

Falls Church, Virginia 22041

File: D2008-104

Date:

NOV 23 2009

In re: LISA J. JACKSON, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

APPEAL

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

ON BEHALF OF RESPONDENT: Gloria P. Martinez-Senftner, Esquire

On April 2, 2009, the Adjudicating Official issued an amended decision, in which she suspended the respondent from practice before the Immigration Courts, Board of Immigration Appeals, and Department of Homeland Security (the "DHS"), for a period of 14 months. The respondent's appeal will be sustained in part, and dismissed in part.

BACKGROUND

On November 9, 2005, the Superior Court, Judicial District of Hartford, Connecticut issued an order suspending the respondent from the practice of law for one year and one day, with a right to reapply for admission no earlier than November 12, 2006.

Before the San Diego Immigration Court the respondent, on October 1, 2007, entered a Form EOIR-28, "Notice of Entry of Appearance As Attorney or Representative Before the Immigration Court", on behalf of an alien (Notice of Intent to Discipline, Att. 2; A.O.'s Apr. 2, 2009, dec., at 2). The respondent represented that she was a member in good standing of the California Supreme Court and Ninth Circuit Court of Appeals. *Id.* She also checked a box indicating that she was not subject to any court order suspending her from the practice of law. The suspension in Connecticut was not divulged. *Id.*

On April 29, 2008, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency. On May 15, 2008, we granted the government's petition for immediate suspension.

The respondent requested a hearing. On December 17, 2008, the Adjudicating Official issued an order. As for the government's claim that the respondent was subject to discipline under 8 C.F.R. § 1003.102(e)(1)(based on being suspended from the practice of law), the Adjudicating Official found that counsel had conceded this charge, and the request for reciprocal discipline (A.O.'s Dec. 17, 2008, dec., at 2). As for the government's claim that the respondent was subject to discipline under 8 C.F.R. § 1003.102(f)(based on false communication about qualifications), the

Adjudicating Official also found the respondent subject to discipline (A.O.'s Dec. 17, 2008, dec., at 3). The Adjudicating Official concluded that, as for the charge under 8 C.F.R. § 1003.102(f), the EOIR Disciplinary Counsel "sought an addition[al] two months on this charge and respondent's counsel accepted this" (A.O.'s Dec. 17, 2008, dec., at 3). The respondent was then ordered suspended for 12 months on the first charge, and 2 months on the second charge. *Id.*

Before filing the timely appeal concerning the Adjudicating Official's decision, the respondent filed a "Motion To Correct Record and Amend Order". The respondent argued that, contrary to the decision of the Adjudicating Official, she did not "acquiesce[]" that the respondent should receive an additional two-month discipline for violating 8 C.F.R. § 1003.102(f)." The motion asserted that the respondent denied violating 8 C.F.R. § 1003.102(f), and would not have accepted a disciplinary term for this charge. The respondent contended that the Adjudicating Official should have entered an order stating that the respondent agreed to a 14-month suspension, but that she agreed to this suspension concerning the first disciplinary charge. The Board on February 25, 2009, returned the record to the Adjudicating Official to consider the respondent's motion.

On April 2, 2009, the Adjudicating Official issued an "Amended Decision and Order Of The Immigration Judge On Certification to the Board of Immigration Appeals." The Adjudicating Official acknowledged that there had been a misunderstanding concerning the concession to the 8 C.F.R. § 1003.102(f) charge and sanction (A.O.'s Apr. 2, 2009, dec., at 1). The Adjudicating Official went on to conclude that the government met its burden of proving that the discipline requested was supported by "clear, convincing and unequivocal evidence." *Id.* The Adjudicating Official imposed a two-month suspension for the respondent's violation of 8 C.F.R. § 1003.102(f), with the respondent suspended for a total of 14 months on both charges. *Id.* at 3.

THE RESPONDENT'S APPEAL IS SUSTAINED IN PART.

The respondent does not dispute that she is subject to discipline under 8 C.F.R. § 1003.102(e)(1), based on being suspended from the practice of law in Connecticut. Therefore, the Adjudicating Official's decision finding the respondent subject to discipline on that basis will be affirmed.

The respondent asserts on appeal that the charge relating to 8 C.F.R. § 1003.102(f) was not proven by the government. The respondent's appeal concerning this charge will be sustained.

