

**BEFORE THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

HARRY I. MOATZ)

Director, Office of)
Enrollment and Discipline,)

v.)

Decision on Petition)
Under 37 C.F.R. § 11.2(d))

Petitioner)

MEMORANDUM AND ORDER

, Petitioner, requests review of the Decision of the Director of Enrollment and Discipline (OED), entered on February 14, 2008. The OED Director disapproved Petitioner's application to be registered as a patent agent under 37 C.F.R. § 11.7(a)(2)(i) because Petitioner failed to demonstrate he has the good moral character and reputation required. For the reasons stated below, the Final Decision of February 14, 2008, is **AFFIRMED**.

I. PROCEDURAL HISTORY

Petitioner submitted an Application for Registration to Practice Before the United States Patent and Trademark Office dated July 17, 2007. On October 18, 2007, Petitioner took and passed the registration exam. In his July 17, 2007, application, 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?"). OED requested additional information concerning Petitioner's

response to Question no. 16, and the Petitioner provided information regarding two Driving While Intoxicated (DWI) incidents, one of which occurred when the Petitioner was 18 years of age and the later of which occurred while the Petitioner was an employee of the USPTO as a patent examiner. After reviewing the explanations, on January 8, 2008, OED issued a Show Cause Requirement to Petitioner to show cause as to why his application for registration to practice before the USPTO should not be denied. Petitioner responded with further explanation and submissions. In these, he assured the OED Director that he took responsibility for the two incidents, that he did not have an alcohol or prescription drug problem, and that he possessed the necessary good moral character and reputation to be registered to practice before the USPTO.

The OED Director carefully reviewed Petitioner's response to the Show Cause Requirement and on February 14, 2008, issued a Final Decision denying the Petitioner's application for registration to practice in patent cases. On April 9, 2008, Petitioner submitted a Petition for Review of the OED Director's Final Decision.

II. LEGAL STANDARDS

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...”

This regulation effectuates the USPTO Director’s recognized duty to ensure that those representing members of the public before the USPTO in patent cases will do so with the highest degree of candor and good faith in order to protect the public. See *Kingsland v. Dorsey*, 338 U.S. 318, 319-320 (1949).

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 USPTO Director will consider no new evidence in deciding a petition for review. *Id.*

III. OPINION

A. Background

As indicated above, Petitioner submitted an Application for Registration to Practice Before the United States Patent and Trademark Office dated July 17, 2007. In his application, Petitioner answered “yes” to Question No. 16 (“Have you ever been arrested ...?”). In response to various OED inquiries, including a Show Cause Requirement, and a response thereto concerning Petitioner’s answer to Question No. 16, Petitioner explained that he had been convicted on two separate DWI incidents, once while a senior in high school, and once in 2006 while employed by the USPTO as a patent examiner. The OED Director reviewed and accepted Petitioner’s explanation and proof that Petitioner fulfilled all requirements surrounding the first

DWI conviction. Regarding the later DWI conviction, Petitioner explained that he had consumed alcohol and had taken a controlled substance (Ambien¹) without a valid prescription prior to operating a vehicle and had therefore suffered a complete memory loss of events leading up to his arrest for the second DWI incident. Petitioner further explained that he had served his sentence, paid all fines, and completed the educational, but not the counseling portion of a court-imposed Alcohol Safety Action Program (ASAP). The OED Director, in considering the Show Cause response information, concluded that Petitioner's lack of completion of the court-imposed ASAP program, statements that Petitioner did not know taking a controlled substance without a prescription was a violation of law, and admission into law school were insufficient to demonstrate the necessary good moral conduct and reputation required, and therefore denied Petitioner's registration application.

In the Petition for Review, Petitioner does not dispute any of his convictions. Rather, Petitioner questions whether the OED Director duly considered several of the factors when evaluating rehabilitation of an individual seeking a moral character and reputation determination. 37 C.F.R. § 11.7(i)(1)-(12). In support of Petitioner's position that he possesses the necessary good moral character and reputation required by 37 C.F.R. § 11.1, Petitioner provides either statements or explanations addressing each factor. Petitioner also provided additional letters from his law school stating that his arrest record did not negatively impact the admission decision and a letter to his summer employer (Federal Magistrate) that provides details surrounding his arrests. Petitioner has also submitted his own affidavit in support of his compliance with the factors to demonstrate his rehabilitation.

