

THE STATE OF SOUTH CAROLINA
Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT SC Court of Appeals

George E. Brown, Circuit Court Judge

Appellant Case No. 2023-000825

Andre, Brooks, Appellant

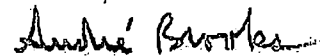
v.

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

RECORD ON APPEAL

December 27, 2023

Respectfully Submitted,



Andre Brooks, *pro se*
19200 Canterbury Rd.
Detroit, MI 48221
Appellant

Timothy Kyle Tennis, Esquire
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South Carolina
Board of Registration for Professional
Engineers and Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

FINAL ORDER

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). Andre Brooks (Appellant) appeals the final decision of the South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's most recent application for licensure by comity as a professional engineer in South Carolina. The Board, acting in conjunction with the South Carolina Department of Labor, Licensing and Regulation (the Department), denied the application for Appellant's failure to meet the applicable requirements for licensure in the State of South Carolina. S.C. Code Ann. § 40-22-10 (Supp. 2022); *see also* S.C. Code Ann. § 40-22-220(C)(2) (Supp. 2022).

Based upon the record on appeal, the parties' briefs, and the applicable law, the Court affirms the Board's final decision.

PROCEDURAL HISTORY

This matter comes to the Court after a somewhat lengthy history of past administrative actions, dating back to 2005. During 2005, Appellant submitted an application for licensure by comity as a Category A Professional Engineer in South Carolina. The application included documentation of licensure in Michigan in 1999, evidence of completion of a bachelor of science in civil engineering technology (a TAC/ABET program) from South Carolina State University in 1986, and additional post-graduate coursework, which included: a calculus course at Oakland

Community College (1989-1990); six semester hours of engineering course work at Wayne State University (WSU) from 1989 to 1990; and a three semester-hours math course at WSU during 1994.¹

Pursuant to its practice, the Department's staff forwarded Appellant's academic record to its educational consultant, Dr. Walter E. Castro, Ph.D., PE.,² for review to determine whether Appellant's academic record reflected completion of coursework that was substantially equivalent to the EAC/ABET requirements. Appellant's application was denied at the staff level because Dr. Castro determined Appellant's academic record was not substantially equivalent to the EAC/ABET requirements.

On February 23, 2005, a full evidentiary hearing was held. Dr. Castro explained engineering technology courses are not always equivalent to engineering courses. Dr. Castro went on to testify regarding Appellant's academic record which included coursework completed at South Carolina State University in 1986 as well as additional post-graduate coursework at Oakland Community College and WSU. Dr. Castro informed the Board that Appellant's academic record was deficient by three (3) hours of differential equations, fourteen (14) semesters of engineering science, and eleven (11) hours of engineering science. Counsel for Appellant questioned Dr. Castro regarding his accounting of Appellant's coursework and the standard against which Appellant's coursework was compared.³ Additionally, counsel argued Appellant should be granted licensure by comity due to his extensive experience and because Appellant had been granted licensure by the Michigan Board of Engineers. See S.C. Code Ann. § 40-22-230(C) (Supp. 2004) (amended 2007 & 2016).

¹ At the time of application, one criterion for licensure as a Category A Professional Engineer was a TAC/ABET accredited engineer technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, supplemental post-graduate studies in approved engineering science courses sufficient to equate the applicant's cumulative program of formal engineering study as being substantially equivalent to an EAC/ABET accredited program. S.C. Code Ann. § 40-22-220(C)(3) (Supp. 2004) (amended 2007 & 2016). "ABET" means the Accreditation Board for Engineering and Technology." S.C. Code Ann. § 40-22-20(1) (Supp. 2022). "EAC" means the Engineering Accreditation Commission of ABET." *Id.* "TAC" or "ETAC" means the Engineering Technology Accreditation Commission of ABET." *Id.*

² Dr. Castro reviewed only those applicants who were not ABET/EAC graduates of accredited ABET/EAC criteria.

³ Appellant is presently appearing before the Court in a pro se capacity.

On March 31, 2005, the Board denied Appellant's application, noting not only the deficiencies identified by Dr. Castro but also making specific recommendations for remedial coursework, or challenging exams, to cure the deficiencies noted in his academic record. Thereafter, Appellant appealed to the ALC.

On appeal, Appellant neither contested Dr. Castro's application of the 1986 criteria nor the findings of deficiency in Appellant's academic record - a point which the Honorable John D. McLeod specifically noted in his order. *See Brooks v. S.C. Dep't of Lab., Licensing & Reg.*, Docket No. 05-ALJ-11-0231-AP, 2005 WL 3419928, at *1 (S.C. Admin. L. Ct. filed Nov. 16, 2005). Judge McLeod upheld the Board's denial, finding that the Board appropriately applied subsection 40-22-220(C)(3) of the South Carolina Code (Supp. 2004) to determine whether Appellant's academic record was substantially equivalent to an EAC/ABET accredited program, and that substantial evidence supported the Board's finding that Appellant's academic record was deficient. *See id.* at *5. Appellant did not appeal Judge McLeod's order.

During 2014, Appellant reappeared before the Board for consideration of licensure by comity as a Category A professional engineer. Following a full evidentiary hearing, the Board denied Appellant's application for licensure by comity by order dated October 20, 2014, finding no evidence or documentation that Appellant had remedied the academic deficiencies noted in the Board's March 31, 2005 order. The Board concluded that in the absence of any additional qualifying education, or challenging examination, the ALC's and the Board's 2005 orders stood as the law of the case. Appellant did not appeal the Board's denial.

On April 14, 2022, Appellant submitted a third application for licensure by comity in South Carolina: it is this application that gives rise to the present appeal. In addition to materials submitted as part of his prior applications, Appellant submitted documentation of licensure in Georgia, North Carolina, and Florida as well as educational evaluations performed by the Michigan Board, the South Carolina State University Engineering Department, and the North Carolina A&T University Civil Engineering Department.

Appellant appeared before the Board on May 24, 2022, arguing he was entitled to licensure because Dr. Castro's 2005 evaluation was flawed and that his academic record was substantially equivalent to an EAC/ABET accredited program. Appellant stated "the real issue here [wa]s the education evaluation." Board member Dr. Johnson W. Peeples inquired why issues related to Dr. Castro's evaluation were only now being raised; Appellant stated, "I just didn't pursue it at that

time." When asked whether Appellant had completed any additional qualifying college-level coursework since Dr. Castro's 2005 review, Appellant acknowledged he had not completed any such work; however, he stated he had completed over 400 hours of continuing education in engineering science and engineering. Thereafter, the Board orally voted on Appellant's application, informed Appellant that it was going to deny his application, and stated a formal order would be forthcoming.

On May 26, 2022, Appellant sent an email to the Board Administrator, requesting reconsideration on the basis that under subsections 40-22-220(B)(2) and -220(B)(4) of the South Carolina Code (Supp. 2022) and arguing his education was substantially equivalent to an EAC/ABET engineering program.

By order dated June 7, 2022, the Board took notice of the 2005 and 2014 orders and noted the absence of any evidence indicating completion of further post-graduate engineering coursework or examination as described in the March 31, 2005 and October 20, 2014 orders. Additionally, the Board noted the ALC had previously found Dr. Castro's educational evaluation of Appellant to be appropriate, and absent evidence of additional coursework or examinations obtained subsequent to the Board's March 31, 2005 or October 20, 2014 orders, the Board concluded the ALC's unappealed ruling stood as the law of the case.

By order dated July 28, 2022, the Board denied Appellant's motion for reconsideration, finding Appellant had not corrected previously determined deficiencies in his academic record and that the doctrines of res judicata and law of the case precluded Appellant from relitigating issues previously addressed as well as those that might have been raised.⁴ This appeal followed.

ISSUES ON APPEAL

1. Whether the Board used the correct standard for evaluating Appellant's education for purposes of licensure by comity?
2. Whether the Board erred in denying Appellant a licensure by comity based on an incorrect education evaluation as being equivalent to an engineering program?

⁴ Appellant did not appear for the hearing on his motion to reconsider before the Board.

3. Whether the Board erred in denying Appellant a licensure by comity based on not evaluating Appellant's education as being substantially equivalent to an engineering program?

STANDARD OF REVIEW

When sitting in its appellate capacity, the ALC reviews a final decision in the same manner prescribed by section 1-23-380 of the South Carolina Code (Supp. 2022). S.C. Code Ann. § 1-23-600(E) (Supp. 2022); S.C. Code Ann. § 40-1-160 (2011) (providing an appeal from the Board is to the ALC). Section 1-23-380(5) provides the following:

The [C]ourt may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The [C]ourt may affirm the decision of the agency or remand the case for further proceedings. The [C]ourt may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"[T]he burden rests squarely on the appellant to prove that substantive rights were prejudiced based on one of six statutory criteria" listed in section 1-23-380(5). *S.C. Dep't of Corr. v. Mitchell*, 377 S.C. 256, 260, 659 S.E.2d 233, 235 (Ct. App. 2008).

"Substantial evidence" is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

Lark v. Bi-Lo, 276 S.C. 130, 135, 276 S.E.2d 304, 306 (1981) (quoting *Laws v. Richland Cnty. Sch. Dist. No. 1*, 270 S.C. 492, 495-96, 243 S.E.2d 192, 193 (1978)). "[T]he possibility of drawing

two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Palmetto Alliance, Inc. v. South Carolina Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). In applying the substantial evidence rule, "a reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark*, 276 S.C. at 136, 276 S.E.2d at 307). When applying the substantial evidence rule, the factual findings of the administrative agency "are presumed to be correct and will be set aside only if unsupported by substantial evidence." *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996).

DISCUSSION

On appeal, Appellant raises three issues.⁵ However, Appellant's issues center on Dr. Castro's evaluation from 2005. Specifically, Appellant argues the Board erred in relying on Dr. Castro's 2005 evaluation because Dr. Castro evaluated Appellant's academic record using an incorrect standard. This argument is the core of Appellant's appeal and frames all of the arguments raised on appeal. Appellant does, in passing, raise claims that the Board is prejudiced against him because other technology applicants were granted licensure. Appellant also argues his education meets the "substantially equivalent" standard prescribed by subsections 40-22-220(B)(2), (B)(4), and (C)(2) of the South Carolina Code (Supp. 2022), and regulation 49-604(1) of the South Carolina Code of Regulations (Supp. 2022). Nowhere in his initial brief, however, does Appellant use the terms *res judicata*, law of the case, or otherwise attempt to discuss why the Board incorrectly relied upon the doctrines of *res judicata* and law of the case in determining that he did not meet the requirements for licensure by comity.

The Court affirms the Board's final decision for the reasons stated below.

I. Appealed Rulings in the Present Appeal

As noted above, Appellant devotes the great majority of his brief advocating that Dr. Castro did not use the correct standard in reviewing his application for licensure by comity and that, as a

⁵ The Court notes Appellant only lists two main argument headings in his initial brief.

result, Dr. Castro's analysis is flawed. Appellant's issue statements and arguments, however, fail to address the Board's conclusions as to law of the case and res judicata.

A ruling which is not appealed, right or wrong, must stand as law of the case. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."); *Atkins v. Wilson*, 417 S.C. 3, 17, 788 S.E. 2d 228, 235 (Ct. App. 2016) (stating law of case prohibits issues decided in a prior appeal from being relitigated in the trial court in the same case); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 573 776 S.E.2d 397, 404 (Ct. App. 2015) ("While the law of the case doctrine is not an inexorable command, a decision of a legal issue or issues by an appellate court establishes the law of the case and must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court, unless the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice.").

Based on Appellant's statement of the issues in Appellant's brief and the absence of any relevant argument, the Court determines that Appellant has not appealed the Board's decision as to law of the case and res judicata. *See* SCALC Rule 37(B) ("A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue and may be stated in question form."). Appellant's reply brief confirms this conclusion, as it states that the appeal "is not a request for [the ALC] to relitigate an issue, but rather to make the correct determination that the Board's 2005 decision to deny license must be vacated for applying the incorrect standard." Appellant then discusses why he believes Judge McLeod erred in 2005.⁶ Thus, the Court affirms the Board's decision that the doctrines of law of the case and res judicata bar Appellant's appeal as to whether his education meets the necessary criteria. Appellant has not challenged those rulings.⁷

To the extent Appellant's issue statements on appeal could be construed as addressing the merits of the Board's conclusions regarding law of the case and res judicata, the Court finds

⁶ To the extent Appellant's reply brief could be construed as raising res judicata and law of the case, the Court determines this is not proper because a reply brief cannot be used to argue an issue that could have been raised in the initial brief. *See ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 553, 854 S.E.2d 171, 175 (Ct. App. 2021) ("[A] party cannot raise an issue for the first time in an appellate reply brief."); 4 C.J.S. *Appeal and Error* § 735 (West Nov. 2022) ("A point raised for the first time in the reply brief will not be considered by the appellate court.").

⁷ The Board's conclusion that the doctrine of law of the case bars Appellant's appeal is itself law of the case.

Appellant abandoned these issues. The substance of the discussion section in Appellant's initial brief is devoid of any mention of the Board's conclusions regarding law of the case and res judicata. While Appellant is certainly not required to use the exact name of a legal doctrine to sufficiently challenge an issue and/or argument on appeal, *cf. State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."). Appellant must make sure that an argument is actually put forth to address the issue at hand. *See* SCALC Rule 37(B)(3) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."); *Bluffton Towne Center, LLC v. Gilleland-Prince*, 412 S.C. 554, 570, 772 S.E.2d 882, 892 (2015); *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority). Here, Appellant's initial brief did not address the Board's determinations related to law of the case and res judicata. Accordingly, to the extent Appellant's issue statements could be construed as challenging these determinations, the Court finds that those arguments were abandoned.

Based on the foregoing, the Court determines the Board's decision as to Appellant's educational analysis must stand and Appellant is not entitled to licensure by comity. Accordingly, the Court affirms.

II. Law of the Case and Res Judicata

While Appellant's failure to specifically challenge the Board's decision as to res judicata and law of the case, the Court will address those conclusions out of an abundance of caution. The Court agrees with the Board that the doctrines of law of the case and res judicata preclude Appellant from raising concerns regarding Dr. Castro's 2005 analysis.

The conclusion that Appellant did not meet the necessary educational requirements for licensure in 2005 is law of the case. Judge McLeod concluded in his 2005 order that substantial evidence supported the Board's position that Appellant did not meet the necessary qualifications. Appellant failed to appeal this ruling. Thus, the Board's 2005 order, which was affirmed by Judge McLeod became law of the case. *See Shirley's Iron Works, Inc.*, 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case and requires affirmance."). Any issue with Dr. Castro's analysis should have been challenged at the time of the 2005 litigation, not seventeen

years after Judge McLeod issued his order. Accordingly, the Board did not err in finding law of the case to be applicable.

"Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). "Under the doctrine of res judicata, '[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.'" *Id.* (quoting *Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)) (emphasis added). "To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit." *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992).

The three elements of res judicata are met here. There is an identity of the parties, as the Board and Appellant were the parties involved in the litigation in 2005. There is an identity of subject matter. The issue in the prior case is the same as the issue presented here—whether Dr. Castro's analysis of Appellant's educational requirements was flawed with the result that Appellant should receive a license. Finally, the Board adjudicated this issue in its 2005, as did Judge McLeod. *See Brooks*, 2005 WL 3419928, at *3-5. Accordingly, res judicata bars relitigation of any arguments related to Dr. Castro or his evaluation. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

III. Present Licensing Requirements

The Court's conclusions above largely, but not wholly, dispose of Appellant's appeal. Remaining before the Court is Appellant's contention that he should have received licensure by comity under the *current* licensing requirements. Appellant argues his education meets the "substantially equivalent" standard prescribed by subsections 40-22-220(B)(2), (B)(4), and (C)(2) of the South Carolina Code (Supp. 2022), and regulation 49-604(1) of the South Carolina Code of Regulations (Supp. 2022). The Court disagrees.

Appellant's reliance on these particular statutes and regulations is misplaced in part. Article 6 of Chapter 49 of the South Carolina Code of Regulations sets forth requirements for Continuing Professional Competency for Professional Engineers and Land Surveyors. *See generally* S.C.

Code Ann. Reg. 49-600 (Supp. 2022) (requiring "[p]rofessionals licensed to practice engineering, surveying, or engineering and surveying in South Carolina . . . to demonstrate to a continuing development of professional competency"). Regulation 49-604 provides the criteria to obtain credit for *professional competency requirements*, not the criteria to receive credit to obtain initial licensure as a professional engineer. S.C. Code Ann. Regs. 49-604 (Supp. 2022); cf. § 40-22-220. While subsections 40-22-220(B)(2) & (B)(4) provide standards for licensure, subsections 40-22-220(B)(2) & (B)(4) pertain to criteria to be eligible for certification as an *engineer-in-training*, not licensure as a *professional engineer*.⁸

Subsection 40-22-220(C)(2) does, however, set forth the minimum standards to obtain licensure as a professional engineer. Regulation 49-203(A)(2) of the South Carolina Code of Regulations (Supp. 2022) directs that consideration for licensure by comity be based upon the applicable licensure act in effect *at the time such other license was issued*. The record provides evidence of Appellant having obtained licensure as a professional engineer in four other states: Michigan (issued 1999), Georgia (issued Feb. 28, 2005), North Carolina (expires 2022), and Florida (expires 2023). The Court considers each of these in turn.

A. Requirements in 2005

Appellant was licensed in both Michigan and Georgia in 2005. Under the standard for licensure by comity described above, the Board was required to determine whether Appellant's educational background in 2005 was substantially equivalent to an EAC/ABET accredited program. This determination was made adversely to Appellant. *See Brooks*, Docket No. 05-ALJ-11-0231-AP, 2005 WL 3419928, at *3-5. This previous determination is, as discussed above, binding on Appellant.

Accordingly, unless Appellant cured the deficiencies noted in 2005 prior to his 2022 application, the fact that he holds licenses in Michigan and Georgia does not require that he be

⁸ Engineer-in-training is "a person who has qualified for and passed the NCEES Fundamentals of Engineering examination as provided in this chapter and is entitled to receive a certificate as an engineer-in-training." S.C. Code Ann. § 40-22-20(12) (Supp. 2022); *see also* S.C. Code Ann. § 40-22-20(30) (Supp. 2022) (defining a professional engineer as "a license holder who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience, is qualified to practice engineering as defined in this section as attested by his license and registration as a professional engineer in this State").

licensed by comity in South Carolina. Substantial evidence supports the Board's conclusion that Appellant had not cured the deficiency. During the most recent Board hearing, Appellant testified that he had not completed any additional qualifying college courses since 2005. This testimony alone provides substantial evidence to support the Board's finding that Appellant's academic record remains deficient and continues to prevent licensure based upon Michigan or Georgia licensure. *See Lark*, 276 S.C. at 135, 276 S.E.2d at 306.⁹

B. Subsequent Requirements

The physical licenses issued by North Carolina and Florida which were submitted by Appellant do not include the date on which these licenses were issued nor do the dates of issuance appear elsewhere in the record. Because the Court cannot determine when these licenses were issued, it is difficult to ascertain which set of standards Appellant's qualifications should be judged against. For example, if the North Carolina and Florida licenses were issued in early 2005 or before, the Court's analysis above is conclusive. If these licenses were issued between 2007 and 2016, a different standard might apply.¹⁰ Finally, if these licenses were issued after 2016, the current standard would apply.

Generally, and regardless of the actual standard in place, *res judicata* precludes any argument by Appellant that he should receive licensure by comity based upon licensure in North Carolina or Florida if either of these licenses were issued prior to the decision on his 2014

⁹ Certainly, Appellant could have attempted to use his licensure in Georgia in his 2014 action with the Board, and Appellant did not appeal the Board's 2014 order. Appellant's failure to raise this argument in 2014 and/or his failure to appeal the Board's 2014 order precludes any attempt to do so now under the doctrine of *res judicata*. *Res judicata* is therefore an additional ground on which the Court confirms the Board's ruling in this case that licensure in Georgia does not require that Appellant be granted a South Carolina license by comity. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

¹⁰ The statutory requirements were revised in 2007 and again in 2016. *See* S.C. Code Ann. § 40-22-220 (Supp. 2007); S.C. Code Ann. § 40-22-220 (Supp. 2022). Appellant's brief does not specifically argue that he should be licensed under standards in place between 2014 and 2016. He simply cites the current statute. Accordingly, the Court finds any argument regarding standards in place between 2014 and 2016 to be abandoned. *See* SCALC Rule 37(B)(3) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."); *Bluffton Towne Center, LLC*, 412 S.C. at 570, 772 S.E.2d at 892; *First Sav. Bank*, 314 S.C. at 363, 444 S.E.2d at 514 (considering an issue abandoned because the appellant failed to provide pertinent argument or supporting authority). The Court addresses this argument herein solely out of an abundance of caution.

application for licensure in South Carolina. Appellant needed to raise these matters to the Board in 2014 and challenge any resulting adverse ruling on appeal. He failed to do so then and is therefore precluded from doing so now. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

The result herein does not change even if Appellant became licensed in North Carolina and/or Florida *between* October 20, 2014, the date of the Board's 2014 order, and June 2, 2016, the last day before section 40-22-220(C)(2) (Supp. 2017) was amended. The educational standard to which Appellant's educational background would have been compared in 2015 or that portion 2016 prior to June 2nd of that year (had either license been issued in these years) was no different than the standard applicable when Appellant's 2014 South Carolina application was considered. Because the Board determined that Appellant did not satisfy South Carolina's requirements in 2014, and these requirements did not substantively change in the next subsequent interval,¹¹ the outcome of Appellant's licensing application also would not have changed. Appellant is bound by the Board's 2014 decision that his education did not meet the applicable South Carolina standard.¹²

To the extent Appellant was licensed in North Carolina and Florida after June 3, 2016, to present, his application for licensure by comity as a result of either license would be governed by the current South Carolina standard. The Court disagrees with Appellant's argument that the Board incorrectly determined he did not satisfy the current requirements for licensure. The minimum educational requirement for licensure as a professional engineer under this provision is "graduation in a bachelor's degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET." § 40-22-220(C)(2)(a) (Supp. 2022). Notably, the current scheme no longer provides an avenue for applicants such as Appellant who possess a TAC/ABET degree to close the gap between that

¹¹ That version of the statute removed the "TAC" reference and broadly required a "baccalaureate degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET." *Id.* Dr. Castro already determined Appellant did not meet that educational criteria.

