

BEFORE THE IOWA BOARD OF SOCIAL WORK

IN THE MATTER OF:) DIA NO. 09DPHSW006
)
)
APRIL ANN EMILY) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) DECISION AND ORDER

On June 16, 2009, the Iowa Board of Social Work (Board) issued a Preliminary Notice of Intent to Deny Licensure to April Ann Emily (Applicant) for a license as a bachelor social worker. The Applicant appealed, and a Notice of Hearing was issued on July 20, 2009. The hearing was held on August 10, 2009 at 9:00 a.m. in the fifth floor conference room, Lucas State Office Building, Des Moines, Iowa. The following members of the Board were present for the hearing: David Stout, LMSW, Chairperson; Joyce Westphal, LISW; Mary Tasler and LaMark Combs, public members. Margaret LaMarche, Administrative Law Judge from the Iowa Department of Inspections and Appeals, assisted the Board in conducting the hearing. The Applicant was self-represented. Assistant Attorney General Heather Adams represented the state. The hearing was recorded by a certified court reporter and was open to the public, pursuant to Iowa Code section 272C.6(1)(2009). Following the hearing, the Board convened in closed executive session to deliberate their decision, pursuant to Iowa Code section 21.5(1)(f)(2009). The administrative law judge was instructed to prepare Findings of Fact, Conclusions of Law, Decision and Order, in accordance with the Board's deliberations.

THE RECORD

The record includes the Notice of Hearing, Petition for Waiver filed on August 9, 2009, the testimony of the Applicant, and the following exhibits:

State Exhibit 1: Preliminary Notice of Intent to Deny Licensure, 6/16/09
State Exhibit 2: Iowa Code section 154C.3; 645 IAC 280.5, 280.7
State Exhibit 3: Application and Accompanying Materials
State Exhibit 4: Notice of Appeal and Accompanying Documentation
State Exhibit 5: Notice of Hearing

Applicant Exhibit A: Letter dated 8/6/09 (Director of Concordia University Social Work Program To Whom It May Concern)

- Applicant Exhibit B: Current Concordia University Fact Book; 2002-2003 Undergraduate Catalog
- Applicant Exhibit C: Ohio Board Requirements for Licensure; Documentation of Applicant's expired Ohio Social Work license.
- Applicant Exhibit D: Information from the Kansas Behavioral Sciences Regulatory Board; Verification of Applicant's Licensure in Kansas as a Licensed Bachelor Social Worker
- Applicant Exhibit E: Job Description, Social Services Coordinator, HCR Manor Care
- Applicant Exhibit F: Board Orders Granting Waiver, Waiver Request Nos. 02-01, 03-01

FINDINGS OF FACT

1. On August 3, 2002, the Applicant graduated from Concordia University in River Forest, Illinois with a Bachelor of Arts degree in Social Work and Sociology. Concordia University is accredited by the North Central Association of Colleges and Schools. However, Concordia University's Social Work program is not accredited by the Council on Social Work Education (CSWE) at this time, and it was not accredited by the CSWE when the Applicant graduated in 2002.

Concordia University had begun the application process for CSWE candidacy in 1997, and it submitted preliminary documents to the CSWE. However the university had serious fiscal difficulties beginning in the academic year of 2003-2004, and it voluntarily opted out of the CSWE candidacy application process at that time due to the expense of the application process. The university reports that it received a very positive initial response from CSWE. In the past year, Concordia University has resumed its efforts towards CSWE candidacy based on the 2008 EPAS criteria. (Testimony of Applicant; State Exhibit 3; Applicant Exhibits A, B)

2. On May 18, 2004, the Applicant received a passing score on the Association of Social Work Boards (ASWB) Basic Examination. (State Exhibit 3; Testimony of Applicant)

3. On July 16, 2004, the Applicant was licensed as a Social Worker (LSW) by the State of Ohio Counselor, Social Worker & Marriage and Family Therapist Board. Ohio requires licensed social workers to have at least a bachelor's degree in Social Work from an "accredited educational institution." Ohio does not require the social work program to be CSWE accredited. This license expired on July 16, 2006. The Applicant does not have a history of license discipline in Ohio. (Testimony of Applicant; State Exhibit 3; Applicant Exhibit C)

4. On September 11, 2007, the Applicant was licensed as a bachelor level social worker by the State of Kansas Behavioral Sciences Regulatory Board. The Applicant's Kansas license is current and has never been sanctioned. The Kansas statute requires applicants for licensure at the bachelor level to have a baccalaureate degree from an accredited college or university, including completion of a social work program recognized and approved by the board, pursuant to the rules and regulations adopted by the board. (See Kan. 65-6306 in Applicant Exhibit D).

