

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

**WEST VIRGINIA STATE BOARD OF
REGISTRATION FOR PROFESSIONAL
ENGINEERS,**

Complainant,

Complaint No. C2024-12

DEREK B. GODWIN,

Respondent.

ORDER

This matter came on for hearing on the 19th day of March, 2024, at 1:05 p.m., before the West Virginia State Board of Registration for Professional Engineers, (the Board). Under West Virginia Engineering Law, W.Va. Code §30-13-4, there are five (5) Members of the Board, and as of this date, those Board Members were as follows:

Garth E. Thomas, President
Dr. Larry C. Nottingham, Vice-President
L.A. Gates, Secretary
Edward L. Robinson, Member and
Carol Stevens, Member

Pursuant to West Virginia Engineering Law, W.Va. Code R. §7-2-3.4, the President of the Board (President) shall serve as the presiding officer in administrative hearing.

The President called the roll of the Board, and each Board Member responded that he/she was present. Dr. Nottingham participated remotely via teleconference.

The President inquired whether any Board Member had a reason to recuse himself/herself from being on this Hearing Panel. All Board Members, including the President, responded in the negative. Therefore, the President declared the Hearing Panel qualified and empaneled.

The President noted that in addition to the court reporter, the following persons were present:

Lesley L. Rosier-Tabor, Board Executive Director and
Edward Eagloski, Board Counsel.

The President called the name of the Respondent, Derek B. Godwin. No one answered.

The President directed Mr. Eagloski to go into the office and call the name of the Respondent, three times. Wherein, Mr. Eagloski left the room and went into the Board office, and he could be heard calling the Respondent's name three times. Upon his reentry into the room, Mr. Eagloski reported that he had called the Respondent's name three times, and that no one responded to his call.

Based upon this action, together with the fact that there was no other unidentified person in the hearing room, the President determined that Respondent was not present in person, nor by way of a servant, agent or counsel.

Under West Virginia Engineering Law, the failure of a party to participate is not grounds to delay the hearing. W.Va. Code R. §7-2-4.3(a)(4). Therefore, the hearing continued.

This hearing was held pursuant to a "*Notice of Hearing*" which was attached to the Complaint, Number C2024-12, which was received and filed by the Board on September 26, 2023.

All witnesses were sworn, State Exhibit Nos. 1-8 were marked for identification, moved and admitted into evidence, the hearing was recorded electronically.

After a review of the record and exhibits admitted into evidence at the hearing of this matter, after assessing the credibility of all testimony of witnesses of record and weighing the evidence in consideration of the findings as to credibility, and after due and mature consideration of the premises, the Board makes these findings on the issues of Credibility, Findings of Fact, and Conclusions of Law.

CREDIBILITY OF WITNESSES, AND EXHIBITS

That the Board makes the following findings regarding the credibility of witnesses, their testimony and admittance of exhibits:

1. The witnesses were credible and truthful, and neither the demeanor of the witnesses, nor the substance of any testimony suggested any inconsistency, conflict, or ulterior motive; and
2. All records and documents entered as exhibits are complete, authentic and valid, and that they were entered with the proper evidentiary foundations.

FINDINGS OF FACT

That the Board makes the following Findings of Facts, that:

1. At all times material hereto, Respondent, Derek B. Godwin, is and was a Registered (licensed) West Virginia Professional Engineer, P.E. License No. 21268;
2. Respondent renewed his West Virginia Professional Engineer registration for the licensure period of January 1, 2023, through December 31, 2024, by utilizing the Board's website portal on or about December 15, 2022;
3. In Respondent's December 15, 2022 renewal, he answered "No" to the disclosure question "Since the date of your last WV PE renewal (or if this is your first WV PE renewal, since

the date of your initial PE application) have you been subject to any disciplinary action or any investigation by any local, state or national regulatory board (including those in WV), or have you been convicted of a felony or a misdemeanor (excluding minor traffic violations)?”;

4. The National Council of Examiners for Engineering and Surveying (“NCEES”) website evidenced that the Minnesota Board of Architecture, Engineering, Land Surveying Landscape Architecture, Geoscience and Interior Design (“Minnesota PE Board”) disciplined Respondent by the entry of a Consent Order entered on September 8, 2022. The NCEES website also evidenced that on July 5, 2022, that Respondent executed under oath, a stipulation agreeing to be disciplined by the Minnesota PE Board through the entry of a Consent Order;

5. As of July 5, 2022, Respondent was aware that he had been investigated by the Minnesota PE Board, and that he would be disciplined;

6. By submitting his December 15, 2022 WV PE renewal, Respondent provided false information to the Board, in that he did not disclose the Minnesota PE Board investigation/disciplinary action to the Board.

