

Date Issued: August 16, 2024
Appeal No. SSAB 1 - 2024

Indexed as: BCSSAB 1 (1) 2024
IN THE MATTER OF THE *SAFETY STANDARDS ACT*,
S.B.C. 2003, Chapter 39

AND IN THE MATTER OF an appeal to the
BRITISH COLUMBIA SAFETY STANDARDS APPEAL BOARD

BETWEEN:

Welder

APPELLANT

AND:

Technical Safety BC

RESPONDENT

REASONS FOR DECISION

Chair:

Maureen Baird, K.C.

On behalf of the Appellant:

The Appellant

Counsel for Technical Safety BC:

Kimberly Fenwick

INTRODUCTION

[1] This appeal concerns a Safety Manager Review Decision dated January 24, 2024, denying the Appellant's request to complete a plate test in lieu of the class A certificate of qualification renewal test required by the Power Engineer, Boiler Pressure Vessel and Refrigeration Safety Regulation, s.41. (the "Regulation").

[2] The Appellant seeks to have his class A pressure welder certificate of qualification reinstated after it expired on January 1, 2024, to be able to continue to work as a welder through his union hall.

[3] After two appeal management conferences, the parties agreed that this appeal would be in writing based on an agreed statement of facts. The Appellant's Notice of Appeal stood as his submission in the appeal, and he had the opportunity to respond to the written submission of the Respondent. The Respondent relied on its Response to Appeal as its written submission. The Appellant did not deliver a response submission.

BACKGROUND FACTS

[4] The following facts are either agreed or not contested.

[5] The Appellant is a member of Union Hall [REDACTED]. He has 40 years of experience as a welder. He has not done any pressure welding in the last 20 years. He is physically able to perform welding work that is not pressure welding work. He says that there is work available to Union Hall [REDACTED] that is not pressure welding work. Union Hall [REDACTED] has told the Appellant they will not send him to work as a welder because he does not have a valid, current class A pressure welder certificate of qualification even if the work is not pressure welder work and does not legally require a class A certificate of qualification.

[6] Prior to 2018, the Appellant was qualified as a pressure welder under the Regulation.

[7] In December 2019, a new pressure welder certificate of qualification system came into force in British Columbia. The changes were introduced to increase the level of safety in the pressure welding industry through the implementation of a standardized certificate of qualification for pressure welding in BC. These changes were clarified in Directive D-BP 2023-01 (Qualification Requirements for Pressure Welders). That directive states that to renew a class A certificate of qualification, an individual must

successfully complete a performance qualification test acceptable to the Provincial Safety Manager.

[8] On January 20, 2021, the Appellant was granted a class A pressure welder certificate of qualification. That certificate of qualification expired on January 1, 2024.

[9] In November 2023, the Appellant contacted Technical Safety BC to request an alternative testing option to the one required by Technical Safety BC for renewal of a class A pressure welder certificate of qualification as set out in Directive DP 2023-01. He is no longer capable of taking the test required by Technical Safety BC for qualification or requalification as a class A pressure welder because of his age and physical abilities. He wanted to take a “plate test” instead of the required test.

[10] On January 8, 2024, the Appellant submitted a request for Safety Manager review of the decision of Technical Safety BC refusing to offer an alternative testing option for renewal of his class A certificate of qualification. On January 24, 2024, the Provincial Safety Manager issued a review decision refusing to offer Mr. [REDACTED] an alternative testing option for renewal of his class A certificate of qualification. Although the request for alternative testing was rejected, the Provincial Safety Manager raised the possibility of providing an accommodation by allowing the Appellant additional time to complete the renewal test.

DISCUSSION AND ANALYSIS

[11] The Provincial Safety Manager has the authority to issue, suspend or review a certificate of qualification pursuant to section 15 of the *Safety Standards Act* (the “Act”).

[12] Pursuant to section 2.3 of the Regulation, certificates of qualification expire on the date specified on the certificate and may be renewed according to the terms and conditions set by the Provincial Safety Manager and applicable under the relevant safety regulation.

[13] Requirements for class A pressure welder certificates of qualification are contained in the Regulation, s.41(2)(b), which states that an applicant for a class A certificate of qualification must meet the applicable conditions and successfully complete a performance qualification test that is acceptable to the Provincial Safety Manager. Pursuant to Directive D-BP 2023-01, the Provincial Safety Manager has determined that an acceptable class A performance qualification renewal test is one that conforms to the Reference Syllabus for Class A Pressure Welder Certificate of Qualification Renewal Performance Qualifications Test.

[14] In the January 24, 2024, letter denying the Appellant's request for an alternative test the Provincial Manager stated that "...The intention of the standardized examination and renewal testing approach is to ensure that a consistent level of competency and capability is possessed by any individual who holds a class A certificate of qualification."

