

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Robert Darren Brumfield,
Petitioner

vs.) **No. 22-0192 (Original Proceeding)**

West Virginia Board of Law Examiners,
Respondent

MEMORANDUM DECISION

On March 3, 2022, the petitioner Robert Darren Brumfield, self-represented, filed exceptions with this Court to the February 1, 2022, decision of the respondent, the West Virginia Board of Law Examiners (“Board”), finding that he was ineligible to apply for admission by transferring his 2017 Uniform Bar Exam (“UBE”) score. The Board concluded that the petitioner’s application was untimely under Rule 3.5(a) of the Rules for Admission to the Practice of Law.¹ On March 31, 2022, the Board, by counsel Carol P. Smith, filed a response to the petitioner’s exceptions, together with an appendix record.

The Court has reviewed and considered the parties’ pleadings, together with the appendix record before the Court. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. This case is appropriate for a memorandum decision rather than an opinion. For the reasons expressed below, we agree with the decision of the Board that the petitioner is ineligible to apply for admission to the practice of law

¹Rule 3.5(a) provides as follows:

Requirements for transferring of UBE score. — An applicant who has taken the UBE in a jurisdiction other than West Virginia and who otherwise meets the requirements of Rules 2.0, 3.0, 3.4(c), and 5.0, may be admitted to the practice of law in West Virginia based upon a UBE score transfer at any time on or after July 1, 2017. The applicant under this rule shall have earned a combined, scaled UBE score of no less than 270 in an administration of the UBE taken within three years immediately preceding the date upon which application is made and a scaled MPRE [Multistate Professional Responsibility Examination] score of no less than 80 achieved within twenty-five months of the applicant's successful UBE administration.

in the State of West Virginia by transfer of his 2017 UBE score.

The petitioner is a 2015 graduate of the William S. Boyd School of Law at the University of Nevada, Las Vegas. Following his graduation, the petitioner applied for admission by examination to the practice of law in the State of West Virginia and sat for the West Virginia bar examination in July of 2016. Petitioner failed to earn a passing score on the 2016 bar examination. A passing score in West Virginia is 270.

On July 25 and 26, 2017, the petitioner sat for the UBE in the State of New Mexico and earned a score of 275. In April of 2019, the petitioner contacted the Board's admissions office to inquire about an "ongoing application" for admission to practice law in the State of West Virginia. On April 19, 2019, the deputy administrator for bar admissions sent the petitioner a response on behalf of the Board. She informed the petitioner that his "previously submitted application [for the 2016 West Virginia bar examination] has expired[.]" The petitioner was also provided with instructions on the process to apply for admission by transferred UBE score. The deputy administrator expressly stated in her response that the petitioner would "need to complete a new application[.]"

On August 7, 2020, the petitioner sent an email to the deputy administrator requesting verification that his application for admission by transferred UBE score had been received. The deputy administrator responded that no application had been received. By email on August 13, 2020, the petitioner was informed of the three-year time period to file an application to transfer a UBE score under Rule 3.5(a).

On September 12, 2020, the petitioner sent a letter to the Board asking that it accept his application. The petitioner argued that his 2016 application for admission by examination was "ongoing" and that Rule 3.5 was ambiguous. On September 29, 2020, the Board responded to the petitioner by letter that (1) his 2016 application for admission by examination had concluded when he failed to earn a passing score on the 2016 bar examination; and (2) although the Board received an electronic transcript of his 2017 UBE score on August 7, 2020, no application for transfer of his 2017 UBE had been received. The petitioner finalized his application to transfer his 2017 UBE score on December 28, 2020.

Under Rule 6(a)², the petitioner requested a hearing. On December 29, 2021, a hearing was

²Rule 6(a) provides as follows:

Request for hearing. — A formal hearing is authorized under this Rule under the following circumstances if requested in writing by the applicant or scheduled by the Bar Admissions Administrator: where the Board determines that an applicant does not meet the requirements of the Rules for Admission to the Practice of Law for any reason, except the failure to pass the bar examination; where the Board denies in whole or in part an applicant's request under Rule 3.3 for special accommodations during the bar examination; or as authorized by Rule 8.0 with respect to an applicant

held before an appointed hearing officer. At the hearing, the hearing examiner questioned the Board's counsel and the petitioner. The hearing examiner asked the petitioner if he agreed that he failed to meet Rule 3.5(a)'s timeline. The petitioner responded, "I agree with that statement to the extent of the pure law, or the pure procedural rule of the matter[.]"

On January 4, 2022, the hearing examiner issued his recommendation that Rule 3.5 was not ambiguous and that the Board's determination on the untimeliness of the petitioner's application be upheld. On February 1, 2022, the Board sent the petitioner a letter acknowledging the hearing examiner's report and concluding that his application to transfer his 2017 UBE score was untimely. These exceptions followed.