The Kansas regulations provide that to be recognized and approved by the board, an undergraduate or graduate social work program shall be accredited by the council on social work education (CSWE) *or* shall be in substantial compliance with the list of standards enumerated in the regulation. (See K.A.R. 102-2-6 in Applicant Exhibit D)

When the Applicant applied for her Kansas license, the Credentialing Specialist for the Kansas Board sent the Registrar and the Social Work Program Director at Concordia University a 20 question form, which appears to mirror the requirements set out in K.A.R. 102-2-6. Concordia University's Registrar and its Social Work Program Director answered all but one question on the form in the affirmative. They signed the form affirming that their answers were true and correct to the best of their knowledge, and the form was notarized as subscribed and sworn on October 2, 2006. The Applicant also provided the Kansas Board with documentation that Concordia University had submitted to CWSE during the application process that was abandoned in 2003. The Applicant was later granted her Kansas license on September 11, 2007. Based on this record, it is not known whether the Kansas Board verified the answers provided by the university or if they obtained any additional information before approving Concordia University's Social Work program. (Testimony of Applicant; Applicant Exhibit D)

5. The Applicant relied on her Kansas licensure when she applied to the Iowa Board for a bachelor level social work license by endorsement. The Applicant's

employer, HCR Manor Care, has since transferred her to Iowa. The job description for her current position as the Social Services Coordinator requires licensure at the bachelor level. (Testimony of Applicant; Applicant Exhibit E)

6. On June 16, 2009, the Board sent the Applicant a Preliminary Notice of Intent To Deny Licensure. The denial was based on the Applicant's lack of a bachelor degree from a social work program accredited by the Council on Social Work Education. (State Exhibit 1). The Applicant appealed and submitted additional information to the Board (State Exhibit 4). At the hearing, the Applicant submitted a Petition for Waiver of Board rule 645 IAC 280.5, which requires applicants to possess a degree in social work from a university or college that is accredited by the Council on Social Work Education at the time of graduation. (Petition for Waiver)

CONCLUSIONS OF LAW

I. Application for Licensure by Endorsement

Iowa Code section 154C.3(2009) provides, in relevant part:

154C.3 Requirements to obtain license...

1. *License requirements.* An applicant for a license as a bachelor social worker,...shall meet the following requirements in addition to paying all fees required by the board.

a. Bachelor social worker. An applicant for a license as a bachelor social worker shall present evidence satisfactory to the board that the applicant:

(1) Possesses a bachelor's degree in social work from an accredited college or university approved by the board.

(2) Has passed an examination given by the board.

(3) Will conduct all professional activities as a bachelor social worker in accordance with the standards for professional conduct established by the board.

...

2. *Reciprocal license.* The board shall issue an appropriate license to an applicant licensed to practice social work in another state which imposes licensure requirements similar or equal to those imposed under subsection 1.

645 IAC 280.5 provides, in relevant part:

645-280.5(154C) Educational qualifications.

280.5(1) Bachelor level social worker. An applicant for a license as a bachelor level social worker shall present evidence satisfactory to the board that the applicant possesses a bachelor's degree in social work from a college or university accredited by the Council on Social Work Education at the time of graduation.

645 IAC 280.7 provides, in relevant part:

645-280.7(154C) Licensure by endorsement. An applicant who has been a licensed social worker under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from...another state...who

...

3. Shows evidence of licensure requirements that are similar to those required in Iowa.

...

The Applicant asserts that she is entitled to licensure by endorsement as a bachelor social worker in Iowa because the licensure requirements for a bachelor social worker in Kansas are similar to the Iowa requirements. The Board disagrees. Iowa requires all applicants to have a degree in social work from a CSWE accredited program. Iowa Code section 154C.3(2009); 645 IAC 280.5. Kansas allows licensure of applicants without a degree from a CSWE accredited program if the school can establish that its social work program is in "substantial compliance" with the standards provided in K.A.N. 102-2-6. The Iowa Board has not approved an alternative to CSWE accreditation and was not persuaded that the alternative provided by Kansas is sufficiently similar to CSWE accreditation to warrant Board approval. Based on this record, it appears that Kansas approved the Concordia University program based solely on the subjective documentation submitted by the university, which has a vested interest in having its graduates licensed. There is no indication that Kansas could or did conduct the type of contemporaneous, on-site evaluation of the social work program that would have been conducted by the CSWE during the accreditation process.