7. At the Board’s September 26, 2023 meeting, the Board received and filed Complaint C2024-12 naming Derek B. Godwin as the Respondent. The Complaint alleged that Respondent perpetrated fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration in violation of W.Va. Code §30-13-21(a)(1), and provided false testimony or information to the Board in violation of W.Va. Code §30-13-21(a)(12).

8. At the September 26, 2023 Board Meeting, the Board also set Complaint C2024-12 for hearing on March 19, 2024, at 1:00 p.m.

9. In Respondent's December 15, 2022 renewal, he listed his primary address as "Railroad Consultants PLLC, 213 Uptown Sq., Murfreesboro, Tennessee, 37139-0573 (primary address);

10. A copy of Complaint C2024-12, together with a "*Notice of Hearing*" which set the hearing of the Complaint for March 19, 2024, at 1:00 p.m., was sent by USPS certified mail, return receipt, to the Respondent's primary address.

11. The Board received the return receipt showing that the mailing was received by Angela Oxford on or about October 6, 2023.

12. Mr. Eagloski confirmed with Angela Oxford by telephone that she had received the Complaint and that she informed Respondent of its receipt and that she forwarded it to him for his handling.

13. Mr. Eagloski stated that an internet search showed that Angela Oxford was an employee of the Railroad Consultants PLLC, Murfreesboro, Tennessee.

14. Mr. Eagloski testified that he requested from the State of Tennessee, the driver's address listed on Respondent's Tennessee driver's license. The State of Tennessee, in response to this request, provided the address of 1430 Avellino Cir., Murfreesboro, Tennessee.

15. A process service company, Kentucky Process Service Inc, was retained to serve Respondent at Respondent's Tennessee driver's license address.

16. Kentucky Process Service Inc. made six (6) attempts, on January 31, 2024, February 5, 2024, February 6, 2024, February 7, 2024, February 15, 2024, and February 17, 2024, to serve a copy of the Complaint, "*Notice of Hearing*," and "*Notice of Hearing and Statement of Charges*"

upon Respondent at his Tennessee driver's license address. On the February 15, 2024 attempt, the process server indicated that a female voice was heard inside, however, no one answered the door.

17. A copy of the Complaint, "Notice of Hearing," and "Notice of Hearing and Statement of Charges" was sent by first-class USPS mail with electronic confirmation of delivery, to Respondent at his Tennessee driver's license address. The USPS electronic confirmation of delivery indicated that the mailing was delivered to said address on February 26, 2024, at 2:06 p.m.

18. Kentucky Process Service Inc. was engaged to serve Respondent at his Tennessee driver's license address. The cost of this service was \$165.00.

19. Garrett Reporting Service charged \$321.00 for the production of a transcript of this hearing.

20. The costs incurred for the services of Kentucky Process Service Inc. and Garrett Reporting Service were for the prosecution of Complaint C2024-12, and were necessary in the prosecution of the case. Moreover, the charges were fair and reasonable in light of the service each provided.

CONCLUSIONS OF LAW

That the Board makes the following Conclusions of Law, that:

1. West Virginia Engineering Law is comprised of the enabling article, W.Va. Code §30-13-1 et seq., and the rules promulgated by the Board, which include the Board's legislative rules, W.Va. Code R. §7-1-1 et seq., and the Board's procedural rules, W.Va. Code R. §7-2-1 et seq.;

2. The Board is the state entity with the power and duty to regulate the practice of engineering in the State of West Virginia, and this matter, Complaint C2024-12, is within the jurisdiction of the Board. W.Va. Code §30-13-1 et seq.;

3. Providing false testimony or information to the Board is grounds for a disciplinary action. W.Va. Code §30-13-21(a)(12);

4. The Board has the burden of proving by a preponderance of the evidence that disciplinary action is warranted. W.Va. Code R. §7-2-4.4;

5. Respondent's act of submitting his December 15, 2022 WV PE renewal to the Board, is an act wherein he provided false information to the Board, in violation of W.Va. Code §30-3-21(a)(12);

6. Providing false testimony or information to the Board is a ground for disciplinary action. W.Va. Code §30-13-21(a)(12);

7. Respondent was served with a copy of the Complaint and copy of *Notice of Hearing* by sending the same by certified mail to Respondent's primary address, wherein Respondent's servant, agent and/or employee, Angela Oxford, accepted service on behalf of Respondent.

8. That the Board in its discretion, has the power to impose upon Respondent Derek B. Godwin such sanction or sanctions under pertinent law as it may find appropriate under the circumstances for the discipline of Respondent; W.Va. Code §30-13-21(c); and

9. That the Board in its discretion, has the power to assess upon Respondent the payment of the administrative costs incurred in connection with the investigation and hearing of this matter. W.Va. Code §30-13-21(d)(4).

