

STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
ELEVATOR INSTALLATION, REPAIR AND MAINTENANCE WORK EXAMINING BOARD

In the matter of)
)
DECLARATORY RULING PETITION OF)
EXCEL ELEVATOR & ESCALATOR CORP.)
FOR GERSON CANHAO AND)
MICHAEL ELIA)

DECLARATORY RULING

On April 21, 2015, Excel Elevator & Escalator Corp., a New York State corporation ("Excel") through its attorney Karen P. Wackerman, of Jeffers Cowherd, P.C., filed a petition for a declaratory ruling from the Elevator Installation, Repair and Maintenance Work Examining Board ("the Board") regarding the Board's denial of applications submitted by two of Excel's employees, Gerson Canhao and Michael Elia, to sit and take the Connecticut unlimited elevator journeyman's license (R-2) test. At the May 19, 2015 special Board meeting, the Board agreed to issue a declaratory ruling on or before the statutorily required date of October 8, 2015. The Board hereby issues a declaratory ruling for each of the following requests.

I. Questions

Excel asked for a declaratory ruling¹ answering:

1. specific and detailed reasons for the denial of the applications of both Mr. Elia and Mr. Canhao;

¹ Excel's request was pursuant to Regs., Conn. State Agencies § 21a-1-10, however, Connecticut General Statute § 4-176 is the proper statute for requesting a declaratory ruling from the Board.

2. an explanation for how the denial complies with Section [20-334a(a)(2)(A)] of the Connecticut General Statutes and Section 20-332-3 of the Regulations of the Connecticut Department of Consumer Protection ("DCP"); and
3. specific guidance as to what the applicants can do or provide the Board in order to have their applications approved.

II. Statement of Facts

1. At the February 3, 2015 regular Board meeting, Excel presented applications by Gerson Canhao, Danbury, CT and Michael Elia, Staten Island, NY to sit and take the Connecticut R-1 unlimited elevator contractor's license test.²

2. Each application included a separate notarized employer reference letter dated January 6, 2015, from Robert Belcher, Vice President, Operations, Excel, on behalf of the applicants stating that Mr. Belcher was responsible for the operations of all vertical transportation (elevators and escalators) and oversaw all journeyman in the service and repair of this equipment. He stated that he has been a member of the International Union of Elevator Constructors Union (IUEC) since 1987.

3. Mr. Belcher did not state that he held a license to do elevator work from any governmental agency.

4. New York State does not issue elevator licenses similar to the State of Connecticut.³

² Excel also submitted an application for its employee, Daniel J. Narisco to take the unlimited contractor's license (R-1) test. At the March 11, 2015 regular Board meeting, the Board approved Mr. Narisco to sit and take the R-1 unlimited contractor's license test.

³ If it did, the Commissioner of Consumer Protection could have granted applicants an R-1 unlimited contractor's license or an unlimited journeyman's license (R-2) upon payment of the appropriate fee. See, Conn. Gen. Stat. § 20-333a, Reciprocity.

Gerson M. Canhao

5. In support of Mr. Canhao's application, Mr. Belcher's letter stated that Mr. Canhao was employed at Excel since 2009. It also indicated that Mr. Canhao began his apprenticeship with IUEC Local One on April 6, 2009 and became a journeyman on November 19, 2014.

6. Mr. Belcher further stated that in Mr. Canhao's position as a journeyman his job duties entailed performing maintenance, repairs, and inspections and modernization, on all elevators and escalators; specializing in escalator repair.

7. The documents attached to Mr. Canhao's application include, but are not limited to, a December 8, 2014 letter from IUEC Local One stating that he began as an apprentice on April 6, 2009, was a journeyman as of November 13, 2014, and recorded 10,250 hours, personal resume, and evidence of completion of the mechanic's examination offered by the National Elevator Industry Education Program ("NEIEP").

Michael Elia

8. In support of Mr. Elia's application, Mr. Belcher's letter stated that Mr. Elia was employed at Excel since 2005. It also indicated that Mr. Elia was originally employed as Assistant Operations Manager and later became a member of IUEC Local One on December 28, 2006.

