Surveyors (hereinafter, "the Board") was represented by Mark F. Swanson, Attorney at Law and Administrative Prosecutor for the Board (hereinafter, "Prosecutor"). The Respondent, John J. Towner, P.E., also known as Joe Towner, P.E. (hereinafter, "Respondent"), appeared pro se. All parties had valid notice and were afforded the opportunity to be heard in accordance with the requirements of due process for administrative hearings. This matter came before the Board for its decision on November 8, 2018.

FINDINGS OF FACT

Having given full consideration to the testimony and evidence presented, having reviewed and become familiar with the entire record on review, including the Hearing Officer's Report and Proposed Findings of Fact dated October 25, 2018, and being otherwise informed on the premises, the Board orders that the Hearing Officer's Findings of Fact therein are well taken and adopted by the Board in their

entirety and amending same with an additional finding of fact. The Findings of Fact are as follows:

1. The Respondent alleges that he was involved in an accident during late October 2014, and that said accident resulted in injury to his back, hand, wrist and a torn rotator cuff. Further, the Respondent stated that he also sustained a serious head injury, had multiple surgeries, remained under heavy medication during the first several months after the accident, and was restricted to bed rest for additional time during rehabilitation. Ex. 2, 12, Tr. p. 36, 45.
2. The Respondent's license lapsed December 31, 2014. Ex. 10, Tr. p. 12.
3. The Respondent submitted an application for renewal on April 13, 2015. Tr. p. 14.
4. The Respondent included with his renewal application an affidavit that stated he had not practiced engineering during the period his license had expired; specifically, January 2015 through April 6, 2015. Ex. 3, Tr. p. 14. On or about June 16, 2015, a complaint was received by the Board alleging that the Respondent engaged in the practice of engineering without a valid license to practice as a professional engineer in New Mexico. Ex. 1, Tr. p. 11.
5. On June 12, 2015, the Board notified the Respondent in writing that his license would be renewed upon receipt of renewal fee payment. Ex. 4, Tr. p. 15.
6. On June 23, 2015, the Board received payment of Respondent's application fee at which time his license was considered renewed and active. Tr. p. 14.
7. On June 25, 2015, the Board issued a second written notice to the Respondent for a written response to the complaint. Ex. 11.

8. On July 10, 2015, the Board received a letter from the Respondent alleging that several exhibits associated with the complaint were from a period where his license was active and in good standing, and that the seal and signature were forged on all exhibits. Ex. 12.
9. On April 11, 2017, the Respondent was interviewed by the Board Investigator and the Respondent was noted as stating that during the time his license was lapsed, he sealed and signed only one set of engineering plans for Isleta Casino, which consisted of design plans for an equipment platform and antennas on a monopole. Ex. 2, Tr. p 13.
10. At the hearing, the Respondent testified that he did not admit to signing or sealing the engineering plans for Isleta Casino, which were submitted as part of the original complaint and included as Exhibits 7-9, and reiterated that the signature and seal were forgeries. Particular focus was drawn by the Respondent to the character of the final letter "r" in the signature of his last name. Tr. p. 35, 38 and 39.
11. At the hearing, the Board Investigator testified that he was unable to produce corroborative evidence (e.g. contemporaneous memo or phone note), beyond his personal recollection of the phone conversation, regarding the Respondent's admission of completing engineering plans for Isleta Casino during the period where the Respondent's license had lapsed. Tr. p. 29-30.
12. At the hearing, the Board Investigator testified that the signatures on Exhibits 7 and 8 (the engineering plans for Isleta Casino) appeared similar to the Respondent's signatures on other documents but that it was difficult to determine similarity on Exhibit 9. Tr. p. 22.

13. At the hearing, the Respondent testified that he did not file complaints with the Board regarding the fraudulent use of his stamp and seal once he became aware of the situation. Tr. p. 41.
14. At the hearing, two exhibits, Exhibit 3 and Exhibit 12, were admitted which contained the Respondent's signature and illustrated significant variability in the character of the Respondent's signature of his last name contemporaneously with the time period where the engineering plans for Isleta Casino were allegedly sealed and signed. Ex 3 and 12.
15. At the hearing, the Board Investigator testified that it was his opinion that Respondent violated Section 61-23-24 and Section 61-23-2 of the Professional Practice Act. Tr. p. 20.
16. At the hearing, neither the Prosecutor nor the Respondent produced examples of signatures, whether verified or alleged forgeries, beyond those associated with the initial complaint and two documents additional documents from the Respondent, nor were any specific examples of signature analysis prepared or submitted. Ex 3, 5, 6, 7, 8, 9 and 12.
17. None of the exhibits were forgeries.
18. Based upon a preponderance of the evidence presented, Respondent sealed and signed engineering plans for Isleta Casino during the period where the Respondent's license had lapsed.

