

Indexed as: BCSSAB 5 (1) 2007

**IN THE MATTER OF THE SAFETY STANDARDS ACT
SBS 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the
British Columbia Safety Standard Appeal Board**

BETWEEN:

A Power Engineer

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR PRELIMINARY DECISION RE:

Jurisdiction of the Board to consider an appeal from a decision by the provincial safety manager to revoke a certificate of qualification, under section 32 of the Safety Standards General Regulation on the basis that it was issued in error

Board Members:

Abigail Fulton, Vice-Chair.

Introduction

[1] The Appellant was employed as a power engineer with a 2nd Class Power Engineering Certificate of Qualification (the Certificate) previously issued by the Boiler, Gas and Railway Safety Branch under the Power Engineers and Boiler and Pressure Vessel Safety Act, c.368. The authority over such qualification now rests with the BC Safety Authority (the Respondent) pursuant to the *Safety Standards Act*, SBC 2003, c.39 (the Act).

[2] He appeals the decision of the Respondent dated May 03, 2007, wherein the provincial boiler safety manager revoked the Appellant's power engineer 2nd class certificate of qualification pursuant to s. 15(a) of the Act, which provides:

"A provincial safety manager may exercise any or all of the powers of a safety officer and may do one or more of the following:

(a) issue, suspend, or revoke a certificate of qualification"

The certificate was revoked on the grounds that the qualification had been issued in error.

Preliminary issue to be decided

[3] Does the Safety Standards Appeal Board (the Board) have jurisdiction under the Act to consider an appeal from a decision by the provincial safety manager (PSM) to revoke a certificate of qualification on the basis that it was issued in error?

Background

[4] On January 10, 2007 the Chief Engineer at the Appellant's employer telephoned the PSM to enquire about the Appellant's qualifications issued by the Boiler, Gas and Railway Safety Branch.

[5] The PSM reviewed the available records and he was not satisfied that the Appellant had completed all the necessary examinations required for the Certificate. He noted discrepancies in the records that, in his opinion, may have been caused by incorrect data input.

[6] The Appellant was asked to provide corroborating evidence that he had, in fact, written all of the necessary examinations required for the Certificate, however he was unable to provide such evidence to the satisfaction of the PSM.

[7] The Appellant's Certificate of Qualification was revoked by the Safety Authority effective May 03, 2007. In the letter advising of the revocation the Appellant was further advised that he had a right of appeal to the Board under s. 51 of the Act which provides:

"51 (2) if a safety manager makes a decision that could otherwise have been made by a safety officer, a person who would have a right to a review under section 49 has instead a right to appeal the decision to the appeal board."

[8] An appeal was launched by the Appellant on May 23, 2007.

[9] The issue of whether the Board had jurisdiction to hear the appeal was raised by the Respondent on June 7, 2007. Section 32 of the Safety Standards General Regulation (the Regulation) states:

“(1) A person’s licence or other permissions may be revoked or suspended by a provincial safety manager if the licence or other permission was issued in error.

(2) A revocation or suspension under subsection (1) cannot be the subject matter of an appeal to the appeal board.”

Both parties were given the opportunity to present arguments to the Board in writing.

Position of Appellant

[10] The Appellant argues that the Board has jurisdiction to hear the appeal.

[11] First, he argues that s. 51(2) of the Act provides an unfettered right of appeal and s. 32 (1) of the Regulation is inconsistent with its authorizing statute because it restricts that right. Section 32 should therefore be unenforceable. The Appellant suggests that s. 51(2) of the Act gives a broad right of appeal and there is nothing further in the Act that derogates from that right, therefore the Regulation should not be able to restrict that right either.

[12] Second, he argues that the certificate was not revoked under s. 32(1) of the Regulation, but rather under s. 15(a) of the Act and that the PSM advised the Appellant that he could appeal the decision under s. 51 of the Act. The Appellant takes the position that, since the PSM did not reference s. 32(1) of the Regulation, it does not apply and therefore the Board will have jurisdiction to hear the appeal.

[13] Third, he argues that if s. 32(1) is applicable, since “certificate” is not specifically mentioned alongside “licence or other permissions” the section does not apply to the revocation of a certificate of qualification, and therefore there should still be a right of appeal to the Board. The Appellant takes the position that the Act differentiates between certificates of qualification, licences and other permissions therefore the fact that it is not specifically included in s. 32(1) of the Regulation indicates an intention to treat a certificate differently.

