
**APPEALS BOARD
UTAH LABOR COMMISSION**

**DIVISION OF BOILER AND ELEVATOR
SAFETY,**

Petitioner,

vs.

JAMES EARL COLLVINS,

Respondent.

**ORDER AFFIRMING ALJ'S
ORDER TO SET ASIDE
PERMANENT SUSPENSION**

Case No. 08-0787

The Division of Boiler and Elevator Safety ("Safety Division") asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Hann's decision setting aside the permanent suspension of James Earl Collvins' certificate of competency under the Utah Safety Act, Title 34A, Chapter 7, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301.

BACKGROUND AND ISSUE PRESENTED

Mr. Collvins appeals the Safety Division's decision to permanently suspend his certificate of competency on November 26, 2007. Judge Hann held an evidentiary hearing and concluded that the Safety Division had failed to prove the underlying allegations that were the basis for suspending Mr. Collvins' certificate. She therefore set aside the permanent suspension.

In its motion for review, the Safety Division argues that Mr. Collvins' certificate was suspended, not because of the particular allegations that were raised in the November 26, 2007, notice, but based on his previous inspection history and probationary status.

FINDINGS OF FACT

The Appeals Board adopts Judge Hann's findings of fact. The facts relevant to the motion for review can be summarized as follows:

Mr. Collvins works for the Hartford Steam Boiler Inspection and Insurance Co. ("Hartford") inspecting boilers and pressure vessels insured by Hartford in Utah. In order to work as an inspector in the state of Utah, Mr. Collvins had to pass a competency test administered by the Safety Division and be issued a certificate of competency, thereby deputizing him as an inspector for the state.

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In April of 2006, Mr. Collvins was placed on a corrective action plan when a complaint and ensuing investigation by the Division showed that he had been issuing certificates for vessels that were not in operation and failing to issue certificates for vessels that were in operation. It was concluded that Mr. Collvins had not intentionally falsified the documents but had rather made mistakes in completing the required paperwork. Mr. Collvins admitted to the mistakes and also underwent an informal review by the National Board in Ohio where he was told it was important in his job to get the paperwork right. Mr. Collvins successfully completed terms of his probation and his probationary status was removed by summer of 2007.

In October of 2007, Mr. Collvins called the Division to report finding an error in his data entry; he had issued permits on two units that were no longer there. Although he had called two weeks earlier to rectify a similar mistake, this time the inspections had been finalized and invoiced by the time he called the Division and they could not just be simply deleted in the system, as had happened after the earlier report. As a result, two inspection certificates were issued on scrapped items. On October 24, 2007, the Division notified Hartford that it was placing Mr. Collvins on probation because of these mistakes. The Division advised that “[t]his probation would lapse after 6 months should there be no more discrepancies [sic] of data entered, and if there are any discrepancies [sic] **during this period** his C of C would be suspended.” (Emphasis added.) Mr. Collvins would also be required to retake the written portion of the certificate of competency exam.

In November of 2007, the Cache County School District (“Cache County”) complained to the Division that on October 30, 2007, Mr. Collvins failed to conduct an inspection on a unit because he could not access the unit, which was located in a ceiling, and advised Cache County to contact the Division rather than notifying the Division himself. On November 19, 2007, the Davis County School District (“Davis County”) called the Division to report that Mr. Collvins had issued operating permits on three units that were scrapped prior to inspection and that another permit was a duplicate. According to the initial complaint form completed by the Division, there was no indication given as to when Mr. Collvins made these alleged errors or further details about the units other than their permit number.

On November 26, 2007, the Division sent a letter to Hartford, with a copy to Mr. Collvins, detailing the foregoing complaints from Cache County and Davis County. The Division advised that “[d]ue to the fact of Mr. Collvins previous inspection history and present probation I am hereby permanently suspending Mr. James Collvins Jr.’s Utah Certificate of Competency #571 effective today.” In support of its position, the Division cited to the Utah Boiler and Pressure Vessel Compliance Manual, Part II, Section A-5(D), which authorizes that:

An inspector’s Utah certificate of competency may be suspended by the Chief Boiler Inspector **after due investigation** and recommendation by the Labor Commission for any reason deemed detrimental to the boiler and pressure vessel inspection program of Utah. Written notice of the suspension shall be given to the inspector and his/her employer by the Chief Boiler Inspector within 10 days of the effective date of the

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suspension. Persons whose Utah certificate of competency have been suspended may appeal to the Labor Commission and may be present in person and represented by counsel at the hearing of the appeal. (Emphasis added.)

