Employment – Failure to Provide Notice as Reason to Deny Employment Verification

Case No. 14-3

Facts:

Engineer A was employed full-time by the engineering firm ABC Engineering for 12 years. ABC Engineering is led by Engineer B. Engineer A decides to depart from the firm to work for another firm. While at the new firm, Engineer A decides to seek comity licensure in another state. Engineer A contacts Engineer B seeking assistance with his comity application. Engineer B responds to Engineer A's request and refuses to submit the employment verification for Engineer A's comity application and sends Engineer A the following e-mail:

> *"Considering the fact that after 12 years of employment with my company, you failed to provide a standard two-week notice of your departure (even though your termination letter specified you would do so), does not make us feel compelled to complete your verification. The only notice you provided was given about 10 minutes before the end of your last working day in which you stated you were leaving. In addition, you said there were things you would follow up on, but never called us back. You didn't even have the consideration to inform the president of the company you were leaving. Customarily, when someone requires their former employer to make any kind of recommendation, the person making the request should also have the common courtesy to call to make the request. Based on the above, we do not feel in any way obliged to support your application for your license in state x. Please contact me with any questions concerning the above."*

Question:

Were the actions of Engineer A and Engineer B ethical in connection with this employment matter?

NSPE Code of Ethics References:

Section II.4. *Engineers shall act for each employer or client as faithful agents or trustees.*

Section III.1. *Engineers shall be guided in all their relations by the highest standards of honesty and integrity.*

Section III.6. *Engineers shall not attempt to obtain employment or advancement or professional engagements by untruthfully criticizing other engineers, or by other improper or questionable methods.*

Section III.7. *Engineers shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other engineers. Engineers who believe others are guilty of unethical or illegal practice shall present such information to the proper authority for action.*

Section III.8.a. *Engineers shall conform with state registration laws in the practice of engineering.*

Copyright © 2014 National Society of Professional Engineer (NSPE) www.nspe.org. All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

Discussion:
Over the years, the Board of Ethical Review has noted that it is not uncommon for ethical issues to arise when an employee leaves an employer.

The departure of an employee to another company can raise ethical concerns, as can the situation when an employee moves to a competing company. On the surface, the departure of the employee might provide both companies with benefits by allowing the two companies to strengthen their relationship and enhance communications between the two companies, but conflicts can arise in the arrangement. The facts in this case identify a clear conflict, or at least the appearance of a potential conflict, faced by the employee involved in the transition.

In BER Case 99-6, Engineer A, was employed by the FGH Construction Company and worked closely with Engineer B who was an employee of LMN Supplies. LMN Supplies sold construction materials and supplies. Part of Engineer A's responsibilities was to negotiate and approve bids by LMN Supplies that were submitted by Engineer B. LMN Supplies offered, and Engineer A accepted, an employment position with LMN Supplies. Engineer A submitted his resignation and gave two week's notice to FGH Construction Company and was not asked and did not mention that he would be employed by LMN Supplies. For the next two weeks before leaving FGH Construction Company, Engineer A continued to negotiate and approve bids submitted by LMN Supplies.

In deciding that it was unethical for Engineer A to fail to mention to FGH Construction Company that he will be employed by its vendor LMN Supplies, the Board noted that under the facts, Engineer A's primary obligation was to FGH Construction and not to LMN Supplies during the two-week period prior to his departure to LMN Supplies. Engineer A had a basic obligation to not do anything that would unduly prejudice the interests of either FGH Construction or LMN Supplies. However, by failing to provide full disclosure to FGH Construction, Engineer A's actions had the effect of prejudicing the interests of both FGH Construction and LMN Supplies.