CONCLUSION OF LAW

19. The New Mexico Board for Licensure of Professional Engineers and Professional Surveyors is authorized to conduct this hearing in accordance with, the Professional Engineering and Surveyors Act, NMSA 1978, §61-23-1 et. seq. and the Uniform Licensing Act, NMSA 1978, §61-1-1 et. seq.

20. The standard of proof to be applied in administrative proceedings is the “preponderance of evidence” standard. NMSA 1978, §61-1—13; *Foster v. Bd. Of Dentistry of the State of New Mexico*, 1986-NMSC-009, 103 N.M. 776, 714 P.2d 580. Proof by a preponderance of the evidence means that which is sought to be proven is more likely true than not true. NM UJI 13-304 NMRA.
21. A professional license is a constitutionally protected property right. A professional facing license revocation or suspension must be afforded due process. *Mills v. New Mexico State Bd. Of Psychological Examiners*, 1997 NMSC 28, ¶14, 123 N.M. 421, 941 P.2d 502.
22. Licensees facing disciplinary proceedings are entitled to procedural due process, although they do not enjoy the “full panoply of rights afforded to an accused in a criminal case.” *Razatos v. Colorado Supreme Court*, 746 F.2d 1435 (10th Cir. 1984).
23. NMSA 1978, §61-23-24 places a duty on Respondent to provide full and accurate information to the Board on any application for licensure or renewal when seeking licensure within the state of New Mexico.
24. Pursuant to the Engineering and Surveyors Practice Act, NMSA 1978 § 61-23-24, the New Mexico Engineering Board may impose discipline on a New Mexico licensee in cases where the licensee provides engineering services without being properly licensed.
25. The Board has the authority to issue an order imposing, in addition to any other remedy, a civil penalty up to \$7,500.00 per violation against a person

who, after a hearing, is determined to have violated the Act or the Board's promulgated rules. NMSA § 61-23-27.11.

26. Any licensed professional engineer whose license has expired, lapsed, or otherwise become delinquent, and continues to act in the capacity of a professional engineer or uses the title or description of professional engineer violates NMSA § 61-23-20.

27. Licensees shall bear the costs of a disciplinary hearing unless they prevail or the costs are waived. NMSA § 61-1-4(G).

28. Based on the Findings of Fact, the Board's prosecutor met its burden of proof by establishing by a preponderance of the evidence that Respondent John Towner practiced engineering without a valid license.

ORDER

IT IS THEREFORE ORDERED that Respondent John Towner shall:

1. Pay to the Board a fine in the amount of **\$750.00** within 60 days from the date of this signed Order; and
2. Pay to the Board the costs of the administrative hearing costs to be paid within 60 days from the date of this signed Order:

Court Reporter Costs: **\$ 510.09** (receipt attached)

Investigator Costs: **\$ 2067.30** (receipt attached)

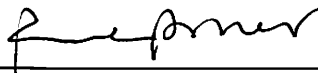
TOTAL fines & costs due: \$2577.39

IT IS SO ORDERED.

RIGHT TO SEEK JUDICIAL REVIEW

Respondent may seek judicial review of this Decision and Order pursuant to NMSA § 61-1-17 and NMSA § 39-3-1.1. Respondent must seek judicial review within 30 days from the date of the signed Board's Decision and Order.

**NEW MEXICO BOARD OF LICENSURE
FOR PROFESSIONAL ENGINEERS AND
PROFESSIONAL SURVEYORS**




Paul Brasher
Chair, Professional Engineering Committee

Dated: 17 DECEMBER 2018

I certify that a copy of the foregoing was emailed to the parties on December 20, 2018 to:

Mark Swanson, Administrative Prosecutor
mswanson@nmag.gov

John Towner
joetowner@aol.com



Miranda Baca
NMBLPEPS Compliance