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Dec 27 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

APPEAL FROM THE DEPARTMENT OF LABOR, LICENSING AND REGULATION
STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND
SURVEYORS

Andre Brooks, Appellant,

v.

South Carolina Department of Labor, Licensing and Regulations, South Carolina Board of
Registration for Professional Engineers, and Surveyors, Respondent.

FINAL BRIEF

Andre Brooks, *pro se*
19200 Canterbury Rd.
Detroit, MI 48221
December 27, 2023

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STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE ADMINISTRATIVE LAW COURT ERRED IN DENYING APPELLANT’S APRIL 28, 2023, MOTION FOR EXTENSION.

STATEMENT OF THE CASE

This brief by the Appellant is pursuant to the Order issued by South Carolina Court of Appeals filed on July 19, 2023. That order was issued after submitting an Appealability Memo as to whether this Court would be able to review this matter. In compliance of that order, Appellant wishes to proceed, and the issues of appeal are limited to Administrative Law Court’s April 28, 2023 order only. Without arguing the merits of the underlying case, Appellant believes that it is apparent for this Court to have a brief understanding of the facts of this case to fully understand the magnitude and impact of the issue on appeal.

This case began in 2005. The Appellant challenges the administrative order of the South Carolina Department of Labor, Licensing, and Regulation, South Carolina Board of Registration of Professional Engineers and Surveyors (the Board) in which the Board denies the Appellants application for licensure by comity as a professional engineer in South Carolina. The Appellant earned an undergraduate degree in Civil Engineering Technology from South Carolina State University in June of 1986. Based on the Laws of South Carolina applicants that hold a degree in Civil Engineering Technology, foreign degree and graduates of engineering programs that are not accredited by ABET as an engineering program must have their education evaluated to determine if it is **substantially equivalent** to an ABET engineering program. Dr. Castro, the Board's appointed educational consultant, evaluated the Appellant's program of study incorrectly as being equivalent to an engineering program instead of **substantially equivalent** to an engineering program which is the basis of the Appellant's appeal to the Administrative Law Court. The Board denied a license to the Appellant in 2014 and 2022 stating that the Appellant did not meet the education requirement based on the incorrect education conducted by Dr. Castro which was affirmed by the ALC Court in 2005. The incorrect education evaluation was addressed in part on the record and other direct testimony did not make it into the record due to 2 tape malfunctions during the hearing which omitted critical testimony and negatively impacted the Court's ruling toward the Appellant..

The Appellant appealed the Board's March 31, 2005, decision with the State of South Carolina Administrative Law Court, Docket No. 05-ALJ-11-0231-AP. The Appellant was represented by Derwin Brannon, Esquire. The Appellant requested the ALC to overturn the decision of the Board and grant him licensure by comity. At that time, Appellant was licensed as a Professional Engineer in the State of Michigan in 1999.

The Appellant instructed his attorney to present objection to the education evaluation completed by Dr. Castro on numerous occasions, but the attorney failed to raise the objection during the appeal. On November 5, 2005, the ALC upheld the decision of the Board based on the testimony of Dr. Castro and an incorrect evaluation of the Appellant's education. The ACL affirmed the Board's decision citing that the Appellant did not meet the education requirement of the State and the Appellant was denied a license. The Appellant was denied a license by Comity due to the

incorrect education evaluation completed by Dr. Castro. After the ACL affirmed the decision of the Board, the Appellant requested that his Attorney appeal the decision of the ACL. The Appellant waited to receive documents pertaining to the Appeal. When the Appellant attempted to contact Attorney Brannon by phone and email, he did not receive a response regarding the filing of the appeal. Since that initial hearing, the Attorney, Derwin Brannon, was subsequently suspended -- and continues to remain -- on disciplinary suspension for ineffective assistance of counsel. The Appellant came before the Board for a hearing on September 23, 2014 for licensure by comity. The Appellant raised the issue that the education evaluation completed by Dr. Castro was incorrect. The Board again denied licensure citing that based on the March 31, 2005 Order that was affirmed by the ALC citing that the Appellant did not meet the educational requirement and did not take additional classes as ordered by the Board.

The Appellant came before the Board for a hearing on May, 2022, for licensure by comity. The Appellant provided a hard copy of information to the Board to show proof that the education evaluation completed by Dr. Castro was done incorrectly. It is apparent in the Education Evaluation Summaries provided to the Board that they did not read or review the education evaluation completed by Dr, Castro which stated that the education evaluation considered the Appellants education as being **equivalent** to an engineering program and not as **substantially equivalent** as required by SC Laws. The Board shunned its responsibilities when they did not review or consider the information provided by the Appellant and denied Appellant's application without any discussion, consideration or confirming of the claim that the education evaluation was completed incorrectly. This same incorrect education evaluation completed in 2005 is the primary reason that the Board has repeatedly denied the Appellant a license in SC including the 2022 application. On April, 11, 2023, Appellant filed a "motion to extend time for a late filing of a motion of reconsideration. On April 28, 2023 The Administrative Law Court denied Appellant's motion.

