

Indexed as: BCSSAB 1 (2) 2013

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

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

BETWEEN: APPELLANT
A REFRIGERATION OPERATOR QUALIFICATION EXAMINATION CANDIDATE

AND: BRITISH COLUMBIA SAFETY AUTHORITY RESPONDENT

REASONS FOR DECISION

Introduction

[1] This is an appeal by the Appellant (the “Candidate”) regarding the results of his Refrigeration Operator Qualification Examination. The Candidate wrote the exam on December 6, 2012 (the “Exam”). He was notified in writing by way of a letter dated December 20, 2012 that he had failed the Exam having obtained a result of 61%. By way of his appeal, the Candidate requests that his certification be granted by the Board as he had obtained 76% on his prepatory examination given by the British Columbia Institute of Technology (“BCIT”) and 81% for the course as a whole. The British Columbia Safety Authority (the “BCSA”) opposes the appeal and requests to have the exam results stand.

History of Appeal

[2] Since bringing his Appeal, the Candidate has rewritten the Exam and has been granted his certification. He has however requested that the Board continue with the Appeal as he feels strongly that there are irregularities in the qualification process that ought to be examined by the Board. Given the number of similar appeals received by the Board in recent years, none of which have proceeded to a final hearing, the Board determined that it would proceed with the appeal in any event.

Issues

[3] The first issue that must be determined is whether the Candidate ought to have been granted his certification after writing the Exam. Regardless of the outcome, the second issue that must be examined by the Board is whether there are any irregularities in the qualification process that ought to be addressed.

Position of the Parties

[4] In support of his appeal, the Candidate provided the Board with written submissions outlining his position.

[5] To summarize, the Candidates' position is as follows:

1. The course he took to prepare for the Exam is approved by the BCSA;
2. The textbook from the course has multiple errors; and
3. The textbook and assignments do not have information within them that will enable one to pass the Exam and candidates must rely on the internet to obtain the required information.

[6] In support of this position, the Candidate advises he knows of a number of individuals that have failed the qualification examination and then were granted their certificate after asking the BCSA to review the examination. In particular, he points to one instance where 9 out of 9 individuals that wrote the examination in 2012 all failed and 8 of them applied to have the examination reviewed and were ultimately granted their certification without having to re-write the examination. The 9th candidate did not apply to have his examination reviewed as he had a very low exam grade.

[7] The Candidate further submits that one question on the examination was incomplete.

[8] In response to the Candidates' position, the BCSA provided the Board with sworn affidavits from the Provincial Safety Manager responsible for the Boiler Refrigeration and Pressure Vessels technologies, the chief instructor of Power Engineering employed by

BCIT, and a Senior Safety Officer for the Boiler, Refrigeration and Pressure Vessels technologies.

[9] The BCSA's position is that all aspects of the qualification process are reasonable and that there is no basis for disturbing the Candidate's result. In particular, the BCSA submits as follows:

1. the process that the Standardization of Power Engineer Examination Committee ("SOPEEC") uses to create and administer the Refrigeration Operators examination and syllabus is a thorough and appropriate process;
2. the content of the examination is appropriate and reflects the knowledge that Refrigeration Operators should have to perform regulated work safely, as well as the SOPEEC syllabus in particular; and
3. BCIT's course materials fairly represent the SOPEEC syllabus and specifically alert students to the fact that material beyond the course materials is reflected on the SOPEEC examination.

[10] In addition to the submissions of the parties and affidavits filed with the Board, the Board also reviewed a copy of the BCIT course textbook as well as a copy of the Exam. The Exam was released to the Board in strict confidence pursuant to section 42 of the *Administrative Tribunals Act*.

Facts

[11] As deposed in the affidavit of the Provincial Safety Manager, SOPEEC's Refrigeration Operators Examination is created in a thorough process that contains a number of safeguards. The Exam is meant to be challenging so that only those qualified to perform the regulated work in question are able to pass and obtain qualification and the consortium that is represented via SOPEEC ensures that the exam material is up to date and accurately reflects the knowledge needed to perform the regulated work.

