

In Re:

MEMORANDUM AND ORDER

I. BACKGROUND AND PROCEDURAL HISTORY

Petitioner seeks to be registered to practice before the Office. His application raised two issues related to good moral character and reputation that required further inquiry: one, his prior criminal record, and two, his tax delinquencies.

Petitioner submitted an application for registration to practice before the USPTO dated January 16, 2007. In that application, regarding his prior criminal record, Petitioner answered "yes" to Question No. 16 ("Have you ever been arrested, charged, or held by Federal, State or other law enforcement authorities for any violation of any Federal or State law, or any county or municipal law, regulation or ordinance?"). Regarding tax delinquency, Petitioner answered "yes" to Question No. 22 ("Are you delinquent on any State or Federal debt?"). Petitioner stated that he owed both Federal and Iowa State back taxes.

On April 24, 2007, Petitioner took and passed the registration exam.

On June 1, 2007, OED wrote to Petitioner and requested additional information concerning his answers to Questions 16 and 22.

On July 22, 2007, Petitioner responded to OED. Regarding his criminal record, Petitioner reported that on November 15, 1999, he was charged with Operating While Intoxicated (OWI) in Polk County, Iowa, and the matter was disposed of on April 12, 2000. Also, Petitioner reported being charged with disorderly conduct on July 2, 2005, in Milwaukee County, Wisconsin. The disorderly charge was suspended and then dismissed. Regarding his tax delinquency, Petitioner stated, "I am presently not on a payment plan. However, please see the invoice and corresponding check which was drawn to pay this invoice." The attached check reflected a payment to the Internal Revenue Service (IRS) dated June 9, 2007.

On August 7, 2007, OED wrote to Petitioner acknowledging the receipt of his documentation. OED informed Petitioner his answers were inadequate to corroborate the amount Petitioner owed in both Federal and State taxes, and failed to establish that Petitioner was making payments in a timely manner. More specifically, OED requested that Petitioner

provide adequate documentation to corroborate the statement in his registration application that “I am repaying these debts in an orderly fashion.”

On August 19, 2007, Petitioner responded with a one-page letter, stating that his \$5,000 tax liability to the State of Iowa for tax year 2001 had been completely satisfied. Regarding his Federal tax liability, Petitioner stated that he recently called the Internal Revenue Service (IRS), and his outstanding balance was approximately \$27,000. As documentation, Petitioner provided a one-page document from the IRS verifying a change in the amount of tax due after an audit had been completed for his 2001 tax return, and a copy of a check made out to the U.S. Treasury in the amount of \$2,343.25.¹

On August 30, 2007, OED sent a *Show Cause Requirement*, asking Petitioner to show why his application for registration to practice before the USPTO should not be denied because the OED Director on the current record could not conclude that the Petitioner was of good moral character and reputation. Along with his *Show Cause Requirement*, Petitioner was required to produce his Federal and Iowa State Tax transcripts for the tax years detailed in the correspondence.

On October 14, 2007, Petitioner responded to the *Show Cause Requirement* with a letter of explanation and attached exhibits. Included in this response was a copy of a check for \$27,373.70 from Petitioner to the IRS that petitioner said paid his 2001 Federal Income Tax liability in full.

II. LEGAL STANDARD

A. Recognition.

The Office governs the recognition of Attorneys for practice before the Office, and may require them to show they are possessed of the necessary qualifications. 35 U.S.C. § 2(b)(2)(D).

¹ This is the same check attached to Petitioner’s July 22, 2007, correspondence.

The Office will not register anyone to practice unless he or she has established to the satisfaction of the OED Director that he or she possesses good moral character and reputation. 37 C.F.R. § 11.7(a)(2)(i). Thus, an individual seeking registration to practice before the Office bears the burden of establishing to the satisfaction of the OED Director that he presently “possesses good moral character and reputation.” *Id.*

B. Review of OED Director’s Final Decision.

An individual dissatisfied with the final decision of the OED Director may petition the USPTO Director for review. 37 C.F.R. § 11.2(d). The petition must be accompanied by the appropriate fee, and must be filed within sixty days of the mailing date of the final decision of the OED Director. *Id.* Petitions not filed within sixty days will be dismissed as untimely. *Id.*

C. Financial Obligations Reflect on Moral Character

The conduct of a bar applicant in satisfying his financial obligations has been widely recognized as a relevant factor in assessing good moral character. *See In re Heller*, 333 A.2d 401 (D.C.Ct.App.), *cert. denied*, 423 U.S. 840, (1975); *In re Cheek*, 246 Or. 433, 425 P.2d 763 (1967). “[A]n applicant’s handling of financial affairs is regularly considered in determining moral fitness.” *Application of Taylor*, 293 Or. 285, 293, 647 P.2d 462, 466 (1982). The failure of a person to honor his legal commitments adversely reflects on his ability to practice law, evincing a disregard for the rights of others. *Petition of Steele*, 262 Mont. 481, 865 P.2d 285 (1993); *In re Application of Charles M.*, 313 Md. 168, 545 A.2d 7 (1988); *See Matter of Connor, Ind.*, 358 N.E.2d 120 (1976).