¹² Naturally, if Appellant had taken additional qualifying courses after the Board's determination in 2014 but prior to June 2, 2016 (again assuming that either the North Carolina or Florida license were issued in this interval), then the effect of the additional course work would need to be examined. However, as discussed above, Appellant took no such additional course work since 2005.

degree and the required EAC/ABET degree with additional coursework.¹³ As a result, Appellant's lack of an EAC/ABET degree is dispositive of his application under the current standard, and substantial evidence supports the Board's decision to deny Appellant licensure. Even if this avenue remained opened to Appellant, and it does not, Appellant did not, as discussed above, complete additional qualifying coursework prior to his 2022 application. The Court finds that substantial evidence supports that Board's ruling that Appellant's academic record is deficient and continues to serve as an impediment to licensure by comity based upon either North Carolina or Florida licensure.

IV. Appellant Claims the Board Was Prejudiced Towards Appellant

In passing, Appellant asserts the Board's decision to deny his license displays prejudice towards Appellant as the Board has previously granted licensure to other applicants who did not satisfy the educational requirements. The Court construes this argument to be one made pursuant to 1-23-380(5)(f), which allows the Court to reverse arbitrary and capricious decisions made by the Board. For the reasons discussed below, the Court rejects this argument and affirms the Board's decision.

As a preliminary matter, the Court questions whether this argument is preserved for review. It is not clear to the Court that Appellant raised this specific argument to the Board. *See generally State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground."); *id.* ("A party may not argue one ground at trial and an alternate ground on appeal."). The Court scoured the hearing transcript from the Board's May 24, 2022 hearing for references to any statements of prejudice evident from a comparison of the Board's decision regarding Appellant's licensure and decisions made by the Board for other applicants. The Court located only passing references of prejudice to the Board and a statement that Appellant had included a summary table listing individuals whom Appellant

¹³ Section 40-22-220(C)(2)(a) (Supp. 2022) does not include language indicating acceptance of "supplemental post graduate studies in approved engineering science courses sufficient to equate the applicant's cumulative program of formal engineering study as being substantially equivalent to an EAC/ABET accredited program[]" as that observed in section 40-22-220(C) (Supp. 2004).

believed had filed deficient applications but were ultimately granted licensure. R. 47. Appellant submitted some supporting documentation to the Board in conjunction with this statement. Notably, the Board's order was devoid of any discussion on this issue, and Appellant did not raise this in his motion to reconsider to the Board. This argument is therefore likely unpreserved.

What is clear to the Court is that Appellant failed to challenge the Board's action as arbitrary or capricious in his brief's statement of issues on appeal.¹⁴ The argument is therefore not properly before the Court and cannot be a basis for reversal of the Board's decision. *See* SCALC Rule 37(B)(1) ("Ordinarily, no point will be considered that is not set forth in the statement of issues on appeal).

Even if the Court were required to reach the merits of this argument, however, the Court would affirm. "A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards." *Deese v. S.C. State Bd of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). Furthermore, "arbitrary," in the context of a judicial decision, has been defined as being "founded on prejudice or preference rather than fact or reason." *Arbitrary*, *Black's Law Dictionary* (11th ed. 2019). "Capricious" has been defined as being "characterized by or guided by unpredictable or impulsive behavior; likely to change one's mind suddenly or to behave in unexpected ways." *Capricious*, *Black's Law Dictionary* (11th ed. 2019).

The 2022 Board's decision was not arbitrary or capricious. The Board correctly applied the doctrines of law of the case and res judicata and substantial evidence supports its conclusion that Appellant's educational background did not meet the requirements of the current standard for licensure by comity. In other words, the Board attempted to and did follow applicable legal

¹⁴ The Court notes Appellant mentions "prejudice" in his initial brief on seven occasions but fails to fully address the purported arbitrariness or capriciousness of the Board's action in light of the Board's discussions in 2005. Nowhere in Appellant's initial brief does he make any specific claim that the Board's decision should be reversed as arbitrary or capricious. Appellant also reattaches some of the exhibits presented at the hearing to his appellate brief to the Court, some of which were *not* submitted to the Board, e.g., an email dated November 1, 2022, to Ms. Kathy Burgess. Any attachments which were not submitted to the Board may not be considered on appeal. *See* S.C. Code Ann. § 1-23-380(4) (Supp. 2022) (stating the Court's review is confined to the record).

principles in reaching its decision. While Appellant might be dissatisfied with the Board's decision, the 2022 Board's actions cannot be characterized as arbitrary or capricious.¹⁵

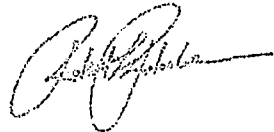
Based on the foregoing, the Court affirms.

CONCLUSION

The Court must stress that by its ruling it neither intends to diminish or disparage either the training Appellant has received nor Appellant's competency to act as a professional engineer. The Court's review, however, is constrained to determining whether the Board's decision violates the law, exceeds its authority, involved unlawful procedure, rests on an error of law, was not supported by evidence, was arbitrary, or was an abuse of discretion. Given this standard and the Court's review of the record and briefs, the Board's decision must be affirmed.

ORDER

IT IS THEREFORE ORDERED that the Board's decision is AFFIRMED.
AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

February 6, 2023
Columbia, South Carolina

¹⁵ To the extent Appellant refers to individuals that were discussed at the 2005 Board hearing as a basis characterizing the Board's action as being arbitrary or capricious, *res judicata* bars litigation of arguments based upon these individuals' qualifications. In 2005, the Board distinguished the academic background of these individuals from that of Appellant and at no time did Appellant challenge the Board's conclusion in this regard. *See Plum Creek Dev. Co.*, 334 S.C. at 34, 512 S.E.2d at 109.

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

James Smith Harrison, III
Judicial Law Clerk

February 6, 2023
Columbia, South Carolina

~~41~~

2

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No. 22-ALJ-11-0313-AP
APPELLANT'S MOTION TO EXTEND
TIME TO FILE A MOTION OF
RECONSIDERATION

Andre R. Brooks, P.E.,

Appellant,

vs

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

Respondent.

February 16, 2023

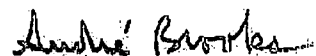
Honorable Robert L. Reibold
S.C. Administrative Law Court
1205 Pendleton Street, Ste.-224
Columbia, SC 29201

Re: Andre Brooks, Appellant vs. South Carolina Department of Labor, Licensing
and Regulation, South Carolina Board of Registration for Professional
Engineers and Surveyors, Respondent
Docket No.: 22-ALJ-11-0313-AP

Dear Judge Reibold:

Please find enclosed the original and one copy of Appellant's Motion to Extend
Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The
Respondent will be mailed a copy of the Appellant's Motion today.

Respectfully Submitted,



Andre Brooks, *pro se*

Enclosure

Cc: Respondent

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South
Carolina Board of Registration for
Professional Engineers and Surveyors,

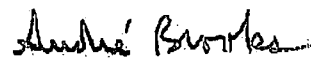
Respondent.

Docket No. 22-ALJ-11-0313-AP

APPELLANT'S MOTION TO EXTEND
TIME TO FILE A MOTION OF
RECONSIDERATION

Appellant respectfully moves this Court to grant Appellant's Motion to Extend Time to file a Motion of Reconsideration in the above-captioned matter. Appellant's Motion of Reconsideration in this matter is currently due February 16, 2023.¹ Due to health issues of the Appellant, as well as an unexpectedly high volume of work and meetings and seeking to retain counsel to file the Motion of Reconsideration, Appellant respectfully requests an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023. This is Appellant's first request for an extension in this matter.

Respectfully Submitted,



February 16, 2023

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

¹ ACL filed the Final Order on January 6, 2023. Per SCALC Rule 37(A), Appellant shall file its motion within 10 days after ACLC Order is filed. Per SCALC Rule 3(C), "[w]henver a party has the right or is required to do some act or take some proceedings within a prescribed period after a party serves a notice or other paper upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period."

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

A MOTION FROM APPELLANT ANDRE BROOKS, P.E.

Docket No. 22-ALJ-11-0313-AP

Andre Brooks Appellant,

vs.

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

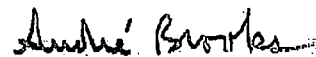
CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2023, in Columbia, South Carolina, I served Appellant's Motion to Extend Time to File a Motion to Reconsider onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Hon. Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

South Carolina Department of Labor, Licensing and
Regulation, South Carolina Board of Registration for
Professional Engineers and Surveyors,
Respondent.
110 Centerview Drive, Columbia, SC 29211

Respectfully Submitted,



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

Columbia, South Carolina F
February 16, 2023

2.1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

STATUS ORDER

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant e-mailed the Court and the Board. In the e-mail, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion shows that Appellant "served" by placing the motion in the mail to the Court's mailing address; the certificate of service lists the Board as being

served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's e-mail and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

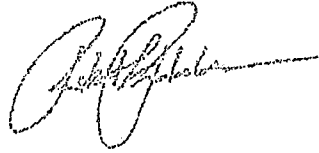
As of the date of this order, the Court has neither received Appellant's motion nor Appellant's filing fee for the motion. *See* SCALC Rule 71(D) (requiring a filing fee for motions); *id.* ("A motion will not be deemed filed until the fee is paid."); *see also* SCALC Rule 4(B) (defining filing with the Court as "(1) by delivering the document to the Court; (2) by depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first class postage attached; or (3) as otherwise approved by the Court through administrative order"). Thus, there is conflicting evidence about whether Appellant has in fact properly served and filed his motion for an extension. Accordingly, the Court now seeks an affidavit from Appellant that states whether Appellant in fact placed the motion in the U.S. mail to both the Court and the board on February 16, 2023.

IT IS THEREFORE ORDERED that Appellant shall file an affidavit with the Court, serve the same upon the Board, and e-mail a copy to both at the time of serving and filing on or by March 9, 2023, at 12:00 P.M., to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023.

IT IS FURTHER ORDERED that if Appellant does not file, serve, and e-mail an affidavit on or by March 9, 2023, at 12:00 P.M., the Court will consider this as a waiver and that Appellant did not in fact file and serve a motion for an extension on February 16, 2023.

IT IS FURTHER ORDERED that if Appellant did in fact file and serve the motion for an extension on February 16, 2023, then Appellant will need to resend the motion and filing fee to the Court; Appellant must file the motion and pay the fee on or by March 9, 2023, at 12:00 P.M.; Appellant shall e-mail a copy of the resent motion and note that a filing fee was included with the filing.

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

February 27, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

James Smith Harrison, III
Judicial Law Clerk

February 27, 2023
Columbia, South Carolina

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3

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No. 22-ALJ-11-0313-AP
APPELLANT'S MOTION TO EXTEND
TIME FOR LATE FILING OF
MOTION OF RECONSIDERATION

Andre R. Brooks, P.E.,

Appellant,

vs

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

Respondent.

March 10, 2023

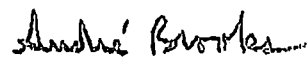
Honorable Robert L. Reibold
S.C. Administrative Law Court
1205 Pendleton Street, Ste.-224
Columbia, SC 29201

Re: Andre Brooks, Appellant vs. South Carolina Department of Labor, Licensing
and Regulation, South Carolina Board of Registration for Professional
Engineers and Surveyors, Respondent
Docket No. :22-ALJ-11-0313-AP

Dear Judge Reibold:

Please find enclosed the original and one copy of Appellant's Motion to Extend
Time for late filing of Motion of Reconsideration for the Court in the above-captioned matter.
The Respondent will be mailed a copy of the Appellant's Motion today.

Respectfully Submitted,



Andre Brooks, *pro se*

Enclosure

Cc: Respondent

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South
Carolina Board of Registration for
Professional Engineers and Surveyors,

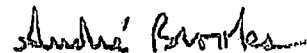
Respondent.

Docket No. 22-ALJ-11-0313-AP

**APPELLANT'S MOTION TO EXTEND
TIME FOR LATE FILING OF
MOTION OF RECONSIDERATION**

Appellant respectfully moves this Court to grant Appellant's Motion to Extend Time for late filing of the Motion of Reconsideration in the above-captioned matter. Appellant's Motion of Reconsideration in this matter was due on March 20, 2023.¹ Due to continued health issues of the Appellant, as well as continued unexpectedly high volume of work, meetings 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 the Appellant on this matter. Appellant respectfully requests the Court to grant an extension for late filing of the Motion of Reconsideration, with the extended filing date of the Motion of Reconsideration being due no later than March 22, 2023 to allow for on time filing of the Motion to Reconsider. Due to the continued health issues of the Appellant and other issues referenced above beyond my control, Appellant respectfully requests that this court grant the Appellant's Motion for Late Filing request..

Respectfully Submitted,



April 10, 2023

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

¹ ACL filed the Final Order on January 6, 2023. Per SCALC Rule 37(A), Appellant shall file its motion within 10 days after ACLC Order is filed. Per SCALC Rule 3(C), "[w]henver a party has the right or is required to do some act or take some proceedings within a prescribed period after a party serves a notice or other paper upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period."

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

A MOTION FROM APPELLANT ANDRE BROOKS, P.E.

Docket No. 22-ALJ-11-0313-AP

Andre Brooks Appellant,

vs.

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

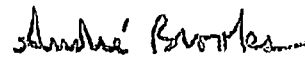
CERTIFICATE OF SERVICE

I hereby certify that on the 10 th day of April, 2023, in Columbia, South Carolina, I served Appellant's Motion to Extend Time for late filing of a Motion to Reconsider onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Hon. Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

South Carolina Department of Labor, Licensing and
Regulation, South Carolina Board of Registration for
Professional Engineers and Surveyors,
Respondent.
110 Centerview Drive, Columbia, SC 29211

Respectfully Submitted,



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

Columbia, South Carolina
April 10, 2023

3.1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

ORDER GRANTING APPELLANT AN
EXTENSION TO FILE AND SERVE HIS
MOTION FOR REHEARING IN THIS
MATTER

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant e-mailed the Court and the Board. In the e-mail, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion shows that Appellant "served" by placing the motion in the mail to the Court's mailing address; the certificate of service lists the Board as

being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's e-mail and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and e-mail a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

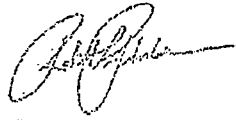
On March 8, 2023, Appellant filed, served, and e-mailed a copy of the documents that were outlined in the Court's February 27, 2023 order. Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concludes that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing.

Our rules provide in pertinent part that: "For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law." SCALC Rule 3(B). Appellant indicates that he suffered from health problems which affected his ability to timely file a motion for rehearing. The Court granted the Department an extension for a similar reason in this case and concludes that Appellant has demonstrated good cause.

IT IS THEREFORE ORDERED that Appellant's motion for an extension to file and serve his motion for rehearing is **GRANTED** and Appellant shall have until **March 20, 2023**, to

file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and
e-mail the same to both the Court and the Board at the time of filing and serving the motion.

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

March 14, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

James Smith Harrison, III
Judicial Law Clerk

March 14, 2023
Columbia, South Carolina

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Now comes Appellant, Andre R. Brooks, Pro Se, and moves this Administrative Law Court to allow a rehearing of its Final Order entered in this matter on February 26, 2023

and in support says:

1. Appellant appealed an order of the South Carolina Board of Engineers dated June 7, 2022.
2. After a hearing this Administrative Law Court issued its Final Order dated February 6, 2023.
3. The order of the Board and the Final Order of this Administrative Law Court based its ruling on the legal theories of “law of the case” and “res judicata”.
4. The theories of “law of the case” and “res judicata” are not applicable to this matter.
5. The Board and the Administrative Law Court did not apply the applicable statute and regulations enacted in 2016 to the Appellant’s credentials.
6. As a result of the foregoing a miscarriage of justice will occur if Appellant is not granted a license or a rehearing is not granted.

Wherefor Appellant requests that Appellant is granted a license or a rehearing of the within matter or a setting aside of this Administrative Law Court order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license.

March 21, 2023

Respectfully Submitted,

/s/ ANDRE R. BROOKS

Appellant Pro Se
19200 Canterbury Road

Detroit, MI, 48221

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Docket No. 22-ALJ-11-0313-AP

Andre R. Brooks, P.E. Appellant,

vs

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

APPELLANT'S IN SUPPORT OF MOTION FOR RECONSIDERATION

Andre R. Brooks, *pro se*
19200 Canterbury Rd.
Detroit, MI 48221

Statement of the Case

Appellant submits this brief in support of his Motion for Reconsideration. As discussed below the Board and this Administrative Law Court (SCALC) applied an inappropriate interpretation of “res judicata” and “law of the case”. Their application, if appropriate, is more flexible in the administrative hearing context and cannot be invoked where, as happened here there has been a favorable change of law since the prior determination that would entitle Appellant to his relief requested.

Given the 2016 amendment to South Carolina Code 40-22-220, Mr. Brooks meets the requirements established in Regulations 49-203 (A)(2) “Licensure By Comity”. Specifically, “Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon consideration or licensure in the appropriate category designation without further written examination.” Appellant meets the requirements established by Regulations 49-203 (A)(2) “Licensure By Comity” when he was granted a license in Florida in January 2022, receiving a license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, the State of Florida’s requirements being not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time Appellant’s Florida license was issued.

Appellant meets the requirements established in 40-22-220(B)(2), “graduation in a bachelor’s degree program, completion of an engineering curriculum found to be substantially

equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination”, appellant graduated with a bachelor’s degree from an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET and the, Appellant passed the NCEES Fundamentals of Engineering examination, he meets the requirement of this section. Appellant meets the requirements established in Section 40-22-220(B)(4) “graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the Board”, appellant graduated with TAC/ABET accredited engineering technology curriculum of four years from South Carolina State University and passed the NCEES Fundamentals of Engineering examination required by the Board he meets the requirement of this section.

UNDERLYING FACTS

In 2005 Appellant applied for a license with the South Carolina Board of Engineers. His petition was denied primarily as a result of the testimony of Dr. Castro who determined Appellant was not qualified pursuant to the then applicable statute. Appeal to the SCALC was taken and the denial upheld.

In 2014 Appellant again applied and was again denied licensing probably based upon the hearsay use of Dr. Castro’s report. No appeal was taken.

In 2022 Appellant again applied. However, on January 12, 2022 Appellant had received a license from the State of Florida and the South Carolina applicable statute was amended in 2016.

The South Carolina statute as amended and in effect presently is comparable to the Florida statute under which Appellant was licensed. Appellant was again denied. However, Appellant appealed this denial to this SCALC. The appeal has been denied by Final Order dated February 6, 2023, from which order Appellant files this Motion for Reconsideration.

The primary basis for the present denial that generates this motion is the application of the legal principals of “law of the case” and/or “Res Judicata”, as a defense to Appellant’s present request for licensure. Neither of these legal theories applies to this case as a matter of law. Also Appellant qualifies for a license applying the 2016 South Carolina amended statute and regulations and as a matter of comity since the Florida statute under which Appellant is licensed is comparable to the present South Carolina statute. See Table 1 on page 13 which provides a comparison between the licensing requirements for South Carolina vs Florida as well as the Appellant meeting the South Carolina requirements.

Standard of Review

A motion for rehearing is governed by Rule 40 of this Court and Rule 221(a), SCACR. On such a motion, the court standard of review is whether the applicant demonstrated that the Court overlooked or misapprehended the applicant’s argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).

A party may appeal to the ALC for review of an administrative agency's final action. S.C. Code Ann. § 40-1-160 (1976, as amended). S.C. Code Ann. § 1-23-380(5) of the South

Carolina Administrative Procedures Act (hereinafter the "APA") provides the standard of review for appeals from an administrative agency. The ALC may overturn the Board's decision if it finds that the decision is, among other reasons, in excess of the statutory authority of the agency, violates the law, affected by other error of law, involved unlawful procedure, clearly erroneous in view of the reliable, rests on a error of law, was not supported by evidence, probative, and amendments to law or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380(5)(b), (d), (e), and (f) (1976, as amended). *See also* S.C. Code Ann. § 1-23-600(E) (1976, as amended) (directing administrative law judges to conduct appellate review in the same manner prescribed in the APA).

Under the APA, the Court may not substitute its judgment for that of the Board on questions of fact, but may reverse the Board's decision if the decision is clearly erroneous in light of the substantial evidence and the law.

Issues

- I. Can the SCALC rehear a case when the laws governing the case was amended?
- II. Does the current law support approval of Appellant's 2022 Application?
- III. Did the Board err when they denied the 2022 application based on current law?
- IV. Did the Board and the SCALC improperly apply the theory of "Law of the Case" to Appellant's request for license?

- V. Did the Board and the SCALC improperly apply the theory of “Res Judicata “ to Appellant’s request for license?
- VI. Did the Board and the SCALC improperly apply the wrong law/standard in determining Appellant’s right to a license and not overturning the Board’s decision.

Discussion

I. LAW OF THE CASE

The legal theory of the “law of the case” is not applicable in this matter. Under that doctrine, an “administrative agency, on remand from a court, [must] conform its further proceedings in the case to the principles set forth in the judicial decision” *Copart, Inc. v. Admin. Review Bd., U.S. Dep’t of Labor*, 495 F.3d 1197, 1201 (10th Cir. 2007) (quotation omitted). It only “applies to issues previously decided, either explicitly or by necessary implication,” *id.* and the “law of the case rules ‘do not apply between separate actions.’” *Builders Mut. Ins. Co. v. Bob Wire Elec., Inc.*, 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018) (quoting Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.)).

