

Before the Iowa Plumbing and Mechanical Systems Board

In the Matter of:)	Case No.: PM20090010
)	DIA No: 11PMB001
)	
Walter Todd Johnson,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	DECISION and ORDER

This matter concerns a statement of charges filed against respondent Walter Todd Johnson on March 15, 2011. He was charged with fraud in procuring a license. The case was set for hearing before the Iowa Plumbing and Mechanical Systems Board (the Board) on May 18, 2011. The following Board members were present for the hearing: Jane Hagedorn, Ken Sharp, Dennis Molden, Ronald Masters, Charles Thomas, Brita Van Horne, Mickey Gage, Jim Cooper, and Blas Hernandez. Jeffrey Farrell, an administrative law judge from the Iowa Department of Inspections and Appeals, assisted the Board. Assistant Attorney General September Lau represented the public interest. Attorney Guy Cook represented respondent.

THE RECORD

The State's exhibits 1-16 were admitted, with the exception that respondent's objection to the narrative entry on exhibit 4, appendix page 16, regarding Steve Jenkins was sustained with the agreement with the State. The Board was instructed to disregard the narrative paragraph concerning the conversation with Mr. Jenkins. The State called Daniel Hostetler and Susan Van Horn as witnesses.

Respondent's exhibits A-D were admitted. Respondent testified. Respondent also called Walter Johnson, Sr. as a witness.

FINDINGS OF FACT

On May 18, 2009, respondent Walter Todd Johnson filed an online application for a license under all four trades regulated by the Board (plumbing, HVAC, refrigeration, and hydronics). Respondent sought a license during a waiver period that applied after the enactment of the Iowa Plumber, Mechanical Professional, and Contractor Licensing Act in 2007.¹ The Act provided for waiver of the educational and examination requirements if an applicant proved (to the satisfaction of the Board) five or more years experience sufficient to demonstrate continuous professional competency consistent with that

¹ Iowa Code Chapter 105.

expected of an individual who passes the applicable licensing examination.² The waiver period closed on December 31, 2009.³ (Exhibits 1-2, 5).

The application form contains questions relating to examination, continuing education, work experience, and other screening areas. Respondent's application stated that he worked at Capital City Boiler from January 1, 1991 to May 18, 2009. Respondent described his duties as a boiler maker. He provided a home address as a residence on Dean Avenue in Des Moines. Respondent answered "yes" to questions concerning: 1) convictions or pleas of guilt or no contest to a felony or misdemeanor, and 2) engaging in illegal or improper use of drugs. Respondent stated as an explanation to his "yes" answers that he was "[c]onvicted of possession of marijuana." No other explanation was provided. (Exhibits 5-6).

The application contains a certification statement that all questions on the application have been carefully read and answered completely and truthfully. The certification statement further states that the applicant is responsible for the accuracy of the data regardless who completes and submits the application. Applicants are warned that the Board may revoke a license for providing misleading or false information on the application, and the Board may refer the matter for criminal prosecution. (Exhibit 6).

On May 20, 2009, the Board approved respondent's application at the master level in all four trades pursuant to the waiver provision relating to work experience. The Board relied on the information reported on respondent's application in granting the license. (Exhibit 5).

On September 29, 2009, the Board received a complaint alleging that respondent could not have had the required experience to obtain a license during the waiver period because he was in the Iowa jail system for at least five years. The Board assigned the complaint to Daniel Hostetler to conduct an investigation. Mr. Hostetler had more than ten years combined experience as a deputy sheriff and motor vehicle officer for the Department of Transportation before starting work for the Board. (Exhibit 4; Hostetler testimony).

Mr. Hostetler checked Iowa Courts Online for reports of criminal convictions or pleas of guilt or no contest. He found that respondent was convicted on April 28, 2003 of a class C felony for possession of methamphetamine with intent to deliver and a class D felony for failure to affix a tax stamp. Respondent was initially given a ten year suspended sentence on the class C felony and a five year suspended sentence on the class D felony. However, on December 20, 2005, respondent's probation was revoked and both sentences were imposed, with the five year sentence to run consecutive to the ten year

² Iowa Code section 105.18(4)(b).

³ 641 IAC 29.6(c).

sentence. Mr. Hostetler confirmed the online report with orders from the criminal court files.⁴ (Exhibits 4, 14-15; Hostetler testimony).

Mr. Hostetler interviewed respondent on December 27, 2010. Respondent stated that he was convicted of possession of marijuana with the intent to deliver. He stated he was incarcerated from December of 2004 to October of 2008. He stated that he spent the first year at Polk County Jail, and was later transferred to the Clarinda Correctional Facility (Clarinda) where he spent most of his prison time. Respondent reported performing boiler work while incarcerated. Respondent stated he returned to work at Capital City Boiler after being approved for work release effective October of 2008. (Exhibit 4).

Mr. Hostetler stated he asked respondent several times if he had any convictions that were not disclosed on his application. Respondent denied any other convictions and stated that the possession with intent to deliver was the only charge he ever had. Respondent told Mr. Hostetler that he completed the application on his own. (Exhibit 4).

