

BEFORE THE
STRUCTURAL PEST CONTROL BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of:

RICARDO A. WINKLER,

Petitioner.

Case No. 2009-32

OAH No. 2015030015

DECISION

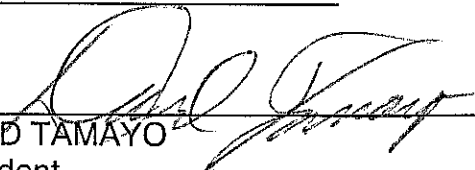
The Proposed Decision of Marcie Larson, Administrative Law Judge, in Sacramento, is attached hereto. Said decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. On page 5, paragraph number 7, "petitioner's operator license" is stricken and replaced with "petitioner's field representative license".

The Proposed Decision as amended is hereby accepted and adopted as the Decision and Order by the Structural Pest Control Board, Department of Consumer Affairs, State of California.

The Decision shall become effective on June 3, 2015.

IT IS SO ORDERED May 4, 2015.



DAVID TAMAYO
President
Structural Pest Control Board
Department of Consumer Affairs

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This matter was heard on March 25, 2015, in Sacramento, California, before a quorum of the Structural Pest Control Board. Administrative Law Judge Marcie Larson, Office of Administrative Hearings, State of California, presided.

David Brice, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General, and appeared pursuant to Government Code section 11522.

Ricardo Winkler was present at the hearing and represented himself.

The matter was submitted on March 25, 2015.

FACTUAL FINDINGS

Procedural History

1. On September 7, 2004, the Board issued Field Representative's license number FR 37722 (Branch 3)¹ (license) to petitioner. His license was set to expire on June 30, 2007, unless renewed or revoked.

¹ Licenses issued to operators, field representatives, or applicators shall be limited to the branch or branches of pest control for which the applicant has qualified by application and examination. The practice of pest control is classified into the following three branches: Fumigation (Branch 1), General Pest Control (Branch 2), and Termite (Branch 3). (Bus. & Prof. Code, § 8560, subd. (a).)

2. In June 2007, petitioner submitted a license renewal application to the Board. On or about August 13, 2007, the Board informed petitioner in writing, that he failed to sign, date, and enter the number of continuing education hours he completed which were required for renewal of his license. Petitioner was required to complete 16 hours of continuing education for the 2007 renewal period.

3. On or about August 27, 2007, petitioner signed, under penalty of perjury, a form indicating that he completed 16 hours of continuing education. On September 21, 2007, the form was received by the Board.

4. On or about November 27, 2007, and March 3, 2008, the Board instructed petitioner to submit copies of his continuing education certificates. Petitioner failed to comply with the Board's directive.

5. On December 5, 2008, the Board filed an Accusation against petitioner. The Board sought to discipline petitioner's license, pursuant to Business and Professions Code sections 8641 and 8593, because he failed to submit verification that he completed the required continuing education courses, as required pursuant to California Code of Regulations, title 16, section 1950, subdivision (a). Respondent failed to file a Notice of Defense.

6. On March 13, 2009, the Board issued a Default Decision and Order. Petitioner's license was revoked effective April 12, 2009.

Petition for Reinstatement

7. On February 2, 2015, petitioner filed the instant Petition for Reinstatement of his license. At hearing, petitioner explained the facts and circumstances that he believes resulted in discipline of his license and his rehabilitative efforts.

8. Petitioner acknowledged that he was charged in the Accusation that he failed to submit verification that he completed the required continuing education courses for the 2007 renewal period. Petitioner also received the Default Decision and Order which revoked his license.

9. In June 2007, petitioner worked for Dedicated Termite. Petitioner testified at hearing that he spoke to his boss about scheduling the continuing education he needed in order to renew his license. His boss assured him that he would speak to the office staff about scheduling the continuing education and would send the appropriate paperwork to the Board. Petitioner's boss did not follow through and petitioner did not complete any continuing education during the renewal period.