After issuing the suspension, the Division ordered all of the inspections Mr. Collvins completed from August 1, 2007, through October 25, 2007, to be re-inspected; no evidence has been presented on the results of the re-inspections. Mr. Collvins denied that he made the errors alleged by Davis County in the November 26, 2007, letter permanently suspending his certificate and filed an appeal of the Division's decision to permanently suspend his certificate with the Labor Commission.

At the appeal hearing before Judge Hann, the Davis County representative testified about a two-year history of problems with inspections, with no specificity as to time or place of the alleged discrepancies. The representative could not specifically link any of these inspections problems to the units he identified in his call to the Division on November 19, 2007. The inspection records of the units at issue in the Davis County's complaint were also not submitted into evidence.

DISCUSSION AND CONCLUSIONS OF LAW

The issue before the Appeals Board is whether the Division acted within its authority in deciding to permanently suspend Mr. Collvins' certificate of competency, thereby revoking his ability to perform inspections in the state of Utah. Judge Hann found that the Division's letter of November 26, 2007, was a notice of agency action and, thus, the Division had the burden of proving the facts alleged in the notice. Judge Hann concluded that the Division failed to prove the underlying facts at the hearing and thus set aside the permanent suspension of Mr. Collvins' certificate of competency.

Under Section 34A-7-103 (8) of the Utah Safety Act, "[i]nspectors deputized or employed by the Division of Safety under this part shall meet at all times nationally recognized standards of qualifications of fitness and competence for work." In following this statutory mandate to ensure the fitness and competence of its inspectors, and pursuant to Commission Rule R616-2-7, the Division has developed and maintained the Utah Boiler and Pressure Vessel Compliance Manual ("Manual"). As cited in the foregoing facts, the Manual provides the Division the authority to suspend Mr. Collvins' certificate of competency "after due investigation and recommendation by the Labor Commission for any reason deemed detrimental to the boiler and pressure vessel inspection program of Utah." Thus, the Appeals Board reviews the record to determine whether the Division complied with its own rules and procedures in suspending Mr. Collvin's certificate of competency.

In reviewing the record, the Appeals Board notes that in April of 2006, when Mr. Collvins first was placed on probation, the Division performed an independent investigation into the complaints made against Mr. Collvins, as reflected in a letter dated April 17, 2006. On October 24, 2007, Mr. Collvins was again placed on probation because of discrepancies in his paperwork. The most pivotal term of Mr. Collvins' probation was that he not commit any further data entry

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discrepancies during the six-month probationary period and, if there were such discrepancies, his certificate of competency would be suspended. By its terms, the Division made further data entry discrepancies the basis for suspending Mr. Collvins' certificate, as was in its discretion.

Within one month of Mr. Collvins' probation, the Division received two separate complaints on Mr. Collvins. However, the only complaint that would form the basis for suspending Mr. Collvins' certificate, according to the terms of the probation, would be Davis County's complaint regarding possible data entry errors that resulted in the issuance of three permits on units that were alleged to have been scrapped prior to Mr. Collvins' inspection and a duplicate permit. However, whereas the Division had previously conducted an investigation in April of 2006, no evidence has been presented that indicates the Division conducted any investigation to substantiate the allegations either before or after it suspended Mr. Collvins' certificate of competency. Such an investigation might have demonstrated that the Division's decision to suspend Mr. Collvins' certificate was reasonable.

Although the Division argues that Mr. Collvins' suspension was not based on the infractions listed in its letter dated November 26, 2007, but rather based on his history of mistakes and current probationary status, the Appeals Board disagrees. Had the new infractions detailed in the November letter not been alleged, Mr. Collvins would have continued on a probationary status. It was only after new complaints were made alleging discrepancies similar to mistakes that Mr. Collvins had made before that the Division made the decision to suspend the certificate. Thus, the alleged discrepancies identified in the letter of November 26, 2007, did form the basis for the Division's decision to suspend Mr. Collvins' certificate.

Accordingly, by its rules and practice, the Division was required to conduct an investigation into the allegations before suspending his certificate. The Division failed to do so. Therefore the Appeals Board finds that the Division was not acting within its statutory authority when it prematurely suspended Mr. Collvins' certificate of competency prior to an investigation to corroborate the discrepancies alleged, as required by the Division's rules and practice. For the foregoing reasons, the Appeals Board affirms Judge Hann's decision to set aside the Division's permanent suspension of

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Mr. Collvins' certificate of competence.

ORDER

The Appeals Board affirms Judge Hann's order setting aside the permanent suspension of Mr. Collvins' certificate of competence and reinstates the terms of the October 24, 2007, probation. It is so ordered.

Dated this 24th day of March, 2009.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.