The *Builders Mut.* case further explains why the doctrine is inapposite here:

[T]he doctrine of “law of the case” is just that—the law of the case in which it was made, not the law of future cases. *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999) (law of the case doctrine “applies only to subsequent proceedings in the same litigation following an appellate decision”); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-72, 776 S.E.2d 397, 403 (Ct. App. 2015) (collecting cases and noting law of case doctrine prohibits matters decided on appeal from being relitigated in the trial court in the same case). See also *Messenger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152 (1912) (“[T]he phrase, ‘law of the case,’ as applied to the effect of previous orders on the later action of the court rendering them in the same

case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.”); Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.) (law of the case rules “do not apply between separate actions”).

Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), cited by this Court for its dicta, is inapposite. The Court there rejected application of law of the case even though, unlike here, the rulings were made in the same case. As the case decision in *Shirley’s* indicates, when a party appeals and does not bring up for review a specific ruling, the “unappealed ruling is the law of the case and requires affirmance.” *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 691 (2010)

Since this matter concerns Appellant’s qualifications under the present statute and regulatory amendments, not the statute and regulations in effect prior to 2016, “law of the case” is simply inapplicable.

II. Res Judicata

The legal theory of “res judicata” also does not apply to this matter. Although the doctrine of former adjudication, including res judicata or claim preclusion, applies in the administrative law context, see *Carman v. S.C. Alcoholic Beverage Control Comm’n*, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994) (citing *United States v. Utah Constr. and Mining Co.*, 384 U.S. 394 (1966)), administrative preclusion “must be tempered by fairness and equity” and is not as rigidly enforced as preclusion in judicial proceedings. *Purter v. Heckler*, 771 F.2d 682, 691 (3d Cir.1985). See *Maldonado v. U.S. Att’y Gen.*, 664 F.3d 1369, 1377-78 (11th Cir. 2011) (concluding that claim preclusion “applies even more flexibly in the administrative context than it does when a second

court of competent jurisdiction is reviewing the decision of a first court”); *Alvear-Velez v. Mukasey*, 540 F.3d 672, 677 (7th Cir. 2008) (“We have applied res judicata much more flexibly in the administrative context.”); *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 229 n.3 (4th Cir. 2006) (Shedd, J., dissenting); *Quinones Candelario v. Postmaster Gen.*, 906 F.2d 798, 801 (1st Cir. 1990) (“In the context of administrative proceedings, res judicata is not automatically and rigidly applied in the face of contrary public policy.”); *Facchiano v. U.S. Dep’t of Labor*, 859 F.2d 1163, 1167 (3d Cir. 1988) (“Administrative preclusion ... is not as rigidly enforced as preclusion in judicial proceedings.”); *Artukovic v. INS*, 693 F.2d 894, 898 (9th Cir. 1982) (“In the administrative law context ... res judicata [is] applied flexibly.”); *Parker v. Califano*, 644 F.2d 1199, 1202 (6th Cir. 1981) (“Administrative res judicata ... is applied with less rigidity than its judicial counterpart.”); *United States v. Smith*, 482 F.2d 1120, 1123 (8th Cir. 1973); *Cartier v. Sec’y of State*, 506 F.2d 191, 196 (D.C. Cir. 1974) (“The doctrine of administrative res judicata ... has not evolved into a rigid system that is to be blindly applied in every context.”).

For example, in *Purter*, the Third Circuit refused to apply Res Judicata to a social security claimant’s application for benefits, even though the claim had previously been denied, where the claimant presented evidence that had not been previously considered. In *Alvear-Velez*, the Seventh Circuit held that an original deportation proceeding against alien based on conviction for sexual assault was not res judicata in subsequent deportation proceeding based on same conviction. Despite fact that conviction did not constitute grounds to deport alien in original proceeding, prior to subsequent proceeding, Congress amended the definition of aggravated felony, a ground for removal, to include sexual abuse of a minor, and specifically applied new definition retroactively.

Since such new definition applied to alien's conviction for sexual assault, the second proceeding was proper.

Even from a strict legal standard applied in judicial litigation, it has long been the law that "res judicata is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation." *State Farm Mut. Auto. Ins. Co. v. Duel*, 324 U.S. 154, 162 (1945). Indeed, "The cases are legion which hold that res judicata is not a defense in a subsequent action where the law under which the first judgment was obtained is different than that applicable to the second action, or there has been an intervening decision, or a change in the law between the first and second judgment, creating an altered situation." *Wagner v. Baron*, 64 So. 2d 267, 267 (Fla. 1953).

The rule was applied by the New York Court of Appeals in the administrative context in *Matter of Hodes v. Axelrod*, 70 N.Y.2d 364, 373, 515 N.E.2d 612, 617 (1987), where there had been a statutory amendment intervening between the two proceedings. The New York Court of Appeals held res judicata was inapplicable: "the operative consideration . . . is that the statutory rights of the parties were altered between the first and second proceedings. This being so, the two proceedings against petitioners can be said to lack the requisite identity for application of res judicata." *Id.* (citing *Duel*).

Put another way, the issue presented in this action, eligibility on the subsequently amended statute and regulations were not and could not have been litigated in the earlier proceedings. Res Judicata or claim preclusion only bars a party from pursuing subsequent "litigation where the claim (1) was litigated or (2) could have been litigated." *Catawba Indian Nation v. State*, 407 S.C. 526,

537, 756 S.E.2d 900, 906 (2014) (citing *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (1997)). Since the issues were not, and could not, be litigated previously, res judicata is inapplicable.

Hence because both “Law of the Case” and “Res Judicata” do not apply to these proceedings the Final Order of the Board and the initial Order of this SCALC should not be allowed to stand to the extent that the ultimate denial of Appellant’s request for licensing is based upon these doctrines. Appellant should be granted a license or at least the matter should be sent back to the hearing stage to produce an appropriate record.

III. Appellant’s Substantive Claim

Appellant qualifies for his license pursuant to the current South Carolina statutes and regulations. Substantively the Board Final Order and this SCALC Final Order relies on the prior two matters and the statute then in effect. There is little or no direct discussion of the application of the current statute.

At page 25 of Respondent’s brief, it clearly states that Dr. Castro probably hearsay report was not put into evidence at the Board hearing in 2022 and therefore could not be used/considered by the Board and this SCALC. However, Dr. Castro’s report is the very basis for the two prior denials. You can’t have one without the other. Since we are dealing with a new statute and regulations, it would be necessary for Dr. Castro’s report to be applicable to the new statutes and regulations. Such testimony was not elicited in these proceedings. The new statutes and regulations no longer rely upon the educational criteria used by Dr. Castro in the first and second hearings pursuant to

the amended 40-22-220 (B) (4), “graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board”, the Appellant graduated with TAC/ABET accredited engineering technology curriculum of four years from South Carolina State University and passed the NCEES Fundamentals of Engineering examination required by the Board, he meets the requirements of this section and should be granted a license based on meeting the requirements of (A) (B) and (C) and 49-203.

(1) The Respondent argues and the Board incorrectly interpreted 40-22-220 (A) (B) and (C) finding that the Appellant’s education does not meet the current requirement for licensure. Based on the current law 40-22-220 (A) (B) and (C) the Appellant meets the requirements in 40-22-220 (A) (B) and (C). The applicant must have graduated from a four year engineering or technology program to be eligible as an engineer in training per 40-22-220 (B). The Appellant meets this requirement by obtaining a Civil Engineering Technology Degree from a TAC/ABET accredited engineering technology curriculum from South Carolina State University. Then the applicant must take and pass the Engineer in Training Exam (FE exam) to become certified as an Engineer in Training. Appellant took and passed the NCEES Fundamentals of Engineering Examination required by the Board. After Appellant passed the FE Exam he was certified as an Engineer-In-Training further meeting all requirements. All of the foregoing requirements were a prerequisite to be eligible for the Professional Engineers Exam. Then the applicant was required to have four years of progressive engineering experience under

a registered engineer. Appellant worked five years under a licensed engineer to meet the experience requirement. After meeting the experience requirement to be eligible as a Professional Engineer, the Appellant took and passed the Professional Engineers Exam and was granted an engineering license. These facts contradict the argument by the Respondent and the SCALC as the Appellant has demonstrated that he meets the requirements of 40-22-220 (A) (B) & (C). Therefore Appellant should be granted a license due to meeting requirements and the comity statute. Appellant qualifies to be licensed in the State of South Carolina, 40-22-220 and 49-203.

Furthermore, the SCALC incorrectly interpreted 40-22-220 (A) (B) & (C) arguing that the current law no longer provides an avenue for applicants such as Appellant with a TAC/ABET degree to close the gap between that degree and the required EAC/ABET degree stating that Appellant's education does not meet the current substantially equivalent requirement relied upon by the Appellant. However, this analysis was an interpretation of the prior statutes and not the current statute. On the contrary the Appellant meets this requirement by virtue of 40-22-220 (B) (4) "graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the Board". The Appellant meets this requirement by obtaining a Civil Engineering Technology Degree from a TAC/ABET accredited engineering technology curriculum from South Carolina State University, The Appellant has meet the requirements of 40-22-220 (A) (B) & (C) which clearly documents that the Appellant with his 4 year technology degree does have a pathway to be granted

a license and should be granted a license in the State as meeting and approved by the State Laws, 40-22-220 and 49-203.

As a result of the foregoing Appellant has demonstrated that he substantially qualifies for a license and the Board has not proven that he is not eligible for a license based on the current statutes and regulations. As a result this SCALC should rule that Appellant is entitled to a license and grant him a license or grant a rehearing of his appeal or remand this matter in its entirety to the Board to develop a complete record based on 40-22-220 and 49-203.

Also, Appellant qualifies for the requirements in subsection (C) because the requirements therein are inclusive of the requirements in subsection (B) per subsection (A). It should be noted that the fourth sentence under (C), items listed in (C) (1) & (2) are the "minimum" evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer. Also note that the requirement states in sentence 3 "the applicant also shall meet the requirements of the other pertinent sections of this chapter which includes Section 40-22-220 (B) even though it is not listed under (C) as (C) only addressed the minimum requirement it does not state that it was the only requirement. This is further confirmed by 40-22-220 (A) "A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure". Based on Section 40-22-220 (C) the Appellant has also meet the educational requirements due to "the applicant also shall meet the requirements of the other pertinent sections of this chapter" which is included by reference and being the basis for being licensed in South Carolina. Therefore, the requirements of (B) are automatically included in (C) as (C) only addressed the minimum requirements and not

the entire requirement per subsection (A). Thus, the Appellant meets this requirements of the South Carolina statutes and regulations 40-22-220 (A) (B) and (C) as well as 49-203 and the Appellant should be granted a license per the current statutes of the State.

IV. South Carolina's Requirements compared to Florida's Requirements and Appellant's Qualification

Per 49-203 (2) Licensure by Comity Laws of the State, “ Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon receipt of the proper documents and payment of the fee established by the Board, be considered for licensure without further written examination”. As illustrated in the Table 1 below, it confirms that the State of Florida's requirements are not less than those specified by the licensing act currently in effect in South Carolina. This table also shows that the Appellant meets the requirements of the South Carolina statutes and regulations, Appellants should be granted a license by comity because he is licensed by Florida in 2022 and the Florida requirements are not less than the South Carolina regulations.

Table 1 - Florida Requirements - Andre Brooks Qualifications compared to the South Carolina Requirements for an engineering license

South Carolina Requirements	Florida Requirements	Appellant meets this Requirements
Education	Education	Education
B. S. Engineering Degree EAC/ABET accredited program	B. S. Engineering Degree EAC/ABET accredited program	N/A
B.S. Engineering Technology Degree ETAC/ABET accredited program	B.S. Engineering Technology Degree ETAC/ABET accredited program	Yes, B.S. Engineering Technology Degree ETAC/ABET accredited program
B. S. Degree from non - EAC/ABET – or non ETAC/ABET – Must be evaluated for equivalency	B. S. Degree from non - EAC/ABET – or non ETAC/ABET	N/A
Foreign Degree – Must be evaluated for equivalency	Foreign Degree – Must be evaluated for equivalency	N/A
Examinations	Examinations	Examinations
Pass the Fundamentals of Engineering (FE) Exam	Pass the Fundamentals of Engineering (FE) Exam	Passed the Fundamentals of Engineering (FE) Exam
*Pass the Principles & Practice Engineering Exam (PE) Exam	*Pass the Principles & Practice Engineering Exam (PE) Exam	*Passed the Principles & Practice Engineering Exam (PE) Exam
Experience	Experience	Experience
*Verified, progressive engineering experience working under a licensed PE	*Verified, progressive engineering experience working under a licensed PE	*Yes, Verified, progressive engineering experience working under a licensed PE
*Four Years if you have a B. S. in engineering	*Four Years if you have a B. S. in engineering	N/A
*Six years if you have a B. S. in engineering Technology	*Four years if you have a B. S. in engineering Technology	*Yes, six years of experience

*Indicates required before applicant can sit for the PE Exam

Finally, the issue of comity must be addressed. The South Carolina statutes and regulations

were amended in 2016. Appellant obtained a license from Florida in 2022 before commencing these proceedings. Florida's licensing laws are comparable to the South Carolina. Statute 49-203 (A)(2) clearly allows Appellant the right to be licensed as a result of comity as documented and confirmed in the table above.

CONCLUSION

The SCALC's review of this motion must determine that the Board's decision violates the current law, exceeds its authority, involved unlawful procedure, rests on error of law, was not supported by evidence, was arbitrary, or was an abuse of discretion. Because the Board and the SCALC improperly applied the legal theories of "law of the case" and "res judicata" in their relative determinations, because Appellant factually qualifies for licensure under the present statute, and because Appellant obtained a license in Florida after the South Carolina statute and regulations were amended, Appellant should be granted a license based upon qualification and/or comity or a rehearing on this appeal, or the matter remanded to the Board in order to create an complete appropriate record. Furthermore, because insufficient admissible testimony was not presented at the Board, Appellant should be granted a license or rehearing herein or the matter remanded to the Board for a determination of whether Appellant qualifies for the requested license pursuant to the statues in effect in 2022 in order to avoid a miscarriage of justice.

Dated: March 21, 2023

/s/ ANDRE R. BROOKS

EXHIBIT 1

SECTION 40-22-20. Definitions.

As used in this chapter:

(1) "ABET" means the Accreditation Board for Engineering and Technology. "EAC" means the Engineering Accreditation Commission of ABET. "TAC" or "ETAC" means the Engineering Technology Accreditation Commission of ABET.

(2) "Approved engineering curriculum" means an engineering program of four or more years determined by the board to be substantially equivalent to that of an EAC/ABET accredited curriculum or the NCEES Engineering Education Standard.

SECTION 40-22-220. Licensure requirements; engineer-in-training; professional engineer; examination.

(A) A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure.

(B) **To be eligible for certification as an engineer in training**, an applicant must be of good character and reputation and be able to communicate effectively in the English language. The minimum evidence satisfactory to the board that an applicant is qualified for certification as an engineer-in-training is:

(1) graduation from an EAC/ABET accredited engineering curriculum of four or more years and passing NCEES Fundamentals of Engineering examinations required by the board;

- (2) graduation in a bachelor's degree program, completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination;
- (3) graduation in a bachelor's degree program, completion of an engineering curriculum found to meet the NCEES Engineering Education Standard, and passing the NCEES Fundamentals of Engineering examination; or
- (4) graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board.

(C) To be eligible for licensure and registration as a professional engineer, an applicant must be of good character and reputation and be able to communicate effectively in the English language. When the evidence presented in the application does not appear conclusive to the board or does not warrant the issuing of a license, the applicant may be required to present further evidence for consideration by the board. The applicant also shall meet the requirements of the other pertinent sections of this chapter. The minimum evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer is:

- (1)(a) graduation in an EAC/ABET accredited engineering curriculum of four or more years from a school or college approved by the board as being in satisfactory standing;
- (b) a specific record after graduation of four or more years of progressive experience in engineering work, supervised by a licensed engineer and of a character satisfactory to the

board, indicating that the applicant is competent to practice engineering; and

(c) passing an NCEES examination required by the board; or

(2)(a) graduation in a bachelor's degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET;

(b) a specific record after graduation of four or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; and

(c) passing the NCEES examination required by the

board; or (3)(a) graduation from a bachelor's degree program;

(b) completion of an engineering curriculum that meets the NCEES Engineering Education Standard;

(c) accrual of a specific record after graduation of four or more years of progressive experience in engineering work:

(i) supervised by a licensed engineer or of a character satisfactory to the board; and indicating that the applicant is competent to practice engineering, and passing NCEES examinations required by the board.

49-203. Licensure by Comity.

A. Professional Engineer.

(1) An application will be considered for licensure by comity from an applicant who is appropriately licensed in another jurisdiction and has not been previously licensed in this State.

(2) Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon receipt of the proper documents and payment of the fee established by the Board, be considered for licensure without further written examination.

(3) A Model Law Engineer applicant may be licensed as a Professional Engineer by making application on the prescribed form and having the NCEES Council Record sent to the Board. To be considered, the Council Record must be submitted directly to the Board by NCEES. Upon receipt of the proper documents and payment of the fee established by the Board, a Model Law Engineer applicant may be licensed as a Professional Engineer upon further review.

EXHIBIT 2
APPELANTS FLORIDA LICENSE



2400 Mahan Dr.
Tallahassee, FL 32308
Phone: (850) 521-0500
fbpe.org

RON DeSANTIS, GOVERNOR
STATE OF FLORIDA

JULIE I. BROWN, SECRETARY
DEPT. OF BUSINESS AND PROFESSIONAL REGULATION

January 12, 2022

Andre Brooks
19200 CANTERBURY RD,
DETROIT, MI 48221

Congratulations! You are now a Professional Engineer in the state of Florida. Your PE number is **93110**. Your wall certificate is enclosed.

To print your PE license:

- Go to myfloridalicense.com, select "My Account" from the menu at the upper right
- Select "Create My Account" and follow the instructions
- Link your license to your account by entering your PE number and your initial activation code (the last four digits of your Social Security number or tax number provided on your application)
- Select your license, which will now be listed on the right side of the main menu
- Under "Functions" section, select "Versa Online Active License Print" and follow the prompts.

A printable PDF will be emailed to the email address associated with your account within 30 minutes. (Visit FBPE.org for step-by-step instructions.)

To purchase your seal, contact a local office supply store, or call the Florida Engineering Society at (850) 224-7121.

Again, congratulations on your accomplishment, and welcome to the engineering profession.

Sincerely,

Zana Raybon, Executive Director
Florida Board of Professional Engineers

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C. KEVIN FLEMING, PE CHAIR (Electrical) 3/27/15-10/31/22	JEB MULOCK, PE (Engineering) 6/8/21-10/31/21	DENISE RAMSEY, PE (Engineering) 6/8/21-10/31/23	VACANCY (Public)
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DYLAN ALBERGO, PE (Civil) 2/21/18-10/31/21	JOHN PISTORINO, PE (Education) 6/8/21-10/31/23	BABU VARGHESE, PE, SI (Structural) 2/20/15-10/31/24	ZANA RAYBON Executive Director



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



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FLORIDA BOARD OF
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STATE OF FLORIDA

BOARD OF PROFESSIONAL ENGINEERS

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PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

BROOKS, ANDRE

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DETROIT MI 48221

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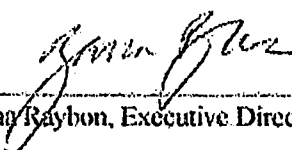
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Andre Brooks

FOR THE FBPE ONLINE STUDY GUIDE


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Date

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Licensure Process

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To become a licensed Professional Engineer in Florida, you must meet criteria in three areas.

Education

- Bachelor of Science degree in engineering from an EAC/ABET-accredited program;
- Bachelor of Science degree in engineering technology from an ETAC/ABET-accredited program; or
- Foreign degree or degree from non-EAC/ABET- or non-ETAC/ABET-accredited program that has been evaluated for equivalency

Examinations

- Pass the Fundamentals of Engineering (FE) exam; and
- Pass the Principles & Practice of Engineering (PE) exam

Experience

- Verified, progressive engineering experience working under a licensed PE:
 - Four years if you have a B.S. in engineering; or
 - Six years if you have a B.S. in engineering technology

EDUCATION

To seek licensure as a Professional Engineer in Florida, [Florida Statutes and Rules](#) require you to have either a:

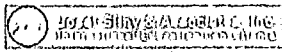
- Bachelor of Science degree in engineering from an EAC/ABET-accredited undergraduate program; or
- Bachelor of Science degree in engineering technology from an ETAC/ABET-accredited undergraduate program.

If you hold a foreign degree or a non-ABET engineering degree, you must have your education reviewed by a Florida-approved evaluation company to demonstrate that your education is substantially equivalent to an EAC/ABET- or ETAC/ABET-accredited degree.

For Non-ABET-accredited or Foreign Degrees

Bachelor of Science in Engineering (non-ABET-accredited or foreign): If you hold a Bachelor of Science degree in engineering from a non-ABET-accredited program or a foreign educational institution, you must have your education reviewed by a Florida-approved evaluation company to demonstrate that your education is substantially equivalent to the EAC/ABET degree requirements.