The court records confirm that respondent was booked on a probation violation on December 27, 2004. He was held continuously at the Polk County Jail until being transferred to the Iowa Department of Corrections on February 3, 2006. He was held continuously by the Department of Corrections until being released to work release on October 2, 2009. (Exhibits 7-8, 15; Hostetler testimony).

Respondent testified that he has worked for his father at Capital City Boiler since he was a ten year old boy in 1978. Respondent learned by watching his father and others in the business, and started to perform tasks such as welding, installation, and equipment repairs. Respondent graduated to the point where he has trained others. Respondent has completed many systems tests and certification courses. (Respondent testimony; exhibits A-D).

Respondent testified at hearing that he did not complete the application that was filed with the Board. An employee of Capital City completed the form on respondent's behalf. Respondent talked to the employee on the phone to answer the questions. Respondent signed the application. He admitted that it contained mistakes by failing to correctly report all convictions. (Respondent testimony).

Respondent testified that he worked in the maintenance department of the prison while incarcerated. He testified that he started out by sweeping and mopping, but was later given assignments including lubricating equipment, removing and rebuilding pumps,

⁴ Mr. Hostetler also found five other convictions or pleas of guilt or no contest from 1997. Two of the five were drug-related, but neither of those were convictions for marijuana. None of the five were reported on the application.

welding, tearing down boilers for inspection, and replacing valves. Respondent's testimony is not corroborated by any other evidence. To the contrary, the State presented evidence from Clarinda through Steven Jenkins and Ellen Poland, who work for the Department of Corrections. They reported that respondent conducted some welding for H & H Industries within the prison, but was released after three weeks because he was not meeting job requirements. They reported that respondent performed general tasks for the maintenance unit from July 16, 2009 through October 1, 2009, but nothing relating to any trades. Respondent responded that Mr. Jenkins and Ms. Poland did not work in the maintenance unit and have no direct knowledge of what he did. Respondent's point may be correct, but he did not submit any statements or testimony from employees or supervisors in the unit to support his testimony. (Respondent, Hostetler testimony; exhibits 9-10).

Respondent believes he has the requisite experience to meet the work exception under the waiver provision. Respondent's father testified that he believes his son to be competent at the master level. Respondent stated at hearing that he is focusing on the trades of plumbing and hydronics. He admitted that he does not consider himself to be a master in the trades of HVAC or refrigeration. (Respondent testimony).

CONCLUSIONS OF LAW

Regulatory framework: The Board was created for the purpose to regulate the practice of plumbing, HVAC, refrigeration and hydronics (referenced as "the four trades").⁵ The board regulates the practice, in part, through the licensing of contractors and professionals within each of the four trades. The Board is authorized to deny an application for license if failing to meet the minimum standards, or to suspend or revoke a license for grounds set forth in the statute.

In order to be licensed as a master in any of the trades, an applicant must typically pass the state master licensing examination.⁶ A masters license is needed to engage in the business of designing, installing, or repairing equipment in the four trades.⁷ However, as referenced in the findings of fact, the Board could waive the written exam requirement during the waiver period for persons who could meet one of two exceptions. Respondent sought a waiver under the second exception, which allows licensure if:

[t]he applicant can demonstrate to the satisfaction of the board that the applicant has five or more years of experience prior to July 1, 2008 in the [applicable trade,] which experience is of a nature that the board deems to

⁵ Iowa Code section 105.22.

⁶ Iowa Code section 105.18(2)(c)(2).

⁷ Iowa Code section 105.10; 105.18(2)(d).

be sufficient to demonstrate continuous professional competency consistent with that expected of an individual who passes the applicable licensing examination[.]”⁸

The Board adopted a rule providing guidance to what it would be sufficient to meet the waiver exception for prior experience. The Board’s rule required the applicant’s five years of experience to be between July 2, 1998, and July 1, 2008.⁹ The rule further required the last two years of the applicant’s experience to be between July 2, 2003, and July 1, 2008. The rule meets the Board’s intent to require some recent experience in the field, which was important to show “continuous professional competency.”

Count I – Fraud in procuring a license: The board may suspend or revoke a license if a licensee used fraud in procuring the license.¹⁰ The term “fraud” is not defined by the statute, but the Board’s regulations defined fraud to include:

[f]alse representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license[.]¹¹

Respondent acknowledged that the application was not correct, but argued that the misstatements were not material to the decision to approve the application. Respondent worked for Capital City from approximately 1980 until he was booked for a probation violation on December 27, 2004. He met the first time period requirement because he had five years of work experience between July 2 of 1998 and July 1 of 2008. Respondent argued that he met the second time period requirement as well. He worked at Capital City for approximately 18 months from July 2, 2003 to December 26, 2004. He claimed that he met the additional six months through his work at the prison. Respondent contended that his sworn testimony regarding his prison experience should be given greater weight than the hearsay accounts of correctional employees who did not directly work with respondent.