9. Mr. Belcher further stated that in Mr. Elia's position as a supervisor/adjuster and his job duties entailed assignments, surveying jobs, material ordering, reviewing and preparing bid proposals. His journeyman duties include performing maintenance, repairs, installation, inspections and modernizations on elevators and escalators; specializing in troubleshooting and adjusting.

10. The documents attached to Mr. Elia's application include, but are not limited to, a December 8, 2014 letter from IUEC Local One stating that he began as an apprentice on December 28, 2006, was a journeyman as of November 22, 2010, and recorded 14,582 hours, personal resume, IUEC dues card, and evidence of completion of the National Elevator Industry Educational Program ("NEIEP").

11. On February 3, 2015, after reviewing the applications and listening to testimony, the Board denied the applications due to lack of an unlimited journeyman's license (R-2) for the required two-year period and/or insufficient evidence satisfactory to the Board that such service was comparable to similar service in Connecticut. See, Connecticut General Statute § 20-334a(a)(1)(A).

12. On March 10, 2015, Attorney Karen P. Wackerman, of Jeffers Cowherd, P.C., on behalf of her client, Excel filed a request for a declaratory ruling of the Board's February 3, 2015 decisions.

13. At the March 11, 2015 regular Board meeting, Excel asked the Board to reconsider the applications of Mr. Canhao and Mr. Elia, but amended their applications to request that they be able to sit and take the unlimited journeyman's license (R-2) test. Mr. Elia did attend the meeting and spoke on his behalf. Excel orally withdrew its March 10, 2015 declaratory ruling request so that Excel could request a declaratory ruling of the Board's decisions made at the March 11, 2015 Board meeting.

14. Excel submitted additional information in support of Mr. Canhao's application including a NEIEP educational program transcript and an updated notarized employer reference letter from Mr. Belcher dated March 9, 2015, providing additional information that Mr. Canhao had experience with all types of manufacturer's equipment such as Thyssen,

Schindler, Kone, Otis, Hyundai, and Fugitec. The letter further states that Mr. Canhao had performed major repairs such as step chain replacements, handrail replacements, and bull gear replacements; had performed upgrades to escalators to meet codes and enhance the overall safety such as with skirt brush installations, skirt switch installations, and comb plate switches; and had performed repairs that are related to damage or vandalism such as hand rail replacements, glass balustrade replacements, skirt panels and skirt cover replacements and comb plate and step damage.

15. Excel also submitted additional information in support of Mr. Elia's application including National Association of Elevator Safety Authorities International ("NAESA International") certificates and an updated notarized employer reference letter from Mr. Belcher dated March 9, 2015, providing additional information that Mr. Elia had extensive experience with various manufacturers of controllers such as: Otis, Kone, Thyssen, Dover, O'Thompson, Motion Controls, and Smart Rise. The letter also indicated that he had experience with the following: all phases of installation and repairs of Hollister-Whitney machines and brake assemblies, hydraulic jack assemblies and tank assemblies (Otis, Unitec, and Thyssen); experience with various door component manufacturers such as: GAL, Otis (Unitec), Thyssen (Dover) and had supervised and installed these components. Finally the letter indicated that Mr. Elia's trouble shooting ability is not limited to one specific controller manufacture, that he had experience with Motion Controls, Smart Rise, Otis, and Thyssen to name a few and that he passed the NAESA International QEI Inspectors Exam and is a certified inspector through the NAESA International.

16. On March 11, 2015, after reviewing the applications, additional information and testimony, the Board denied Mr. Canhao and Mr. Elia's applications due to failure to

demonstrate their competency to perform all services in the elevator trade, specifically lack of proof of on the job training under licensed supervision and lack of equivalent work experience.

17. At the April 7, 2015 regular Board meeting, Excel asked the Board to reconsider the amended applications of Gerson Canhao and Michael Elia to sit and take the unlimited journeyman's license (R-2) test.

