

Before the Building Practitioners Board

Between: [OMITTED] (the Applicant)

And: The Registrar

In the matter of: An application for leave to file an appeal out of time

Board Decision

Procedure:

The matter was considered by the Building Practitioners Board (the Board) under the provisions of Part 4 of the Building Act 2004 (the Act), the Licensed Building Practitioners Rules 2007 (the Rules) and the Board's Procedures for the Management of Appeals (the Appeal Procedures).

Introduction

- [1] Mr [OMITTED] applied for a Carpentry Licence. The Registrar declined the application. Mr [OMITTED] was informed of the Registrar's decision on 15 May 2024. He was informed of his right to appeal under section 330 of the Act and the date by which he needed to lodge an appeal (12 June 2024).
- [2] On 31 July 2024, Mr [OMITTED] informed the Registrar of his intention to appeal. On 7 August 2024, he emailed the Board asking for an extension of time to file an appeal.
- [3] On 13 August 2024, a Board Minute was issued advising Mr [OMITTED] that, in accordance with clause 2.6.3 of the Board's Appeal Procedures, he was to provide reasons for the delay and the steps taken by him to lodge the application on time by no later than 20 August 2024.
- [4] On 19 August 2024, Mr [OMITTED] emailed, stating:

For the last few months life has been a bit tough. I have had to prioritise and focus on work, surviving and taking care of my family.

As previously stated, this Carpentry LBP is important to me. So please find the attached documents along with the extension letter.
- [5] The attachments did not include an extension letter. A copy of Mr [OMITTED]'s appeal application was attached. It was signed and dated 19 May 2024, which was within the appeal period. As noted, however, the appeal was not lodged on that date.

Background to the appeal

- [6] Under section 331 of the Act, an appeal must be filed within 20 working days or any further time that the appeal authority (the Board) allows. Mr [OMITTED] was informed of the date by which he had to appeal when his licence application was declined. That date was 12 June 2024.
- [7] Mr [OMITTED] signed but did not submit his appeal on 19 May 2024. He filed it on 31 July 2024, well outside of the time limit.
- [8] Mr [OMITTED] is familiar with the appeal process. This is his second appeal. The first appeal was made after the Registrar declined his licence application because he had been the subject of disciplinary action overseas. In that appeal, the Board referred the licence application back to the Registrar for reconsideration on the basis that the Registrar could not take a foreign disciplinary decision into consideration.
- [9] Mr [OMITTED]'s first appeal was filed out of time. He had until 25 January 2024 to appeal. An email dated 24 January 2024 purported to lodge the appeal. It was not sent to the correct email address. An appeal application was acknowledged as having been received on 19 February 2024. It included an appeal form signed on 16 February 2024. Given there was evidence of an intention to file on time and because the appeal documents indicated that the Registrar may have made an error at law when declining the licence application, the appeal was accepted out of time. Those circumstances do not apply to this appeal. What is important to note is that Mr [OMITTED] should, because of the previous appeal, be aware of the time frames.

Should leave be granted

- [10] The burden of establishing that the appeal should be accepted out of time sits with Mr [OMITTED]. He needs to establish, on the balance of probability, that there are good reasons why it should be accepted.
- [11] It is common for time periods to be attached to a right to appeal. This ensures that there is certainty and finality in decision-making and in implementing those decisions. It also ensures the orderly administration of the appeal process.
- [12] The appeal time frame provided for in the Act is 20 working days. Put simply, a person who has a licence application declined has a month to appeal. It is not an unreasonable period of time.
- [13] Mr [OMITTED]'s stated reasons were:
- For the last few months life has been a bit tough. I have had to prioritise and focus on work, surviving and taking care of my family.*
- [14] No supporting or corroborating evidence was provided to support the stated reason. The reasons given do not, of themselves, establish a good reason why the Board should accept the appeal out of time.

