

HARRY I. MOATZ

V.

Petitioner.

I. PROCEDURAL HISTORY AND BACKGROUND

The OPM investigation looked into an allegation that Mr. [REDACTED] committed fraud in his application for employment at the USPTO with assistance from Petitioner [REDACTED].

who was then an employee of the USPTO. Mr. application included a copy of a translation (the original was in Russian) of Petitioner's academic transcript, altered to look as if it was Mr. transcript. Petitioner and Mr. both contend Mr. created this forgery without Petitioner's knowledge or consent. OPM concluded it was more likely than not that Petitioner participated in Mr. fraudulent actions.

After review of the OPM investigation, OED conducted their own investigation, and then wrote Petitioner asking that he explain the situation.

On September 12, 2007, Petitioner responded. The OED Director considered applicant's response, and then issued a Show Cause Requirement (see 37 C.F.R. § 11.7(j)) to Petitioner dated October 15, 2007 (served on October 18, 2007).

On December 13, 2007, OED received Petitioner's response to the Show Cause Requirement.

On January 3, 2008, the OED Director issued his final decision on Petitioner's application for registration, and denied the application based on a failure to demonstrate the requisite moral character and reputation.

On February 18, 2008, Petitioner submitted a timely Petition for Review of the Director's Final Decision and Memorandum Opinion (received on February 21, 2008) to the Director of the USPTO. Petitioner contends he possesses the requisite moral character and reputation to be registered to practice before the Office.

II. LEGAL STANDARDS

A. Recognition.

35 U.S.C. § 2(b)(2)(D) states in pertinent part that the USPTO:

“may require [agents, attorneys, or other persons representing applicants or other parties before the USPTO], before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation...”

Pursuant to the statute, Petitioner bears the burden of showing that he is of good moral character and reputation. In accordance with that statute, the USPTO Director promulgated 37 C.F.R. § 11.7, which states in pertinent part:

- (a) No individual will be registered to practice before the Office unless he or she has:
- (2) Established to the satisfaction of the OED Director that he or she:
 - (i) Possesses good moral character and reputation...

The primary responsibility for protection of the public from unqualified practitioners before the Office rests with the Director of the Office. *Kingsland v. Dorsey*, 338 U.S. 318, 319-20 (1949); *Cupples v. Marzall*, 101 F. Supp. 579, 583, 92 U.S.P.Q. 169, 172 (D.D.C. 1952), *aff'd*, 204 F.2d 58, 97 U.S.P.Q. 1 (D.C. Cir. 1953). The OED Director has been delegated authority to determine if an applicant has made a satisfactory showing of good moral character and reputation. See C.F.R. §§ 11.2(b)(3) and 11.7(a)(2). “Good moral character” denotes “an absence of proven conduct or acts which have been historically considered as manifestations of ‘moral turpitude.’” *Konigsberg v. State Bar of California*, 353 U.S. 252, 263 (1957).

In making a determination whether an applicant presently possesses the required good moral character, the OED Director considers, among other things, evidence presented by the applicant in answer to questions authorized by 37 C.F.R. § 11.7(g).

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.*

III. OPINION

Petitioner's attacks on the OED Director's decision are reorganized below for ease of understanding.

A. OPM Investigation.

The OED Director found Petitioner's responses to inquiries about the matter treated in the OPM investigation not to support the necessary finding of good moral character and reputation.

Petitioner made several arguments related to the OPM investigation. First, he asserts that OPM had no evidence that Petitioner assisted Mr. [REDACTED] in committing fraud in his employment application. The record does not support Petitioner's assertion because the OPM investigation is replete with circumstantial evidence that Petitioner played a role in the fraud. For example, Mr. [REDACTED] says he obtained the transcript from one of two job websites rather than from Petitioner, yet this seems highly unlikely if not impossible. The record shows that OPM checked with the websites to determine whether what Mr. [REDACTED] claimed to have done was possible. Both responded that it

was not possible to search within either specified job website by name, so it would be very difficult for Mr. [REDACTED] to have found Petitioner's resume. Further, there is a fee to do such a search. The record shows that Mr. [REDACTED] in response to OPM's inquiry, did not indicate that he had paid a fee. In addition, prior to performing such a search, the job websites confirm that the searcher is a potential employer, and Mr. [REDACTED] was not a potential employer, nor did he say he represented himself as such. Furthermore, Petitioner's position seems self-contradictory, as he stated that he never discussed academic transcripts with Mr. [REDACTED] it is then unclear how Mr. [REDACTED] would have known to look for Petitioner's transcript on-line in the first place.

While the evidence suggests Petitioner provided the transcript to Mr. [REDACTED] the OED Director's decision does not rest on that conclusion. The OED Director concluded that Petitioner's answers were not credible and raised serious doubts about good moral character and reputation without directly finding that Petitioner provided the transcripts to Mr. [REDACTED] That finding is well-supported.