18. Excel submitted additional information in support of Mr. Canhao's application that included a Henry Abbott Regional Vocational-Technical School, Danbury, CT electrical course diploma and NEIEP student certificate statement.

19. Excel also submitted additional information in support of Mr. Elia's application that included a Francis School high school diploma and Commonwealth of Pennsylvania, Department of Labor and Industry Uniform Construction Coded Certification Card.

20. At the April 7, 2015 regular Board meeting, the matters were continued to the May 5, 2015 regular Board meeting due to lack of a quorum.

21. On April 21, 2015, Attorney Karen P. Wackerman, of Jeffers Cowherd, P.C., on behalf of her client, Excel filed the current petition for a declaratory ruling.

22. At the May 5, 2015 regular Board meeting, Excel again asked the Board to reconsider the amended applications of Mr. Canhao and Mr. Elia to sit and take the unlimited journeyman's license (R-2) test. Mr. Canhao attended this meeting.

23. Excel submitted additional information in support of Mr. Elia's application that included an IUEC Local One letter dated May 5, 2015 stating that Mr. Elia completed his NEIEP apprenticeship courses in 2010 and passed his journeyman's test in November 2010.

24. On May 5, 2015, after reviewing the applications and additional information, the Board denied Mr. Canhao and Mr. Elia's applications because Mr. Belcher, who submitted the March 9, 2015 letter attesting to work-related experience, was not a licensed contractor.

25. On May 5, 2015, the Board voted unanimously to have further proceedings on Excel's April 21, 2015 petition for declaratory ruling in accordance with the provisions of Connecticut General Statute § 4-176.

26. At the May 19, 2015 special Board meeting, the Board discussed Excel's petition for declaratory ruling.

27. The Board discussed the reasons for the denial of the amended applications of Mr. Canhao and Mr. Elia to sit and take the unlimited journeyman's license (R-2) test. It was discussed that the letters submitted to serve as proof of work-related experience were not authored by a licensed individual, and that the applicants did not have enough work experience.

28. The Board continued the matter to the next regular Board Meeting on June 2, 2015.

29. At the June 2, 2015 regular Board meeting, Paul Farnsworth, acting chairperson stated that the Board had agreed to issue a declaratory ruling and it was the Board's intention to issue a declaratory ruling no later than at the July 7, 2015 regular Board meeting.

30. At the June 2, 2015 regular Board meeting, Excel submitted additional information in support of Mr. Canhao's application that included, but is not limited to, a four page professional profile/resume of Robert Belcher and a letter from Carolyn Robinson, Supervisor Apprenticeship Training, NYS Department of Labor, confirming that Mr. Canhao completed the apprenticeship requirements in the State of New York.

32. Excel also submitted additional information in support of Mr. Elia's application that included, but is not limited to, a four page professional profile/resume of Robert Belcher, a seven page detailed list of Mr. Elia's work experience as an apprentice, and a one page nonnotarized letter from a customer, Smartrise, detailing elevator work completed by Mr. Canhoa.

33. At the July 7, 2015 regular Board meeting, Excel summarized the additional information that was submitted at the June 2, 2015 regular Board meeting and requested that the Board reconsider its denial of the amended applications of Mr. Canhao and Mr. Elia to sit and take the unlimited journeyman's license (R-2) test. Mr. Elia attended the meeting.

34. On July 7, 2015, the Board voted unanimously to take no action on Excel's requests for reconsideration. Acting chairperson, Paul Farnsworth stated that the applicants can apply or reapply at any time for the R-2 unlimited elevator journeyman's license.

35. At the July 7, 2015 regular Board meeting, after reviewing the amended applications, additional information and testimony, the Board voted unanimously for the acting chairperson, Paul Farnsworth, to write a draft declaratory ruling that would be distributed at a special meeting of the Board on July 21, 2015.

36. At the July 21, 2015 special Board meeting, the Board heard additional comments and Paul Farnsworth, acting chairperson, distributed his draft declaratory ruling.