[15] When making a decision, the Board does, however, also need to consider the merits of the appeal. In *Mao v Buddle Findlay*,¹ the Court of Appeal stated:

[10] The principles to be applied on an application for an extension of time under r 43(2) of the Rules are well settled. In *Yarrow v Westpac New Zealand Ltd*,² this Court stated that the Supreme Court's decision in *Almond v Read* concerning applications for an extension of time to appeal under r 29A should be applied.³ Relevant considerations are likely to include the length of the delay, the reasons for it, the conduct of the parties (particularly the applicant), any prejudice or hardship to the respondent or others with a legitimate interest in the outcome, and the significance of the issues raised by the proposed appeal, both to the parties and more generally.⁴ The merits of an appeal may be relevant but a decision to refuse an extension of time based substantially on that ground should only be made where the proposed appeal is clearly hopeless.⁵

[16] In *Mao v Buddle Findlay*, the Court commented:

[13] While it is usually difficult to make any assessment of the merits of a proposed appeal in the context of an application to extend time, it appears to us that the proposed appeal in this case has little realistic prospect of success."

[17] As noted above regarding Mr [OMITTED]'s first appeal, the merits of that appeal meant that it was appropriate for the Board to accept and consider it.

[18] The decision Mr [OMITTED] wants to appeal is the Registrar's decision to decline Mr [OMITTED]'s application to become a Licensed Building Practitioner (LBP). To be licensed as an LBP, an applicant person must satisfy the Registrar that they meet the applicable minimum standard for the class or classes of licence applied for.⁶ The minimum standard is prescribed by rule 4 of the Licensed Building Practitioners Rules 2007 (the Rules). It states:

4 MINIMUM STANDARD OF COMPETENCE FOR EACH CLASS OF LICENCE

(1) *The minimum standard of competence for a class of licence is meeting all of the competencies set out for that class of licence in Schedule 1.*

(2) *In determining whether a person meets a competency, regard must be had to the extent to which the person meets the performance indicators set out for that competency in Schedule 1.*

¹ [2023] NZCA 393

² [2018] NZCA 601 at [4]

³ [2017] NZSC 80; [2017] 1 NZLR 801

⁴ *Ibid* at [38]

⁵ *Ibid* at [39]

⁶ Refer rule 9(1)(a) of the Licensed Building Practitioners Rules 2007

[19] Under rule 12 of the Rules, the Registrar must make a decision on the application. The Registrar's decision to grant or decline a licence must be informed by an Assessor's recommendation.⁷ The Assessor must be a person who has experience and/or qualifications relevant to the licence class he or she is appointed to assess.⁸ In short, they are people who are qualified to assess the competency of the person applying.

[20] The Assessor's recommendation was that the application be declined on the basis that Mr [OMITTED] had not met any of the competencies for a Carpentry Licence. Those 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.

[21] The Assessor's report, which the Board obtained, showed that the process stipulated in the Rules had been complied with. The Board noted that the Assessor's recommendation was:

In reviewing the application, including applicant's work history, original project jobs and records, RFI for 2 new projects, interview of applicant and referees there is insufficient evidence to demonstrate current competence across all 4 competencies to recommend the awarding of the carpentry license.

Competency 1 - Regulatory Knowledge, when questioned what he knew or studied up on the license before applying he said he didn't think he needed to and hadn't read the LBP Handbook. Therefore he had no knowledge of Restricted Building Work (RBW), a layman's understanding of the difference between the Building Act and Building Code, no knowledge of who an LBP is responsible to, no knowledge of the skills maintenance program, no understanding of any other license classes that could be involved in the construction process, or contractual obligations and again a layman's understanding of the Code of Ethics, saying he treats people the way he wants to be treated and does what he says he'll do.

Competency 2 - Knowledge of current trade practice, was limited to only recently being exposed to NZS3604 without being able to specifically explain the content of the document. Again, recent exposure to E2/AS1 which he described the content as the external envelope and found the detail on his current job for a saddle flashing. Regarding the bracing elements he is aware

⁷ Rules 10 and 11 of the Licensed Building Practitioners Rules 2007

⁸ Rules(10)(2) of the Licensed Building Practitioners Rules 2007

of the GIB Site Guide and was able to name what the bracing elements BL, GS1 and GS2 without going into greater detail, he said he has the document but couldn't name it.