[12] BCIT has been an approved Refrigeration Operation (or equivalent) course provider in British Columbia for approximately 50 years and BCIT has reviewed its course materials against the SOPEEC syllabus. Only two areas are not covered in the syllabus used by BCIT. These are relevant provincial jurisdictional legislation and

workplace safety. As set out in the chief instructor of Power Engineering's affidavit, the applicable legislation is taught in the BCIT course and is assessed with course work while workplace safety is supposed to be gained with on the job workplace experience (which is necessary to obtain qualification). Further, BCIT's assignments clearly indicate that further information outside of the syllabus is recommended.

[13] Statistics show that students generally obtain 10 to 15 percent lower on the SOPEEC qualification examination than they do on the BCIT final examination and applicants are advised of this at the time they register for the BCIT preparatory course.

[14] Notably, the chief instructor of Power Engineering at BCIT deposed in her affidavit that she was unaware of any problems BCIT's students have had with the SOPEEC examination. One would expect that as chief instructor she would be aware of situations where BCIT's students routinely performed worse as a whole than other educational institutions' students.

[15] The Candidate required an examination result of 65% to pass and become certified. As set out in the affidavit of the Senior Safety Officer, sworn February 28, 2013 one question contained a small typographical error, which was easily understood to be a typo and did not interfere with general comprehension of the examination question. Even if given credit for this question the Candidate would still not have reached the 65% required to pass the Exam.

Decision

[16] The *Safety Standards Act*, SBC 2003, c. 39, gives the provincial Safety Manager the power to assess contractor's credentials and determine and administer examinations for that purpose. Given the rigorous protocol followed by SOPEEC in the formulation of its qualification exams, it is clear that the provincial Safety Manager has diligently exercised his powers in choosing to administer the SOPEEC examinations as part of the qualifying process. Further, the provincial Safety Manager has jurisdiction to approve course providers as set out in section 24(a)(i) of the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, BC Reg 104/2004.

[17] As the legislation gives the provincial Safety Manager jurisdiction to set examinations and approve course providers, the Board must defer to the Safety Manager's decisions in these regards. In any event, upon review of the evidence before the Board, the examination process at issue in this appeal is an appropriate thorough and challenging examination process. Examinations that do not reflect current standards or technology, or those that can be passed by candidates without a sufficient knowledge base, do not provide the necessary level of assurance that certified individuals will be able to operate technical systems safely.

[18] The Appellant's examination result stands. Accordingly, this appeal is dismissed.

Commentary

[19] Despite the above set out decision, the Board has determined as a result of its review of the qualification process currently in place that the British Columbia Safety Authority (the "BCSA") may wish to consider a number of points in order to ensure that procedural fairness exists in the qualification process.

[20] First, the BCSA may wish to ensure that candidates are aware that the qualification examinations are difficult and that they are purposely created this way in order to ensure that those that pass the examinations possess the high level of ability required to meet national standards to maintain public safety.

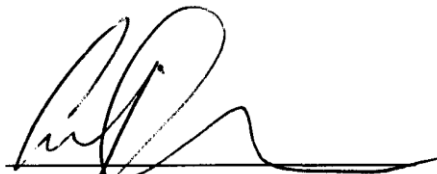
[21] Second, the BCSA may wish to ensure that candidates are aware of the already existing exam remarking option that exists within the BCSA. The Board notes that although the remarking process exists and is briefly mentioned in the BCSA's fee schedule for provision of certain documents and services that there is no mention in the regulations or legislation that such an option exists. The only noted avenue of resolution is an appeal to this Board. Perhaps a directive issued by the BCSA or other information bulletin may assist candidates.

[22] Finally, the Board notes that while courses of study are approved by the BCSA as required by the regulations there are a number of approved educational providers and


while the BCSA vets the content it is up to candidates to ensure that their own educational needs are ultimately met.

[23] It is the Board's hope that the within decision provides assistance and guidance to candidates as they move through the qualification process.


Signed:



Emily C. Drown, Vice-Chair



Tim Haaf



Keith Saddlemyer, Chair