¹ Ambien is a non-narcotic schedule IV controlled substance. See Zolpidem at 21 U.S.C. § 812 and 21 C.F.R. Part 1308.

B. Discussion

Petitioner's arguments, although extensive, are ultimately, not persuasive. Despite Petitioner's repeated claims regarding his candor and honesty, Mr. Holman's explanations and information regarding his possession and use of a controlled substance without a valid prescription and the failure to complete the ASAP program demonstrate that the Petitioner lacks the requisite good moral character and reputation.

Petitioner has explained how he came into possession of a controlled substance without a prescription. However, possession of a controlled substance alone, no matter how obtained, is a violation of law. His efforts to minimize this fact by excusing the way in which he obtained the substance do not support his claim of good moral character and reputation. Petitioner's statement that he did not know, or did not intend to illegally possess a controlled substance is disingenuous in light of Petitioner's admission that Ambien is a prescribed drug. Although Petitioner attempts to cast the violation as proof of his honesty and candor, the explanation is troubling for several reasons. First, Petitioner justifies the use of Ambien by saying he had taken Ambien in the past when he did have a valid prescription. Second, Petitioner downplays the violation as he obtained the controlled substance from his step-mother, and "not some drug dealer off the street," but his step-mother is not a physician or an individual authorized to prescribe controlled substances. These efforts at minimizing his conduct tend to detract from his assertion that he takes responsibility for his actions. Finally, Petitioner states that he was not charged with possession of the controlled substance without a prescription when he was arrested for his second DWI incident, and had he not disclosed the Ambien use, OED would never had

known about the violation. The lack of a criminal prosecution is not dispositive, and truthfulness in his response to OED is a sine qua non of even considering his application.

Petitioner also argues that the cases cited in the Director's Final Decision imposed lesser disciplinary measures on the offending attorneys involved. Petitioner goes on to argue that there was no injury to persons or property as a result of the DWI incidents, and that he has been honest and candid about his DWI convictions to both his law school and summer employer. These arguments are of little weight because those cases were cited only as examples of attorney disciplinary actions which involved use of a controlled substance, and because each case is different.

The same factors Petitioner claims the OED Director has ignored in his decision, in fact, support that decision. In particular, 37 C.F.R. §11.7(j)(7) states:

Abstinence from the use of controlled substances or alcohol for not less than two years if the specific misconduct was attributable in part to the use of a controlled substance or alcohol, where abstinence may be demonstrated by, but is not necessarily limited to, enrolling in and complying with a self-help or professional treatment program.

In this regard, the record indicates that Petitioner has not completed the ASAP program imposed by his second DWI sentence. Although Petitioner has explained his logistical difficulties in completing the program, the cause for such failure lies squarely with Petitioner. He moved to a jurisdiction with different requirements for the completion of an ASAP program (Fairfax County to Arlington County and then to the State of Texas), and did not secure adequate alternative arrangements. Although Petitioner admits that he is now in possession of information as to how to complete the counseling portion of the ASAP program in Texas, his present location, the record, including his Petition, does not indicate any completion of the counseling portion of the ASAP program or even a forecast as to when the counseling portion will be

completed. Rather, Petitioner indicates that he attended “several counseling sessions” with a counselor in his hometown. Other than these counseling sessions, Petitioner therefore, has not demonstrated a two-year abstinence from the specific misconduct that attributed to the use of a controlled substance or alcohol by enrolling and complying with a self-help or professional treatment program. In this short period of time, Petitioner has not demonstrated his current good moral character. See *In re Mustafa*, 631 A.2d 45 (D.C. 1993) (applicant denied admission to D.C. Bar two years after misconduct based largely on recency of misconduct).

IV. CONCLUSION

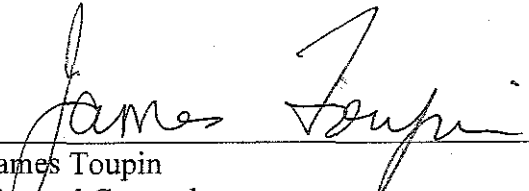
The OED Director properly determined that Petitioner lacks the necessary good moral character and reputation required of registered practitioners and agents. The OED Director’s decision is well supported by the record. The OED Director’s decision is hereby **AFFIRMED**.

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.

By delegation from the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office:

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


James Toupin
General Counsel
United States Patent and Trademark Office

JUL 16 2008

Date

cc:

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