III. OPINION

A. Criminal Record.

After a series of written exchanges, the OED Director was satisfied that the Petitioner had completed the requirements of the OWI and disorderly conduct charges, including the related probationary periods.

B. Tax Delinquency.

The OED Director concluded Petitioner does not possess the required good moral character and reputation to be registered as a practitioner based on the evidence related to Petitioner's tax delinquency.

First, the record reflects Petitioner's approach to his financial obligations. The OED Director reasonably concluded that the Petitioner was not making adequate efforts to pay his Federal and Iowa State tax debts until after applying for registration. As the OED Director properly found, Petitioner's subsequent efforts to cure his delinquencies therefore did not provide substantial support for a claim of good moral character.

Second, during the application process, Petitioner failed to provide adequate explanations and evidence, and also presented conflicting and uncorroborated information. For example, Petitioner asserted that he owed Iowa approximately \$5,000 for tax year 2001 and had made good on that debt. Petitioner provides no evidence of such payment, despite OED's request to do so. The copy of the 2001 personal income tax statement Petitioner provided is an inadequate explanation because it shows a refund of \$63 for tax year 2001. OED specifically asked Petitioner if the \$5,000 delinquency was related to a business partnership, and Petitioner did not provide an answer. As a second example, Petitioner asserted that at the time he applied for registration (January 16, 2007), he was repaying both the Iowa State tax and Federal tax in an

orderly fashion. The file contains no such evidence. The first evidence of payment to either debt by the Petitioner is the June 9, 2007, payment to the IRS.²

Based on Petitioner's approach to his financial obligations, and Petitioner's inadequate answers, the OED Director properly concluded petitioner did not possess the requisite good moral character and reputation.

C. Petitioner's Arguments on Appeal to the USPTO Director.

Petitioner advances two arguments in support of his Petition. First, he alleges that he started to pay off his tax debts after he graduated from law school in 2005. Petitioner's Appeal at 1. Second, he argues that his situation differs from the cases cited in the Final Decision and Memorandum Opinion dated November 7, 2007. *Id.* at 2. We address these arguments in turn.

Petitioner's argument that he started to pay his tax debts after graduating from law school is factually not supported in the record. As stated above, Petitioner began repayment after application for registration with the Office in January of 2007.

Petitioner next argues that his situation is different from the cases cited in support of the November 7, 2007, Final Decision and Memorandum Opinion. Petitioner does not present a single case standing for the proposition that his conduct evidenced sufficient moral character and reputation. Nor does Petitioner present a case suggesting that payment of financial obligations does not reflect on moral character.

The question is not, as Petitioner appears to contend, if Petitioner's conduct has a minor factual distinction from the cases the OED Director referenced in his decision. The question is whether the OED Director's decision is supported by the facts of the case and the law. In this case, the record contains ample evidence to conclude Petitioner did not demonstrate the requisite moral character with regard to his financial obligations. Further, the law is quite clear the

² Copies of the check attached to Petitioner's July 22, 2007, and August 19, 2007, submissions.

payment of financial obligations does reflect on moral character and Petitioner has presented no case to the contrary. The OED Director's decision is further strengthened by the fact that Petitioner, who carries the burden of proof, has provided inconsistent and uncorroborated statements, and failed to provide adequate explanation in response to specific inquiries.

IV. CONCLUSION

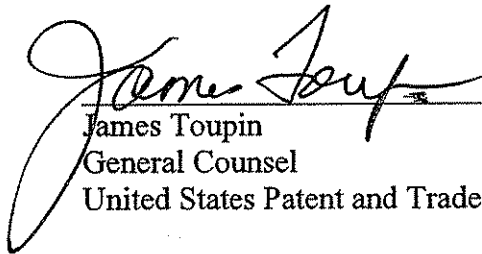
The OED Director properly determined that Petitioner does not currently possess the good moral character and reputation to practice before the USPTO. Petitioner's arguments otherwise are unpersuasive. Petitioner's appeal from the final decision of the OED Director should be denied.

ORDER

Upon consideration of the Petitioner's Appeal from the Final Decision of the OED Director under 37 CFR § 11.2(d), it is ORDERED that the OED Director's decision is hereby affirmed.

On behalf of the Under Secretary of Commerce for
Intellectual Property and Director of the United
States Patent and Trademark Office

April 3, 2008
Date


James Toupin
General Counsel
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cc:

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