

BPB Appeal No. A1044

IN THE MATTER OF

The Building Act 2004

AND

IN THE MATTER OF

An Appeal to the Building Practitioners Board under Section 330(1)(a) by **the Appellant** against a decision of the Registrar

DECISION OF THE BUILDING PRACTITIONERS' BOARD

1. Introduction

- 1.1 The Appellant applied for Carpentry Licence under S.288(2) of Building Act 2004 ("the Act") and the Licensed Building Practitioners' Rules 2007¹ ("the Rules").
- 1.2 The Registrar of Licensed Building Practitioners ("the Registrar") declined the application and the Appellant was notified of the Registrar's decision on 16 February 2012, together with his right to appeal the decision within 20 working days to the Building Practitioners Board ("the Board").
- 1.3 On 8 March 2012², the Appellant appealed to the Board against the Registrar's decision under S.330(1)(a) of the Act, seeking that, on the basis of information provided, the Board upholds his application and grants him Licensed Building Practitioner status in Carpentry.
- 1.4 The Board decided to hear the appeal in [omitted] on 8 May 2012. The Appeal was considered in accordance with the Board's "Appeals Procedure".
- 1.5 A pre-hearing teleconference was convened by the Chairman of the Board with the Appellant on 26 April 2012. The Board's Secretary was in attendance.
- 1.6 The Procedure provides that appeals are considered by way of a "re-hearing"³, and that the burden of proof lies with the Appellant (Clauses 3.10.17 and 3.10.18 of the Board's Appeals Procedure). The Appellant had been advised of this fact during the pre-hearing conference and that he could present new evidence and should focus his appeal on the areas of competency which the Registrar concluded he had failed to demonstrate that he met.

¹ Incorporating amendments for 2008, 2009 and 2010.

² Received by Board Secretary on 8 March 2012. Appeal application completed on 12 March 2012.

³ Refer S.335(2) of the Act.

1.7 The following were present for the hearing of the appeal:

Board Members and support staff:

Alan Bickers	Board Chairman (Presiding)
David Clark	Acting Deputy Chair
Jane Cuming	Board Member
Colin Orchiston	Board Member
William Smith	Board Member

Pam Lwee Board Secretary LBP Appeals and Complaints

Appellant:

The Appellant

Registrar and support:

Mark Scully

1.8 The Board received the Registrar's report of 22 March 2012.

2. Background

- 2.1 The Appellant submitted his application to the Registrar to be licensed as a building practitioner in the Carpentry licence class on 25 November 2011.
- 2.2 On 28 November 2012, the Registrar wrote to the Appellant advising him that his application for Carpentry was complete and had proceeded to assessment.
- 2.3 Assessment Systems Limited (ASL) reviewed the application.
- 2.4 The assessment was completed on the 15 January 2012 and the Assessor recommended to the Registrar (under Rule 11) that the Appellant's application for a Carpentry licence should be declined because of insufficient evidence and lack of technical referees.
- 2.5 After reviewing the Assessor's report, the Registrar provided the Appellant with an opportunity to submit further evidence demonstrating that he met Competency 4: *Carry out carpentry work*. The Appellant's response did not provide any additional information demonstrating Competency 4. The Registrar then clarified to the Appellant the kind of evidence suitable to demonstrate that he met the requirements of Competency 4.
- 2.6 After 11 working days without a response from the Appellant, and taking into account the recommendation of the Assessor and the requirements of S. 286 of the Act, the Registrar decided (under Rule 12) to decline the application for a Carpentry licence.

3. The Registrar's Report & Submissions

3.1 In order to become licensed, the Appellant was required to satisfy the Registrar that he met the applicable minimum standards for licensing (under S.286 of the Act). These minimum standards are set out in Schedule 1 to the Rules, in the form of "competencies" which must all be satisfied.

For Carpentry, these competencies are:

- *Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
- *Competency 2: Demonstrate knowledge of current building and trade practice.*
- *Competency 3: Carry out planning and scheduling for carpentry work.*
- *Competency 4: Carry out carpentry work.*

In order to be licensed an applicant must demonstrate that he/she meets all the required Competencies of the Licence Class.

3.2 These competences may be demonstrated by meeting some or all of the performance indicators of the Rules. In carrying out an assessment, the Assessor appointed by the Registrar must use the "Assessor Guidelines" prescribed by the Registrar. The Registrar must take into consideration the Assessor's recommendation before making a decision but is not bound by the recommendation.

3.3 In making the recommendation to decline the application, the reasons below were recorded by the Assessor:

- The Appellant is a qualified builder who completed his apprenticeship in 1984.
- The Appellant now works as a building inspector.
- The Appellant's referees were not technical.
- The projects provided by the Appellant were the only projects he had worked on recently and he did not offer any other evidence to support his application.

3.4 The Registrar acknowledged that the Appellant was a qualified builder but noted that validated evidence was still needed to demonstrate current competence in Competency 4. The referees submitted by the Appellant did not meet the requirements for "Technical Referees". After providing the Appellant with the opportunity to provide further evidence demonstrating Competency 4, and not receiving the required information, the Registrar's decision was to decline the application for a Carpentry licence.

