

REVIEW DECISION

Re: Review Reference #: R0329879
Board Decision under Review: July 12, 2024

Date: March 31, 2025

Review Officer: Jefferson Rappell

Introduction and Background

The employer is an asbestos abatement firm registered with the Workers' Compensation Board ("Board"), which operates as WorkSafeBC. On May 9, 2024, the employer submitted an Asbestos Abatement Licence ("Licence") Application to the Board.

In the July 12, 2024 decision letter that is the subject of this review, the Board refused the employer the Licence,

Section 268(1)(d)(ii) of the *Act* allows a review to be requested of a Board decision respecting a refusal to issue the Licence.

The employer requests a review of the Board's decision to refuse it a Licence. The employer submits that it understands the initial denial, which was based on the transferred experience rating of affiliated firms. The employer submits that had it known about this unsafe work history, it would never have hired these companies. The owner of the employer submits that he has owned the firm for 10 years without any infractions or stop work orders. Also, before starting his own business, the owner worked for large asbestos abatement removal firms for eight years. The owner noted that while he had subcontracted a few times for one of the affiliated firms, he had never witnessed any Board violations while working for them. The owner also advised that since submitting the Licence application, he had obtained a Level 2 Asbestos Certificate, and he named four people with asbestos certificates that he planned to hire.

Because the decision under review concerns only the Board's decision to refuse the employer the Licence, there are no other parties to this review.

In the course of this review, the Review Division requested comments from the Board officer who made the decision under review. These comments were disclosed to the employer, along with the opportunity to provide additional submissions. No additional submissions were forthcoming.

Section 20(3) of the *Workers Compensation Act* ("*Act*") gives me the authority to conduct this review. Section 339(2) of the *Act* requires me to make a decision on the merits and justice of the case, applying the policies of the Board's board of directors applicable in the case. The policies are found in the *Prevention*

Manual. The standard of proof that applies to this review is the balance of probabilities.

Issue

The issue is the Board's decision to refuse the employer a Licence.

Reasons and Decision

On January 1, 2024, amendments to the *Act* came into force that create a requirement for asbestos abatement licensing. Section 59.05(1) of the *Act* states that on application in accordance with section 59.04, the Board may issue a licence authorizing a person to offer to carry out, and carry out, asbestos abatement work.

Section 59.06(1) states that the Board may refuse to issue a licence to an applicant if the Board is satisfied that:

- a) the applicant has provided false or misleading information on the application for the licence,
- b) the applicant has
 - i. failed to meet or comply with a requirement under this *Act* or with a term or condition of another licence issued to the applicant,
 - ii. been refused a licence or been refused, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement,
 - iii. held a licence that has been suspended or cancelled or held, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement that has been suspended or cancelled, or
 - iv. been subject, in British Columbia or another jurisdiction, to a penalty for contravening a law, which contravention calls into question the honesty or integrity of the applicant, or
- c) a person who is associated with the applicant at the time the application is made has
 - i. failed to meet or comply with a requirement under this *Act* or with a term or condition of a licence issued to the person,

- ii. been refused a licence or been refused, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement,
- iii. held a licence that has been suspended or cancelled or held, in British Columbia or another jurisdiction, a similar authorization in relation to asbestos abatement that has been suspended or cancelled, or
- iv. been subject, in British Columbia or another jurisdiction, to a penalty for contravening a law, which contravention calls into question the honesty or integrity of the person

Policy Item P2-59.03-1, *Asbestos Abatement Licensing*, supports the framework for asbestos abatement licensing that became mandatory for asbestos abatement contractors starting on January 1, 2024. It states that the Board may refuse to issue a licence if it is satisfied that, among other things, the applicant failed to meet or comply with a requirement under the *Act* or the *Occupational Health and Safety Regulation* ("Regulation"). Part (f) of this Item states that for the purposes of determining whether to issue, renew, suspend, or cancel a licence, the Board will consider whether there has been a contravention which places workers and others at potential or actual risk of serious injury, illness, or death. This may include whether the violation is high risk and the magnitude of that risk.

In the decision letter under review, the Board officer noted that the employer has been registered with the Board since 2014. The Board officer also noted that the experience ratings of two other firms (D Ltd and N Ltd) were transferred to the employer on May 14, 2021, and as a result, the inspection histories of those firms would be considered in determining whether to issue a Licence to the employer.

The employer does not dispute that the experience ratings of D Ltd and N Ltd were transferred to it in a May 14, 2021 decision letter. I note as well that my jurisdiction on this review extends only to the Licence decision. As a result, I do not have jurisdiction to disturb the Board's decision to transfer the experience ratings of D Ltd and N Ltd to the employer.

I acknowledge the employer's submission that had it known about the unsafe work history of D Ltd and N Ltd, it would never have hired these companies. I note, however, that the employer did not simply hire these firms. Rather, as the Board determined in May 2021, the experience ratings of D Ltd and N Ltd were transferred to the employer because a significant portion of the business operations of D Ltd and N Ltd had transferred to the employer.

Policy specifically considers the effects of an employer taking on the experience rating of another firm. Item P2-95-3, *Transfer of OHS History*, states that for

occupational health and safety purposes, if the Board transfers the experience rating to the successor firm, the Board will treat the original firm's occupational health and safety history, including prior violations and penalties, as part of the successor firm's history. Pursuant to this policy, I find it appropriate to consider the inspection histories of D Ltd and N Ltd in determining whether to issue a Licence to the employer.