Florida has approved two companies to perform these evaluations:



Josef Silny & Associates Inc.
International Education Consultants
7101 SW 102 Ave., Miami, FL 33173
T: (305) 273-1616
F: (305) 273-1338
W: jsilny.org

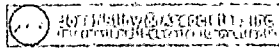
EVALUATION APPLICATION



NCEES Credentials Evaluations
200 Verdae Blvd., Greenville, SC 29607
Toll Free: (800) 250-3196
T: (800) 250-3196
F: (864) 654-6033
W: ncees.org/credentials-evaluations/

Bachelor of Science in Engineering Technology (non-ETAC/ABET-accredited or foreign): If you hold a Bachelor of Science degree in engineering technology from a non-ETAC/ABET-accredited program or a foreign educational institution, you must have your education reviewed to demonstrate that your education is substantially equivalent to the ETAC/ABET degree requirements.

Florida has approved Josef Silny & Associates Inc. to perform these evaluations:



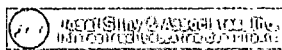
Josef Silny & Associates Inc.
International Education Consultants
7101 SW 102 Ave., Miami, FL 33173
T: (305) 273-1616
F: (305) 273-1338
W: jsilny.org

EVALUATION APPLICATION

For Master's or Doctor's Degrees in Engineering

If you do not hold a Bachelor of Science degree in engineering or engineering technology, you must show proof of an advanced degree in engineering and are required to obtain an evaluation of both degrees to demonstrate substantial equivalency to the EAC/ABET degree requirements.

Florida has approved two companies to perform these evaluations:



Josef Silny & Associates Inc.
International Education Consultants
7101 SW 102 Ave., Miami, FL 33173
T: (305) 273-1616
F: (305) 273-1338
W: jsilny.org

EVALUATION APPLICATION



NCEES Credentials Evaluations
200 Verdae Blvd., Greenville, SC 29607
Toll Free: (800) 250-3196
T: (800) 250-3196
F: (864) 654-6033
W: ncees.org/credentials-evaluations/

EXAMINATIONS

You must pass two examinations on the path to Professional Engineer licensure in Florida.

NCEES Fundamentals of Engineering (FE) Exam

The FE exam, which is developed and administered by the National Council of Examiners for Engineering and Surveying (NCEES), is generally taken during your final year of a four-year EAC/ABET engineering program or a four-year ETAC/ABET engineering technology program, or immediately after graduation. Apply directly with NCEES to take the FE exam.

No engineering experience is required. However, in order to qualify for an Engineer Intern (EI) certificate, you must provide evidence of appropriate education, such as an official transcript.

For complete information on the FE exam, please see the Engineering Exams page under the *Licensure* section of our website.

NCEES Principles & Practice of Engineering (PE) Exam

Like the FE exam, the Principles & Practice of Engineering (PE) exam is developed and administered by NCEES. In Florida, you must have earned an ABET-accredited degree and passed the FE exam before you can take the PE exam. As with the FE exam, you apply directly with NCEES to take the PE exam.

While no engineering experience is required to sit for the PE exam, NCEES statistics show that first-time examinees are more likely to pass the exam with at least four years of engineering experience.

For complete information on the PE exam, please see the Engineering Exams page under the *Licensure* section of our website.

EXPERIENCE

Once you have passed both the FE and PE exams, you must have accumulated the required, verified engineering experience and met other Florida requirements before you can apply for licensure as a Professional Engineer in Florida.

Rule 61G15-20.002, Florida Administrative Code, spells out in detail what qualifies as acceptable work experience. Following is a brief summary of the experience requirements.

Experience is credited based on full-time work. No additional credit is allowable for overtime work, or for part-time work experience obtained while pursuing engineering education on a full-time basis, or for the pursuit of a master's or doctoral degree while obtaining full-time work experience.

Experience must be under the supervision of a licensed Professional Engineer and must be progressive in nature, demonstrating increasing quality and requiring greater responsibility.

Full-time engineering work experience accrued during the last two years of completing an engineering or engineering technology program may be awarded at 50 percent of actual time, not to exceed a maximum 12 months of experience prior to graduation.

Advanced degrees obtained as a full-time student may count for 12 months equivalent experience.

In addition, some teaching experience at the advanced level at a college or university or experience gained in the armed services may also be counted.

At the time you apply for Licensure as a Professional Engineer, you must have:

- 48 months of experience if you have a Bachelor of Science degree in engineering; or
- 72 months of experience if you have a Bachelor of Science degree in engineering technology.

LICENSURE FEES

Application and licensure fees are set by Rule 61G15-24.001, Florida Administrative Code. Fees are non-refundable except where noted. FBPE only accepts checks and money orders. They must be made payable to FBPE in the exact amount. No

credit cards or cash are accepted.

Engineer Intern (EI)

- Application for Engineer Intern Certification – \$100.00
- Name Change – \$0.00
- Duplicate/Replacement Certificate – \$25.00

Professional Engineer (PE)

- Application for Licensure as Professional Engineer – \$230.00 (\$130.00 of fee is non-refundable)
- Application for Temporary PE Licensure – \$155.00
- Application for PE Licensure for Additional Discipline – \$125.00
- License Status Change - Active to Inactive – \$93.75
- License Status Change - Inactive to Active – \$93.75
- Reinstatement of Null & Void License – \$155.00
- Name Change – \$0.00
- Duplicate/Replacement Certificate – \$25.00
- PE Licensure Renewal – \$98.75
- PE Licensure Renewal (Delinquent) – \$123.75 (\$98.75 + \$25.00 delinquent fee)

Special Inspector

- Special Inspector Certification – \$230.00

Special Inspector (Limited)

- Special Inspector (Limited) Certification – \$230.00

Engineering Firms

- Qualified Business Organization Registry – \$0.00

Continuing Education Provider

- Initial Application or Renewal – \$250.00
- Laws & Rules or Ethics Course Application – \$0.00

Important Payment Information

- FBPE cannot take credit card payments or payments over the phone. We only accept checks or money orders made payable to FBPE.
- Applications and payments must be received in our office, together, at the same time. FBPE cannot accept applications electronically.
- All checks must be in U.S. dollars and "USD" must be typed on the check. For help writing a check, please see Bankrate's Step-by-Step Guide.
- Our W-9 form is available for download.
- Mail your payment to:
Florida Board of Professional Engineers
2400 Mahan Dr.
Tallahassee, FL 32308
- All fees are non-refundable except where noted.

FEE WAIVERS AVAILABLE

Florida Statutes give the Florida Board of Professional Engineers leeway to assist active duty personnel and veterans of the U.S. Armed Forces, and their spouses, and to assist low-income individuals with all or portions of the fees associated with PE licensure in Florida. For more details, please see [Military & Low-Income Fee Waivers](#).

CONTACT FBPE

FLORIDA BOARD OF PROFESSIONAL ENGINEERS
2400 Mahan Dr
Tallahassee, FL 32304
Phone: (850) 521-0500

FBPE HOURS & CONTACTS

HOURS: 7:30 A.M.-4:30 P.M. MONDAY-FRIDAY
GENERAL BOARD CONTACT: BOARD@FBPE.ORG
WEBSITE CONTACT: WEBMASTER@FBPE.ORG

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EXHIBIT 3

South Carolina State University Education Evaluation



South Carolina State University
COLLEGE OF SCIENCE, TECHNOLOGY, ENGINEERING,
MATHEMATICS, AND TRANSPORTATION
300 COLLEGE AVENUE, N.E.
ORANGEBURG, SOUTH CAROLINA 29117
(803) 536-7117

DEPARTMENT OF ENGINEERING

May 21, 2022

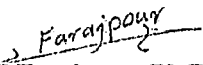
South Carolina Board of Registration
For Professional Engineers and Land Surveyors
Division of Professional and Occupational Licensing
Department of Labor, Licensing and Regulation
P.O. Box 11597
Columbia, SC 29211-1597

Attention: Ms. Leonora Addison-Miles, Administrator
Board of Registration for Professional Engineers and Land Surveyors
Re: Andre Brooks Education Evaluation

Dear Ms. Addison-Miles,

I have completed the education evaluation of Mr. Andre Brooks's degree in Civil Engineering Technology against the Curriculum Criterion of EAC/ABET-accredited programs (1986). The EAC/ABET education program has five areas of concentration, College-Level Mathematics (16 credits), Basic Sciences (16 credits) Humanities/Social Science (16 credits), Engineering Science (32 credits), and Engineering Design (16 credits). Based on the SC Code of Laws Section 40-22-220, items B2 & B4 the coursework completed by Mr. Brooks was assigned to the five areas listed above. Mr. Brooks took additional math classes at Oakland Community College, Calculus III – 4 credits and Differential Equations – 3 credits. Mr. Brooks also took additional engineering design courses from Wayne State University, which has an EAC/ABET-accredited engineering program, Water and Sewerage Systems – 3 credits and Environmental Engineering – 3 credits. These additional courses were required by the Michigan Board based on the education evaluation completed by them. The Michigan board utilizes the EAC/ABET-accredited program requirements when Mr. Brooks' education was evaluated which is also used by the SC Board. After Mr. Brooks completed the additional coursework required to bring his coursework to a standard substantially equivalent to an EAC/ABET-accredited program, the Michigan Board granted him access to take the FE and PE exams.

I have completed my review of Mr. Brooks' education, he has satisfied the education requirements of the five EAC/ABET education areas listed above. Based on my evaluation, Mr. Brooks' education is substantially equivalent to an EAC/ABET-accredited program as referenced in the Rules and Regulations of South Carolina.


Ismail Farajpour, Ph.D., P.E.
Associate Professor of Civil Engineering
Department of Engineering
South Carolina State University
300 College Avenue
Orangeburg, SC, 29115
Phone: 803-536-7081
Email: ifarajpo@scsu.edu

Name: Andre Brooks, PE

College: South Carolina State College

Graduated: CET 1986

Evaluation of South Carolina State's CET program against the ABET Criteria

The Coursework listed below represents a summary of the courses that were taken and being evaluated against the ABET education criteria which is summarized in the five subject areas below.

		Credit Hours Earned
Coursework Completed		
One Half Year of Math (16 sem -hrs) ABET		
M100A	Basic Skills Math	3
M102C	Fund of Math I	3
M103C	Fund of Math II	3
M203C	Anal Geo & Calculus I	3
M204-03	Anal Geo & Calculus II	3
MAT271	Calculus III (Oakland Community College)	3
MAT273	Calculus IV Differential Equations (Oakland Community College)	4
Total	16 hours required Mr. Brooks has 16 hours	22
One Half Year of Basic Sciences (16 sem -hrs) ABET		
C103D	Chemistry I (with Lab)	4
C104D	Chemistry II (with Lab)	4
P201A	Physics I (with Lab)	4
P202A	Physics II (with Lab)	4
Total	16 hours required Mr. Brooks has 16 hours	16
One Half Year of Humanities/Social Sciences (16 sem -hrs) ABET		
E100A	English Essentials	3
E101I	English Comp & Comm	3
E102C	English Comp & Comm	3
H201J	Humanities I	3
H202E	Humanities II	3
H301A	Humanities III	3
MS102B	Gen Military Subjects	3
S103Q	Speech Communication	3
S205B	Public Speaking	3
Total	16 hours required Mr. Brooks has 27	27
One Year of Engineering Sciences (32 sem -hrs) ABET		
CET101C	Mechanical Drawing	2
CET102A	Mechanical Drawing	2
CET202-01	Mechanical Drawing	3
CET203A	Technical Drafting	3
CET204A	Technical Drafting	3
CET212C	Statics	3
CET213A	Strenght of Materials	3
EET271B	Intro to solid State Electronics (Circuits)	3
CET310A	Engineering Computing	3
CET311A	Plane Surveying	3
CET312A	Route Surveying	3
CET313A	Dynamics	3
MET421-01	Thermodynamics	3
ECON205E	Engineering Economics	3
CET315A	Construction I	3
CET316A	Construction II	3
CET412A	Contracts, Reg, Codes & Records	3
CET415A	Fluid Mechanics and Hydraulics	3
CET416	Hydraulics Laboratory	0
CET418A	Soil Mechanics	3
CET170A	Intro to Engineering	2
CET417A	Mechanics of Materials Lab	3
Total	32 hours required Mr. Brooks has 60 hours	60
One Half Year of Engineering Design (16 sem -hrs) ABET		
CET320-01	Highway Engineering (Transportation)	3
CET413A	Structural Design I (Structures)	3
CET414A	Structural Design II (Structures)	3
CET419A	Foundation Engineering (Geotechnical)	3
CET420A	Water and Sewage Systems (Civil)	3
CE421	Water Resources (Wayne State University - Water/Wastewater)	3
CE422	Environmental Engineering (Wayne State University - Evironmental)	3
Total	16 hours required Mr. Brooks has 21 hours	21

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

Docket No. 22-ALJ-11-0313-AP

South Carolina Department of Labor,
Licensing and Regulation, South Carolina
Board of Registration for Professional
Engineers and Surveyors,

Respondent.

APPELLANT'S MOTION FOR REHEARING

ANDRE R. BROOKS
Appellant Pro Se
19200 Canterbury Road
Detroit MI 48221

Now comes Appellant, Andre R. Brooks, Pro Se, and moves this Administrative Law Court to allow a rehearing of its Final Order entered in this matter on February 26, 2023

and in support says:

1. Appellant appealed an order of the South Carolina Board of Engineers dated June 7, 2022.
2. After a hearing this Administrative Law Court issued its Final Order dated February 6, 2023.
3. The order of the Board and the Final Order of this Administrative Law Court based its ruling on the legal theories of “law of the case” and “res judicata”.
4. The theories of “law of the case” and “res judicata” are not applicable to this matter.
5. The Board and the Administrative Law Court did not apply the applicable statute and regulations enacted in 2016 to the Appellant’s credentials.
6. As a result of the foregoing a miscarriage of justice will occur if Appellant is not granted a license or a rehearing is not granted.

Wherefor Appellant requests that Appellant is granted a license or a rehearing of the within matter or a setting aside of this Administrative Law Court order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license.

/s/ ANDRE R. BROOKS

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Docket No. 22-ALJ-11-0313-AP

Andre R. Brooks, P.E.,.....Appellant,

vs

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

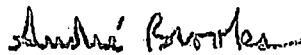
CERTIFICATE OF SERVICE

I herby certify that on the 21th day of March, 2023, in Columbia, SC, I served Appellant's Motion to Reconsider onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Honorable Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

March 21, 2023


Andre R. Brooks, pro se
19200 Canterbury Rd.
Detroit, MI 48221

4.1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

ORDER DENYING APPELLANT'S
MOTION FOR REHEARING

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant emailed the Court and the Board. In the email, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion reflected that Appellant "served" the

motion by placing the motion in the mail to the Court's mailing address; the certificate of service listed the Board as being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's email and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and email a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the Court's February 27, 2023 order.¹ Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concluded that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing. Accordingly, on March 14, 2023, the Court granted Appellant's motion and provided the following: "Appellant shall have until March 20, 2023, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing, and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, Appellant emailed the Court and the Board a copy of his motion for rehearing and a filing in support of the motion. In the email, Appellant stated the motion and filing

¹ The Court notes that Appellant included the Board's mailing address with the certificate of service dated February 16, 2023.

in support were being mailed to the Court and the Board on March 21, 2023. Additionally, Appellant's motion and certificate of service was dated March 21, 2023. Appellant raises several arguments related to the Board's brief and the Court's order dated February 6, 2023. Specifically, Appellant requests the following relief: "[that he be] granted a license or a rehearing of the within matter or a setting aside of this [ALC] order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license."

DISCUSSION

Appellant requests that the Court reconsider its decision dated February 6, 2023. The Court denies Appellant's request because Appellant's motion for rehearing is untimely.

SCALC Rule 40 provides that a motion for rehearing "must be filed within ten days of receipt of the order." Moreover, SCALC Rule 38 permits the Court to deny a motion for rehearing if the party seeking the rehearing fails to comply with the Court's order setting the deadline for such motion to be filed and served. *See id.* ("Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or *resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court.*" (emphasis added)).

Pursuant to SCALC Rule 3(B), the Court granted Appellant's requested relief to have his motion for rehearing "due no later than March 20, 2023." *See id.* ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law."). Specifically, in the Court's March 14, 2023 order, the Court ordered the following: "Appellant shall have until March 20, 2023, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

Appellant emailed, filed, and served his motion for rehearing on March 21, 2023 after the deadline that he requested in his motion for an extension and the date that the Court ordered on March 14, 2023. Accordingly, Appellant's motion for rehearing is untimely, and the Court denies Appellant's motion for rehearing based on the untimeliness of said motion.

ORDER

IT IS THEREFORE ORDERED that Appellant's motion for rehearing is DENIED because the motion is untimely.²

AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

March 30, 2023
Columbia, South Carolina

² Because the Court determines Appellant's motion is untimely, the Court need not address Appellant's arguments related to the merits of his motion for a rehearing. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).


James Smith Harrison, III
Judicial Law Clerk

March 30, 2023
Columbia, South Carolina

Section 5 intentionally omitted

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5

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No. 22-ALJ-11-0313-AP
APPELLANT'S MOTION TO EXTEND
TIME FOR LATE FILING OF
MOTION OF RECONSIDERATION

Andre R. Brooks, P.E.,

Appellant,

vs

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

Respondent.

March 10, 2023

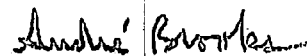
Honorable Robert L. Reibold
S.C. Administrative Law Court
1205 Pendleton Street, Ste.-224
Columbia, SC 29201

Re: Andre Brooks, Appellant vs. South Carolina Department of Labor, Licensing
and Regulation, South Carolina Board of Registration for Professional
Engineers and Surveyors, Respondent
Docket No.: 22-ALJ-11-0313-AP

Dear Judge Reibold:

Please find enclosed the original and one copy of Appellant's Motion to Extend
Time for late filing of Motion of Reconsideration for the Court in the above-captioned matter.
The Respondent will be mailed a copy of the Appellant's Motion today.

Respectfully Submitted,



Andre Brooks, pro se

Enclosure

Cc: Respondent

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South
Carolina Board of Registration for
Professional Engineers and Surveyors,

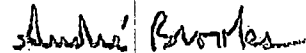
Respondent.

Docket No. 22-ALJ-11-0313-AP

**APPELLANT'S MOTION TO EXTEND
TIME FOR LATE FILING OF
MOTION OF RECONSIDERATION**

Appellant respectfully moves this Court to grant Appellant's Motion to Extend Time for late filing of the Motion of Reconsideration in the above-captioned matter. Appellant's Motion of Reconsideration in this matter was due on March 20, 2023.¹ Due to continued health issues of the Appellant, as well as continued unexpectedly high volume of work, meetings 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 the Appellant on this matter. Appellant respectfully requests the Court to grant an extension for late filing of the Motion of Reconsideration, with the extended filing date of the Motion of Reconsideration being due no later than March 22, 2023 to allow for on time filing of the Motion to Reconsider. Due to the continued health issues of the Appellant and other issues referenced above beyond my control, Appellant respectfully requests that this court grant the Appellant's Motion for Late Filing request..

Respectfully Submitted,



April 10, 2023

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

¹ ACL filed the Final Order on January 6, 2023. Per SCALC Rule 37(A), Appellant shall file its motion within 10 days after ACLC Order is filed. Per SCALC Rule 3(C), "[w]henver a party has the right or is required to do some act or take some proceedings within a prescribed period after a party serves a notice or other paper upon him by mail, by e-mail, or upon a person designated by statute to accept service, five days shall be added to the prescribed period."

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

A MOTION FROM APPELLANT ANDRE BROOKS, P.E.

Docket No. 22-ALJ-11-0313-AP

Andre Brooks Appellant,

VS.

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

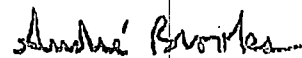
CERTIFICATE OF SERVICE

I hereby certify that on the 10 th day of April, 2023, in Columbia, South Carolina, I served Appellant's Motion to Extend Time for late filing of a Motion to Reconsider onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Hon. Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

South Carolina Department of Labor, Licensing and
Regulation, South Carolina Board of Registration for
Professional Engineers and Surveyors,
Respondent.
110 Centerview Drive, Columbia, SC 29211

Respectfully Submitted,



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

Columbia, South Carolina
April 10, 2023

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6

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Andre Brooks,

Docket No. 22-ALJ-11-0313-AP

Appellant,

ORDER DENYING APPELLANT'S
MOTION TO EXTEND THE TIME TO
FILE HIS MOTION FOR REHEARING

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant emailed the Court and the Board. In the email, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion reflected that Appellant "served" the

motion by placing the motion in the mail to the Court's mailing address; the certificate of service listed the Board as being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's email and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and email a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the Court's February 27, 2023 order.¹ Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concluded that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing. Accordingly, on March 14, 2023, the Court granted Appellant's motion and provided the following: "Appellant shall have until March 20, 2023, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, Appellant emailed the Court and the Board a copy of his motion for rehearing and a filing in support of the motion. In the email, Appellant stated the motion and filing

¹ The Court notes that Appellant included the Board's mailing address with the certificate of service dated February 16, 2023.

in support were being mailed to the Court and the Board on March 21, 2023. Additionally, Appellant's motion and certificate of service were dated March 21, 2023. Appellant raised several arguments related to the Board's brief and the Court's order dated February 6, 2023. Specifically, Appellant requested the following relief: "[that he be] granted a license or a rehearing of the within matter or a setting aside of this [ALC] order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license." On March 30, 2023, the Court denied Appellant's motion because the motion was untimely. Accordingly, the Court declined to rule on the other grounds raised in Appellant's motion.

On April 11, 2023, Appellant filed a "motion to extend time for late filing of motion of reconsideration." In the motion, Appellant stated the following:

Due to continued health issues of... Appellant, as well as continued unexpectedly high volume of work, meetings[,] 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 requests the Court to grant an extension for late filing of the motion of Reconsideration, with the extended filing date of the Motion of Reconsideration being due no later than March 22, 2023[,] to allow for on time filing of the Motion to Reconsider. Due to the continued health issues of... Appellant and other issues referenced above beyond my control, Appellant respectfully request that this court grant... Appellant's Motion for Late Filing request.