As the appeal in this case was filed before January 20, 2009, under 8 C.F.R. § 1003.106(c), the Board has jurisdiction to review the decision of the Adjudicating Official, and conducts a *de novo* review of the record.¹

¹Revised regulations effective after January 20, 2009, provide that the Board reviews findings of fact under the "clearly erroneous" standard, 8 C.F.R. § 1003.1(d)(3)(i), and reviews questions of law, discretion, and judgment and all other issues in appeals *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii). See 73 Fed. Reg. 76914, 76926 (December 18, 2008)(to be codified at 8 C.F.R. § 1003.106(c))(Board has jurisdiction to review the decision of the Adjudicating Official and conducts its review pursuant to 8 C.F.R. § 1003.1(d)(3)).

The regulation at 8 C.F.R. § 1003.102(f) says that a practitioner will be subject to disciplinary sanctions in the public interest if she “[k]nowingly or with reckless disregard makes a false or misleading communication about ... her qualifications or services.”

Given the unusual circumstances surrounding the respondent’s one-time submission of a Form EOIR-28 with incorrect information, the Board finds that although this case presents a close question, the respondent’s actions were negligent, rather than knowing or reckless. Therefore, the government did not meet its burden of proof concerning the charge at 8 C.F.R. § 1003.102(f). *See also* 8 C.F.R. §§ 1003.106 (a)(1)(iv), 1003.106(b).

The Adjudicating Official accepted the respondent’s factual claims concerning her submission of the Form EOIR-28, and no reason is given to question the respondent’s contentions. That is, the respondent asserted that she is a civil and criminal defense attorney who had not earlier appeared before an Immigration Court, and she was unfamiliar with its procedures and rules, including the process for entering an appearance as an attorney (A.O.’s Apr. 2, 2009, dec., at 2; Respondent’s Declaration). The Adjudicating Official also considered evidence that the respondent completed the Form EOIR-28 in haste before she provided mistaken information. *Id.* The Adjudicating Official took into account the respondent’s assertion that the submission of the Form EOIR-28 was part of assisting her paralegal *pro bono*. *Id.*

The respondent stated in a declaration that on the day in question, she and her paralegal drove from Los Angeles to San Diego for an immigration hearing that they learned was not scheduled for that day. Rather than return to Los Angeles, they went to the U.S. Attorney’s Office to speak with U.S. Attorney Robert Witties about finalizing the paralegal’s criminal proceedings that the respondent understood had already been resolved by a plea on the record. She was told that she had to fill out an “appearance” form before she could speak to Witties about her paralegal’s case. (Respondent’s Affidavit, at ¶¶ 4-5). The respondent returned to the Immigration Court, quickly filled out the Form EOIR-28, and returned it to the clerk. She was rushing to file the form because she was concerned that she would not be able to speak to the U.S. Attorney Witties in San Diego before he left for the day. *Id.* She was able to meet with him that day and verify the status of her paralegal’s criminal proceedings. Finally, the respondent immediately filed a corrected form when notified of her mistake. *See* Respondent’s Br. at 3-4, 7-9.

The respondent presented numerous letters of support from attorneys, and others, who said that she is a person of good character who had learned from her mistakes. The Board finds that the respondent’s isolated conduct, under the particular circumstances presented, while clearly negligent, is distinguishable from cases cited by the EOIR Disciplinary Counsel, and Adjudicating Official, where the respondents’ actions in those cases were more pervasive and egregious than the single incident charged against the respondent (Respondent’s Br. at 5-7).

In sum, the respondent’s appeal of the Adjudicating Official’s decision will be dismissed in part, and the respondent will be suspended from practice for 12 months, based on the charge under 8 C.F.R. § 1003.102(e)(1). The respondent’s appeal concerning the discipline charged under 8 C.F.R. § 1003.102(f) will be sustained.

ORDER: The respondent's appeal is dismissed as to the charge under 8 C.F.R. § 1003.102(e)(1), and Lisa J. Jackson is suspended from practice before the Board, the Immigration Courts, and the DHS, for a period of 12 months, effective May 15, 2008.

FURTHER ORDER: The respondent's appeal concerning the discipline charged under 8 C.F.R. § 1003.102(f) is sustained.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against her.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(b).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. *See* 73 Fed. Reg. 76914, 76925 (December 18, 2008)(to be codified at 8 C.F.R. § 1003.105(d)(2)).



FOR THE BOARD