10. Petitioner acknowledged that he signed the August 27, 2007 verification form that indicated he completed 16 hours of continuing education required for renewal of his license. He gave the signed form to his employer. However, he only signed the form, he did

not write the number of hours he completed on the form before he gave it to his employer, because he had not completed any hours. He also did not send the form to the Board.

11. Petitioner now understands that he, not his employer, is responsible for obtaining the required continuing education hours. After his license was revoked, respondent was not sure what steps to take to get it back. Since petitioner lost his license, he has performed carpentry work for various termite control companies. Petitioner assured the Board that he has not engaged in any type of work that required a field representative license, nor has he performed any work that required an applicator license.

12. Since petitioner lost his license, he has struggled financially. He would like to have his license reinstated so that he can resume working in a field where he has the most experience. In March 2015, petitioner completed 18 hours of continuing education, which included an eight-hour course titled "Pesticides, Pest Id & Biology, Construction Repair and Preservation Techniques," an eight-hour course titled "Structural Pest Control Act, Rules and Regulations," and a two-hour course titled "IPM-The New Old Way." In addition to the continuing education courses, petitioner has read updates concerning developments in pest control in California.

Discussion

13. Petitioner has provided sufficient evidence of rehabilitation to warrant reinstatement of his license with probationary conditions as detailed below. In particular, the Board believes that although it is commendable that petitioner completed 18 hours of continuing education in March 2015, he needs to complete additional continuing education once his license is reinstated. The purpose of the continuing education is to ensure that petitioner complies with the Board's rules and regulations, and does not pose a risk to the public health, safety and welfare.

LEGAL CONCLUSIONS

1. Government Code section 11522 provides that a person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition.

2. In a proceeding to restore a revoked or surrendered license, the burden rests on the petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) An individual seeking reinstatement must present strong proof of rehabilitation, which must be sufficient to overcome the former adverse determination. (*Houseman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.)

3. As set forth in the Factual Findings and Legal Conclusions as a whole, petitioner has met his burden and established that it would not be against the public interest to reinstate his Field Representative license, upon appropriate terms and conditions.

ORDER

The petition of Ricardo Winkler for reinstatement of Field Representative license number FR37722 (Branch 3) is GRANTED. Upon reinstatement, petitioner's license shall be immediately REVOKED. The order of revocation shall be stayed, and petitioner shall be placed on probation for a period of three years on the following terms and conditions:

1. **Obey All Laws**

Petitioner shall obey all laws and rules relating to the practice of structural pest control.

2. **Quarterly Reports**

Petitioner shall file quarterly reports with the Board during the period of probation.

3. **Tolling of Probation**

Should petitioner leave California to reside outside this state, he must immediately notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to reduction of the probationary period.

4. **Notice to Employers**

Petitioner shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on petitioner by said decision. Within 30 days of the effective date of this decision, and within 15 days of undertaking new employment, petitioner shall cause his employer to report to the Board in writing acknowledging the employer has read this decision.

5. **Notice to Employees**

Petitioner shall, upon or before the effective date of this decision, post or circulate a notice to all employees involved in structural pest control operations that accurately recites the terms and conditions of probation. Petitioner shall be responsible for this notice being immediately available to his employees. "Employees" as used in this provision includes all full-time, part-time, temporary and relief employees and independent contractors employed or hired at any time during probation.

6. Violation of Probation

Should petitioner violate probation in any respect, the Board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

7. Completion of Probation

Upon successful completion of probation, petitioner's operator's license will be fully restored.

8. Continuing Education Course – Branch 3

Petitioner shall complete 16 hours continuing education course(s) for pest control in Branch 3 (wood destroying pests and organisms) within eighteen (18) months of the effective date of this decision. The 16 hours of continuing education shall count towards his renewal period continuing education requirement.


DECISION

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on June 3, 2015

IT IS SO ORDERED.

Dated: May 4, 2015



DAVID TAMAYO
President
Structural Pest Control Board.