

STATE OF INDIANA
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS

IN RE THE MATTER OF:

TROY D. DULANEY,
Petitioner,

CASE NO.: DHS-2307-001968

DEPARTMENT OF HOMELAND SECURITY,
Respondent.

**PETITIONER TROY DULANEY’S BRIEF IN SUPPORT OF UPHOLDING THE
ORDER ISSUED BY THE OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

Petitioner Captain Troy D. Dulaney (“Dulaney”) submits this brief in support of his request for the Board of Firefighters Personnel Standards and Education (the “Board”) to uphold, and confirm, the Non-Final Administrative Decision (the “OALP Order”) issued by the Office of Administrative Law Proceedings (“OALP”) through the findings of Administrative Law Judge Carrie Ingram (“ALJ Ingram”) on September 24, 2024. The OALP Order was correct when it held that neither the evidence nor the law supported the Board’s complete and indefinite revocation of Dulaney’s certifications – the most severe revocation permitted by law.

I. INTRODUCTION

On June 5, 2023, the Board permanently revoked all of Dulaney’s Fire Certifications due to the findings of a superficial investigation into some allegations made by some bitter co-workers to prevent Dulaney from being promoted to the position of battalion chief. The allegations had originally been brought to the attention of the Muncie Fire Chief, who originally decided there was no merit to the allegations and took no action. However, after the allegations gained media

attention, the mission began to escape the spotlight using the path of least resistance – heaping all the “blame” on Captain Troy Dulaney.

After Dulaney appealed the Board’s decision to OALP, an all-day evidentiary hearing was held in which evidence was presented and argument was heard. ALJ Ingram then went on to issue the OALP Order which included nineteen (19) pages wherein she outlined the deficiencies in the Board’s decision and reversed the revocation of Dulaney’s certifications in total. A true and accurate copy of that decision is included with this brief as Exhibit A.

II. FACTUAL AND PROCEDURAL HISTORY

Captain Dulaney is a twenty (20) year veteran firefighter in the Third Battalion at Muncie Fire Department (“MFD”). Throughout his tenure at MFD, Dulaney has never had one (1) disciplinary action taken against him. Dulaney frequently held study sessions for new recruits and other personnel at MFD who needed assistance with certificate examinations. His study sessions included reviewing sample questions and answers and reviewing skills necessary to pass the examinations. It was widely held at MFD that Dulaney was one of the best tutors, and if an individual was struggling with a skill or subject, that individual would likely be sent to Dulaney, who would spend countless hours with that individual until they learned the subject or skill.

On March 10, 2023, the Indiana Department of Homeland Security (“DHS”) received an anonymous complaint alleging that Dulaney was orchestrating a large cheating scheme at the Muncie Fire Department for emergency medical services and firefighting certifications. The complaint alleged, specifically, that Dulaney facilitated cheating in the 2021 Ropes Course and the 2022 Fire Officer Strategy Tactics (FOST) course. Due to the allegations of cheating on Firefighter examinations, the complaint was investigated by the Firefighter division of DHS.

Firefighter examinations are regulated by the Board. Zach Matthews (“Matthews”) conducted the investigation on behalf of the Board. At the conclusion of his investigation, Matthews presented his findings to the Board, which included the following:

- a. Respondent initiated text message conversations from his personal cell phone number to the personal cell phone numbers of students to facilitate and request an exchange of test questions and answers. Respondent sent students test questions and answers, and encouraged and pressured the students to provide him with test questions and answers in return.
- b. A paper copy of multiple test messages from Respondent show that he stated, "you owe me," and "see how much you are willing to invest back in me," as he requested recruits to collect and share test questions for EMT and firefighting examinations.
- c. The witness accounts and text message documentation show that Respondent initiated and engaged in this exchange of test questions and answers from at least 2018 to 2023.
- d. Respondent utilized his position as Captain, instructor, and proctor at Muncie Fire Department to obtain test questions and answers for firefighting and EMT course examinations.
- e. In his capacity as Captain, instructor and proctor at Muncie Fire Department, Respondent pressured students and new recruits to engage in this exchange of test questions and answers.
- f. Because Respondent facilitated, encouraged, and pressured students and new recruits to engage in this exchange of test questions and answers before tests, students were able to pass the exams by memorizing the test questions and answers, rather than learning the material.”