III. Discussion

Conn. Gen. Stat. § 4-176 provides in subsection (a) that "[a]ny person may petition an agency, or an agency may on its own motion initiate a proceeding, for a declaratory ruling as to the validity of any regulation, or the applicability to specified circumstances of a provision of the

general statutes, a regulation, or a final decision on a matter within the jurisdiction of the agency." The Board will address the first two questions together:

1. **Specific and detailed reasons for the denial of the applications of both Mr. Elia and Mr. Canhao; and**
2. **An explanation of how the denial complies with Section 20-334a(2)(A)(2) of the Connecticut General Statutes and Section 20-332-3 of the regulations of the Connecticut Department of Consumer Protection.**

Conn. Gen. Stat. § 20-334a provides that certain licenses "may be issued by the Department of Consumer Protection, upon authorization of the boards, under the provisions of section 20-333." Conn. Gen. Stat. § 20-333 states, in relevant part: "The applicant shall satisfy such board that such applicant...has the requisite skill to perform the work in the trade for which such applicant is applying for a license and can comply with all other requirements of this chapter and the regulations adopted under this chapter." (Emphasis added.) The statute gives the Board authority to determine whether Gerson Canhao and Michael Elia submitted sufficient information in their applications to sit for and take the unlimited journeyman's license (R-2) test. The key word in the language in Conn. Gen. Stat. § 20-333, which is quoted above is "and". The words in a statute are to be given their plain and ordinary meaning. Mazur v. Burns, 184 Conn. 116, 118 (1981). Merriam-Webster's Collegiate Dictionary (10th ed 2001), p. 43, defines "and", in relevant part, as follows: "a logical operator that requires...two conditions to be met for...a statement to be executed." The intent of the legislature in using "and" is thus clear: an applicant for an unlimited journeyman license (R-2) must comply with all of the requirements of the Connecticut General Statutes and Regulations of Connecticut State Agencies.

Mr. Canhao and Mr. Elia were seeking an unlimited journeyman's license which falls under Conn. Gen. Stat. § 20-334a(a)(2)(A) that states, in relevant part:

An unlimited journeyman's license may be issued to any person who has completed a bona fide apprenticeship program, including not less than four years' experience in the trade for which such person seeks a license,⁴ and has demonstrated such person's competency to perform all services included in the trade for which a license is sought by successfully completing the applicable state licensure examination. (Emphasis added.)

The statute uses the word "may" which indicates that the Board has discretion on whether to issue a license. This was confirmed by the Superior Court in International Union of Elevator Contractors, Local 91 v. State Elevator Work Examining Board, et al, 2005 WL 407723 (Lavine, J.)(2005) in which the court said "that while the board has a ministerial duty to review and pass upon applications, the substantive manner in which the Board fulfils this duty require the exercise of discretion, . . ."

Applicants for the unlimited journeyman's license (R-2) test must also comply with the requirements of Regs., Conn. State Agencies § 20-332-8(b), which requires that, "Applicants for a journeyman's license shall furnish documentary evidence of (1) having been employed for the required number of years as an apprentice under the direct personal supervision of a licensed craftsman in the work for which an application has been filed, or (2) having had experience which could be deemed by the board to be equivalent thereto."(Emphasis added.)

The Board denied Mr. Canhao's and Mr. Elia's applications because they failed to submit sufficient information in their applications, additional documentation and testimony demonstrating that they were supervised by a licensed unlimited contractor (R-1) or unlimited journeyman (R-2). In fact, Mr. Canhao and Mr. Elia could not meet this requirement because

⁴ Regs., Conn. State Agencies § 20-332-3(b), unlimited journeyperson elevator license (R-2) states, in relevant part, "A person must have completed a two year, four thousand (4,000) hour, elevator apprenticeship program or have equivalent experience to qualify for the R-2 examination." This regulation is superseded by Connecticut General Statute § 20-334a(a)(2)(A) which requires four years or 8,000 hours experience in the elevator trade.

New York State does not issue either an unlimited contractor's licenses (R-1) or an unlimited journeyman's license (R-2) similar to Connecticut.