The Board disagrees with Respondent’s argument and finds respondent’s misrepresentation of his work experience to be highly material. Respondent reported on his application continuous employment with Capital City from May 1, 1991 to May 18, 2009. At the time respondent made that statement on May 18, 2009, he had not worked at Capital City for four and a half years due to his incarceration. His employment during that period was directly relevant to whether he could be licensed under the waiver

⁸ Iowa Code section 105.18(4)(b).

⁹ 641 IAC 29.6(1)(c)(2).

¹⁰ Iowa Code section 105.22(1).

¹¹ 657 IAC 36.1(4)(ac).

provision. The Board only granted respondent's application due to its reliance on the accuracy of the information reported on the application.

Respondent's lack of sincerity is shown through several other facts. The experience waiver exception was set to close on December 31, 2009. At the time he filed his application on May 18, 2009, he remained in prison and had no guarantee that he would be granted work release or parole before the expiration of the waiver. Respondent had an interest in obtaining his license before the experience waiver expired so he would not have to take the exam and meet other requirements set by statute and the Board. He filed his application listing current continuous employment since 1981, and listing as his personal address a residence on Dean Avenue in Des Moines. Respondent listed only one of his seven convictions, and completely minimized the explanation of that conviction by stating it was for possession of marijuana, when it was actually for intent to deliver meth. Respondent's entire application was designed to evade scrutiny by the Board so he could obtain a license without having to comply with the regular statutory requirement to obtain a license.

The Board cannot accept respondent's testimony that he met the remaining six months of experience while in prison. First, even if Mr. Jenkins from the Department of Corrections did not have first-hand knowledge of respondent's work, Mr. Jenkins provided precise information that respondent's work with the maintenance unit occurred from July 16, 2009 through October 1, 2009. That period occurred after the application was filed on May 18, 2009, so respondent could not have relied on his maintenance experience in prison at the time he filed the application. Second, respondent admitted at hearing that he did not meet the experience levels to qualify as a master in the HVAC and refrigeration trades, yet his application asserted that he qualified in all four trades. This additional misrepresentation is independent justification for revoking his license as to those two trades, and serves as further evidence of his lack of credibility on his work experience in prison. Third, respondent provided no evidence from other sources to attest to his work in prison. Finally, respondent did not identify any work he had done in prison on his application, and only points to it now two years after the fact during the course of a licensing hearing. If he believed he had work in prison, he should have identified it at the time he completed the application. That would have allowed the Board an opportunity to investigate his claim before he received a license, rather than two years after the fact.

Accordingly, based on foregoing discussion and reasoning, the Board finds in favor of the State on Count I. The State has proven that respondent used fraud in obtaining his license to practice in all four trades at the master level.

SANCTION

Revocation is the only rational sanction in this case. If respondent had been truthful on his application, the Board would not have granted a license. The Board cannot reward fraud when used to obtain a license that otherwise would not have been approved. Respondent's licenses in the four trades must be revoked.

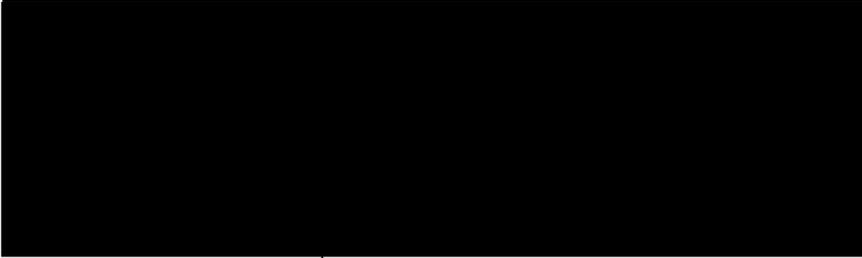
With that said, the Board would consider future applications from respondent if he follows the requirements set by statute and the Board's regulations. Respondent grew up in the field and has considerable past work experience prior to his incarceration. The Board will not prohibit him from seeking a license in the future if he wishes to pursue the practice. Respondent cannot use the experience waiver exception due its expiration, but he can sit for the exams and follow all other current requirements to obtain licensure. This path may require time and effort, but it is the one respondent will need to follow if he seeks to work in this field.

DECISION AND ORDER

The Iowa Plumbing and Mechanical Systems Board revokes the master plumbing, HVAC, refrigeration, and hydronics license held by Walter Todd Johnson. Respondent shall immediately return his license to the Board at its headquarter, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

Respondent shall pay \$75.00 for fees associated with conducting the disciplinary hearing. In addition, the executive secretary/director of the Board may bill respondent for any witness fees and expenses or transcript costs associated with this disciplinary hearing. Respondent shall remit for these expenses within thirty days of receipt of the bill.

Dated this 27 day of June, 2011.



cc: September Lau, Assistant Attorney General
Guy Cook, Attorney
Respondent

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Notice

Any aggrieved or adversely affected party may seek judicial review of this decision and order of the board, pursuant to Iowa Code section 17A.19.