Article eight of the West Virginia Constitution vests this Court with "the authority to define, regulate and control the practice of law in West Virginia."³ Under that authority, this Court has promulgated the Rules for Admission to the Practice of Law.

Under Rule 6(e)⁴, the petitioner filed exceptions with this Court to the Board's decision.

admitted under a Conditional Admission Agreement. Unless otherwise specified herein, requests for a formal hearing must be received by the Board of Law Examiners within sixty days from the receipt of notice by the applicant of the Board's adverse decision. After a request for hearing has been made, an application may not be withdrawn, except upon written motion and for good cause shown and, further, upon payment of costs.

³Syl. Pt. 1, *Lane v. W. Va. State Bd. of Law Exam'rs*, 170 W.Va. 583, 295 S.E.2d 670 (1982).

⁴Rule 6(e) provides as follows:

Review by Board and Court. — Upon completion of the hearing before the hearing officer, the hearing officer shall make a written recommendation based upon the requirements of these rules and upon the evidence submitted. Such written report, together with a copy of the transcript of the hearing, shall be forwarded as soon as practicable to the Board of Law Examiners. The Board, within forty-five (45) days from the receipt of said written report and the record, shall review the report and shall advise the applicant in writing as to whether he or she has been found eligible to take the bar examination or to be admitted, if examination is not required, or, in the case of a conditionally admitted applicant, whether the applicant has been found to have violated the Conditional Admission Agreement. In cases appealing the Board's denial of testing accommodations, the Board shall advise the applicant in writing within fifteen days from the receipt of the written report and the record whether the requested accommodations will be granted. In the event that the Board makes a finding adverse to the applicant, the applicant may file exceptions to the Board's

We consider this matter under the following standard:

This Court reviews *de novo* the adjudicatory record made before the West Virginia Board of Law Examiners with regard to questions of law, questions of application of the law to the facts, and questions of whether an applicant should or should not be admitted to the practice of law. Although this Court gives respectful consideration to the Board of Law Examiners' recommendations, it ultimately exercises its own independent judgment. On the other hand, this Court gives substantial deference to the Board of Law Examiners' findings of fact, unless such findings are not supported by reliable, probative, and substantial evidence on the whole record.⁵

With these standards in mind, we turn to the petitioner's arguments.

In his exceptions, the petitioner argues that Rule 3.5 is ambiguous as to the time the three-year time period begins. He asserts that his deadline to file an application to transfer his 2017 UBE score should have been calculated beginning in "mid-September" of 2017 when he claims to have received his passing score from the New Mexico Bar Examiners by letter. He asserts that any error in his calculation of his deadline was harmless because he filed his application in early August of 2020 within two weeks of the deadline imposed by the Board.

The Board counters that Rule 3.5 is unambiguous and should be applied as written. According to the Board, the language in Rule 3.5(a) that the applicant shall have earned a score of no less than 270 "in an administration of the UBE taken within three years immediately preceding the date upon which application is made" is clear. *Id.* The Board asserts that the petitioner earned a score of no less than 270 in the administration of the New Mexico UBE taken on July 25-26, 2017. According to the Board, when three years from that date had passed on July 28, 2020, the petitioner had not yet submitted an application to transfer his 2017 UBE score under Rule 3.5. We agree with the Board.

The language in Rule 3.5(a) clearly provides that an application to transfer a UBE score must be based on a score earned during an administration of the UBE "taken within three years immediately preceding the date upon which application is made." *Id.* The UBE score the petitioner earned in 2017 and upon which he based his application to transfer was earned by him in an administration of the UBE on July 25-26, 2017. The petitioner failed to apply to transfer that score to West Virginia within three years of the administration of that UBE. The records before the Court reflect that the petitioner did not submit his application to transfer his 2017 UBE score until December 28, 2020—more than three years immediately after he had earned that score. Therefore,

recommendations. Exceptions shall be filed with the Clerk of the Supreme Court of Appeals within thirty (30) days from the date of the receipt of the Board's written recommendation. If the Court determines that the matter has merit, it shall docket the case for full argument.

⁵Syl. Pt. 2, *In re Dortch*, 199 W.Va. 571, 486 S.E.2d 311 (1997) (footnote added).

the Board correctly determined that the petitioner's application was untimely.

Upon consideration of the applicable standard of review and the record, this Court finds that the petitioner's exceptions have no merit, and, therefore, we affirm the Board's finding that petitioner, Robert Darren Brumfield, is ineligible for admission to the practice of law in the State of West Virginia by transfer of his 2017 UBE score.

Exceptions refused.

ISSUED: May 26, 2022

CONCURRED IN BY:

Chief Justice John A. Hutchison
Justice Elizabeth D. Walker
Justice Tim Armstead
Justice William R. Wooton
Justice C. Haley Bunn