As of the date of this order, the Court has not received a response from the Board on Appellant's present motion.

DISCUSSION

Appellant requests that the Court issue an order again extending the time for him to file his motion for rehearing. The Court denies Appellant's request.

SCALC Rule 40 provides that a motion for rehearing "must be filed within ten days of receipt of the order." Moreover, SCALC Rule 38 permits the Court to deny a motion for rehearing if the party seeking the rehearing fails to comply with the Court's order setting the deadline for such motion to be filed and served. *See id.* ("Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or *resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to*

comply with any of the time limits provided in these rules or by order of the Court." (emphasis added)).

Pursuant to SCALC Rule 3(B), the Court granted Appellant's initial requested relief to have his motion for rehearing "due no later than March 20, 2023." *See id.* ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law."). Specifically, in the Court's March 14, 2023 order, the Court ordered the following: "Appellant shall have until March 20, 2023, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

Appellant emailed, filed, and served his motion for rehearing on March 21, 2023—after the deadline that he requested in his motion for an extension and the date that the Court ordered on March 14, 2023. Accordingly, the Court determined Appellant's motion for rehearing was untimely, and the Court denied Appellant's motion for rehearing based on the untimeliness of said motion.

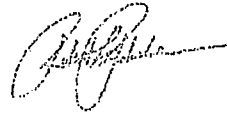
Presently, Appellant is yet again seeking an extension of time. The Court was receptive of Appellant's first request for an extension of time to file and serve his motion for rehearing, which was why the Court granted Appellant the deadline he sought. The deadline Appellant requested passed without any motions from Appellant seeking to extend the time again. Had Appellant sought an additional extension prior to the expiration of the initial extension, the Court might have been inclined to grant that request, but Appellant made no such motion. Moreover, Appellant's motion for an extension relies upon the same generic considerations which supported the first motion and make no mention of any changed or new circumstance requiring even more time. As of today's date, almost three months have elapsed since the Court issued the final order on February 6, 2023. At some point, finality is required.

The Court is aware the consequences of its decision may appear harsh, and the Court is cognizant about Appellant's statements about seeking counsel. However, while Appellant is pro se, he is still obligated to follow the substantive and procedural requirements of the law. *See State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) ("A pro se litigant who knowingly elects to represent himself [or herself] assumes full responsibility for complying with substantive and procedural requirements of the law." (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003))); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368

S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable[,] and the court will not hold a layman to any lesser standard than is applied to an attorney."). Accordingly, the Court concludes Appellant's motion should be denied.

ORDER

IT IS THEREFORE ORDERED that Appellant's motion is DENIED.
AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

April 28, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

April 28, 2023
Columbia, South Carolina

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Statement of the Case

Appellant submits this brief to Appeal the Final Order issued on February 6, 2023. As discussed below the Board and this Administrative Law Court (SCALC) applied an inappropriate interpretation of “res judicata” and “law of the case”. Their application, if appropriate, is more flexible in the administrative hearing context and cannot be invoked where, as happened here there has been a favorable change of law since the prior determination that would entitle Appellant to his relief requested.

Given the 2016 amendment to South Carolina Code 40-22-220, Mr. Brooks meets the requirements established in Regulations 49-203 (A)(2) “Licensure By Comity”. Specifically, “Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon consideration or licensure in the appropriate category designation without further written examination.” Appellant meets the requirements established by Regulations 49-203 (A)(2) “Licensure By Comity” when he was granted a license in Florida in January 2022, receiving a license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, the State of Florida’s requirements being not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time Appellant’s Florida license was issued.

Appellant meets the requirements established in 40-22-220(B)(2), “graduation in a bachelor’s degree program, completion of an engineering curriculum found to be substantially

equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination”, appellant graduated with a bachelor’s degree from an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET and the, Appellant passed the NCEES Fundamentals of Engineering examination, he meets the requirement of this section. Appellant meets the requirements established in Section 40-22-220(B)(4) “graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the Board”, appellant graduated with TAC/ABET accredited engineering technology curriculum of four years from South Carolina State University and passed the NCEES Fundamentals of Engineering examination required by the Board he meets the requirement of this section.

UNDERLYING FACTS

In 2005 Appellant applied for a license with the South Carolina Board of Engineers. His petition was denied primarily as a result of the testimony of Dr. Castro who determined Appellant was not qualified pursuant to the then applicable statute. Appeal to the SCALC was taken and the denial upheld.

In 2014 Appellant again applied and was again denied licensing probably based upon the hearsay use of Dr. Castro’s report. No appeal was taken.

In 2022 Appellant again applied. However, on January 12, 2022 Appellant had received a license from the State of Florida and the South Carolina applicable statute was amended in 2016.

The South Carolina statute as amended and in effect presently is comparable to the Florida statute under which Appellant was licensed. Appellant was again denied. However, Appellant appealed this denial to this SCALC. The appeal has been denied by Final Order dated February 6, 2023, from which order Appellant files this Motion for Reconsideration.

The primary basis for the present denial that generates this motion is the application of the legal principals of “law of the case” and/or “Res Judicata”, as a defense to Appellant’s present request for licensure. Neither of these legal theories applies to this case as a matter of law. Also Appellant qualifies for a license applying the 2016 South Carolina amended statute and regulations and as a matter of comity since the Florida statute under which Appellant is licensed is comparable to the present South Carolina statute. See Table 1 on page 13 which provides a comparison between the licensing requirements for South Carolina vs Florida as well as the Appellant meeting the South Carolina requirements.

Standard of Review

A motion for appeal is governed by Rule 40 of this Court and Rule 221(a), SCACR. On such a motion, the court standard of review is whether the applicant demonstrated that the Court overlooked or misapprehended the applicant’s argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).

A party may appeal to the ALC for review of an administrative agency’s final action. S.C. Code Ann. § 40-1-160 (1976, as amended). S.C. Code Ann. § 1-23-380(5) of the South

Carolina Administrative Procedures Act (hereinafter the "APA") provides the standard of review for appeals from an administrative agency. The ALC may overturn the Board's decision if it finds that the decision is, among other reasons, in excess of the statutory authority of the agency, violates the law, affected by other error of law, involved unlawful procedure, clearly erroneous in view of the reliable, rests on a error of law, was not supported by evidence, probative, and amendments to law or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380(5)(b), (d), (e), and (f) (1976, as amended). *See also* S.C. Code Ann. § 1-23-600(E) (1976, as amended) (directing administrative law judges to conduct appellate review in the same manner prescribed in the APA).

Under the APA, the Court may not substitute its judgment for that of the Board on questions of fact, but may reverse the Board's decision if the decision is clearly erroneous in light of the substantial evidence and the law.

Issues

- I. Does the current law support approval of Appellant's 2022 Application?
- II. Did the Board err when they denied the 2022 application based on current law?
- III. Did the Board and the SCALC improperly apply the theory of "Law of the Case" to Appellant's request for license?
- IV. Did the Board and the SCALC improperly apply the theory of "Res Judicata" to

Appellant's request for license?

- V. Did the Board and the SCALC improperly apply the wrong law/standard in determining Appellant's right to a license and not overturning the Board's decision.

Discussion

I. LAW OF THE CASE

The legal theory of the "law of the case" is not applicable in this matter. Under that doctrine, an "administrative agency, on remand from a court, [must] conform its further proceedings in the case to the principles set forth in the judicial decision" *Copart, Inc. v. Admin. Review Bd., U.S. Dep't of Labor*, 495 F.3d 1197, 1201 (10th Cir. 2007) (quotation omitted). It only "applies to issues previously decided, either explicitly or by necessary implication," *id.*, and the "law of the case rules 'do not apply between separate actions.'" *Builders Mut. Ins. Co. v. Bob Wire Elec., Inc.*, 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018) (quoting Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.)).

The *Builders Mut.* case further explains why the doctrine is inapposite here:

[T]he doctrine of "law of the case" is just that—the law of the case in which it was made, not the law of future cases. *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999) (law of the case doctrine "applies only to subsequent proceedings in the same litigation following an appellate decision"); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-72, 776 S.E.2d 397, 403 (Ct. App. 2015) (collecting cases and noting law of case doctrine prohibits matters decided on appeal from being relitigated in the trial court in the same case). See also *Messenger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152 (1912) ("[T]he phrase, 'law of the case,' as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power."); Wright & Miller, Fed. Prac. & Proc. §

4478 (2d. ed.) (law of the case rules “do not apply between separate actions”).

Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), cited by this Court for its dicta, is inapposite. The Court there rejected application of law of the case even though, unlike here, the rulings were made in the same case. As the case decision in Shirley’s indicates, when a party appeals and does not bring up for review a specific ruling, the “unappealed ruling is the law of the case and requires affirmance.” *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 691 (2010)

Since this matter concerns Appellant’s qualifications under the present statute and regulatory amendments, not the statute and regulations in effect prior to 2016, “law of the case” is simply inapplicable.

II. Res Judicata

The legal theory of “res judicata” also does not apply to this matter. Although the doctrine of former adjudication, including res judicata or claim preclusion, applies in the administrative law context, see *Carman v. S.C. Alcoholic Beverage Control Comm’n*, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994) (citing *United States v. Utah Constr. and Mining Co.*, 384 U.S. 394 (1966)), administrative preclusion “must be tempered by fairness and equity” and is not as rigidly enforced as preclusion in judicial proceedings. *Purter v. Heckler*, 771 F.2d 682, 691 (3d Cir.1985). See *Maldonado v. U.S. Att’y Gen.*, 664 F.3d 1369, 1377-78 (11th Cir. 2011) (concluding that claim preclusion “applies even more flexibly in the administrative context than it does when a second court of competent jurisdiction is reviewing the decision of a first court”); *Alvear-Velez v.*

Mukasey, 540 F.3d 672, 677 (7th Cir. 2008) (“We have applied res judicata much more flexibly in the administrative context.”); *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 229 n.3 (4th Cir. 2006) (Shedd, J., dissenting); *Quinones Candelario v. Postmaster Gen.*, 906 F.2d 798, 801 (1st Cir. 1990) (“In the context of administrative proceedings, res judicata is not automatically and rigidly applied in the face of contrary public policy.”); *Facchiano v. U.S. Dep’t of Labor*, 859 F.2d 1163, 1167 (3d Cir. 1988) (“Administrative preclusion ... is not as rigidly enforced as preclusion in judicial proceedings.”); *Artukovic v. INS*, 693 F.2d 894, 898 (9th Cir. 1982) (“In the administrative law context ... res judicata [is] applied flexibly.”); *Parker v. Califano*, 644 F.2d 1199, 1202 (6th Cir. 1981) (“Administrative res judicata ... is applied with less rigidity than its judicial counterpart.”); *United States v. Smith*, 482 F.2d 1120, 1123 (8th Cir. 1973); *Cartier v. Sec’y of State*, 506 F.2d 191, 196 (D.C. Cir. 1974) (“The doctrine of administrative res judicata ... has not evolved into a rigid system that is to be blindly applied in every context.”).

For example, in *Purter*, the Third Circuit refused to apply Res Judicata to a social security claimant’s application for benefits, even though the claim had previously been denied, where the claimant presented evidence that had not been previously considered. In *Alvear-Velez*, the Seventh Circuit held that an original deportation proceeding against alien based on conviction for sexual assault was not res judicata in subsequent deportation proceeding based on same conviction. Despite fact that conviction did not constitute grounds to deport alien in original proceeding, prior to subsequent proceeding, Congress amended the definition of aggravated felony, a ground for removal, to include sexual abuse of a minor, and specifically applied new definition retroactively. Since such new definition applied to alien’s conviction for sexual assault, the second proceeding

was proper.

Even from a strict legal standard applied in judicial litigation, it has long been the law that “res judicata is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation.” *State Farm Mut. Auto. Ins. Co. v. Duel*, 324 U.S. 154, 162 (1945). Indeed, “The cases are legion which hold that res judicata is not a defense in a subsequent action where the law under which the first judgment was obtained is different than that applicable to the second action, or there has been an intervening decision, or a change in the law between the first and second judgment, creating an altered situation.” *Wagner v. Baron*, 64 So. 2d 267, 267 (Fla. 1953).

The rule was applied by the New York Court of Appeals in the administrative context in *Matter of Hodes v. Axelrod*, 70 N.Y.2d 364, 373, 515 N.E.2d 612, 617 (1987), where there had been a statutory amendment intervening between the two proceedings. The New York Court of Appeals held res judicata was inapplicable: “the operative consideration . . . is that the statutory rights of the parties were altered between the first and second proceedings. This being so, the two proceedings against petitioners can be said to lack the requisite identity for application of res judicata.” *Id.* (citing *Duel*).

Put another way, the issue presented in this action, eligibility on the subsequently amended statute and regulations were not and could not have been litigated in the earlier proceedings. Res Judicata or claim preclusion only bars a party from pursuing subsequent “litigation where the claim (1) was litigated or (2) could have been litigated.” *Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014) (citing *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216,

493 S.E.2d 826, 835 (1997)). Since the issues were not, and could not, be litigated previously, res judicata is inapplicable.

Hence because both "Law of the Case" and "Res Judicata" do not apply to these proceedings the Final Order of the Board and the initial Order of this SCALC should not be allowed to stand to the extent that the ultimate denial of Appellant's request for licensing is based upon these doctrines. Appellant should be granted a license or at least the matter should be sent back to the hearing stage to produce an appropriate record.

III. Appellant's Substantive Claim

Appellant qualifies for his license pursuant to the current South Carolina statutes and regulations. Substantively the Board Final Order and this SCALC Final Order relies on the prior two matters and the statute then in effect. There is little or no direct discussion of the application of the current statute.

At page 25 of Respondent's brief, it clearly states that Dr. Castro probably hearsay report was not put into evidence at the Board hearing in 2022 and therefore could not be used/considered by the Board and this SCALC. However, Dr. Castro's report is the very basis for the two prior denials. You can't have one without the other. Since we are dealing with a new statute and regulations, it would be necessary for Dr. Castro's report to be applicable to the new statutes and regulations. Such testimony was not elicited in these proceedings. The new statutes and regulations no longer rely upon the educational criteria used by Dr. Castro in the first and second hearings pursuant to the amended 40-22-220 (B) (4), "graduation in a TAC/ABET accredited engineering technology

curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board", the Appellant graduated with TAC/ABET accredited engineering technology curriculum of four years from South Carolina State University and passed the NCEES Fundamentals of Engineering examination required by the Board, he meets the requirements of this section and should be granted a license based on meeting the requirements of (A) (B) and (C) and 49-203.

(1) The Respondent argues and the Board incorrectly interpreted 40-22-220 (A) (B) and (C) finding that the Appellant's education does not meet the current requirement for licensure. Based on the current law 40-22-220 (A) (B) and (C) the Appellant meets the requirements in 40-22-220 (A) (B) and (C). The applicant must have graduated from a four year engineering or technology program to be eligible as an engineer in training per 40-22-220 (B). The Appellant meets this requirement by obtaining a Civil Engineering Technology Degree from a TAC/ABET accredited engineering technology curriculum from South Carolina State University. Then the applicant must take and pass the Engineer in Training Exam (FE exam) to become certified as an Engineer in Training. Appellant took and passed the NCEES Fundamentals of Engineering Examination required by the Board. After Appellant passed the FE Exam he was certified as an Engineer-In-Training further meeting all requirements. All of the foregoing requirements were a prerequisite to be eligible for the Professional Engineers Exam. Then the applicant was required to have four years of progressive engineering experience under a registered engineer. Appellant worked five years under a licensed engineer to meet the

experience requirement. After meeting the experience requirement to be eligible as a Professional Engineer, the Appellant took and passed the Professional Engineers Exam and was granted an engineering license. These facts contradict the argument by the Respondent and the SCALC as the Appellant has demonstrated that he meets the requirements of 40-22-220 (A) (B) & (C). Therefore Appellant should be granted a license due to meeting requirements and the comity statute. Appellant qualifies to be licensed in the State of South Carolina, 40-22-220 and 49-203.

Furthermore, the SCALC incorrectly interpreted 40-22-220 (A) (B) & (C) arguing that the current law no longer provides an avenue for applicants such as Appellant with a TAC/ABET degree to close the gap between that degree and the required EAC/ABET degree stating that Appellant's education does not meet the current substantially equivalent requirement relied upon by the Appellant. However, this analysis was an interpretation of the prior statutes and not the current statute. On the contrary the Appellant meets this requirement by virtue of 40-22-220.(B) (4) "graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the Board". The Appellant meets this requirement by obtaining a Civil Engineering Technology Degree from a TAC/ABET accredited engineering technology curriculum from South Carolina State University, The Appellant has meet the requirements of 40-22-220 (A) (B) & (C) which clearly documents that the Appellant with his 4 year technology degree does have a pathway to be granted a license and should be granted a license in the State as meeting and approved by the State Laws,

40-22-220 and 49-203.

As a result of the foregoing Appellant has demonstrated that he substantially qualifies for a license and the Board has not proven that he is not eligible for a license based on the current statutes and regulations. As a result this SCALC should rule that Appellant is entitled to a license and grant him a license or grant a rehearing of his appeal or remand this matter in its entirety to the Board to develop a complete record based on 40-22-220 and 49-203.

Also, Appellant qualifies for the requirements in subsection (C) because the requirements therein are inclusive of the requirements in subsection (B) per subsection (A). It should be noted that the fourth sentence under (C), items listed in (C) (1) & (2) are the "minimum" evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer. Also note that the requirement states in sentence 3 "the applicant also shall meet the requirements of the other pertinent sections of this chapter which includes Section 40-22-220 (B) even though it is not listed under (C) as (C) only addressed the minimum requirement it does not state that it was the only requirement. This is further confirmed by 40-22-220 (A) "A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure". Based on Section 40-22-220 (C) the Appellant has also meet the educational requirements due to "the applicant also shall meet the requirements of the other pertinent sections of this chapter" which is included by reference and being the basis for being licensed in South Carolina. Therefore, the requirements of (B) are automatically included in (C) as (C) only addressed the minimum requirements and not the entire requirement per subsection (A). Thus, the Appellant meets this requirements of the South

Carolina statutes and regulations 40-22-220 (A) (B) and (C) as well as 49-203 and the Appellant should be granted a license per the current statutes of the State.

IV. South Carolina's Requirements compared to Florida's Requirements and Appellant's Qualification

Per 49-203 (2) Licensure by Comity Laws of the State, " Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon receipt of the proper documents and payment of the fee established by the Board, be considered for licensure without further written examination". As illustrated in the Table 1 below, it confirms that the State of Florida's requirements are not less than those specified by the licensing act currently in effect in South Carolina. This table also shows that the Appellant meets the requirements of the South Carolina statutes and regulations, Appellants should be granted a license by comity because he is licensed by Florida in 2022 and the Florida requirements are not less than the South Carolina regulations.

Table 1 - Florida Requirements - Andre Brooks Qualifications compared to the South

Carolina Requirements for an engineering license

South Carolina Requirements	Florida Requirements	Appellant meets this Requirements
Education	Education	Education
B. S. Engineering Degree EAC/ ABET accredited program	B. S. Engineering Degree EAC/ABET accredited program	N/A
B.S. Engineering Technology Degree ETAC/ ABET accredited program	B.S. Engineering Technology Degree ETAC/ ABET accredited program	Yes, B.S. Engineering Technology Degree ETAC/ ABET accredited program
B. S. Degree from non - EAC/ABET - or non ETAC/ABET - Must be evaluated for equivalency	B. S. Degree from non - EAC/ABET - or non ETAC/ABET	N/A
Foreign Degree - Must be evaluated for equivalency	Foreign Degree - Must be evaluated for equivalency	N/A
Examinations	Examinations	Examinations
Pass the Fundamentals of Engineering (FE) Exam	Pass the Fundamentals of Engineering (FE) Exam	Passed the Fundamentals of Engineering (FE) Exam
*Pass the Principles & Practice Engineering Exam (PE) Exam	*Pass the Principles & Practice Engineering Exam (PE) Exam	*Passed the Principles & Practice Engineering Exam (PE) Exam
Experience	Experience	Experience
*Verified, progressive engineering experience working under a licensed PE	*Verified, progressive engineering experience working under a licensed PE	*Yes, Verified, progressive engineering experience working under a licensed PE
*Four Years if you have a B. S. in engineering	*Four Years if you have a B. S. in engineering	N/A
*Six years if you have a B. S. in engineering Technology	*Four years if you have a B. S. in engineering Technology	*Yes, six years of experience

*Indicates required before applicant can sit for the PE Exam.

Finally, the issue of comity must be addressed. The South Carolina statutes and regulations were amended in 2016. Appellant obtained a license from Florida in 2022 before commencing

these proceedings. Florida's licensing laws are comparable to the South Carolina. Statute 49-203 (A)(2) clearly allows Appellant the right to be licensed as a result of comity as documented and confirmed in the table above.

CONCLUSION

The SCALC's review of this motion must determine that the Board's decision violates the current law, exceeds its authority, involved unlawful procedure, rests on error of law, was not supported by evidence, was arbitrary, or was an abuse of discretion. Because the Board and the SCALC improperly applied the legal theories of "law of the case" and "res judicata" in their relative determinations, because Appellant factually qualifies for licensure under the present statute, and because Appellant obtained a license in Florida after the South Carolina statute and regulations were amended, Appellant should be granted a license based upon qualification and/or comity or a rehearing on this appeal, or the matter remanded to the Board in order to create an complete appropriate record. Furthermore, because insufficient admissible testimony was not presented at the Board, Appellant should be granted a license or rehearing herein or the matter remanded to the Board for a determination of whether Appellant qualifies for the requested license pursuant to the statutes in effect in 2022 in order to avoid a miscarriage of justice.