Alternatively, Mr. Canhao and Mr. Elia are eligible to sit and take the unlimited journeyman's license (R-2) test if they can demonstrate to the Board that they possess experience which could be deemed by the Board to be equivalent thereto. As an unlimited journeyman (R-2), applicants who pass the test are allowed to perform elevator work in all areas of the trade. Those applicants who come from states that do not provide elevator licenses equivalent to Connecticut's must demonstrate to the Board that they possess the requisite skills to perform work in all areas of the trade, including but not limited to: accessibility equipment including inclined stairway chairlifts, vertical wheel chair lifts, inclined lifts and any other lifts referred to in Conn. Gen. Stat. § 29-200 (see Regs., Conn. State Agencies § 20-332-3(c) - R-5 limited contractor and § 20-332-3(d)- R-6 limited journeyman elevator licenses); installation, maintenance, alteration or repair of equipment, apparatus or machines used to convey materials (see Regs., Conn. State Agencies § 20-332-3(e) - R-7 limited conveyer contractor and § 20-332-3(f) - R-8 limited conveyor journeyman elevator licenses); and installation, maintenance, alteration or repair of equipment, apparatus or machines used to hoist or lift materials, including but not limited to monorail, under hung cranes, overhead hoists, top running single girder cranes with under hung hoists and double girder cranes with top running hoists (see, Regs., Conn. State Agencies § 20-332-3(g) - R-9 limited hoist, cranes and lifts contractor's elevator licenses).

The Board used its judgment and expertise to determine that Mr. Canhao and Mr. Elia did not submit sufficient evidence that they possessed work experience which could be deemed by the board to be equivalent similar service for all areas of the trade within

Connecticut. Although Mr. Belcher's March 9, 2015 letter for Mr. Canhao states that he worked on elevators and escalators, nothing in either that letter, documents submitted by Mr. Canhao, or Mr. Canhao's answers to the Board's questions indicated that Mr. Canhao had equivalent, if any, work experience with accessibility equipment including inclined stairway chairlifts, vertical wheel chair lifts, inclined lifts and any other lifts, conveyors, hoists, or cranes. Although Mr. Belcher's March 9, 2015 letter for Mr. Elia states that he works on elevators, nothing in either that letter, documents submitted by Mr. Elia, or Mr. Elia's answers to the Board's questions indicated that Mr. Elia had equivalent, if any, work experience with escalators, accessibility equipment including inclined stairway chairlifts, vertical wheel chair lifts, inclined lifts and any other lifts, conveyors, hoists, or cranes.⁵

Therefore the Board denied Mr. Canhao's and Mr. Elia's applications due to lack of proof of on the job training under licensed supervision and lack of equivalent work experience.

3. Specific guidance as to what the applicants can do or provide the Board in order to have their applications approved.

This request does not ask the Board to give a declaratory opinion based on specified circumstances as required by Conn. Gen. Stat. § 4-176 and therefore is not an appropriate request. However the Board provides the following general guidance without waiving any of its rights to review future applications and decide whether those applications meet the requirements of the statutes and regulations.

While Mr. Belcher's March 9, 2015 letters on behalf of Mr. Canhao and Mr. Elia refer to different types of elevators and controllers that his employees may have worked upon, there is little documentation of dates, duties, specific equipment worked upon, and under whose

⁵ Mr. Elia submitted a seven page detailed list of his work experience as an apprentice, but it does not detail dates, times, work performed, and under whose supervision.


supervision. Excel may submit certified copies of daily work logs for Mr. Canhao and Mr. Elia including evidence of date, time, worked performed, and under whose supervision.

Mr. Canhao and Mr. Elia can reapply to sit for the R-2 unlimited journeyman's license test after they have completed the required amount of hours to demonstrate that they have worked under the direct personal supervision of a licensed craftsman to competently perform all services in the elevator trade.

IV. Conclusion

In conclusion, the Board denied Mr. Canhao and Mr. Elia's applications due to lack of proof of on the job training under licensed supervision and lack of equivalent work experience.

ON BEHALF OF THE BOARD


Paul B. Farnsworth,
Acting Chairman

09-22-15
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