Competency 3 – Planning and scheduling of carpentry work, there has been limited evidence presented by referees that the applicant is planning out a full scope of work from set out to completion on both projects and no evidence that they could verify of repeatability prior to 2023. It was confirmed that the applicant can read and interpret the drawings by both referees.

Competency 4 – Carry out carpentry work, both projects are limited in their scope, that the applicant was responsible for carrying out on an independent basis. In conversation with the applicant, he said it's been many years since he's been on the tools, as evidenced by the work history declaration, which highlights Project Management roles employed by 2 construction companies after disbanding [OMITTED] and the suspension of his [OMITTED] Contractors license.

In summing up the applicant has limited experience across all 4 competencies within the NZ Regulatory environment and is learning on the job, as this is a competency-based assessment the applicant therefore hasn't demonstrated current competent.

- [22] The Board is satisfied that the correct process was followed and that there were no errors in the process. As such, if leave is granted for Mr [OMITTED] to appeal out of time, he will have to establish that, on the balance of probabilities, the Registrar's decision was wrong and that he does meet all four competencies. In his appeal application, he states his reasons for appealing as:

After reading and studying the LBP Handbook, etc of late I will admit the LBP Board had some validation in their decision however. At present and after studying, eating some humble pie I have an understanding of current carpentry requirements - Regulatory environment of building industry, current building and trade practise, planning and scheduling for carpentry work, and carrying out carpentry work and along with many years of trade practice Furthermore I did my carpentry apprenticeship in New Zealand late 80s. Reading LBP Handbook was interesting, reading, learning, I enjoyed it and plan on educating myself as updates come out.

- [23] The email that accompanied the appeal application stated:

I have ate alot of humble pie and been reading the LBP handbook.

With all due respect it was my understanding the first application for an LBP was that I had enough carpentry experience and met the necessary requirements.

Furthermore approx 5 years prior to myself leaving NZ, [OMITTED]) I completed a

New Zealand Carpentry Apprenticeship and

I've been working back home (NZ) over the past 1 1/2 years.

I will go through the appeal process, again.

Please let me know if you'd like to visit the jobsite.

- [24] The LBP licencing regime is competency based. The LBP regime was introduced to improve the skills and knowledge of those involved in residential construction. The following was stated as the intention of the enabling legislation⁹:

The Government's goal is a more efficient and productive sector that stands behind the quality of its work; a sector with the necessary skills and capability to build it right first time and that takes prides in its work; a sector that delivers good-quality, affordable homes and buildings and contributes to a prosperous economy; a well-informed sector that shares information and quickly identifies and corrects problems; and a sector where everyone involved in building work knows what they are accountable for and what they rely on others for.

- [25] And, as was noted by the responsible Minister during the first reading of the legislative provisions that established it:¹⁰

A robust licensing scheme with a critical mass of licensed builders means consumers can have confidence that their homes will be built right first time.

- [26] Within that context, it is important that the competence of those who seek to be licensed is thoroughly assessed so as to ensure that the legislative purposes of licensing are advanced, consumers are protected, and buildings are designed and constructed in a manner that makes them safe and healthy.

- [27] Having reviewed Mr [OMITTED]'s grounds for the appeal, the information he has provided, and the Assessor's recommendation, the Board has formed the view that the merits of the appeal do not warrant the Board granting leave for him to appeal out of time.

Decision

- [28] Leave to appeal out of time is refused. The appeal will not be accepted and will not proceed.

⁹ Hansard volume 669: Page 16053

¹⁰ Hansard volume 669: Page 16053

[29] Mr [OMITTED] should note that he may, at any time, reapply to the Registrar to be licensed.

Right of Appeal

[30] The right to appeal a Board decision of this type is provided for in section 330(2) of the Actⁱ.

[31]

Signed and dated this 10th day of September 2024.



Mr M. Orange
Presiding Member

ⁱ Section 330 Right of appeal

(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)

Section 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.