

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8, 2002

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0168
STATE OF WISCONSIN**

Cir. Ct. No. 01-CV-74

**IN COURT OF APPEALS
DISTRICT III**

THOMAS V. RANKIN, M.D.,

PETITIONER-APPELLANT,

v.

MEDICAL EXAMINING BOARD,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Eau Claire County:
LISA K. STARK, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Thomas Rankin appeals an order upholding the Wisconsin Medical Examining Board's decision to revoke his medical license. Rankin argues (1) the evidence is insufficient to support the board's decision; and (2) the board's action was arbitrary and capricious. We reject these arguments and affirm the order.

BACKGROUND

¶2 In August 1993, Rankin submitted an application to the board for a license to practice medicine and surgery in Wisconsin. The application included the following inquiry: “Have you ever entered a plea of guilty or no contest to a misdemeanor or felony or had a jury verdict of guilty, court finding of guilty or judgment of conviction against you for a misdemeanor or felony?” An “X” was placed in the box under the “No” column next to the question.

¶3 In September 1993, the board granted Rankin’s application for a license. In June 2000, the Wisconsin Department of Regulation and Licensing, Division of Enforcement (department) filed a complaint seeking revocation of Rankin’s license. The complaint alleged that because Rankin had in fact been convicted of twenty-seven misdemeanors in 1988—nine counts each of forgery, false sales tax returns and false reports—his response to the application’s inquiry with respect to prior convictions constituted a false statement in violation of WIS. ADMIN. CODE § MED 10.02(2)(c).¹

¶4 Following a hearing before an administrative law judge, the ALJ found: “Dr. Rankin’s conduct in failing to disclose his criminal convictions caused a false statement to be made and presented to the Board in connection with his application for licensure.” Ultimately, the ALJ recommended a reprimand, noting that “revocation of Dr. Rankin’s license is not being recommended because the evidence presented does not establish that he ‘knowingly’ provided false

¹ WISCONSIN ADMIN. CODE § MED 10.02(2)(c) defines unprofessional conduct as: “[k]nowingly making or presenting or causing to be made or presented any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing in connection with any application for license.”

information on the application.” Although the board accepted the ALJ’s findings of fact, it concluded that “the false statement was made intentionally.” The board therefore rejected the ALJ’s discipline recommendation and revoked Rankin’s license. The circuit court affirmed the board’s decision and this appeal followed.

ANALYSIS

A. STANDARD OF REVIEW

¶5 When an appeal is taken from a circuit court order on administrative review, we review the decision of the agency, not the circuit court. *Zip Sort, Inc. v. DOR*, 2001 WI App 185, ¶11, 247 Wis. 2d 295, 634 N.W.2d 99. We must affirm the board’s factual findings if supported by substantial evidence. *Walag v. DOA*, 2001 WI App 217, ¶5, 247 Wis. 2d 850, 634 N.W.2d 906.

Substantial evidence is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion. An agency’s decision may be set aside by a reviewing court only when, upon examination of the entire record, the evidence, including the inferences therefrom, is such that a reasonable person could not have reached the decision from the evidence and its inferences.

Id. (citation omitted). Moreover, we cannot substitute our judgment for that of the board with respect to the credibility of a witness or the weight to be accorded to the evidence supporting any finding of fact. *West Bend Co. v. LIRC*, 149 Wis. 2d 110, 118, 438 N.W.2d 823 (1989). Our review is confined to the record made before the board. *Sterlingworth Condo. Ass’n v. DNR*, 205 Wis. 2d 710, 720, 556 N.W.2d 791 (Ct. App. 1996).

B. SUFFICIENCY OF THE EVIDENCE

¶6 Rankin argues that the evidence is insufficient to support the board's finding that he knowingly filed a false application. At the administrative hearing, Rankin admitted that the information provided on the application with respect to prior convictions was inaccurate. Rankin testified, however, that the Wisconsin application was one of many applications that his medical assistant had prepared. Rankin further testified that "at the completion of filling out all the applications, I just went through them and signed them." Rankin ultimately testified: "And so my sin here was a sin of omission in failing to appreciate what the question was in reading over before signing it."

¶7 Although the board accepted Rankin's representation that his assistant filled out the application, the board concluded: "[Rankin's] representation that he signed the application without reading it is inherently not credible, especially given that the signature he affixed is attached to his affidavit."

