

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7758

Summary Calendar

CLARENCE MCDONALD LELAND,

Plaintiff-Appellee,

versus

MISSISSIPPI STATE BOARD OF
REGISTRATION FOR PROFESSIONAL
ENGINEERS AND LAND SURVEYORS,

Defendant,

DAVID W. ARNOLD,
ET AL.,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Mississippi
(3:93 CV 193 (L) (C))

(August 22, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

A Mississippi registration board revoked Clarence Leland's engineering license without first giving him a hearing. He sued the board and its members under 42 U.S.C. § 1983 for denying him

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

due process. The district court denied the individual defendants' motion for summary judgment based on qualified immunity. The individual defendants appealed.

The question is "whether the defendant's conduct was objectively reasonable." Spann v. Rainey, 987 F.2d 1110, 1114 (5th Cir. 1993). Reasonableness is assessed in light of the legal rules clearly established at the time of the incident. Id.

The defendants argue that the Due Process Clause only requires a predeprivation hearing in cases involving material fact issues. This argument is incorrect: Cleveland Board of Education v. Loudemill says that "[e]ven when the facts are clear, the appropriateness or necessity of the discharge may not be; in such cases, the only meaningful opportunity to invoke the discretion of the decisionmaker is likely to be before the termination takes effect." 470 U.S. 532, 543 (1985). Here, Leland had a serious argument that the Board's action was not authorized by statute. The importance of his interest in his professional license required that he be able to present that argument before the fact. Bell v. Burson, 402 U.S. 535, 542 (1971). NLRB v. J.C. Penney Co., 559 F.2d 373, 377 (5th Cir. 1977), is not analogous, because the losing plaintiff in that case had a chance to submit evidence and make objections before its case was heard.

Defendants argue that they heard Leland's legal theory after the fact and rejected it. The possibility that the defendants might not have accepted his theory had they used proper procedure

does not excuse them from following that procedure. See Carey v. Piphus, 435 U.S. 247, 266 (1978).

AFFIRMED.