[15] The Appellant's position is that he should be permitted to take a less physically demanding plate test in lieu of the practical examination now required for renewal because he does not intend to do pressure welding. He is frustrated with his union hall who will not send him out to do welding work even if that work does not include pressure welding unless he possesses a class A certificate of qualification. He says there is "...lots of welding for us old guys to do". In his Notice of Appeal, he does not advance any errors he says were made by the Provincial Safety Manager in the January 24, 2024, review decision refusing to approve alternate testing. He does not say that there was any unfairness in the process by which the decision was reached.

[16] The Respondent submits that this appeal should be dismissed on the basis that the Provincial Safety Manager's decision not to modify the performance qualification test was correct and reasonable for the reasons set out in the Safety Manager Review Decision. It says that the standardized examination and testing process has been implemented to ensure a consistent level of capability is possessed by those who hold a class A pressure welder certificate of qualification. Further, the examination and testing requirements are consistent with the abilities required to safely complete the work that a

class A certificate of qualification entitles a holder to perform. Altering the certification requirements would jeopardize the integrity of the class A certificate of qualification, creating a multi-tiered system inconsistent with the regulatory environment.

[17] The Respondent also says that the Appellant did not provide justification of how an alternate form of testing would demonstrate a level of competency consisting with the current renewal test requirements. Importantly, the Respondent says that the Act does not prohibit the Appellant from performing non-regulated welding work, specifically work that is not “pressure welding” under CSA B51. The Respondent also relied on the accommodation of extra time, that was offered by the Provincial Safety Manager, as a basis for saying the decision not to modify the performance qualification test required for renewal of the Appellant’s class A pressure welder certificate of qualifications, was reasonable and correct.

[18] Section 53 of the Act provides that an appeal to the Safety Standards Appeal Board (the “Board”) is a new hearing unless the Board otherwise recommends and the parties to the appeal agree. This has been conducted as a new appeal. Section 59 of the Act provides that this Board must decide the appeal by confirming, varying, or reversing the decision or by dismissing the appeal.

[19] The Appellant has represented himself throughout the appeal without the benefit of a facility with using internet resources. The Board office has attempted to provide him with support in terms of delivery of documents by mail and provision of paper copies of documents otherwise available on the internet such as the Act, and the Board’s Rules of Practice and Procedure.

[20] Section 52(1) of the Act requires the Board to consider the maintenance and enhancement of public safety when considering an appeal. While I appreciate the Appellant’s physical limitations, I agree with the Respondent that no evidence has been presented to demonstrate that the alternative practical performance test proposed by the Appellant would demonstrate a level of competency and capability consistent with

the current renewal test requirements. Further, the Appellant did not take the position that there was any procedural unfairness in the Provincial Safety Manager's decision under appeal and on review of the record, I do not find any. Similarly, I find no error in the decision under appeal that would make it unreasonable or unfair. The Provincial Safety Manager found that there was no evidence presented of how an alternate form of testing would demonstrate a level of competency and capability consistent with holding a class A certificate of qualification. The paramount consideration for the Provincial Safety Manager in the review decision and for me in this appeal is the maintenance and enhancement of public safety. The standardized testing regime adopted by Technical Safety BC for the renewal of class A certificates of qualification was expressly implemented to create consistency in capability of people holding this certificate class. There is nothing before me to satisfy me that the alternative testing urged by the Appellant will achieve this goal.

[21] I want to emphasize that I hear and appreciate that the Appellant says he will not do pressure welding and that he has not done so for a considerable period. His goal in this appeal is to obtain a decision that would convince or compel his union hall to send him out on welding jobs that do not require a class A certificate of qualification. That is not something that is within my jurisdiction.

[22] Section 59 of the Act says that the Board must decide the appeal by confirming, varying, or reversing the decision or by dismissing the appeal. I have been presented with no basis on which to reverse or vary the decision. I accept that meeting the standards for a class A certificate of qualification may be beyond the Appellant's physical capabilities and that this is causing him hardship, but that does not, in my view, justify an exception to the renewal testing standards that have been developed to promote safety. I note the clear position of Technical Safety BC of which they set out in its Response to Appeal that the Act and the Regulation does not prohibit the Appellant from performing non-regulated work, that is welding that is not "pressure welding" under CSA B51. I have no jurisdiction to order or direct the Appellant's union hall to send him out on welding jobs that do not involve pressure welding. This is a matter that he will

have to resolve elsewhere.

CONCLUSION

[23] For the reasons above, I dismiss the appeal.

Signed;



Maureen Baird, Chair