STANDARD OF REVIEW

ARGUMENT

II. WHETHER THE ADMINISTRATIVE LAW COURT ERRED IN DENYING APPELLANT’S APRIL 28, 2023, MOTION FOR EXTENSION.

Good Cause

The Administrative Law Court (ALC) erred in denying Appellant’s April 28, 2023 Motion for an Extension because the Appellant had good cause. SC Rules of procedure allows parties to file motions for extensions, and agencies and courts generally grant these extensions if the parties demonstrate good cause. In the ALC’s denial, it states, “Appellant’s motion for an extension relies upon the same generic considerations which supported the first motion.” The ALC’s characterization of Appellant’s reasons for good cause as “generic considerations” is misguided and a diminishes the due diligence that Appellant has attempted in protecting his rights and undercuts the real and accurate harm the Appellant has and continues to endure while self-representing. In the Appellant’s motions, the following is noted,

Due to continued health issues of ... Appellant, as well as continued unexpectedly high volume of work, meeting, and seeking to retain counsel to file the Motion of Reconsideration. Appellant attempted to retain counsel but was unable to get an attorney to represent ... Appellant on this matter. Appellant respectfully request the Court to grant an extension for late filing of the motion of Reconsideration being due no later than March 22, 2023, to allow for an on-time filing of the Motion to Reconsider. Due to the continued health issues of ... Appellant and other issues referenced above and beyond Appellant’s control, Appellant respectfully request that this court grant Appellant’s Motion for Late Filing.”

As mentioned in the Statement of the Case, Appellant has been attempting to gain his licensure by comity since 2005. At onset, Appellant was able to retain counsel, Attorney Derwin Brannon. Attorney Brannon’s counsel was ineffective. He failed to provide Appellant the necessary information during the Board hearings, he failed to provide Appellant’s notice of his rights to appeal decisions and was generally unwilling to correctly advocate for the Appellant. Appellant’s characterization of Attorney Brannon’s counsel is supported by the fact that the South Carolina Supreme Court suspended Attorney Brannon from the practice of law for ineffective assistance of

counsel. To this day, Attorney Brannon remains suspended. Since the initial hearing, Appellant has encountered considerable difficulty in being able to retain counsel for a plethora of reasons, not limited to the financial constraints of litigation, and the limited number of lawyers who specialize in administrative law given the facts the Appellant's case. Despite these obstacles, the Appellant has been doing his best to appear before the Courts as a pro se litigant, seeking counsel, while doing this all out of state.

The Administrative Law Court also refers to Appellant's health issues as generic. The Appellant, over the past few years, has had a fair share of health challenges, not limited to the obvious struggles the entire world experienced from the pandemic. These challenges coupled with ever-aging, and providing care to Appellant's mother, are not, as the ALC characterizes them, "generic." The Appellant was unaware the ALC would need specifics as to the Appellant's health as a condition for good cause.

It should be noted that the original deadline for Appellant filing the Motion for Reconsideration was March 20, 2023, the Appellant submitted an extension on March 21, 2023, and was thus only one day late. Prior to and since then, the Appellant has been diligent in submitting all other motions, briefs, and deadlines for matters before the ALC. Appellant had good cause to request Motion for Extension and the ALC erred when it denied the motion.

Equitable Tolling

Appellant further request this Court to consider the doctrine of equitable tolling to the present case. In South Carolina, a statute of limitations, and other rules of procedures may be tolled, "to serve the end of justice where technical forfeitures would unjustifiably prevent a trial on the merits." *Hooper v. Ebenezer Sr. Services & Rehab. Ctr.*, 386 S.C. 108, 115 (2009). Equitable tolling is judicially created; it stems from the judiciary's inherent power to formulate rules of procedure where justice demands it. *Id.* According to this Court, "time requirements in lawsuits between private litigants are customarily subject to equitable tolling if such tolling is necessary to prevent unfairness to a diligent plaintiff." *Pelzer v. State*, 378 S.C. 516, 521, 662 S.E. 2d 618, 620 (Ct. App. 2008). In this case, the Appellant has consistently been diligent in defending his rights and advocating his right to licensure by comity. Appellant demonstrates his diligence by the mere

fact that he began the process for licensure by comity over a decade ago. In addition to initially retaining ineffective counsel, Appellant has self-represented for all Board and ALC hearings.

CONCLUSION

Appellant will suffer irreparable harm if this Court affirms the denial of his motion for an extension. The motion for an extension will allow the Appellant to submit a Motion to Reconsider the Board's most recent denial of licensure by comity, where the Appellant has new information for the Board to consider. The ALC, by its own admission, recognizes the harsh consequence of its denial. It effectively ends the Appellant's decade long pursuit of his licensure due to a technicality. Here, the interest of justice and fairness favor the Appellant's Motion for an Extension be granted or remanded to the ALC for additional review. The Appellant has consistently and diligently attempted to defend his rights. Appellant respectfully asks this Court to consider a reversal of the ALC's April 28, 2023 order.

December 27, 2023

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Appellant.

PROOF OF SERVICE

I certify that I have served the Final Brief and the Original Record of Appeal documents on the Court of Appeals and the Respondent, Timothy Kyle Tennis, Esquire in this matter via email and by mail to the addresses as follows:

The Honorable Jenny Abbott Kitchings
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