By not informing FGH Construction, Engineer A's actions most probably raised some doubt in the minds of the supervisors and perhaps owners of FGH Construction about whether Engineer A's continued negotiations and approval of bids submitted by LMN Supplies were somehow tainted and could have resulted in inflated costs to FGH Construction or other unearned competitive advantages for the benefit of Engineer A's new employer, LMN Supplies. Also by failing to disclose the material conflict that existed concerning his new employment with LMN Supplies, Engineer A may have unwittingly planted "seeds of doubt" with FGH Construction and potentially damaged the goodwill that might have existed between FGH Construction and LMN Supplies. Based upon the facts as presented, FGH Construction might wrongly conclude that LMN Supplies somehow persuaded Engineer A not to disclose his new position with LMN Supplies

Copyright © 2014 National Society of Professional Engineer (NSPE) www.nspe.org. All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

during the two-week period in order to gain some advantages. Engineer A's failure to fully disclose his new position with LMN Supplies, and to continue to negotiate and approve LMN Supplies' bids to his current employer, was not in accordance with the spirit or the intent of the NSPE Code of Ethics for Engineers. His actions want for the highest standards of honesty and integrity expected of engineers, and were not circumspect.

While the facts in the present case are somewhat different than those in BER Case 99-6, there are elements in both cases that are instructive in the present facts: the importance of disclosure and the obligation to protect, and to not disregard, the interests of one's current employer or former employer. In the present case based on the facts, it appears that while Engineer A had been physically present within the offices of ABC Engineering, Engineer A may not have acted professionally in the weeks and days prior to departing by failing to provide the notice and communications expected. As a full-time employee of ABC Engineering, Engineer A had an obligation to devote his attention for the benefit of ABC Engineering. By failing to provide timely notice or to demonstrate a serious level of commitment to the interests of ABC Engineering prior to and after his departure, Engineer A appears to have acted unethically.

At the same time, while the Board can understand Engineer B's disappointment in the manner that Engineer A behaved prior to and following his departure from ABC Engineering, the Board also believes that Engineer B has an ethical obligation to engage in conduct consistent with the codes, rules, and laws relating to the practice of engineering. Those codes, rules, and laws may compel Engineer B to cooperate with the engineering licensure processes, including the factual work verification of Engineer A's pending comity application. Certainly Engineer B is not compelled to go beyond what is legally required in providing the employment verification, but Engineer B must at a minimum meet the legal and regulatory requirements and be factually accurate in all reporting and verification.

Conclusions:

1. It was unethical for Engineer A to fail to provide timely and sufficient notice as promised to ABC Engineering.

2. It was unethical for Engineer B or ABC Engineering to fail to meet the ethical, legal, and regulatory requirements, and be factually accurate in providing the necessary information, including employment verification, required for Engineer A's comity application.

Copyright © 2014 National Society of Professional Engineer (NSPE) www.nspe.org. All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).

Board of Ethical Review:
Robert J. Andreoli, P.E.
John C. Branch, P.E.
Vincent P. Drnevich, Ph.D., P.E., F.NSPE
Neil A. Norman, P.E., D.E.E., F.NSPE
Luke Patterson, P.E.
Samuel G. Sudler III, P.E.
Daniel K. O'Brien, P.E., F.NSPE ***(Chair)***

NOTE: The NSPE Board of Ethical Review considers ethical cases involving either real or hypothetical matters submitted to it from NSPE members, other engineers, public officials, and members of the public. The BER reviews each case in the context of the NSPE Code and earlier BER opinions. The facts contained in each case do not necessarily represent all of the pertinent facts submitted to or reviewed by the BER.

Each opinion is intended as guidance to individual practicing engineers, students, and the public. In regard to the question of application of the NSPE Code to engineering organizations (e.g., corporations, partnerships, sole proprietorships, government agencies, and university engineering departments), the specific business form or type should not negate nor detract from the conformance of individuals to the NSPE Code. The NSPE Code deals with professional services, which must be performed by real persons. Real persons in turn establish and implement policies within business structures.

This opinion is for educational purposes only. It may be reprinted without further permission, provided that this statement is included before or after the text of the case and appropriate attribution is provided to the National Society of Professional Engineers' Board of Ethical Review.

To obtain additional NSPE opinions, visit www.nspe.org or call 800-417-0348.

Copyright © 2014 National Society of Professional Engineer (NSPE) www.nspe.org. All rights reserved.
To request permission to reproduce this NSPE Board of Ethical Review Case, please contact the NSPE Legal Department (legal@nspe.org).