Dated: March 21, 2023

/s/ ANDRE R. BROOKS

EXHIBIT 1

SECTION 40-22-20. Definitions.

As used in this chapter:

- (1) "ABET" means the Accreditation Board for Engineering and Technology. "EAC" means the Engineering Accreditation Commission of ABET. "TAC" or "ETAC" means the Engineering Technology Accreditation Commission of ABET.
- (2) "Approved engineering curriculum" means an engineering program of four or more years determined by the board to be substantially equivalent to that of an EAC/ABET accredited curriculum or the NCEES Engineering Education Standard.

SECTION 40-22-220. Licensure requirements; engineer-in-training; professional engineer; examination.

- (A) A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure.
- (B) To be eligible for certification as an engineer in training, an applicant must be of good character and reputation and be able to communicate effectively in the English language. The minimum evidence satisfactory to the board that an applicant is qualified for certification as an engineer-in-training is:

- (1) graduation from an EAC/ABET accredited engineering curriculum of four or more years and passing NCEES Fundamentals of Engineering examinations required by the board;

- (2) graduation in a bachelor's degree program, completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination;
- (3) graduation in a bachelor's degree program, completion of an engineering curriculum found to meet the NCEES Engineering Education Standard, and passing the NCEES Fundamentals of Engineering examination; or
- (4) graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board.

(C) To be eligible for licensure and registration as a professional engineer, an applicant must be of good character and reputation and be able to communicate effectively in the English language. When the evidence presented in the application does not appear conclusive to the board or does not warrant the issuing of a license, the applicant may be required to present further evidence for consideration by the board. The applicant also shall meet the requirements of the other pertinent sections of this chapter. The minimum evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer is:

(1)(a) graduation in an EAC/ABET accredited engineering curriculum of four or more years from a school or college approved by the board as being in satisfactory standing;

(b) a specific record after graduation of four or more years of progressive experience in engineering work, supervised by a licensed engineer and of a character satisfactory to the

board, indicating that the applicant is competent to practice engineering; and

(c) passing an NCEES examination required by the board; or

(2)(a) graduation in a bachelor's degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET;

(b) a specific record after graduation of four or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; and

(c) passing the NCEES examination required by the

board; or (3)(a) graduation from a bachelor's degree program;

(b) completion of an engineering curriculum that meets the NCEES Engineering Education Standard;

(c) accrual of a specific record after graduation of four or more years of progressive experience in engineering work:

(i) supervised by a licensed engineer or of a character satisfactory to the board; and indicating that the applicant is competent to practice engineering, and passing NCEES examinations required by the board.

49-203. Licensure by Comity.

A. Professional Engineer.

(1) An application will be considered for licensure by comity from an applicant who is appropriately licensed in another jurisdiction and has not been previously licensed in this State.

(2) Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon receipt of the proper documents and payment of the fee established by the Board, be considered for licensure without further written examination.

(3) A Model Law Engineer applicant may be licensed as a Professional Engineer by making application on the prescribed form and having the NCEES Council Record sent to the Board. To be considered, the Council Record must be submitted directly to the Board by NCEES. Upon receipt of the proper documents and payment of the fee established by the Board, a Model Law Engineer applicant may be licensed as a Professional Engineer upon further review.

EXHIBIT 2
APPELANTS FLORIDA LICENSE

EXHIBIT 3

South Carolina State University Education Evaluation

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Docket No. 22-ALJ-11-0313-AP

Andre R. Brooks, P.E. Appellant,

vs

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

APPELLANT'S APPEAL OF FINAL ORDER

Andre R. Brooks, *pro se*
19200 Canterbury Rd.
Detroit, MI 48221

Statement of the Case

Appellant submits this brief to Appeal the Final Order issued on February 6, 2023. As discussed below the Board and this Administrative Law Court (SCALC) applied an inappropriate interpretation of “res judicata” and “law of the case”. Their application, if appropriate, is more flexible in the administrative hearing context and cannot be invoked where, as happened here there has been a favorable change of law since the prior determination that would entitle Appellant to his relief requested.

Given the 2016 amendment to South Carolina Code 40-22-220, Mr. Brooks meets the requirements established in Regulations 49-203 (A)(2) “Licensure By Comity”. Specifically, “Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon consideration or licensure in the appropriate category designation without further written examination.” Appellant meets the requirements established by Regulations 49-203 (A)(2) “Licensure By Comity” when he was granted a license in Florida in January 2022, receiving a license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, the State of Florida’s requirements being not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time Appellant’s Florida license was issued.

Appellant meets the requirements established in 40-22-220(B)(2), “graduation in a bachelor’s degree program, completion of an engineering curriculum found to be substantially

equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination”, appellant graduated with a bachelor’s degree from an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET and the, Appellant passed the NCEES Fundamentals of Engineering examination, he meets the requirement of this section. Appellant meets the requirements established in Section 40-22-220(B)(4) “graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the Board”, appellant graduated with TAC/ABET accredited engineering technology curriculum of four years from South Carolina State University and passed the NCEES Fundamentals of Engineering examination required by the Board he meets the requirement of this section.

UNDERLYING FACTS

In 2005 Appellant applied for a license with the South Carolina Board of Engineers. His petition was denied primarily as a result of the testimony of Dr. Castro who determined Appellant was not qualified pursuant to the then applicable statute. Appeal to the SCALC was taken and the denial upheld.

In 2014 Appellant again applied and was again denied licensing probably based upon the hearsay use of Dr. Castro’s report. No appeal was taken.

In 2022 Appellant again applied. However, on January 12, 2022 Appellant had received a license from the State of Florida and the South Carolina applicable statute was amended in 2016.

The South Carolina statute as amended and in effect presently is comparable to the Florida statute under which Appellant was licensed. Appellant was again denied. However, Appellant appealed this denial to this SCALC. The appeal has been denied by Final Order dated February 6, 2023, from which order Appellant files this Motion for Reconsideration.

The primary basis for the present denial that generates this motion is the application of the legal principals of “law of the case” and/or “Res Judicata”, as a defense to Appellant’s present request for licensure. Neither of these legal theories applies to this case as a matter of law. Also Appellant qualifies for a license applying the 2016 South Carolina amended statute and regulations and as a matter of comity since the Florida statute under which Appellant is licensed is comparable to the present South Carolina statute. See Table 1 on page 13 which provides a comparison between the licensing requirements for South Carolina vs Florida as well as the Appellant meeting the South Carolina requirements.

Standard of Review

A motion for appeal is governed by Rule 40 of this Court and Rule 221(a), SCACR. On such a motion, the court standard of review is whether the applicant demonstrated that the Court overlooked or misapprehended the applicant’s argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).

A party may appeal to the ALC for review of an administrative agency's final action. S.C. Code Ann. § 40-1-160 (1976, as amended). S.C. Code Ann. § 1-23-380(5) of the South

Carolina Administrative Procedures Act (hereinafter the "APA") provides the standard of review for appeals from an administrative agency. The ALC may overturn the Board's decision if it finds that the decision is, among other reasons, in excess of the statutory authority of the agency, violates the law, affected by other error of law, involved unlawful procedure, clearly erroneous in view of the reliable, rests on a error of law, was not supported by evidence, probative, and amendments to law or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380(5)(b), (d), (e), and (f) (1976, as amended). *See also* S.C. Code Ann. § 1-23-600(E) (1976, as amended) (directing administrative law judges to conduct appellate review in the same manner prescribed in the APA).

Under the APA, the Court may not substitute its judgment for that of the Board on questions of fact, but may reverse the Board's decision if the decision is clearly erroneous in light of the substantial evidence and the law.

Issues

- I. Does the current law support approval of Appellant's 2022 Application?
- II. Did the Board err when they denied the 2022 application based on current law?
- III. Did the Board and the SCALC improperly apply the theory of "Law of the Case" to Appellant's request for license?
- IV. Did the Board and the SCALC improperly apply the theory of "Res Judicata" to

Appellant's request for license?

- V. Did the Board and the SCALC improperly apply the wrong law/standard in determining Appellant's right to a license and not overturning the Board's decision.

Discussion

I. LAW OF THE CASE

The legal theory of the "law of the case" is not applicable in this matter. Under that doctrine, an "administrative agency, on remand from a court, [must] conform its further proceedings in the case to the principles set forth in the judicial decision" *Copart, Inc. v. Admin. Review Bd., U.S. Dep't of Labor*, 495 F.3d 1197, 1201 (10th Cir. 2007) (quotation omitted). It only "applies to issues previously decided, either explicitly or by necessary implication," *id.*, and the "law of the case rules 'do not apply between separate actions.'" *Builders Mut. Ins. Co. v. Bob Wire Elec., Inc.*, 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018) (quoting Wright & Miller, Fed. Prac. & Proc. § 4478 (2d. ed.)).

The *Builders Mut.* case further explains why the doctrine is inapposite here:

[T]he doctrine of "law of the case" is just that—the law of the case in which it was made, not the law of future cases. *Lifschultz Fast Freight, Inc. v. Haynsworth, Marion, McKay & Guerard*, 334 S.C. 244, 245, 513 S.E.2d 96, 96-97 (1999) (law of the case doctrine "applies only to subsequent proceedings in the same litigation following an appellate decision"); *Flexon v. PHC-Jasper, Inc.*, 413 S.C. 561, 571-72, 776 S.E.2d 397, 403 (Ct. App. 2015) (collecting cases and noting law of case doctrine prohibits matters decided on appeal from being relitigated in the trial court in the same case). See also *Messenger v. Anderson*, 225 U.S. 436, 444, 32 S. Ct. 739, 56 L. Ed. 1152 (1912) ("[T]he phrase, 'law of the case,' as applied to the effect of previous orders on the later action of the court rendering them in the same case, merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power."); Wright & Miller, Fed. Prac. & Proc. §

4478 (2d. ed.) (law of the case rules “do not apply between separate actions”).

Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), cited by this Court for its dicta, is inapposite. The Court there rejected application of law of the case even though, unlike here, the rulings were made in the same case. As the case decision in Shirley's indicates, when a party appeals and does not bring up for review a specific ruling, the “unappealed ruling is the law of the case and requires affirmance.” *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 432, 699 S.E.2d 687, 691 (2010)

Since this matter concerns Appellant's qualifications under the present statute and regulatory amendments, not the statute and regulations in effect prior to 2016, “law of the case” is simply inapplicable.

II. Res Judicata

The legal theory of “res judicata” also does not apply to this matter. Although the doctrine of former adjudication, including res judicata or claim preclusion, applies in the administrative law context, see *Carman v. S.C. Alcoholic Beverage Control Comm'n*, 317 S.C. 1, 6, 451 S.E.2d 383, 386 (1994) (citing *United States v. Utah Constr. and Mining Co.*, 384 U.S. 394 (1966)), administrative preclusion “must be tempered by fairness and equity” and is not as rigidly enforced as preclusion in judicial proceedings. *Purter v. Heckler*, 771 F.2d 682, 691 (3d Cir.1985). See *Maldonado v. U.S. Att'y Gen.*, 664 F.3d 1369, 1377-78 (11th Cir. 2011) (concluding that claim preclusion “applies even more flexibly in the administrative context than it does when a second court of competent jurisdiction is reviewing the decision of a first court”); *Alvear-Velez v.*

Mukasey, 540 F.3d 672, 677 (7th Cir. 2008) (“We have applied res judicata much more flexibly in the administrative context.”); *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 229 n.3 (4th Cir. 2006) (Shedd, J., dissenting); *Quinones Candelario v. Postmaster Gen.*, 906 F.2d 798, 801 (1st Cir. 1990) (“In the context of administrative proceedings, res judicata is not automatically and rigidly applied in the face of contrary public policy.”); *Facchiano v. U.S. Dep’t of Labor*, 859 F.2d 1163, 1167 (3d Cir. 1988) (“Administrative preclusion ... is not as rigidly enforced as preclusion in judicial proceedings.”); *Artukovic v. INS*, 693 F.2d 894, 898 (9th Cir. 1982) (“In the administrative law context ... res judicata [is] applied flexibly.”); *Parker v. Califano*, 644 F.2d 1199, 1202 (6th Cir. 1981) (“Administrative res judicata ... is applied with less rigidity than its judicial counterpart.”); *United States v. Smith*, 482 F.2d 1120, 1123 (8th Cir. 1973); *Cartier v. Sec’y of State*, 506 F.2d 191, 196 (D.C. Cir. 1974) (“The doctrine of administrative res judicata ... has not evolved into a rigid system that is to be blindly applied in every context.”).

For example, in *Purter*, the Third Circuit refused to apply Res Judicata to a social security claimant’s application for benefits, even though the claim had previously been denied, where the claimant presented evidence that had not been previously considered. In *Alvear-Velez*, the Seventh Circuit held that an original deportation proceeding against alien based on conviction for sexual assault was not res judicata in subsequent deportation proceeding based on same conviction. Despite fact that conviction did not constitute grounds to deport alien in original proceeding, prior to subsequent proceeding, Congress amended the definition of aggravated felony, a ground for removal, to include sexual abuse of a minor, and specifically applied new definition retroactively. Since such new definition applied to alien’s conviction for sexual assault, the second proceeding

was proper.

Even from a strict legal standard applied in judicial litigation, it has long been the law that “res judicata is no defense where between the time of the first judgment and the second there has been an intervening decision or a change in the law creating an altered situation.” *State Farm Mut. Auto. Ins. Co. v. Duel*, 324 U.S. 154, 162 (1945). Indeed, “The cases are legion which hold that res judicata is not a defense in a subsequent action where the law under which the first judgment was obtained is different than that applicable to the second action, or there has been an intervening decision, or a change in the law between the first and second judgment, creating an altered situation.” *Wagner v. Baron*, 64 So. 2d 267, 267 (Fla. 1953).

The rule was applied by the New York Court of Appeals in the administrative context in *Matter of Hodes v. Axelrod*, 70 N.Y.2d 364, 373, 515 N.E.2d 612, 617 (1987), where there had been a statutory amendment intervening between the two proceedings. The New York Court of Appeals held res judicata was inapplicable: “the operative consideration . . . is that the statutory rights of the parties were altered between the first and second proceedings. This being so, the two proceedings against petitioners can be said to lack the requisite identity for application of res judicata.” *Id.* (citing *Duel*).

Put another way, the issue presented in this action, eligibility on the subsequently amended statute and regulations were not and could not have been litigated in the earlier proceedings. Res Judicata or claim preclusion only bars a party from pursuing subsequent “litigation where the claim (1) was litigated or (2) could have been litigated.” *Catawba Indian Nation v. State*, 407 S.C. 526, 537, 756 S.E.2d 900, 906 (2014) (citing *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216,

493 S.E.2d 826, 835 (1997)). Since the issues were not, and could not, be litigated previously, res judicata is inapplicable.

Hence because both "Law of the Case" and "Res Judicata" do not apply to these proceedings the Final Order of the Board and the initial Order of this SCALC should not be allowed to stand to the extent that the ultimate denial of Appellant's request for licensing is based upon these doctrines. Appellant should be granted a license or at least the matter should be sent back to the hearing stage to produce an appropriate record.

III. Appellant's Substantive Claim

Appellant qualifies for his license pursuant to the current South Carolina statutes and regulations. Substantively the Board Final Order and this SCALC Final Order relies on the prior two matters and the statute then in effect. There is little or no direct discussion of the application of the current statute.

At page 25 of Respondent's brief, it clearly states that Dr. Castro probably hearsay report was not put into evidence at the Board hearing in 2022 and therefore could not be used/considered by the Board and this SCALC. However, Dr. Castro's report is the very basis for the two prior denials. You can't have one without the other. Since we are dealing with a new statute and regulations, it would be necessary for Dr. Castro's report to be applicable to the new statutes and regulations. Such testimony was not elicited in these proceedings. The new statutes and regulations no longer rely upon the educational criteria used by Dr. Castro in the first and second hearings pursuant to the amended 40-22-220 (B) (4), "graduation in a TAC/ABET accredited engineering technology

curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board", the Appellant graduated with TAC/ABET accredited engineering technology curriculum of four years from South Carolina State University and passed the NCEES Fundamentals of Engineering examination required by the Board, he meets the requirements of this section and should be granted a license based on meeting the requirements of (A) (B) and (C) and 49-203.

(1) The Respondent argues and the Board incorrectly interpreted 40-22-220 (A) (B) and (C) finding that the Appellant's education does not meet the current requirement for licensure. Based on the current law 40-22-220 (A) (B) and (C) the Appellant meets the requirements in 40-22-220 (A) (B) and (C). The applicant must have graduated from a four year engineering or technology program to be eligible as an engineer in training per 40-22-220 (B). The Appellant meets this requirement by obtaining a Civil Engineering Technology Degree from a TAC/ABET accredited engineering technology curriculum from South Carolina State University. Then the applicant must take and pass the Engineer in Training Exam (FE exam) to become certified as an Engineer in Training. Appellant took and passed the NCEES Fundamentals of Engineering Examination required by the Board. After Appellant passed the FE Exam he was certified as an Engineer-In-Training further meeting all requirements. All of the foregoing requirements were a prerequisite to be eligible for the Professional Engineers Exam. Then the applicant was required to have four years of progressive engineering experience under a registered engineer. Appellant worked five years under a licensed engineer to meet the

experience requirement. After meeting the experience requirement to be eligible as a Professional Engineer, the Appellant took and passed the Professional Engineers Exam and was granted an engineering license. These facts contradict the argument by the Respondent and the SCALC as the Appellant has demonstrated that he meets the requirements of 40-22-220 (A) (B) & (C). Therefore Appellant should be granted a license due to meeting requirements and the comity statute. Appellant qualifies to be licensed in the State of South Carolina, 40-22-220 and 49-203.

Furthermore, the SCALC incorrectly interpreted 40-22-220 (A) (B) & (C) arguing that the current law no longer provides an avenue for applicants such as Appellant with a TAC/ABET degree to close the gap between that degree and the required EAC/ABET degree stating that Appellant's education does not meet the current substantially equivalent requirement relied upon by the Appellant. However, this analysis was an interpretation of the prior statutes and not the current statute. On the contrary the Appellant meets this requirement by virtue of 40-22-220 (B) (4) "graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the Board". The Appellant meets this requirement by obtaining a Civil Engineering Technology Degree from a TAC/ABET accredited engineering technology curriculum from South Carolina State University. The Appellant has met the requirements of 40-22-220 (A) (B) & (C) which clearly documents that the Appellant with his 4 year technology degree does have a pathway to be granted a license and should be granted a license in the State as meeting and approved by the State Laws,

40-22-220 and 49-203.

As a result of the foregoing Appellant has demonstrated that he substantially qualifies for a license and the Board has not proven that he is not eligible for a license based on the current statutes and regulations. As a result this SCALC should rule that Appellant is entitled to a license and grant him a license or grant a rehearing of his appeal or remand this matter in its entirety to the Board to develop a complete record based on 40-22-220 and 49-203.

Also, Appellant qualifies for the requirements in subsection (C) because the requirements therein are inclusive of the requirements in subsection (B) per subsection (A). It should be noted that the fourth sentence under (C), items listed in (C) (1) & (2) are the "minimum" evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer. Also note that the requirement states in sentence 3 "the applicant also shall meet the requirements of the other pertinent sections of this chapter which includes Section 40-22-220 (B) even though it is not listed under (C) as (C) only addressed the minimum requirement it does not state that it was the only requirement. This is further confirmed by 40-22-220 (A) "A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure". Based on Section 40-22-220 (C) the Appellant has also meet the educational requirements due to "the applicant also shall meet the requirements of the other pertinent sections of this chapter" which is included by reference and being the basis for being licensed in South Carolina. Therefore, the requirements of (B) are automatically included in (C) as (C) only addressed the minimum requirements and not the entire requirement per subsection (A). Thus, the Appellant meets this requirements of the South

Carolina statutes and regulations 40-22-220 (A) (B) and (C) as well as 49-203 and the Appellant should be granted a license per the current statutes of the State.

IV. South Carolina's Requirements compared to Florida's Requirements and Appellant's Qualification

Per 49-203 (2) Licensure by Comity Laws of the State, " Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon receipt of the proper documents and payment of the fee established by the Board, be considered for licensure without further written examination". As illustrated in the Table 1 below, it confirms that the State of Florida's requirements are not less than those specified by the licensing act currently in effect in South Carolina. This table also shows that the Appellant meets the requirements of the South Carolina statutes and regulations, Appellants should be granted a license by comity because he is licensed by Florida in 2022 and the Florida requirements are not less than the South Carolina regulations.

Table 1 - Florida Requirements - Andre Brooks Qualifications compared to the South

Carolina Requirements for an engineering license

South Carolina Requirements	Florida Requirements	Appellant meets this Requirements
Education	Education	Education
B. S. Engineering Degree EAC/ABET accredited program	B. S. Engineering Degree EAC/ABET accredited program	N/A
B.S. Engineering Technology Degree ETAC/ABET accredited program	B.S. Engineering Technology Degree ETAC/ABET accredited program	Yes, B.S. Engineering Technology Degree ETAC/ABET accredited program
B. S. Degree from non - EAC/ABET - or non ETAC/ABET - Must be evaluated for equivalency	B. S. Degree from non - EAC/ABET - or non ETAC/ABET	N/A
Foreign Degree - Must be evaluated for equivalency	Foreign Degree - Must be evaluated for equivalency	N/A
Examinations	Examinations	Examinations
Pass the Fundamentals of Engineering (FE) Exam	Pass the Fundamentals of Engineering (FE) Exam	Passed the Fundamentals of Engineering (FE) Exam
*Pass the Principles & Practice Engineering Exam (PE) Exam	*Pass the Principles & Practice Engineering Exam (PE) Exam	*Passed the Principles & Practice Engineering Exam (PE) Exam
Experience	Experience	Experience
*Verified, progressive engineering experience working under a licensed PE	*Verified, progressive engineering experience working under a licensed PE	*Yes, Verified, progressive engineering experience working under a licensed PE
*Four Years if you have a B. S. in engineering	*Four Years if you have a B. S. in engineering	N/A
*Six years if you have a B. S. in engineering Technology	*Four years if you have a B. S. in engineering Technology	*Yes, six years of experience

*Indicates required before applicant can sit for the PE Exam

Finally, the issue of comity must be addressed. The South Carolina statutes and regulations were amended in 2016. Appellant obtained a license from Florida in 2022 before commencing

these proceedings. Florida's licensing laws are comparable to the South Carolina. Statute 49-203 (A)(2) clearly allows Appellant the right to be licensed as a result of comity as documented and confirmed in the table above.