At the conclusion of the presentation of the case, the Board **GRANTED** the motion of the Board Counsel to dismiss the allegation that Respondent perpetrated any fraud or deceit in obtaining or attempting to obtain or renew a certificate of registration or certificate of authorization. W.Va. Code §30-13-21(a)(1). Thereafter, the Board sequestered themselves for deliberation.

ORDER

The Board, after sequestering themselves for deliberation on the matter before it, reentered the open forum, whereupon the Panel Members voted, to accept or reject the following Findings of Facts, and Conclusions of Law, by a preponderance of evidence:

- 1 That Derek B. Godwin, is the Respondent in C2024-12;
- 2 That Respondent held an active WV professional engineering registration on December 15, 2022, with registration number 21268;
- 3 That on December 15, 2022, Respondent renewed his WV professional engineer’s registration for the period of January 1, 2023, to December 31, 2024, by submitting his “2023-24 WV PE renewal application” to the Board;
- 4 That in his 2023-24 WV PE renewal application, Respondent answered “No,” to the disclosure question "Since the date of your last WV PE renewal (or if this is your first WV PE renewal, since the date of your initial PE application) have you been subject to any disciplinary action or any investigation by any local, state or national regulatory board (including those in WV), or have you been convicted of a felony or a misdemeanor (excluding minor traffic violations)?";
- 5 That Respondent was disciplined by the Minnesota Board of Professional Engineers (“Minnesota PE Board”) through a “Stipulation and Consent Order” filed on September 8, 2022.
- 6 That Respondent did not disclose the Minnesota PE Board disciplinary action on his 2023-24 WV PE renewal application;
- 7 That Respondent was aware of the Minnesota PE Board's investigation and/or disciplinary order at the time of the submission of his 2023-24 WV PE renewal application in that he signed the Stipulation and Consent Order on July 5, 2022; and
- 8 That Respondent provided false information to the Board by not disclosing the September 8, 2022 Minnesota PE Board disciplinary action on his 2023-24 WV PE renewal application he submitted on December 15, 2022.

Each Panel Member, in turn, was asked to state his/her vote, either “Yea” or “Nay”, to this statement, with the presiding officer, casting his vote last, as follows:

Panel Member

Dr. Larry C. Nottingham, Vice-President	Yea
L.A. Gates, Secretary	Yea
Edward L. Robinson, Member	Yea
Carol Stevens, Member	Yea
Garth E. Thomas, Jr., Board President	Yea

The vote was recorded as 5 Yeas, and 0 Nays, a majority of those Members voting, voted to accept the aforesaid Findings of Facts, and Conclusions of Law, and that the Hearing Panel hereby **ADOPTED** the aforesaid Findings of Facts, and Conclusions of Law.

The Board **ORDERED** Respondent be **DISCIPLINED** pursuant to W.Va. Code §30-13-21 for his violation of West Virginia Engineering Law as follows:

1. Board **ORDERED** Respondent to pay a civil penalty in the amount of Five Hundred Dollars (\$500.00) for providing false testimony or information to the Board in violation of W.Va. Code §30-13-21(a)(12).

2. The civil penalty imposed herein totaling Five Hundred Dollars (\$500.00) shall be paid within fifty (50) days of the date of entry set forth below, such amount to be made payable to the **W. Va. P.E. Board** for transfer to the general fund of the State of West Virginia upon receipt.

3. The Board **ORDERED** Respondent to pay administrative costs associated with the prosecution of this matter. Specifically, the cost of services of Kentucky Process Services Inc., One Hundred and Sixty-Five Dollars (\$165.00); and Garrett Reporting Service, Three Hundred and Twenty-One Dollars (\$321.00); for a total of Four Hundred and Eighty-Six Dollars (\$486.00).

4. The administrative costs imposed herein in the total amount of Four Hundred and Eighty-Six Dollars (\$486.00) shall be paid by separate payment within fifty (50) days from the date of entry, such amount to be made payable to the **W. Va. P.E. Board**.

5. The sum and substance of the Complaint, Findings of Fact, Conclusions of Law and this Board Order, in part or in their entirety, shall be set forth in Board publications and on the Board's website, as well as other appropriate placements, including the non-public enforcement exchange database administered by the National Council of Examiners for Engineering and Surveying (NCEES).

6. Non-compliance with this Board Order shall be immediate cause for further action by the Board.

Pursuant to W.Va. Code §§30-13-22(d), and 51-11-4, an aggrieved party may appeal this Order to the Intermediate Court of Appeals of West Virginia.

ENTERED into the records of the West Virginia State Board of Registration for Professional Engineers this 6th day of May, 2024.

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

By: 
GARTH E. THOMAS, JR., P.E.
BOARD PRESIDENT