I have also considered that on April 5, 2024, the British Columbia Court of Appeal granted an injunction against D Ltd and G, its principal, requiring them to comply with the occupational health and safety provisions of the *Act* and Regulation. I am satisfied that an injunction is a severe sanction that was required because other measures had failed to motivate D Ltd to comply with the *Act* and the Regulation. As I have determined above, the employer did not merely work with D Ltd, but rather a significant portion of the business operations of the firm was transferred to the employer.

I note as well that G was identified as the employer representative for the employer in a May 8, 2021 inspection report, so it appears that G was working directly for the employer. This suggests to me that the employer had not distanced itself from the actions of G. I find this to be further evidence in support of the conclusion that it is appropriate to consider the inspection histories of D Ltd and N Ltd in determining whether to issue a Licence to the employer.

In a July 11, 2024 Decision Memo, the Board officer provided the employer's inspection history (including the experience histories of D Ltd and N Ltd). The Board officer advised that over the last seven years, there were 45 inspections that resulted in the Board issuing 78 orders. Among these included 43 potential high risk violations and five stop work orders. The Board officer provided a table summarizing the employer's repeat or similar violations over this period. On this table are repeat orders for failing to safely contain or remove asbestos-containing materials, failing to control asbestos fibres, failing to meet the requirements related to asbestos waste handling and disposal, and failing to meet the requirements of air monitoring for high risk asbestos abatement, among others.

The Board officer also advised that over the last seven years, 12 administrative penalties had been issued to D Ltd and N Ltd. Ten of these penalties were related to work disturbing material containing asbestos, or potentially causing asbestos, to be performed without the necessary precautions to protect workers. The other two penalties resulted from the intentional violation of a stop work order and an intentional violation related to work disturbing material containing asbestos, or potentially causing asbestos, to be performed without the necessary precautions to protect workers.

Pursuant to Item P2-59.03-1, I must consider whether there has been a contravention which places workers and others at potential or actual risk of

serious injury, illness, or death. This may include whether the violation is high risk and the magnitude of that risk.

In this case, I find that there are multiple contraventions in the employer's inspection history over the last seven years that placed workers and others at potential or actual risk of serious injury, illness, or death. These include the 43 potential high risk violations cited by the Board officer. Also, I specifically highlight the stop work orders and the other orders that resulted in administrative penalties as strong examples of contraventions that placed workers and others at potential or actual risk of serious injury, illness, or death.

I acknowledge that in the July 11, 2024 Decision Memo, the Board officer advised that the most recent penalties in the employer's inspection history were from 2020 and the most recent violations were from 2021. I find these sufficiently recent to be of relevance when considering whether a Licence should be issued. Also, I note from the Decision Memo that the employer filed approximately five Notices of Project for Hazardous materials ("NOPH") in 2022, one in 2023, and none in 2024 to date. The employer filed 32 NOPHs in 2021 alone, suggesting that it has not been engaged in as much asbestos abatement work since 2022. As a result, the employer's fewer violations after 2022 appear to be a reflection of the fact that it was doing significantly less asbestos abatement work after 2022, and not evidence of a good compliance history during this period.

Item P2-59.03-1 states that the Board may also consider whether there has been a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or Regulation. Among the listed contraventions the Board will consider include, but are not limited to: the violation of a stop work, stop use, or stop operations order or injunction; and having amounts owing to the Board.

In this case, the Board officer determined that there has been a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or Regulation, and I agree.

I note that the employer's inspection history includes an October 9, 2018 stop operations/prohibit work from starting order issued D Ltd, and that the Board canceled D Ltd's account. In February 2020, N Ltd, a firm affiliated with D Ltd, was observed completing asbestos abatement work, and the Board issued an order to N Ltd for a violation of a stop operations order under section 115(1) of the *Act*. I am satisfied, therefore, that the employer's inspection history includes a violation of a stop operations order. I note as well that this resulted in an administrative penalty in 2020 for intentionally violating a stop work order.

In my view, the employer's inspection history, particularly related to the stop operations order and the violation of that order, demonstrates a pattern and history of contraventions demonstrating a serious disregard for compliance with the *Act* or Regulation.

As noted in Item P2-59.03-1, having amounts owing to the Board is among the listed contraventions the Board will consider to determine whether there has been a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or Regulation. In the July 11, 2024 Decision Memo, the Board officer advised that the employer had an account balance of \$167.65. The Board officer also advised that on May 25, 2024, Licensing Services sent an email to the employer regarding the debt, but the employer had not responded. As a result, I am also satisfied that the fact that the employer had an amount owing is another factor suggesting that the employer has a pattern or history of contraventions demonstrating a serious disregard for compliance with the *Act* or Regulation.

I acknowledge the employer's submissions that its principal now holds a Level 2 Asbestos Certificate, and it planned to hire three workers with a Level 2 Asbestos Certificate and another with a Level 3 Asbestos Certificate. However, I find that when considering the facts, law and policy, the evidence strongly supports a conclusion that the employer should not be issued a Licence.

In summary, I have found that there are multiple contraventions in the employer's inspection history just over the last seven years that placed workers and others at potential or actual risk of serious injury, illness, or death. I have also found that the employer's inspection history shows a pattern and history of contraventions demonstrating a serious disregard for compliance with the *Act* or Regulation. As a result, I find the Board's decision to deny the employer a Licence consistent with the facts, law and policy.

Accordingly, I deny the employer's request on this review.

Conclusion

As a result, I confirm the Board's decision dated July 12, 2024.

Jefferson Rappell
Review Officer
Review Division