CONCLUSION

The SCALC's review of this motion must determine that the Board's decision violates the current law, exceeds its authority, involved unlawful procedure, rests on error of law, was not supported by evidence, was arbitrary, or was an abuse of discretion. Because the Board and the SCALC improperly applied the legal theories of "law of the case" and "res judicata" in their relative determinations, because Appellant factually qualifies for licensure under the present statute, and because Appellant obtained a license in Florida after the South Carolina statute and regulations were amended, Appellant should be granted a license based upon qualification and/or comity or a rehearing on this appeal, or the matter remanded to the Board in order to create an complete appropriate record. Furthermore, because insufficient admissible testimony was not presented at the Board, Appellant should be granted a license or rehearing herein or the matter remanded to the Board for a determination of whether Appellant qualifies for the requested license pursuant to the statutes in effect in 2022 in order to avoid a miscarriage of justice.

Dated: March 21, 2023

/s/ ANDRE R. BROOKS

EXHIBIT 1

SECTION 40-22-20. Definitions.

As used in this chapter:

(1) "ABET" means the Accreditation Board for Engineering and Technology. "EAC" means the Engineering Accreditation Commission of ABET. "TAC" or "ETAC" means the Engineering Technology Accreditation Commission of ABET.

(2) "Approved engineering curriculum" means an engineering program of four or more years determined by the board to be substantially equivalent to that of an EAC/ABET accredited curriculum or the NCEES Engineering Education Standard.

SECTION 40-22-220. Licensure requirements; engineer-in-training; professional engineer; examination.

(A) A person having the necessary qualifications prescribed in this chapter to entitle him to registration is eligible for licensure. A person must be certified as an engineer-in-training as a prerequisite to licensure.

(B) **To be eligible for certification as an engineer in training**, an applicant must be of good character and reputation and be able to communicate effectively in the English language. The minimum evidence satisfactory to the board that an applicant is qualified for certification as an engineer-in-training is:

(1) graduation from an EAC/ABET accredited engineering curriculum of four or more years and passing NCEES Fundamentals of Engineering examinations required by the board;

- (2) graduation in a bachelor's degree program, completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET, and passing the NCEES Fundamentals of Engineering examination;
- (3) graduation in a bachelor's degree program, completion of an engineering curriculum found to meet the NCEES Engineering Education Standard, and passing the NCEES Fundamentals of Engineering examination; or
- (4) graduation in a TAC/ABET accredited engineering technology curriculum of four or more years from a school or college approved by the board as being in satisfactory standing, and passing the NCEES Fundamentals of Engineering examination required by the board.

(C) **To be eligible for licensure and registration as a professional engineer**, an applicant must be of good character and reputation and be able to communicate effectively in the English language. When the evidence presented in the application does not appear conclusive to the board or does not warrant the issuing of a license, the applicant may be required to present further evidence for consideration by the board. The applicant also shall meet the requirements of the other pertinent sections of this chapter. The minimum evidence satisfactory to the board that an applicant is qualified for licensure as a professional engineer is:

(1)(a) graduation in an EAC/ABET accredited engineering curriculum of four or more years from a school or college approved by the board as being in satisfactory standing;

(b) a specific record after graduation of four or more years of progressive experience in engineering work, supervised by a licensed engineer and of a character satisfactory to the

board, indicating that the applicant is competent to practice engineering; and

(c) passing an NCEES examination required by the board; or

(2)(a) graduation in a bachelor's degree program and completion of an engineering curriculum found to be substantially equivalent to an engineering curriculum accredited by EAC/ABET;

(b) a specific record after graduation of four or more years of progressive experience in engineering work supervised by a licensed engineer or of a character satisfactory to the board, indicating that the applicant is competent to practice engineering; and

(c) passing the NCEES examination required by the

board; or (3)(a) graduation from a bachelor's degree program;

(b) completion of an engineering curriculum that meets the NCEES Engineering Education Standard;

(c) accrual of a specific record after graduation of four or more years of progressive experience in engineering work;

(i) supervised by a licensed engineer or of a character satisfactory to the board; and indicating that the applicant is competent to practice engineering, and passing NCEES examinations required by the board.

49-203. Licensure by Comity.

A. Professional Engineer.

(1) An application will be considered for licensure by comity from an applicant who is appropriately licensed in another jurisdiction and has not been previously licensed in this State.

(2) Any applicant holding a valid license to practice engineering issued by a proper authority of a jurisdiction or possession of the United States, based on requirements not less than those specified by the applicable licensure act in effect in the State of South Carolina at the time such other license was issued, may, upon receipt of the proper documents and payment of the fee established by the Board, be considered for licensure without further written examination.

(3) A Model Law Engineer applicant may be licensed as a Professional Engineer by making application on the prescribed form and having the NCEES Council Record sent to the Board. To be considered, the Council Record must be submitted directly to the Board by NCEES. Upon receipt of the proper documents and payment of the fee established by the Board, a Model Law Engineer applicant may be licensed as a Professional Engineer upon further review.

EXHIBIT 2
APPELANTS FLORIDA LICENSE



2400 Mahan Dr.
Tallahassee, FL 32308
Phone: (850) 521-0500
fbpe.org

RON DeSANTIS, GOVERNOR
STATE OF FLORIDA

JULIE I. BROWN, SECRETARY
DEPT. OF BUSINESS AND PROFESSIONAL REGULATION

January 12, 2022

Andre Brooks
19200 CANTERBURY RD,
DETROIT, MI 48221

Congratulations! You are now a Professional Engineer in the state of Florida. Your PE number is **93110**.
Your wall certificate is enclosed.

To print your PE license:

- Go to myfloridalicense.com, select "My Account" from the menu at the upper right
- Select "Create My Account" and follow the instructions
- Link your license to your account by entering your PE number and your initial activation code (the last four digits of your Social Security number or tax number provided on your application)
- Select your license, which will now be listed on the right side of the main menu
- Under "Functions" section, select "Versa Online Active License Print" and follow the prompts.

A printable PDF will be emailed to the email address associated with your account within 30 minutes.
(Visit FBPE.org for step-by-step instructions.)

To purchase your seal, contact a local office supply store, or call the Florida Engineering Society at (850) 224-7121.

Again, congratulations on your accomplishment, and welcome to the engineering profession.

Sincerely,

Zana Raybon, Executive Director
Florida Board of Professional Engineers

Board Members:

C. KEVIN FLEMING, PE
CHAIR (Electrical)
3/27/15-10/31/22

JEB MULLOCK, PE
(Engineering)
6/8/21-10/31/21

DENISE RAMSEY, PE
(Engineering)
6/8/21-10/31/23

VACANCY
(Public)

SCOTT DRURY, PE
VICE CHAIR (Mechanical)
2/21/18-10/31/21

YASSI MYERS, PE
(Engineering)
6/8/21-10/31/23

PANKAJ (PJ) SHAH, PE
(Civil)
5/25/17-10/31/24

VACANCY
(Public)

DYLAN ALBERGO, PE
(Civil)
2/21/18-10/31/21

JOHN PISTORINO, PE
(Education)
6/8/21-10/31/23

BABU VARGHESE, PE, SI
(Structural)
2/20/15-10/31/24

ZANA RAYBON
Executive Director



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



FBPE
FLORIDA BOARD OF
PROFESSIONAL ENGINEERS

STATE OF FLORIDA

BOARD OF PROFESSIONAL ENGINEERS

THE PROFESSIONAL ENGINEER HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 471, FLORIDA STATUTES

BROOKS, ANDRE

19200 CANTERBURY RD
DETROIT MI 48221

LICENSE NUMBER: PE93110

EXPIRATION DATE: FEBRUARY 28, 2025

Always verify licenses online at MyFloridaLicense.com



Do not alter this document in any form.

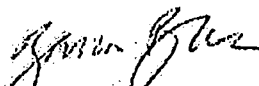
This is your license. It is unlawful for anyone other than the licensee to use this document.

The
FLORIDA BOARD OF
PROFESSIONAL ENGINEERS

PRESENTS THIS
CERTIFICATE OF COMPLETION

TO
Andre Brooks

FOR THE FBPE ONLINE STUDY GUIDE


Zana Raybon, Executive Director

10/30/21
Date

DOES NOT COUNT TOWARD CONTINUING EDUCATION REQUIREMENTS.

EXHIBIT 3

South Carolina State University Education Evaluation



South Carolina State University
COLLEGE OF SCIENCE, TECHNOLOGY, ENGINEERING,
MATHEMATICS, AND TRANSPORTATION
300 COLLEGE AVENUE, N.E.
ORANGEBURG, SOUTH CAROLINA 29117
(803) 536-7117

DEPARTMENT OF ENGINEERING

May 21, 2022

South Carolina Board of Registration
For Professional Engineers and Land Surveyors
Division of Professional and Occupational Licensing
Department of Labor, Licensing and Regulation
P.O. Box 11597
Columbia, SC 29211-1597

Attention: Ms. Leonora Addison-Miles, Administrator
Board of Registration for Professional Engineers and Land Surveyors
Re: Andre Brooks Education Evaluation

Dear Ms. Addison-Miles,

I have completed the education evaluation of Mr. Andre Brooks's degree in Civil Engineering Technology against the Curriculum Criterion of EAC/ABET-accredited programs (1986). The EAC/ABET education program has five areas of concentration, College-Level Mathematics (16 credits), Basic Sciences (16 credits) Humanities/Social Science (16 credits), Engineering Science (32 credits), and Engineering Design (16 credits). Based on the SC Code of Laws Section 40-22-220, items B2 & B4 the coursework completed by Mr. Brooks was assigned to the five areas listed above. Mr. Brooks took additional math classes at Oakland Community College, Calculus III – 4 credits and Differential Equations – 3 credits. Mr. Brooks also took additional engineering design courses from Wayne State University, which has an EAC/ABET-accredited engineering program, Water and Sewerage Systems – 3 credits and Environmental Engineering – 3 credits. These additional courses were required by the Michigan Board based on the education evaluation completed by them. The Michigan board utilizes the EAC/ABET-accredited program requirements when Mr. Brooks' education was evaluated which is also used by the SC Board. After Mr. Brooks completed the additional coursework required to bring his coursework to a standard substantially equivalent to an EAC/ABET-accredited program, the Michigan Board granted him access to take the FE and PE exams.

I have completed my review of Mr. Brooks' education, he has satisfied the education requirements of the five EAC/ABET education areas listed above. Based on my evaluation, Mr. Brooks' education is substantially equivalent to an EAC/ABET-accredited program as referenced in the Rules and Regulations of South Carolina.

Farajpour
Ismail Farajpour, Ph.D., P.E.
Associate Professor of Civil Engineering
Department of Engineering
South Carolina State University
300 College Avenue
Orangeburg, SC, 29115
Phone: 803-536-7081
Email: ifarajpo@scsu.edu

Name: **Andre Brooks, PE**
 College: **South Carolina State College**
 Graduated: **CET 1986**
 Evaluation of South Carolina State's CET program against the ABET Criteria

The Coursework listed below represents a summary of the courses that were taken and being evaluated against the ABET education criteria which is summarized in the five subject areas below.

Coursework Completed		Credit Hours Earned
One Half Year of Math (16 sem -hrs) ABET		
M100A	Basic Skills Math	3
M102C	Fund of Math I	3
M103C	Fund of Math II	3
M203C	Anal Geo & Calculus I	3
M204-03	Anal Geo & Calculus II	3
MAT271	Calculus III (Oakland Community College)	3
MAT273	Calculus IV Differential Equations (Oakland Community College)	4
Total	16 hours required Mr. Brooks has 16 hours	22
One Half Year of Basic Sciences (16 sem -hrs) ABET		
C103D	Chemistry I (with Lab)	4
C104D	Chemistry II (with Lab)	4
P201A	Physics I (with Lab)	4
P202A	Physics II (with Lab)	4
Total	16 hours required Mr. Brooks has 16 hours	16
One Half Year of Humanities/Social Sciences (16 sem -hrs) ABET		
E100A	English Essentials	3
E101F	English Comp & Comm	3
E102C	English Comp & Comm	3
H201J	Humanities I	3
H202E	Humanities II	3
H301A	Humanities III	3
MS102B	Gen Military Subjects	3
S103Q	Speech Communication	3
S205B	Public Speaking	3
Total	16 hours required Mr. Brooks has 27	27
One Year of Engineering Sciences (32 sem -hrs) ABET		
CET101C	Mechanical Drawing	2
CET102A	Mechanical Drawing	2
CET202-01	Mechanical Drawing	3
CET203A	Technical Drafting	3
CET204A	Technical Drafting	3
CET212C	Statics	3
CET213A	Strenght of Materials	3
EET271B	Intro to solid State Electronics (Circuits)	3
CET310A	Engineering Computing	3
CET311A	Plane Surveying	3
CET312A	Route Surveying	3
CET313A	Dynamics	3
MET421-01	Thermodynamics	3
ECON205E	Engineering Economics	3
CET315A	Construction I	3
CET316A	Construction II	3
CET412A	Contracts, Reg. Codes & Records	3
CET415A	Fluid Mechanics and Hydraulics	3
CET416	Hydraulics Laboratory	0
CET418A	Soil Mechanics	3
CET170A	Intro to Engineering	2
CET417A	Mechanics of Materials Lab	3
Total	32 hours required Mr. Brooks has 60 hours	60
One Half Year of Engineering Design (16 sem -hrs) ABET		
CET320-01	Highway Engineering (Transportation)	3
CET413A	Structural Design I (Structures)	3
CET414A	Structural Design II (Structures)	3
CET419A	Foundation Engineering (Geotechnical)	3
CET420A	Water and Sewage Systems (Civil)	3
CE421	Water Resources (Wayne State University - Water/Wastewater)	3
CE422	Environmental Engineering (Wayne State University - Environmental)	3
Total	16 hours required Mr. Brooks has 21 hours	21

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Docket No. 22-ALJ-11-0313-AP

Andre R. Brooks, P.E., ...Appellant,

vs

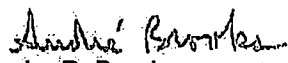
South Carolina Department of Labor, Licensing and Regulations,
South Carolina Board of Registration for
Professional Engineers, and Surveyors Respondent.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2023, in Columbia, SC, I served Appellant's Motion to
Appeal onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Honorable Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent


Andre R. Brooks, pro se
19200 Canterbury Rd.
Detroit, MI 48221

May 10, 2023

~~8.1~~

8

STATE OF SOUTH CAROLINA
Administrative Law Court

Robert L. Reibold
Administrative Law Judge

PHONE: (803) 734-0550
FAX: (803) 734-6400
WEB: WWW.SCALC.NET

May 16, 2023

Mr. Andre Brooks
19200 Canterbury Rd
Detroit, MI 48221

Re: *Andre Brooks vs. South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Professional Engineers and Surveyors*, Docket No. 22-ALJ-11-0313-AP

Dear Mr. Brooks:

As you are aware, the South Carolina Administrative Law Court (the ALC or the Court) filed and served its final order on February 6, 2023.¹ Thereafter, the Court granted you an extension to file and serve your motion for rehearing and stated "Appellant shall have until March 20, 2023, to file his motion for rehearing with the Court, serve the [South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Professional Engineers and Surveyors (the Board)] with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

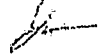
On March 21, 2023, you filed, served, and emailed the motion for rehearing. By order dated March 30, 2023, the Court denied your motion because the Court concluded your motion was untimely. On April 11, 2023, you filed a "motion to extend time for late filing of motion of reconsideration," and by order dated April 28, 2023, the Court denied the aforementioned motion.

On May 16, 2023, I received a document titled "Appellant's Appeal of Final Order" and a filing fee of \$50.00 that was made payable to the ALC. This filing appears to be a successive motion for a rehearing. See, e.g., App.'s Appeal of Final Order at 15 ("The SCALC's review of this motion. . ."). As such, I am returning your motion and filing fee to you.

[Signature block to follow on the next page.]

¹ For a full discussion of the history of the case since the Court filed and served its final order, see the statement of the case from *Brooks v. South Carolina Department of Labor, Licensing and Regulation*, Docket No. 22-ALJ-11-0313-AP (S.C. Admin. L. Ct. order filed April 28, 2023).

Sincerely,



JTH

James Smith Harrison, III

Law Clerk to The Honorable Robert L. Reibold

cc: Mr. Timothy Kyle Tennis, Esq., Office of General Counsel, South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Professional Engineers and Surveyors

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this letter upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).


James Smith Harrison, III
Judicial Law Clerk

May 16, 2023
Columbia, South Carolina

9

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Case No. 22-ALJ-11-0313-AP

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

v.

Andre, Brooks, PE,	Appellant.
--------------------	------------

NOTICE OF APPEAL

Andre Brooks, PE appeals the decision of the Honorable Robert L. Reibold dated May April 28, 2023. Appellant received a copy of this decision on April 28, 2023.

May 20, 2023

s/ Andre Brooks, PE
19200 Canterbury Road
Detroit, Michigan 48221
(313) 475-2549
Andre Brooks, PE, pro se

The Honorable Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Case No. 22-ALJ-11-0313-AP

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

Respondent,

v.

Andre, Brooks, PE,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Administrative Law Court and the Respondent, T. Kyle Tennis in this matter by mailing to the addresses as follows:

The Honorable Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

May 20, 2023

s/ Andre Brooks, PE
19200 Canterbury Road
Detroit, Michigan 48221
(313) 475-2549
Andre Brooks, PE, pro se

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Andre Brooks,

Appellant,

vs.

South Carolina Labor, Licensing and
Regulation, South Carolina Board of
Registration for Professional Engineers and
Surveyors,

Respondent.

Docket No. 22-ALJ-11-0313-AP

**ORDER DENYING APPELLANT'S
MOTION TO EXTEND THE TIME TO
FILE HIS MOTION FOR REHEARING**

STATEMENT OF THE CASE

This matter is pending before the South Carolina Administrative Law Court (the ALC or the Court) for an administrative appeal filed by Andre Brooks (Appellant) pursuant to section 1-23-600(D) of the South Carolina Code (Supp. 2022). In this appeal, Appellant challenges the final administrative order of the South Carolina Department of Labor, Licensing and Regulation, South Carolina Board of Registration for Professional Engineers and Surveyors (the Board) in which the Board denied Appellant's application for licensure by comity as a professional engineer in South Carolina. This matter was assigned to the undersigned on September 1, 2022. The Board filed the record on appeal on October 11, 2022. On November 10, 2022, Appellant filed his brief. On December 6, 2022, the Board moved for an extension to file its brief, which the Court granted on December 9, 2022. Thus, the Board filed its brief on January 13, 2023, and Appellant filed his reply brief on January 23, 2023.

The Court filed and served its final order on February 6, 2023. On Thursday, February 16, 2023, at 5:00 P.M., Appellant emailed the Court and the Board. In the email, Appellant stated the following: "Attached is the motion for an extension in the above captioned matter. [Counsel for the Board] is copied on the email and a hard copy will be mailed to both parties." The attached motion stated Appellant was seeking "an extension to file a Motion of Reconsideration, with the Motion of Reconsideration being due no later than March 20, 2023." *See generally* SCALC Rule 40 (providing for motions for rehearing in appeals). Appellant cited SCALC Rules 3(C) and 37(A). Appellant's certificate of service for the motion reflected that Appellant "served" the

motion by placing the motion in the mail to the Court's mailing address; the certificate of service listed the Board as being served, but no address was listed. Additionally, in Appellant's cover letter to the motion, Appellant stated the following: "Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File a Motion of Reconsideration for the Court in the above-captioned matter. The Respondent will be mailed a copy of Appellant's Motion today."

At 5:11 P.M. on February 16, 2023, the Court confirmed receipt of Appellant's email and electronic attachment. On Tuesday, February 21, 2023, counsel for the Board stated the following: "I've received Appellant's attached motion. Respondent does not intend to file an objection or formal response to the motion."

As of February 27, 2023, the Court had not received Appellant's motion to enlarge the time to file his motion for rehearing. Accordingly, on February 27, 2023, the Court issued a status order about Appellant's motion. The status order stated the following: (1) Appellant shall file an affidavit with the Court, serve the same upon the Board, and email a copy to both by March 9, 2023, at 12:00 P.M. to explain if Appellant did in fact place the motion for an extension in the U.S. mail to the Court and the Board on February 16, 2023; (2) if Appellant did not comply with the prior conditions, the Court would deem this as a waiver; and (3) if Appellant in fact filed and served the motion for an extension on February 16, 2023, then Appellant needed to resend the motion and filing fee to the Court on or by March 9, 2023, at 12:00 P.M.