4. The Appellant's Submissions

- 4.1 The Appellant submitted a short written statement summarising the basis for his appeal accompanied by:
- Evidence of his attendance at a BOINZ course on building controls (2012);
 - Evidence of his attendance at a Level 3 qualification on workplace safety (2011);
 - A character reference from [omitted] (Architectural Designer);
 - A reference from [omitted];
 - A reference from [omitted] .
- 4.2 The basis of the Appellant's submissions that he be granted a licence was:
- He completed a building apprenticeship from 1978 to 1982;
 - He was a third generation builder;
 - He had 30 years experience;
 - He was formerly a Registered Master Builder.
- 4.3 The Appellant then responded to questions from Board members. He stated that from April 2010 until late 2011, he had been unable to work as a result of a workplace injury he suffered.

Prior to that he had been working in the [omitted] District and environs as a builder engaged in additions and alterations, new dwellings and rural building (milking sheds). He had carried out work both as a subcontractor to [a building company] and on his own account.

The Appellant described, in response to questions from Board Members, how he undertook various aspects of construction of new dwellings which corresponded to the performance indicators for Competency 4. He also explained the nature of other building work which he had carried out in the period 2007-2010. He responded to questions from Board Members in a satisfactory manner although he did not support this with validated evidence.

5. Board's Considerations

- 5.1 The Board noted that the Registrar was satisfied that the Appellant met the following competencies for a Carpentry licence:
- *Competency 1: Demonstrate knowledge of the regulatory environment of the building construction industry.*
 - *Competency 2: Demonstrate knowledge of current building and trade practice.*
 - *Competency 3: Carry out planning and scheduling for carpentry work.*

- 5.2 The Board then considered Competency 4: *Carry out carpentry work*. This Competency can be demonstrated by meeting some or all of the performance indicators as listed in Schedule 1 of the Rules.
- 5.3 The Board noted that despite requests from both the Assessor and the Registrar, the Appellant had failed to provide validated evidence to demonstrate his recent experience in carrying out carpentry work. Had he done so it is likely that the Registrar would have issued him with a Carpentry Licence. The Registrar's decision was justified given the Appellant's lack of response.
- 5.4 Notwithstanding advice from the Registrar that he study the licensing requirements in the Rules and, in particular, the competencies for the Carpentry Licence. The Appellant produced no evidence to the Board to demonstrate that he had within recent years carried out carpentry work. At the hearing, the Appellant outlined the reasons for the lack of records but the Board considers that he could have obtained copies of consent information of his previous building work from the Building Consent Authority.
- 5.6 Through the responses to his questions from the Board, the Appellant demonstrated that he met all the performance indicators for Competency 4. The Registrar also confirmed that, on the basis of the Appellant's answers to the Board's questions, that the performance indicators were demonstrated. The Registrar considered that had the Appellant provided the requisite information when requested, the appeal would have been unnecessary.

6. Board's Decision

- 6.1 **Pursuant to S.335(3) of the Act the Board has resolved to reverse the Registrar's decision not to grant the Appellant with a Carpentry Licence.**
- 6.2 **Pursuant to Clause 3.11.6 of the Board's Appeals Procedure, the Board directs the Registrar to issue a Carpentry Licence to the Appellant as soon as practicable.**
- 6.3 The Board's reasons are that the Appellant has demonstrated, to the Board's satisfaction, that he meets all of the competency requirements of the Carpentry Licence.

7. Costs

- 7.1 Pursuant to S.338 of the Act, the Board may order any party to the appeal to pay any other party any or all of the costs incurred by the other party in respect of the appeal.⁴
- 7.2 Neither the Appellant nor the Registrar sought costs. The Board considers that had the Appellant addressed the Registrar's questions and requests for information, it is highly likely that his Carpentry Licence would have been granted. The inaction of the Appellant has resulted in this appeal and in the Registrar and the Board incurring unnecessary costs.
- 7.3 On that basis, and notwithstanding that the Registrar has not sought costs from the Appellant, the Board considered it was reasonable that the Appellant should pay part of the Registrar's costs of the Appeal. The Board has, however, had regard for the Appellant's personal circumstances leading up to his relatively recent employment as a building official, and has decided not to order that the Appellant pay costs.
- 7.4 The Board directs that the costs of the appeal shall lie where they fall.

8. Publication of Name

- 8.1 Pursuant to S.339 of the Act, the Board may prohibit the publication of the Appellant's name and/or particulars.
- 8.2 The Board invited submissions from the Appellant on prohibition of publication of the Appellant's name and the Appellant requested his name be withheld.
- 8.3 The Board having considered the circumstances of this appeal directs that the name and the particulars of the Appellant are not made public.

Signed and dated this 17th day of May 2012

Alan Bickers
Chairman
(Presiding Member)

⁴ The "parties" are the Appellant and the Registrar. The Board is not a party.

Advice Note (not part of Board's Decision)

Extracts from the Building Act 2004:

330 Right of Appeal

- (1) *A person may appeal to the Board against any decision of the Registrar to—*
 - (a) *decline to licence the person as a building practitioner; or*
 - (b) *suspend or cancel his or her licensing.*

- (2) *A person may appeal to a District Court against any decision of the Board—*
 - (a) *made by it on an appeal brought under subsection (1); or*

...

331 Time in which appeal must be brought

- *An appeal must be lodged—*
 - (a) *within 20 working days after notice of the decision or action is communicated to the appellant; or*
 - (b) *within any further time that the appeal authority allows on application made before or after the period expires.*