

Date Issued: October 10, 2008

Indexed as: BCSSAB 9 (1) 2008

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

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

BETWEEN:

**Candidate
Fifth Class Power Engineering Certificate of Qualification**

Appellant

AND:

BC Safety Authority

Respondent

**REASONS FOR DECISION
Appeal of Examination Results**

Board Member:

Abigail Fulton, Vice-Chair

Introduction

[1] This is an appeal of the results of the Appellant's Fifth Class Power Engineering examination which was invigilated by the BC Safety Authority (the Respondent) pursuant to the *Safety Standards Act* (the Act) and Regulations, on the grounds that the examination was incorrectly invigilated by the Respondent. The Appellant sought a passing mark.

Preliminary Issue to be decided

[1] Does the Appellant have sufficient grounds to appeal the regulator's decision?

Grounds for appeal

[2] The Board obtains its jurisdiction from section 52 of the *Safety Standards Act* which states that when hearing appeals it must consider the maintenance and enhancement of public safety. The Board's jurisdiction reflects the purpose of the Act to prevent, avoid or reduce the risk of personal injury or damage to property associated with regulated work and products.

[3] When considering a person's reasons for appealing a decision the Board must be satisfied that the person has sufficient grounds or reasons relating to the purpose of the Act to have a right to appeal. Examples of sufficient grounds for appeal would be if the facts of a case are not as stated in a regulator's written decision or the decision was not made in accordance with the Act and regulations.

[4] The Act sets out the need for qualifications as follows:

26 (1) An individual who wishes to be certified as qualified to perform regulated work may, in accordance with the regulations, apply to a provincial safety manager for a certificate of qualification in one or more disciplines as defined in the regulations under section 2 (1) (c).

(2) An applicant who pays the required application fee and meets the requirements of the regulations for a certificate of qualification must be issued a certificate of qualification in each discipline for which the applicant is qualified.

(3) A provincial safety manager must examine the applicant's qualifications and determine their level or category of qualification and for that purpose may devise and administer tests.

(4) If, in the opinion of a provincial safety manager, the applicant does not meet the requirements under the regulations for a certificate of qualification, the provincial safety manager must give the applicant written notice of that decision.

(5) The notice must state the reasons for the decision and that the applicant has the right to appeal the decision to the appeal board.

[5] The Requirement for qualification under the Act for a 5th Class Power Engineer can be found in the Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation as follows:

- 23** (1) An applicant for a fifth class power engineer's certificate of qualification (boiler endorsement) must
- (a) Repealed. [B.C. Reg. 475/2004, Sch. 4, s. 7 (a).]
 - (b) have experience for a period of not less than 8 months as a power engineer trainee in a power plant that has a boiler capacity that exceeds 10 m², a low pressure steam plant that has a boiler capacity that exceeds 30 m², a low pressure thermal fluid plant that has a boiler capacity that exceeds 150 m² of boiler capacity or a fluid plant that has a boiler capacity that exceeds 150 m² of boiler capacity,
 - (c) have experience for a period of not less than 8 months in the design, construction, repair, operation or maintenance of equipment to which this regulation applies, and have successfully completed a fifth class power engineering course (with a boiler endorsement) that has been approved by a provincial safety manager or provide proof of having an equivalent technical educational background that has been approved by a provincial safety manager, or
 - (d) be the holder of a marine engineer (motor) certificate of competency.
- (2) If an applicant holds an engineering degree acceptable to a provincial safety manager or has successfully completed a fifth class power engineering course that has been approved by a provincial safety manager, the required periods of employment referred to in subsection (1) (a) or (b) are reduced by 4 months.

[6] The Regulation further states:

- 5** (1) An individual must not perform regulated work unless the individual
- (a) holds a valid certificate of qualification issued under this regulation,
 - (b) performs regulated work in accordance with section 5 of the Safety Standards General Regulation,
 - (c) is specifically authorized in this regulation, or
 - (d) has been exempted from any specified authorization requirement under this regulation.

[7] The sections of the Act and the Regulation referenced are intended to avoid or reduce the risk to safety by ensuring that persons doing regulated work are qualified. Where an examination is required to enable the issuance of a certificate of qualification a passing grade must be achieved. A passing grade can only be based on the quality and correctness of the questions answered. It can not be surmised from answers that may have been made had more time been available or the circumstances of the invigilation altered.

[8] The information provided to the Board in the Notice of Appeal and the accompanying affidavit, dated September 13, 2008, did not indicate that the Appellant had completed the requirements necessary under the Act and Regulations to achieve a 5th Class Power Engineer Qualification. While the Appellant may indeed have encountered difficulties in the process of taking the examination, there is no indication that he correctly answered enough of the questions to achieve a passing grade which would be required in order to have successfully completed the required examination for qualification. Where an examination is invigilated improperly by a regulator, it would be appropriate for that regulator to give the examinee a new opportunity, at no cost, to rewrite the exam. However without an ability to assess a passing grade based on actual questions answered there would be no way to award a certificate of qualification and be able to ensure that the requirements of maintaining and enhancing public safety had been met. Therefore, the requirements for obtaining the required qualification have not been met and the appeal board has no jurisdiction to alter those requirements.

[9] The Board is sympathetic to the Appellant's concerns regarding the invigilation of his examination and supportive of the actions already taken by the Respondent to offer a re-write of the exam at no cost to the Appellant. However, on the basis of the reasons stated above the Board finds that there are not sufficient grounds to warrant an appeal of the regulator's decision and the application to appeal the decision is denied.