[14] Finally, the argument is put forward that, if s. 32(1) applies, it requires, as a precondition to its application, a factual finding by the Board that the “licence or other permission” was issued in error. It is the Appellant’s position that the Board should have jurisdiction to consider the facts and make such a finding.

Position of Respondent

[15] The Respondent argues that the letter of revocation sent by the PSM clearly indicates that the certificate of qualification was revoked because it had been issued in

error. As a result, only s. 32(1) of the Regulation applies and the Appellant has no right of appeal to the Board. The Respondent states that s. 15 (a) gives the power of revocation to the PSM and that it was appropriate to cite that section in the letter. While s. 32(1) was not specifically cited in the letter, the section refers to a particular circumstance of a s. 15(a) revocation, one which is directly applicable to this case. The fact that the PSM suggested that there was a right of appeal to the Board in his letter to the Appellant does not create jurisdiction for the Board if it is precluded by the legislation. i.e. s. 32(2) of the Regulation.

[16] The Respondent disagrees with the Appellant's argument that since "certificate" is not specifically mentioned along with "licence or other permission" in s. 32(1) it does not apply to a revocation of a certificate of qualification. He argues that, in fact, a certificate can also be an "other permission" and since the Act consistently groups "certificate" in with licence, permit and other permissions it should also be read as being included in s. 32(1) of the Regulation.

[17] The Respondent argues that s. 51(2) grants a right of appeal only when the PSM has exercised a s. 18 power and that s. 51 removes a circularity that would arise if the PSM exercises a s. 18 power and the affected party is dissatisfied with the PSM's decision. Section 51(2) allows the dissatisfied party to seek an appeal without having to first have the PSM review the decision as per sections 49 and 50 of the Act.

Analysis and conclusions

[18] Is section 32(1) of the Regulation enforceable?

[19] The jurisdiction of the Board as outlined in the Act is clearly not unfettered. The Board has the jurisdiction to hear appeals from certain decisions of local government or provincial safety officers, acting under delegated authority, and local government or provincial safety managers under the Act. For example, a right of appeal is specifically given in respect to a refusal to issue a licence, permit or a certificate of qualification. Additionally there are instances outlined in the Act where it is clearly stated that there is no right of appeal to the Board. For example, s. 32 of the Act states that a decision of a safety manager on a review of a decision to not issue a variance is not appealable to the Board. If the intention of the Legislature was to provide a broad right of appeal on all decisions made by provincial safety managers they would not have specified when a right of appeal was available and when it was not.

[20] **The Board finds that s. 32(1) of the Regulation is not inconsistent with its authorizing statute and it is enforceable.**

[21] **Does a revocation of a certificate of qualification under section 15(a) of the Act carry with it a right of appeal to the Board?**

[22] Section 15 of the Act outlines the powers of a PSM. The power to revoke a certificate of qualification is one of those powers. This section, however, does not indicate when or if there is a right to appeal decisions made under this section by the PSM to the Board. Further reading of the Act is required to determine if an appeal to the Board is possible. For example, s. 15(b) gives the PSM the power to issue a licence. However, it is s. 23(8) that provides the right to appeal that decision to the Board.

[23] Not all the powers granted to the PSM are appealable to the Board. Section 15(e) grants the PSM the power to review a decision of a safety officer. However, in some instances the Act denies a right of appeal to the Board from that review decision. Section 32 of the Act, noted above, is just such an instance.

[24] In this context, turning now to a consideration of s. 42, the Act provides some insight with regard to when a PSM might exercise the right to revoke a certificate of qualification. For example, a revocation could be one of the sanctions imposed under a discipline order. Section 42(1) details when a discipline order would be issued:

“A provincial safety manager may, in writing, on their own initiative or if requested by a safety officer or local safety manager, issue a discipline order to any person performing regulated work who

- (a) is in breach of a condition of, or restriction on, any licence or permission, whether stated in the licence or permission or stated in the regulations,*
- (b) practises in a discipline under this Act for which the contractor is not licensed, or undertakes regulated work that the individual or contractor is not qualified to undertake,*
- (c) fails to comply with a compliance order,*
- (d) fails to comply with a safety order,*
- (e) fails to comply with the terms of an equivalent standards agreement, or,*
- (f) is convicted of an offence under this Act.”*

[25] Further, s. 42(3) of the Act provides,

“A discipline order under subsection (1) may impose any sanction that the provincial safety manager considers necessary in the circumstances, including any of the following orders:

- (a) *an order suspending or revoking the licence of a licensed contractor or revoking any permission granted to any person;*
- (b) *an order changing the terms or conditions of, or attaching additional terms or conditions to, the certificate of qualification of an individual or the licence of a licensed contractor;”*

The Act goes on to specifically provide a right of appeal to the Board from such an order. It is interesting to note that the Act allows the PSM to impose any sanction necessary, which clearly would include the revocation of a qualification since that power has been granted by s. 15. The Act however only gives as examples the revocation of a “licence” of a licensed contractor or “any permission” granted to any person. It is not necessary to consider whether “certificate” is included in “permission” in this instance, but it does stand as an example in the Act where “certificate” is not specifically mentioned but we can be certain that the intent of the Act is to include it.