The affidavit provided:

I, the above-named applicant, state that I am the person referred to in this application and that all the statements herein contained are each and all strictly true in every respect, and that the photograph submitted with this application is a true likeness of me. I understand that false or forged statements made in connection with this application may be grounds for revocation of my license.

The board also "found significance in the fact" that Rankin's convictions were for the submission of false and fraudulent documents to the State of Pennsylvania.

The board noted:

Any presumption of veracity is rebutted by the fact that [Rankin] has been found to have submitted such fraudulent sales documents with no other motivation than simple petty greed. That is certainly a less compelling motive to lie than

the possible denial of his license application had he admitted the convictions.

¶8 Rankin argues that the board's determination of his intent, in the absence of his medical assistant's testimony, indicates the board erroneously shifted the burden of proof to Rankin. Rankin further argues that there is no evidence to support the board's conclusion that Rankin's explanation for his conduct was "inherently not credible." Finally, Rankin contends that the board improperly considered his prior misdemeanor convictions in evaluating the credibility of his testimony. We are not persuaded.

¶9 Although Rankin challenges the board's characterization of his testimony as "inherently not credible," Rankin cites his own testimony as evidence that the false statement was not intentionally made. Motivation and intent, however, are questions of fact for the agency factfinder. *Hoell v. LIRC*, 186 Wis. 2d 603, 614, 522 N.W.2d 234 (Ct. App. 1994). As with other factual determinations, the agency's findings must be affirmed if they are supported by substantial evidence in the record, and where more than one inference is supported by the evidence, the agency's determination is conclusive. *Abbyland Processing v. LIRC*, 206 Wis. 2d 309, 318-19, 557 N.W.2d 419 (Ct. App. 1996). We conclude there is substantial evidence to satisfy the board's determination that Rankin knowingly filed a false application.

¶10 Rankin's testimony was inconsistent on the issue whether he read the application before signing it. On direct examination, Rankin testified that he "went through" the applications and signed them. Rankin later answered in the affirmative when the ALJ asked: "And is it your testimony that you did not read the application?" In addition to Rankin's inconsistent testimony, the board cited Rankin's affidavit and the nature of his misdemeanor convictions as support for its

conclusion that Rankin knowingly falsified his application. Although more than one inference is supported by Rankin's testimony, the board was free to accept the inference that Rankin read the application before signing it. *See id.* at 318-19.

¶11 Rankin also argues the board improperly considered his prior misdemeanor convictions in evaluating the credibility of his testimony. Specifically, Rankin contends that the rules of evidence preclude the admission of prior crimes as evidence of a witness' bad character or criminal propensity. As Rankin concedes, however, administrative proceedings are not subject to common law or statutory rules of evidence. Rather, in administrative cases, the hearing examiner "shall admit all testimony having reasonable probative value." WIS. STAT. § 227.45(1).² Because Rankin's misdemeanor convictions for fraud and false swearing are probative of his credibility in this case, we discern no error.

C. ARBITRARY AND CAPRICIOUS

¶12 Finally, Rankin argues the board's action was arbitrary and capricious. Specifically, Rankin claims that although the board professes to require an element of intent before one may be held liable for a false statement, in practice it accepts no explanation for false statements, thus converting the statute into one of strict liability. We are not persuaded.³

² All references to the Wisconsin Statutes are to the 1999-2000 version.

³ Rankin again challenges the board's consideration of his misdemeanor convictions as evidence of his bad character. As noted above, the board properly considered the nature of Rankin's misdemeanor convictions as probative of his credibility in the present action. *See* WIS. STAT. § 227.45(1).

¶13 Our supreme court has stated that “[a]rbitrary or capricious action occurs when it can be said that such action is unreasonable or does not have a rational basis.” *Chicago & N.W. Ry. Co. v. PSC*, 43 Wis. 2d 570, 582, 169 N.W.2d 65 (1969). In other words, “[a]rbitrary action is the result of an unconsidered, willful and irrational choice of conduct and not the result of the ‘winnowing and sifting’ process.” *Id.* “When applying the arbitrary and capricious standard, we determine whether the agency’s action had a rational basis.” *J.F. Ahern Co. v. Wisconsin State Bldg. Comm’n*, 114 Wis. 2d 69, 96, 336 N.W.2d 679 (Ct. App. 1983).

¶14 Here, the board rejected Rankin’s explanation for the false statement and found that Rankin knowingly falsified his application. Because the board based its finding on reasonable inferences from the evidence, we conclude that the board’s decision was neither arbitrary nor capricious.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

