

**ARKANSAS COURT OF APPEALS**

DIVISION III

No. CA11-297

GORE ENGINEERING ASSOCIATES,  
INC.

APPELLANT

V.

ARKANSAS CONTRACTORS  
LICENSING BOARD

APPELLEE

**Opinion Delivered** October 26, 2011APPEAL FROM THE BENTON  
COUNTY CIRCUIT COURT,  
[NO. CV10-1749-5]HONORABLE XOLLIE DUNCAN,  
JUDGE

REVERSED AND REMANDED

**RAYMOND R. ABRAMSON, Judge**

This is an appeal from an administrative order entered by the Arkansas Contractors Licensing Board (“Board”) on May 14, 2010, finding that Gore Engineering Associates, Inc. (“Gore Engineering”), had acted as a general contractor without a license as required by Ark. Code Ann. §§ 17-25-101 *et seq.* and without obtaining the bond required by Ark. Code Ann. §§ 17-25-401 *et seq.*

This case arose as a result of actions taken by Gore Engineering during a repair and remediation project being performed on the Collier Center in Johnson, Arkansas. The Collier Center was a fairly new building that had suffered from water intrusion. Mel Collier, the owner of the building, hired Gore Engineering to investigate the damage and report its findings to him. A lawsuit stemming from the allegedly defective construction of the building was subsequently filed.

During the discovery phase of that lawsuit, Mel Collier and James Gore of Gore Engineering gave depositions regarding Gore Engineering's role in the administration of the project.

In February 2009, an attorney involved in the lawsuit contacted Larry Lloyd, an investigator with the Board, and provided him with copies of the Collier and Gore depositions. Based on these depositions and his conversation with the attorney, Lloyd started an investigation into whether Gore Engineering had acted as a general contractor without obtaining a general contractor's license or posting a contractor's bond, which would have been required for a project the size of the Collier Center.

The Board also requested a written determination by the Engineering Board into whether Gore Engineering's conduct was of the type "customarily furnished by . . . engineers" as such conduct is exempt from the licensing and bond requirements if their only financial interest in the project are engineering fees for work "customarily furnished by . . . engineers." Ark. Code Ann. § 17-25-102(2) (Repl. 2010). The Engineering Board declined to issue an opinion, stating that it was not within its purview to interpret the contractors licensing statutes.

Based on its investigation, the Board held a hearing on May 14, 2010, to determine whether Gore Engineering was in violation of the contractors licensing statutes and bond requirements. After hearing the testimony and reviewing the evidence, the Board determined that Gore Engineering was not providing supervision as customarily furnished by an engineer and, as such, was not exempt from the licensing statutes. The Board further

found that Gore Engineering had not posted the requisite bond for the project. Therefore, Gore Engineering was in violation of the licensing and bonding requirements set forth in Ark. Code Ann. §§ 17-25-103 and 17-25-408. In so finding, the Board made the following findings of fact:

1. Gore Engineering Associates, Inc. acted as a construction manager on the Collier Center in Johnson, Arkansas. The work performed falls within the definition of contractor as defined in Section 17-25-101 (Act 150 of 1965 as amended) and Section 17-25-401 (Act 162 of 1987 as amended).

2. Gore Engineering Associates, Inc.'s financial interests for construction supervision of the Collier Center in Johnson, Arkansas, exceeded that which is customarily furnished by engineers.

3. A contractor's license and surety bond is required for the work performed by Gore Engineering Associates, Inc.

4. Gore Engineering Associates, Inc. is not licensed by the Contractor's Licensing Board.

5. Gore Engineering Associates, Inc. has failed to obtain a \$10,000.00 surety bond or cash bond prior to commencing work as a contractor.

As a result of these violations, Gore Engineering was ordered to pay \$8830 for violation of the licensing statute and \$8830 for violation of the bonding requirements.

Gore Engineering timely appealed to the Benton County Circuit Court, which affirmed the decision of the Board. This appeal follows.

On appeal, Gore Engineering argues that the Board incorrectly found that it was acting as a general contractor, that its work was not of the type "customarily furnished by engineers," and that it was not required to post a bond. However, because the Board failed to render sufficient findings, we are unable to reach the merits of Gore Engineering's arguments.

The Administrative Procedure Act requires that a "final decision shall include findings

of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.” Ark. Code Ann. § 25-15-210(b)(2) (Repl. 2002). This court has described a “finding of fact” as

a simple straightforward statement of what happened. A statement of what the Board finds has happened; not a statement that a witness, or witnesses, testified thus and so. . . . [W]hen the reader is a reviewing court the statement must contain all specific facts relevant to the contested issue or issues so that the court may determine whether the Board has resolved those issues in conformity with the law.

*Nesterenko v. Ark. Bd. of Chiropractic Exam’rs*, 76 Ark. App. 561, 566, 69 S.W.3d 459, 461 (2002). Whether sufficient findings of fact have been made is a threshold question in an appeal from an administrative board. *Vallaroutto v. Alcoholic Beverage Control Bd.*, 81 Ark. App. 318, 101 S.W.3d 836 (2003). Here, the Board failed to set out the specific facts supporting its conclusion that Gore Engineering was acting as a general contractor in violation of the licensing or bonding statutes. Even though the order in this case contains the labels “findings of fact” and “conclusions of law,” it does not indicate what specific actions of Gore Engineering constituted contracting services under the statute or those actions that it determined exceeded the scope of those services “customarily furnished” by engineers.

The long-standing rule is that, when an administrative agency fails to make a finding upon a pertinent issue of fact, the courts do not decide the question in the first instance. The cause is remanded to the agency so that a finding can be made on that issue. *Hays v. Batesville Mfg. Co.*, 251 Ark. 659, 473 S.W.2d 926 (1971); *Reddick v. Scott*, 217 Ark. 38, 228 S.W.2d

1008 (1950); *Chandler v. Ark. Appraisers Licensing & Certification Bd.*, 92 Ark. App. 423, 214 S.W.3d 86 (2005); *Alcoholic Beverage Control Bd. v. Hicks*, 19 Ark. App. 212, 718 S.W.2d 488 (1986); *Lawrence v. Everett*, 9 Ark. App. 138, 653 S.W.2d 140 (1983). Accordingly, we reverse and remand this cause to the circuit court, with directions to remand it to the Contractors Licensing Board to make appropriate findings of fact.

We also point out several deficiencies in the abstract and addendum that should be addressed should the parties take another appeal to this court. First, the appellant failed to abstract the deposition testimony of Collier and Gore as required by Supreme Court Rule 4-2(a)(5)(A). Second, the addendum does not contain the brief submitted to the circuit court on petition for review as required by Supreme Court Rule 4-2(a)(8)(A)(i). Finally, the second page of the circuit court's order is missing from the addendum. We strongly encourage appellate counsel to review our rules prior to refileing to ensure that these and any additional deficiencies are corrected.

Reversed and remanded with instructions.

PITTMAN and HOOFFMAN, JJ., agree.