[26] A discipline order is not the only occasion where a qualification may be revoked. In appeal number BCSSAB 3 (4) 2005 this Board considered whether a PSM had the power to revoke a certificate of qualification without issuing a discipline order. The Board found,

“...that the section 15(a) power is not a form of enforcement, nor is it to be limited only to those occasions where a section 15(f) discipline order becomes necessary , nor to cases where there is a clear and pressing safety concern.”

[27] Therefore, since a certificate of qualification can be revoked without the issuance of a discipline order, from which there is a specific right of appeal, we cannot assume that every revocation under s. 15(a) will likewise carry a right of appeal to the Board.

[28] For these reasons the Board finds that a right of appeal does not automatically arise as a result of a section 15(a) revocation of a certificate of qualification. The fact that the Respondent cited section 15(1) in the letter revoking the Appellant’s certification of qualification did not give rise to a right of appeal to the Board. Neither can the incorrect suggestion by the provincial safety manager that a right of appeal existed, make it so.

[29] **Could a certificate of qualification be revoked under section 32 of the Safety Standards General Regulation?**

[30] Section 32(1) of the Regulation allows for a person’s license or “other permissions” to be revoked or suspended by a PSM if they were issued in error. Neither the Regulation nor the Act provide a right of appeal from such a decision. The question arises whether “certificate of qualification” would be included in “other permissions”, or if

it was intentionally excluded from the regulation and therefore cannot be the subject of the s. 32 revocation.

[31] The Act clearly distinguishes between “licences”, “certificates” and “permits” although it only defines “certificates of recognition”. “Permission” on the other hand is defined as “a permission authorized under this Act”. Greater clarity as to the meaning of “permission” is found in the consistent use of the phrase “licences, certificates, permits or other permissions” throughout the Act. The clear grammatical implication of the phrase is that “licences” “certificates” and “permits” are all forms of “permissions”.

[32] Section 32 of the Regulation is phrased in a similar fashion to s. 42 of the Act noted above which also deals with the revocation of a “licence or permission”, and which has been identified as a method through which a PSM may revoke a qualification. Section 13 of the *Interpretation Act* [RSBC 1996] ch. 238 provides that an expression used in a regulation has the same meaning as in the enactment authorizing the regulation.

[33] The Regulation also provides a definition of “documentation” which includes “permits, certificates, licences, reports and records”. Section 32 is headed “Documents issued by mistake”. Although “document” is not specifically defined, s. 28(4) of the *Interpretation Act* provides that if a word or expression is defined in an enactment, other parts of speech and grammatical forms of the same word or expression have corresponding meanings. “Document” would therefore include “certificate”.

[34] For these reasons the Board finds that s. 32 of the Regulation will apply to a revocation of a certificate of qualification and therefore that the Board does not have jurisdiction to hear an appeal from a decision by a PSM to revoke a certificate of qualification that was issued in error.

[35] Is a factual finding by the Board that the certificate was issued in error a precondition to the application of section 32?

[36] That an error occurred should be a precondition to the efficacy of s. 32. Clearly the Safety Authority should be required to provide clear and adequate evidence that an error was made prior to taking the serious step of revoking an individual’s certificate of qualification and potentially impeding their ability to earn a living. However, while the Board appreciates the importance of such a finding, there is nothing in the Act which gives the Board the jurisdiction to hear an appeal on such a matter separate and apart

from the actual decision made by the PSM. The basis for this appeal was the decision by the Safety Authority to revoke a certificate that was issued in error and the Board has no jurisdiction to hear such an appeal. The letter to the Appellant clearly states that the certificate of qualification was issued due to a data entry error and for that reason the certificate is being revoked. Presumably the only reason a person would seek to appeal such a decision is if they felt there was no error in the issuance of the certificate. Therefore, to allow the Board jurisdiction to hear arguments on that point is to effectively ignore s. 32 of the Regulation specifically denying the right of appeal.

[37] The Board does not have jurisdiction to hear arguments on whether the Appellant's certificate of qualification was in fact issued in error.