On March 8, 2023, Appellant filed, served, and emailed a copy of the documents that were outlined in the Court's February 27, 2023 order.¹ Specifically, Appellant explained that he did in fact place his motion in the U.S. mail on February 16, 2023, and he was uncertain of the status of his prior motion in the U.S. mail. He also provided the filing fee and copy of the prior motion. The Court therefore concluded that Appellant timely filed a motion for an extension of time in which to file a motion for rehearing. Accordingly, on March 14, 2023, the Court granted Appellant's motion and provided the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

On March 21, 2023, Appellant emailed the Court and the Board a copy of his motion for rehearing and a filing in support of the motion. In the email, Appellant stated the motion and filing

¹ The Court notes that Appellant included the Board's mailing address with the certificate of service dated February 16, 2023.

in support were being mailed to the Court and the Board on March 21, 2023. Additionally, Appellant's motion and certificate of service were dated March 21, 2023. Appellant raised several arguments related to the Board's brief and the Court's order dated February 6, 2023. Specifically, Appellant requested the following relief: "[that he be] granted a license or a rehearing of the within matter or a setting aside of this [ALC] order Feb 6, 2023 and a remand to the Board to develop a more complete record or order the Board to grant Appellant a license." On March 30, 2023, the Court denied Appellant's motion because the motion was untimely. Accordingly, the Court declined to rule on the other grounds raised in Appellant's motion.

On April 11, 2023, Appellant filed a "motion to extend time for late filing of motion of reconsideration." In the motion, Appellant stated the following:

Due to continued health issues of... Appellant, as well as continued unexpectedly high volume of work, meetings[,] 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 requests the Court to grant an extension for late filing of the motion of Reconsideration, with the extended filing date of the Motion of Reconsideration being due no later than March 22, 2023[,] to allow for on time filing of the Motion to Reconsider. Due to the continued health issues of... Appellant and other issues referenced above beyond my control, Appellant respectfully request that this court grant... Appellant's Motion for Late Filing request.

As of the date of this order, the Court has not received a response from the Board on Appellant's present motion.

DISCUSSION

Appellant requests that the Court issue an order again extending the time for him to file his motion for rehearing. The Court denies Appellant's request.

SCALC Rule 40 provides that a motion for rehearing "must be filed within ten days of receipt of the order." Moreover, SCALC Rule 38 permits the Court to deny a motion for rehearing if the party seeking the rehearing fails to comply with the Court's order setting the deadline for such motion to be filed and served. *See id.* ("Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or *resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to*

comply with any of the time limits provided in these rules or by order of the Court." (emphasis added)).

Pursuant to SCALC Rule 3(B), the Court granted Appellant's initial requested relief to have his motion for rehearing "due no later than March 20, 2023." *See id.* ("For good cause shown, the administrative law judge may extend or shorten the time to take any action, except as otherwise provided by rule or law."). Specifically, in the Court's March 14, 2023 order, the Court ordered the following: "Appellant shall have until **March 20, 2023**, to file his motion for rehearing with the Court, serve the Board with his motion for rehearing; and e-mail the same to both the Court and the Board at the time of filing and serving the motion."

Appellant emailed, filed, and served his motion for rehearing on March 21, 2023—after the deadline that he requested in his motion for an extension and the date that the Court ordered on March 14, 2023. Accordingly, the Court determined Appellant's motion for rehearing was untimely, and the Court denied Appellant's motion for rehearing based on the untimeliness of said motion.

Presently, Appellant is yet again seeking an extension of time. The Court was receptive of Appellant's first request for an extension of time to file and serve his motion for rehearing, which was why the Court granted Appellant the deadline he sought. The deadline Appellant requested passed without any motions from Appellant seeking to extend the time again. Had Appellant sought an additional extension prior to the expiration of the initial extension, the Court might have been inclined to grant that request, but Appellant made no such motion. Moreover, Appellant's motion for an extension relies upon the same generic considerations which supported the first motion and make no mention of any changed or new circumstance requiring even more time. As of today's date, almost three months have elapsed since the Court issued the final order on February 6, 2023. At some point, finality is required.

The Court is aware the consequences of its decision may appear harsh, and the Court is cognizant about Appellant's statements about seeking counsel. However, while Appellant is pro se, he is still obligated to follow the substantive and procedural requirements of the law. *See State v. Policao*, 402 S.C. 547, 558, 741 S.E.2d 774, 779-80 (Ct. App. 2013) ("A pro se litigant who knowingly elects to represent himself [or herself] assumes full responsibility for complying with substantive and procedural requirements of the law." (quoting *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003))); *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 403, 368

S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable[,] and the court will not hold a layman to any lesser standard than is applied to an attorney."). Accordingly, the Court concludes Appellant's motion should be denied.

ORDER

IT IS THEREFORE ORDERED that Appellant's motion is **DENIED**.
AND IT IS SO ORDERED.



Robert L. Reibold
Administrative Law Judge

April 28, 2023
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, James Smith Harrison, III, hereby certify that I have this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



James Smith Harrison, III
Judicial Law Clerk

April 28, 2023
Columbia, South Carolina

9.A



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 31, 2023

Andre Brooks, PE
19200 Canterbury Road
Detroit MI 48221

Mr. Timothy Kyle Tennis, Esquire
PO Box 11329
Columbia SC 29211

Re: Andre Brooks v. SCDLLR
Appellate Case No. 2023-000825

Dear Counsel and Mr. Brooks:

This Court has received your notice of appeal. A preliminary review of the order(s) challenged on appeal indicates it might not be appealable.

Accordingly, it is requested that you serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memorandum.

Very truly yours,

A handwritten signature in cursive script, reading "Jenny A. Kitchings".

CLERK

9.B



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

June 1, 2023

Andre Brooks, PE
19200 Canterbury Road
Detroit MI 48221

Re: Andre Brooks v. SCDLLR
Appellate Case No. 2023-000825

Dear Mr. Brooks:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review

filings for redaction or to determine if materials should be sealed.

This is to advise that the title in the above matter has been changed to read as follows:

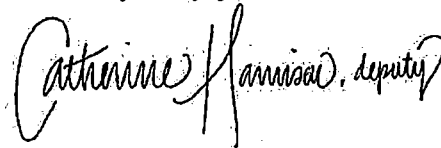
Andre Brooks, Appellant,

v.

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

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harnissau, deputy". The signature is written in dark ink and is positioned above the typed name "CLERK".

CLERK

cc: Timothy Kyle Tennis, Esquire

~~41~~
10

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Case No. 22-ALJ-11-0313-AP

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

v.

Andre, Brooks, PE,	Appellant.
--------------------	------------

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Administrative Law Court and the Respondent, T. Kyle Tennis in this matter by mailing to the addresses as follows:

The Honorable Robert L. Reibold
Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Ste. 224
Columbia, SC 29201-3731

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

May 20, 2023

s/ Andre Brooks, PE
19200 Canterbury Road
Detroit, Michigan 48221
(313) 475-2549
Andre Brooks, PE, pro se

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

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

v.

Andre, Brooks,	Appellant.
----------------	------------

APPEALABILITY MEMORANDUM

On May 31, 2023, a letter was received from the court requesting that the Appellant and the Respondent file a memo of appealability based on a preliminary review that the order challenged on appeal might not be appealable.

The order is appealable based on the following:

On March February 6, 2023, the ALC issued a Final Order regarding case No. 22-ALJ-11-0313-AP was issued by the court.

On February 16, 2023, a motion to extend time to file the motion of reconsideration was filed with the ALC by the Appellant.

On March 14, 2023, the court granted the extension of time to file the motion for rehearing. The motion for rehearing was due on March 20, 2023.

On March 21, 2023, the Appellant filed a motion for a rehearing.

On March 30, 2023, the court denied the motion for rehearing because the motion was untimely, the motion was due on March 20, 2023.

On April 10, 2023, the appellant filed a motion to extend time for late filing of the motion to reconsider with the ALC due to a hardship. The Motion to reconsider was due on March 20, 2023, the Appellant submitted it on March because of the hardship.

On April 28, 2023, the court issued an order denying the Appellant's motion to extend time for late filing of the motion to reconsider.

On May 20, 2023, a Notice of Appeal was filed with the South Carolina Court of Appeals. Hard copies were sent to the Court of Appeals, the ALC and the SCDLLR.

The Notice of Appeal was filed timely after receiving the order regarding the motion to extend time from the Honorable Robert L. Reibold dated May April 28, 2023. The order challenged on appeal is appealable based on the timeline of the of the case listed above and court rules of the South Carolina Appellant Court. If the Court is unable to grant this appeal, the Appellant will suffer an irreparable harm and will further delay his ability to present the merits of his case.

June 8, 2023

s/ Andre Brooks, PE
19200 Canterbury Road
Detroit, Michigan 48221
(313) 475-2549
Andre Brooks, PE, pro se
Appellant

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

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11

The South Carolina Court of Appeals

Andre Brooks, Appellant,

v.

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

Appellate Case No. 2023-000825

ORDER

After careful consideration of the parties' memoranda regarding appealability, this appeal may proceed as to the Administrative Law Court's April 28, 2023 order only. First, the April 28, 2023 order is the only order Appellant included with his notice of appeal to this court, pursuant to Rule 203(d)(2)(B)(ii), SCACR (providing a notice of appeal from the ALC shall be accompanied by "[a] copy of the decision(s) to be challenged on appeal"). Moreover, Appellant's March 21, 2023 motion for reconsideration was untimely, and therefore did not operate to toll the time for serving and filing the notice of appeal of the ALC's February 6, 2023 final order. *See* Rule 40, SCALC ("A motion for rehearing must be filed within ten days of receipt of the order. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion."); Rule 203(b)(6), SCACR ("If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion.").

Because Appellant failed to serve and file his notice of appeal within thirty days of receipt of the ALC's final order, and no timely motion for reconsideration tolled the time for serving and filing the notice of appeal, this court has no jurisdiction over the February 6, 2023 order. *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."). However, Appellant did serve and

file his notice of appeal within thirty days of receipt of the ALC's April 28, 2023 order, denying his second motion to allow late filing of his motion for reconsideration. Accordingly, if Appellant chooses to proceed, issues on appeal will be limited to the April 28 order only; the parties may not argue the merits of the case because the final order is not properly before this court.



FOR THE COURT

Columbia, South Carolina

cc:

Andre Brooks, PE

Timothy Kyle Tennis, Esquire

FILED
Jul 19 2023

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12

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

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

Respondent,

v.

Andre, Brooks,

Appellant.

MOTION TO EXTEND TIME TO FILE DESIGNATION OF MATTER AND
INITIAL BRIEF

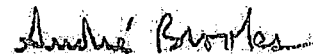
August 17, 2023

Honorable John D. Geathers
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

Dear Judge Geathers:

Please find enclosed the original and one copy of Appellant's Motion to Extend Time to File the Designation of Matter and Initial Brief for the Court in the above-captioned matter. The Respondent will be mailed a copy of the Appellant's Motion today.

Respectfully Submitted,



Andre Brooks, *pro se*

Enclosure

Cc: Respondent

STATE OF SOUTH CAROLINA
COURT OF APPEALS

Andre Brooks,

Appellant,

vs.

South Carolina Department of Labor,
Licensing and Regulation, South
Carolina Board of Registration for
Professional Engineers and Surveyors,

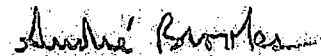
Respondent.

Appellant Case No. 2023-000825

**APPELLANT'S MOTION TO
EXTEND TIME TO FILE THE
DESIGNATION OF MATTER
AND INITIAL BRIEF**

Appellant respectfully moves this Court to grant Appellant's Motion to Extend Time to file Designation of Matter and Initial Brief in the above-captioned matter. Appellant's Designation of Matter and Initial Brief is currently due August 18, 2023. Due to health issues of the Appellant, as well as an unexpectedly high volume of work, and meetings as well as seeking to retain counsel to file the Designation of Matter and Initial Brief. Appellant respectfully requests an extension to file Designation of Matter and Initial Brief, being due no later than September 15, 2023. This is Appellant's first request for an extension in this matter.

Respectfully Submitted,



August 17, 2023

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

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

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

Respondent,

v.

Andre, Brooks,

Appellant.

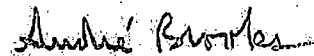
CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2023, in Columbia, South Carolina, I served Appellant's Motion to Extend Time to File the Designation of Matter and Initial Brief onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Hon. John D. Geathers
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Respectfully Submitted,



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

Columbia, South Carolina
August 17, 2023

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13



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

August 18, 2023

Andre Brooks, PE
19200 Canterbury Road
Detroit MI 48221

Re: Andre Brooks v. SCDLLR
Appellate Case No. 2023-000825

Dear Mr. Brooks:

Upon reviewing your motion for extension of time, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your filing will not be considered:

- The required filing fee has not been submitted. The correct filing fee is \$50.00.

Very truly yours,

A handwritten signature in cursive script, reading "Jenny A. Kitchings".

CLERK

cc: Timothy Kyle Tennis, Esquire

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14

The South Carolina Court of Appeals

Andre Brooks, Appellant,

v.

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

Appellate Case No. 2023-000825

The Honorable Robert Lawrence Reibold
Trial Court Case No. 2022ALJ110313AP

ORDER

The time for serving and filing the initial brief of appellant and designation of matter is hereby extended until September 15, 2023.

FOR THE COURT
BY Catherine Hannissaw, deputy
CLERK

Columbia, South Carolina

cc:
Andre Brooks, PE
Timothy Kyle Tennis, Esquire

FILED
Aug 28 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

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

v.

Andre, Brooks,	Appellant.
----------------	------------

APPEALABILITY MEMORANDUM

On May 31, 2023, a letter was received from the court requesting that the Appellant and the Respondent file a memo of appealability based on a preliminary review that the order challenged on appeal might not be appealable.

The order is appealable based on the following:

On March February 6, 2023, the ALC issued a Final Order regarding case No. 22-ALJ-11-0313-AP was issued by the court.

On February 16, 2023, a motion to extend time to file the motion of reconsideration was filed with the ALC by the Appellant.

On March 14, 2023, the court granted the extension of time to file the motion for rehearing. The motion for rehearing was due on March 20, 2023.

On March 21, 2023, the Appellant filed a motion for a rehearing.

On March 30, 2023, the court denied the motion for rehearing because the motion was untimely, the motion was due on March 20, 2023.

On April 10, 2023, the appellant filed a motion to extend time for late filing of the motion to reconsider with the ALC due to a hardship. The Motion to reconsider was due on March 20, 2023, the Appellant submitted it on March because of the hardship.

On April 28, 2023, the court issued an order denying the Appellant's motion to extend time for late filing of the motion to reconsider.

On May 20, 2023, a Notice of Appeal was filed with the South Carolina Court of Appeals. Hard copies were sent to the Court of Appeals, the ALC and the SCDLLR.

The Notice of Appeal was filed timely after receiving the order regarding the motion to extend time from the Honorable Robert L. Reibold dated May April 28, 2023. The order challenged on appeal is appealable based on the timeline of the of the case listed above and court rules of the South Carolina Appellant Court. If the Court is unable to grant this appeal, the Appellant will suffer an irreparable harm and will further delay his ability to present the merits of his case.

June 8, 2023

s/ Andre Brooks, PE
19200 Canterbury Road
Detroit, Michigan 48221
(313) 475-2549
Andre Brooks, PE, pro se
Appellant

T. Kyle Tennis
S. C. Department of Labor, Licensing
and Regulation
P. O. Box 11329
Columbia, S. C. 29211-1329
Respondent

The South Carolina Court of Appeals

Andre Brooks, Appellant,

v.

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

Appellate Case No. 2023-000825

ORDER

After careful consideration of the parties' memoranda regarding appealability, this appeal may proceed as to the Administrative Law Court's April 28, 2023 order only. First, the April 28, 2023 order is the only order Appellant included with his notice of appeal to this court, pursuant to Rule 203(d)(2)(B)(ii), SCACR (providing a notice of appeal from the ALC shall be accompanied by "[a] copy of the decision(s) to be challenged on appeal"). Moreover, Appellant's March 21, 2023 motion for reconsideration was untimely, and therefore did not operate to toll the time for serving and filing the notice of appeal of the ALC's February 6, 2023 final order. *See* Rule 40, SCALC ("A motion for rehearing must be filed within ten days of receipt of the order. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion."); Rule 203(b)(6), SCACR ("If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion.").

Because Appellant failed to serve and file his notice of appeal within thirty days of receipt of the ALC's final order, and no timely motion for reconsideration tolled the time for serving and filing the notice of appeal, this court has no jurisdiction over the February 6, 2023 order. *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985) ("Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served."). However, Appellant did serve and

file his notice of appeal within thirty days of receipt of the ALC's April 28, 2023 order, denying his second motion to allow late filing of his motion for reconsideration. Accordingly, if Appellant chooses to proceed, issues on appeal will be limited to the April 28 order only; the parties may not argue the merits of the case because the final order is not properly before this court.



FOR THE COURT

Columbia, South Carolina

cc:

Andre Brooks, PE

Timothy Kyle Tennis, Esquire

FILED
Jul 19 2023

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

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

Respondent,

v.

Andre, Brooks,

Appellant.

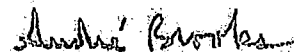
CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2023, in Columbia, South Carolina, I served Appellant's Motion to Extend Time to File the Designation of Matter and Initial Brief onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Hon. John D. Geathers
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Respectfully Submitted,



Andre Brooks, pro se
19200 Canterbury Rd.
Detroit, MI 48221

Columbia, South Carolina
August 17, 2023

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15

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

THE STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Docket No. 22-ALJ-11-0313-AP

Andre R. Brooks, P.E. Appellant,

vs

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

BRIEF OF THE APPELLANT

Andre R. Brooks, *pro se*
19200 Canterbury Rd.
Detroit, MI 48221
September 15, 2023

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.

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 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.

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.

FORM 14
DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Honorable Robert Lawrence Reibold

Trail Court Case No. 2022ALJ110313AP

Case No. 2023-000825

South Carolina Department of Licensing,
and Regulation, South Carolina Board of
Registration for Professional Engineers
and Surveyors

Timothy Kyle Tennis, Esquire,

Respondent,

v.

Andre Brooks,

Appellant.

DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

1. Motion to Extend Time for Late Filing March 10, 2023;
2. Appellant's Motion for Rehearing, March 21, 2023;
3. Order Denying Appellant's Motion April 28, 2023;
4. Notice of Appeal May 20, 2023;

I certify that this designation contains no matter which is irrelevant to this appeal.

September 15, 2023

/s/ Andre Brooks
Andre Brooks
19200 Canterbury Road
Detroit, Michigan 48221
(313) 475-2549

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

George E. Brown, Administrative Law Judge

Appellant Case No. 2023-000825

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

Respondent,

v.

Andre, Brooks,

Appellant.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2023, in Columbia, South Carolina, I served Appellant's Designation of Matter and Initial Brief onto the Court and Respondent in this matter by mailing to the addresses as follows:

The Hon. John D. Geathers
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Respectfully Submitted,



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

Columbia, South Carolina
September 15, 2023

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 7, 2023

Andre Brooks, PE
19200 Canterbury Road
Detroit MI 48221

Re: Andre Brooks v. SCDLLR
Appellate Case No. 2023-000825

Dear Mr. Brooks:

Our records reflect the time is approaching to file the record on appeal and final briefs. The Supreme Court issued an order reducing the number of copies required in appellate matters. See *Re: Reduced Number of Copies Required in Appellate Matters* (S.C. Sup. Ct. Order dated August 25, 2021). As permitted by the order, the Court of Appeals has determined a need exists for one additional bound copy of the record on appeal and all final briefs. The additional copies must comply with any binding or cover color requirements specified by Rule 267 of the South Carolina Appellate Court Rules (SCACR).

Accordingly, each party must file an original record on appeal and/or final brief, in either electronic or unbound paper form, as well as one bound paper copy, at the time the record on appeal and final briefs are due to be served and filed in accordance with the SCACR.

Additionally, please review the following guidelines as you prepare your record on appeal and final briefs:

Pursuant to Rules 209, 210, and 267, SCACR, the record on appeal must include the following:

1. The correct case title (provided below) and caption as set forth in Rules 210(d) and 267, SCACR.
2. The name and contact information for all counsel representing the parties to the appeal. Please do not include names of counsel that have not previously made an appearance in this case.
3. A certificate of counsel, pursuant to Rule 210(g), SCACR.
4. A proof of service of the record on appeal, if one has not already been filed with this Court.
5. All matters designated by the parties pursuant to Rule 209, SCACR, in compliance with Rule 210(c) and (e), SCACR.
6. The binding for the copies of the record on appeal must be in compliance with Rule 267(d), SCACR.

Pursuant to Rules 211 and 267, SCACR, all final briefs must include the following:

1. The correct case title (provided below) and caption as set forth in Rules 210(d) and 267, SCACR.
2. The name and contact information for counsel filing the brief. If you are filing your final brief pro se, you must include your name and contact information on the cover of the brief.
3. The signature of the person filing the brief should be on the conclusion page.
4. A certificate of counsel for the final brief, pursuant to Rule 211, SCACR.
5. A proof of service of the final brief. Mail receipts will not be accepted in lieu of proper proof of service.
6. The binding for the copies of all final briefs must be in compliance with Rule 267(d), SCACR.

According to our records, the correct caption for this appeal should read as follows on the record on appeal and all final briefs:

Andre Brooks, Appellant,

v.

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

We request large parcels such as bound paper copies of final briefs and the record on appeal be sent directly to the Court via the street address: 1220 Senate Street,

Columbia, S.C. 29201. Thank you for your attention. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Catherine H. Harris".

CLERK

cc: Timothy Kyle Tennis, Esquire

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The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

December 18, 2023

Andre Brooks, PE
19200 Canterbury Road
Detroit MI 48221

Re: Andre Brooks v. SCDLLR
Appellate Case No. 2023-000825

Dear Mr. Brooks:

According to our records, the time to serve and file the record on appeal and proof of service has expired. Within ten (10) days from the date of this letter, you must provide the record on appeal, proof of service, and a motion to file outside the deadlines, or this appeal will be dismissed.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Harrison, deputy".

CLERK

cc: Timothy Kyle Tennis, Esquire

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