Petitioner's second argument related to OPM is that OPM made an improper attempt to shift the burden of proof to Petitioner. The assertion that OPM tried to improperly shift the burden of proof is irrelevant to the decision in this case. In this case, Petitioner has the burden of proving he is of the requisite moral character and reputation. 37 C.F.R. § 11.7(a)(2)(i). The OED Director considered Petitioner's responses to the OPM investigation and to the subsequent OED investigation, and determined the evidence called Petitioner's moral character and reputation into question. Since the OED Director did not adopt OPM's findings as collateral estoppel to the OED proceeding, arguments about any legal error by OPM are unavailing in this appeal.

Third, Petitioner contends that the OPM investigation produced nothing that was admissible in court. The OED Director's decision rests on the credibility of Petitioner's responses to the OPM and OED investigations. Those responses would be admissible, as would the evidence presented to which Petitioner was responding. Thus, it appears all of the evidence would be admissible to support the grounds for the OED decision. Even assuming *arguendo*, that petitioner's argument is correct, the argument is irrelevant as this is an administrative and not a court proceeding.

Finally, Petitioner says he challenged the OPM final suitability decision at the Merit Systems Protection Board and "was given permission to reapply at the USPTO as part of the settlement agreement with OPM. No person without a good moral character and reputation would have been granted this permission by the OPM."

Petitioner did challenge OPM's final suitability decision and entered a settlement agreement on July 19, 2006. Petitioner's contention he was "given permission to reapply" is misleading. In fact, the agreement provided, "[t]he Appellant agrees not to compete for or accept appointment to any position in the competitive Federal Service until March 20, 2007." Settlement Agreement, paragraph 5. This eight-month prohibition can hardly be properly referred to as "permission to reapply." Petitioner goes on to suggest the settlement is evidence of his good moral character, yet the settlement contains no such endorsement. Petitioner's mischaracterizations of the settlement agreement are yet another reflection on his moral character.

B. Petitioner's Resume.

Petitioner suggests that Mr. _____ found Petitioner's resume on a job website, and digitally copied the Petitioner's attached academic transcript. In response to OED's question about how this was accomplished, Petitioner replied that it would be easy for anyone with "a minimal knowledge of computers" to copy a digital image from a job website. Petitioner's argument falls far short of a technical explanation of how a copy can be made, rather it is simply an unsupported conclusory statement. Likewise, during the OPM investigation, Mr. _____ was asked how the copy was made, and he too did not provide an explanation.

It is also rather telling what Petitioner fails to address regarding how the transcript was copied. Petitioner does not address any of the difficulties Mr. _____ faced in locating the Petitioner's resume in the first place.

C. Mr. _____

In this appeal, Petitioner characterizes Mr. _____ as an "acquaintance." Petition at 2. Petitioner adds that he initially did not mention collaboration on a website with Mr. _____ because he "saw it being absolutely irrelevant at the time." Petition at 3. Petitioner goes on to conclude that it would not make sense for him to risk his own job by participating in fraud to help Mr. _____ a mere acquaintance.

This argument is also unconvincing. Petitioner does not address why he used Mr. _____ as a reference on his resume and on his background investigation if Mr. _____ is just an acquaintance. While perhaps Petitioner honestly did not see the connection to Mr. _____ through their joint website as relevant, this does not explain

why Petitioner initially estimated his contact with Mr. [REDACTED] as limited, and later admitted that he had monthly interaction with Mr. [REDACTED] for six years. Another inconsistency is that Petitioner once stated that he had not read either resume provided by Mr. [REDACTED] and later stated that he saw Mr. [REDACTED] course listing (in his resume).

There is ample evidence of a long-term relationship between Mr. [REDACTED] and the Petitioner. A few examples are illustrative: Petitioner and Mr. [REDACTED] were co-authors of a website labeled as "our website"; the website included a picture of Petitioner and Mr. [REDACTED] together; the website include an "about us" section about Petitioner and Mr. [REDACTED]. Petitioner listed Mr. [REDACTED] as a reference on his resume and application; and Mr. [REDACTED] listed Petitioner as someone who knew him well on his application to the USPTO. Without contradiction of any of these specific examples, Petitioner asserts without support that he does not have a close relationship with Mr. [REDACTED] and that they are "just acquaintances."

IV. CONCLUSION

The OED Director's decision is well supported by evidence in the file that Petitioner's explanations in both the OPM investigation and the OED investigation are not credible and raise serious doubts about Petitioner's good moral character and reputation. Petitioner had ample opportunity to explain his conduct truthfully and convincingly, but failed to do so either because his answers were inconsistent, or because they failed to address significant aspects of the evidence.

The OED Director properly determined that Petitioner has not established that he possesses the requisite moral character and reputation to be registered to practice before the Office. The OED Director's decision should be **AFFIRMED.**

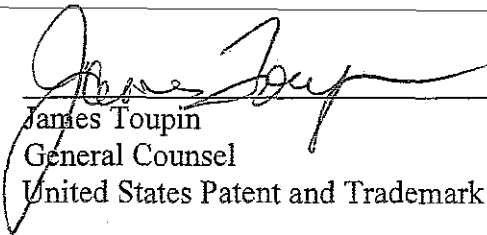
ORDER

Upon consideration of the petition to the USPTO Director for registration to practice before the USPTO in patent cases, it is ORDERED that the petition is denied.

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

MAY 28 2008

Date


James Toupin
General Counsel
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