

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE COMMISSIONER OF PATENTS AND TRADEMARKS

In re _____)
)
)

DECISION ON PETITION

_____, petitioner, requests review of the April 3, 1998, decision of the Director of the Office of Enrollment and Discipline regarding Petitioner's request to investigate her August 27, 1997, examination. The petition is denied.

BACKGROUND

Petitioner sat for the August 27, 1997, examination. She received a failing score (62) on the afternoon section of the examination. On March 19, 1998, Petitioner wrote a letter to the Director requesting that her examination be investigated "because the score [she] received on the afternoon section of the exam, upon information and belief, was the student happiness rating at _____, backwards." She noted that the student happiness rating was 26. Petitioner also requested that her time to file a petition for regrade of the afternoon section of the examination be stayed until completion of the investigation.

On April 3, 1998, the Director issued her decision on Petitioner's request. After reviewing Petitioner's answer sheet, the Director determined that Petitioner's score of 62 was correct. The Director also denied Petitioner's request for a stay of time because Petitioner had not shown an extraordinary situation which in the interest of justice required a waiver of the regulation. See 37 C.F.R. § 10.170.

On April 8, 1998, Petitioner filed the instant petition. She requests a policy change for investigation of examinations, a stay of time to file her petition for regrade of the afternoon section of the August 27, 1997, examination, and, in the event she receives a passing score on the afternoon section of the August 27, 1997, examination, an investigation of her August 28, 1996, and May 3, 1995, examinations. In her appeal, Petitioner has not argued that any specific answer of hers was incorrectly scored.

DISCUSSION

Petitioner questions the thoroughness of the Director's investigation of her August 27, 1997, examination. She requests a policy change in the manner in which examination investigations are conducted. Specifically, she appears to be concerned that her score was not correctly calculated and that some of her answers were changed. The Director's decision clearly addressed Petitioner's first concern. Her second concern is without foundation. There is no indication that Petitioner was denied credit as a result of correct answers being changed to incorrect answers.

Petitioner also requests that the time to file her petition for regrade of the afternoon section of the August 27, 1997, examination be stayed until completion of the investigation. Her petition for regrade was due within two months from the date she was notified that she had failed the afternoon section. See 37 C.F.R. § 10.7(c). Petitioner was notified on January 22, 1998. Accordingly, her petition for regrade was due on or before March 22, 1998. Her letter to the Director requesting an investigation is dated March 19, 1998. It provided no reason why she should be granted a stay of time, other than she "would like to stay" her right. She now argues

that “a policy change” in how examination investigations are conducted is an extraordinary situation requiring a grant of her request. See 37 C.F.R. § 10.170(a)(“In an extraordinary situation, when justice requires, any requirement of the regulations of this part which is not a requirement of the statutes may be suspended or waived by the Commissioner....”). As no policy change has occurred, there is no need to address Petitioner’s argument.

Petitioner presents no other reasons why she is entitled to a waiver of the two-month time period. Also, there is nothing in the record to indicate that, through the exercise of ordinary care or diligence, Petitioner could not have filed a petition for regrade at the same time she filed her request for an investigation. See Nitto Chemical Indus. Co. v. Comer, 39 USPQ2d 1778, 1782 (D.D.C. 1994) (finding that “oversight that could have been prevented by the exercise of ordinary care or diligence” is not an extraordinary situation).

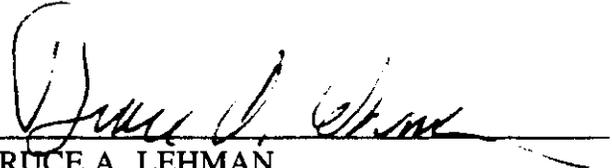
CONCLUSION

The investigation of Petitioner’s afternoon section of the August 27, 1997, examination was thorough and complete. Petitioner has presented no argument to support the changing of her score from 62. Therefore, the Director did not err when she confirmed that score. Also, her request for a policy change on how an examination investigation is conducted is denied. Further, it is ORDERED that for the reasons noted above, her request for a stay of time to file a petition for regrade of her afternoon section is also denied. Finally, since she has not received a passing score on the afternoon section of the August 27, 1997, examination, her

request for a stay of time to file petitions for regrade of her afternoon sections of the August 28, 1996, and May 3, 1995, is moot.

JUN - 8 1998

DATE



BRUCE A. LEHMAN
Assistant Secretary of Commerce and
Commissioner of Patents and Trademarks

Recorded and Mailed:
June 10, 1998
Danita Ingram
Paralegal Specialist