By statute, Iowa prohibits licensure as a bachelor level social worker *unless* the applicant possesses a bachelor's degree in social work from an *accredited college or university approved by the Board*. Iowa Code section 154C.3(1)(a)(1)(2009)(emphasis added). The Board's rules contain similar language. The Board has determined, by rule, that a bachelor's degree in social work from a CSWE accredited program is essential to qualify a person to hold a license as a bachelor level social worker in Iowa. The Applicant's application for licensure by endorsement must be denied because the licensure requirements in the state of Kansas are not sufficiently similar to Iowa's licensure requirements. Iowa Code section 154C.3(2)(2009); 645 IAC 280.7(3).

II. *Petition for Waiver*

The Applicant has filed a Petition for Waiver from 645 IAC 280.5. 645 IAC 18.4 provides that the Board may, in its sole discretion, issue an order waiving the requirements of a rule in whole or in part, if the Board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial rights of any person.
3. The provisions of the rules subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

A. Undue Hardship

The Applicant claims undue hardship from the application of the rule because she could lose her job if she is not licensed. The rule does not define "undue hardship." When statutory terms are left undefined, we presume the legislature intends that they be given their common, ordinary meaning. Noble v. Lamoni Prods., 512 N.W.2d 290, 294 (Iowa 1994). Webster's New American Dictionary (1995) defines "undue" as "1.

exceeding what is appropriate or normal; excessive. 2. Not just, proper or legal..." Hardship is defined as "1. Extreme privation; suffering..."

The Applicant (and her employer) knew that she was not licensed in Iowa when the Applicant was transferred to Iowa. If they had carefully reviewed the Board's statute and rules they would have known that the Appellant's degree does not satisfy the educational requirements established by Board rule. Although loss of a job is clearly a hardship, it is not an "undue" hardship when the job requires licensure for which the Applicant is not qualified. The Applicant failed to present clear and convincing evidence that the application of the Board's rule will cause her "undue hardship."

B. Prejudice The Substantial Legal Rights Of Any Person

The Applicant failed to establish that waiver of the rule would not prejudice the substantial legal rights of any person. The Board has denied licensure to other Applicants who did not have a degree from a CSWE accredited program and will likely deny similar applications in the future. If the waiver is granted to this Applicant, the substantial legal rights of those required to comply with the rule would be prejudiced by disparate treatment.

C. Rule Provisions Mandated By Statute

The Board is satisfied that it has the authority to consider the Applicant's waiver request. So long as an applicant has a degree in social work from an accredited college or university, Iowa Code section 154C.3(1)(a)(2009) gives the Board discretion to approve or disapprove the college or university. By rule, the Board has determined that in order for the social work degree to satisfy the educational requirements, it must be from a CSWE accredited program.

D. Substantially Equal Protection of Public Health, Safety, and Welfare

The Applicant failed to present clear and convincing evidence that there will be substantially equal protection of the public health, safety, and welfare if her waiver request is granted. The Board believes that the CSWE accreditation process provides essential in-depth review and oversight to ensure that a school's social work program meets accepted standards. The Board does not believe that it is equipped or qualified to make a similar determination on a case-by-case basis.

The Applicant submitted two Board Orders Granting Waiver that were issued in 2002 and 2003. (Applicant Exhibit F) Both concerned waiver applications for students graduating from the University of Northern Iowa (UNI) with MSWs in 2002 and 2003, which was before UNI's master's program received CSWE accreditation. However, UNI's bachelor level social work program had been CSWE accredited for a number of years, and its master's program had been awarded CSWE candidacy status at the time both Petitions for Waiver were granted. Full accreditation was anticipated by October 2003, and CSWE rules provide that initial accreditation is retroactive to those students who entered the program while it was in candidacy status and who completed the approved curriculum. The circumstances cited in these Orders Granting Waiver are significantly different from the Applicant's circumstances. The Applicant's university was never granted candidacy status by the CSWE and is not accredited to this day.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the application for licensure as a bachelor level social worker, filed by April Ann Emily, is hereby DENIED. IT IS FURTHER ORDERED that her petition for waiver, filed on August 9, 2009, is also DENIED.

This findings of fact, conclusions of law, decision and order is approved by the board on October 8, 2009.

Any appeal to the district court from denial of license shall be taken within 30 days from the issuance of the decision by the board. It is not necessary to request a rehearing before the board to appeal to the district court. 645 IAC 11.25(1). The party who appeals a decision of the board to the district court shall pay the cost of the preparation of a transcript of the administrative hearing for the district court. 645 IAC 11.23.