

IN THE SUPREME COURT OF THE STATE OF NEVADA

LYNN H. AFFLECK,
Appellant,
vs.
STATE OF NEVADA BOARD OF
PROFESSIONAL ENGINEERS AND
LAND SURVEYORS,
Respondent.

No. 56971

FILED

FEB 10 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying judicial review in a professional license revocation matter. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

On January 25, 2010, the Nevada State Board of Professional Engineers and Land Surveyors (the "State Board") issued a decision and order that revoked appellant's license to practice civil engineering in the State of Nevada and precluded him from reapplying for a license until January 14, 2012. The State Board found that appellant's conduct in preparing an engineering inspection report concerning a client's residence, which was to be submitted to the State Contractors' Board, violated NAC 625.530(5) and the terms of his probation, and constituted grounds for disciplinary action under NRS 625.410(2), (5), and (8), since he was not licensed as a structural engineer and the discipline previously imposed on him precluded him from performing engineering involving structures. Appellant petitioned for judicial review, and the district court denied the petition. Appellant appeals, arguing that he did not engage in work that was prohibited by the terms of his probation as clarified by the State Board in an earlier disciplinary proceeding, and thus revocation of his license was unwarranted.

This court, like the district court, reviews an administrative agency's factual findings "for clear error or an arbitrary abuse of discretion," and will only overturn those findings if they are not supported by substantial evidence. Day v. Washoe County Sch. Dist., 121 Nev. 387, 389, 116 P.3d 68, 69 (2005) (internal quotations omitted). "Substantial evidence is evidence that a reasonable person could accept as adequately supporting a conclusion." Vredenburg v. Sedgwick CMS, 124 Nev. 553, 557 n.4, 188 P.3d 1084, 1087 n.4 (2008) (citation omitted). Questions of law, including statutory interpretation, are reviewed de novo. Star Ins. Co. v. Neighbors, 122 Nev. 773, 776, 138 P.3d 507, 509-10 (2006).

Here, substantial evidence in the record supports the conclusion that appellant's conduct violated part of the professional code of conduct, specifically NAC 625.530, and the terms of his probation. In his request for a letter of endorsement from his client, appellant indicated that he understood that his probation restricted him from doing any engineering involving "structural work." While there is conflicting evidence as to whether appellant's report required an engineering license to prepare, the State Board determined that providing the report involved engineering concerning a structure, which he was not authorized or licensed to perform. See Maxwell v. SIIS, 109 Nev. 327, 331, 849 P.2d 267, 271 (1993) (holding that this court may not substitute its judgment for that of the administrative agency as to the weight of the evidence on questions of fact). Because appellant was restricted from engaging in structural engineering under the terms of his probation, the evidence supports the State Board's finding that he violated NAC 625.530(5) and

the terms of his probation.¹ See NRS 625.410(5) (allowing disciplinary action for violating any statutory provision in Chapter 625); NRS 625.410(8) (allowing disciplinary action for failing to comply with an order issued by the State Board). In addition, the client's testimony in the record indicates that appellant held himself out as a structural engineer when he did not have a structural engineering license and while he was also precluded from structural engineering activities under the terms of his probation. NRS 625.410(2) (allowing for disciplinary action for misconduct); see also Nellis Motors v. State, DMV, 124 Nev. 1263, 1269-70, 197 P.3d 1061, 1066 (2008) (holding that the court will not reassess a witness' credibility on judicial review). Thus, the State Board's decision to impose disciplinary measures upon appellant was not arbitrary, capricious, or an abuse of discretion.

Appellant also asserts that the severity of revoking his license is "out of balance" with the magnitude of the offense charged, and is thus arbitrary and capricious. The State Board is authorized to revoke the license of a professional engineer if they find him guilty of violating the code of conduct. NRS 625.460. The code does not require progressive disciplinary measures, but instead gives the State Board discretion to decide what is appropriate. The record indicates that the State Board considered whether revocation was too harsh in light of its previous orders and the terms of appellant's probation, and determined that the discipline

¹Appellant argues that he did not commit malpractice, as there was nothing erroneous in the content of the report from which the State Board's complaint stemmed. His competence is not at issue in this matter, as the State Board's decision and order was based upon his conduct in relation to the terms of his probation and license status.

imposed was appropriate.² Having reviewed the record and considered appellant's arguments, we conclude that the revocation of appellant's license with the stipulation that he not seek reinstatement until January 2012, was not an abuse of discretion because substantial evidence supports the finding of a violation. C.f. State, Dep't. of Commerce v. Soeller, 98 Nev. 579, 590, 656 P.2d 224, 231 (1982) ("So long as the violations [of the code for real estate brokers] found by the Commission are based on substantial evidence and are not trivial, we may not modify the assigned penalty."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Pickering, J.
Pickering

Hardesty, J.
Hardesty

cc: Hon. Jessie Elizabeth Walsh, District Judge
Lynn H. Affleck
Walter Bruce Robb
Eighth District Court Clerk

²The record shows that appellant first appeared before the State Board in 2006 for a disciplinary hearing, where he was given two years of probation. In 2008, the State Board found that he violated the terms of his probation and extended his probation period an additional two years.