On June 5, 2023, the Board permanently revoked Dulaney’s fire fighter certifications (the “Fire Order”), which included the following designations: Fire Officer I; Fire Officer II; Firefighter I; Firefighter II; Instructor I, Instructor II/III; Strategy and Tactics; Aircraft Crash and Rescue; Confined Space Rescue Awareness; Confined Space Rescue Operations; Confined Space Rescue Technician; Hazmat First Responder Awareness; Rope Rescue Operations; Rope Rescue

Technician; Structural Collapse Rescue Awareness; Vehicle and Machinery Rescue Ops; Vehicle and Machinery Rescue Tech; and Wilderness Rescue Awareness. The Board, in coming to its decision, relied on the following legal authorities: (i) 655 IAC 1-1-12(j)(12); (ii) 655 IAC 1-1-13(a)(4)(C); and (iii) Indiana Code §35-43-5-4(a)(3). A true and accurate copy of that decision is included with this brief as Exhibit B.

On or about June 17, 2023, Dulaney filed a Petition for Review with DHS, which was granted by the Board on June 27, 2023. The matter was forwarded to OALP on July 13, 2023 and ALJ Ingram was appointed as the administrative law judge on July 14, 2023.

On or about June 27, 2024, an Evidentiary Hearing (the “Hearing”) was held, where evidence was presented, and argument was heard by ALJ Ingram. ALJ Ingram issued the OALP Order on or about September 24, 2024. In her Order, ALJ Ingram held that DHS made the following findings: (i) that there was insufficient evidence Dulaney violated 655 IAC 1-1-13(a)(4)(C); (ii) that there was no credible evidence to support the Board’s finding that Dulaney violated 655 IAC 1-1-12(j)(12); and (iii) that the Board did not have authority to revoke Dulaney’s certifications for committing fraud as defined by Ind. Code § 35-43-5-4. Thus, ALJ Ingram reversed the Fire Order and recommended that all Dulaney’s revoked certifications be reinstated immediately and in their entirety. DHS appealed to the final authority, the Board, on or about October 9, 2024, and asked that the OALP order be overruled. On or about October 16, 2024, Dulaney requested that the Board award attorney fees per Ind. Code § 4-21.5-3-27.5.

These two requests set the stage for a hearing before this Board scheduled for March 13, 2025. The Board, as the final administrative authority prior to a petition for judicial review, must determine whether to accept and affirm the OALP Order or whether to adjudicate the allegations

against Dulaney in some other manner. The Board is not limited to the recommendations of ALJ Ingram. *See* Ind. Code §4-21.5-3-29(b).

III. ARGUMENT

- A. ALJ Ingram was correct in her findings that DHS did not meet its burden to prove that Dulaney violated any Indiana Code which would have supported the complete revocation of his Firefighting Certifications and thus was correct to reverse the Board's Order.**

The Board has the responsibility for establishing the rules and regulations for voluntary training for fire service and, for some specialized training, non-fire service personnel in Indiana, including setting criteria for certification of firefighters at different levels of education within the state. The certifications governed by the Board include:

- 1) Firefighter I;
- 2) Firefighter II;
- 3) Driver/Operator-General;
- 4) Driver/Operator-Pumper;
- 5) Driver/Operator-Aerial;
- 6) Driver/Operator-Mobile Water Supply;
- 7) Airport Firefighter;
- 8) Technical Rescue Awareness;
- 9) Rope Rescue Operations;
- 10) Rope Rescue-Technician;
- 11) Structural Collapse Rescue Operations;
- 12) Structural Collapse Rescue-Technician;
- 13) Confined Space Rescue Operations;
- 14) Confined Space Rescue-Technician;

- 15) Vehicle Rescue Operations;
- 16) Vehicle Rescue-Technician;
- 17) Animal Technical Rescue-Operations;
- 18) Animal Technical Rescue-Technician;
- 19) Wilderness Search and Rescue Operations;
- 20) Wilderness Search and Rescue-Technician;
- 21) Trench Rescue Operations;
- 22) Trench Rescue-Technician;
- 23) Machinery Rescue Operations;
- 24) Machinery Rescue Technician
- 25) Surface Water Rescue Operations;
- 26) Surface Water Rescue-Technician;
- 27) Swift Water Rescue Operations;
- 28) Swift Water Rescue-Technician;
- 29) Ice Rescue Operations;
- 30) Ice Rescue-Technician;
- 31) Floodwater Rescue Operations;
- 32) Floodwater Rescue-Technician;
- 33) Fire Officer Strategy and Tactics;
- 34) Fire Officer I;
- 35) Fire Officer II;
- 36) Fire Officer III;
- 37) Fire Officer IV;

- 38) Fire Inspector I;
- 39) Fire Inspector II;
- 40) Fire Investigator;
- 41) Fire and Life Safety Educator I;
- 42) Fire and Life Safety Educator II;
- 43) Fire and Emergency Services Instructor I;
- 44) Fire and Emergency Services Instructor II;
- 45) Fire and Emergency Services Instructor III;
- 46) Hazardous Materials-Awareness;
- 47) Hazardous Materials-Operations;
- 48) Hazardous Materials-Technician;
- 49) Hazardous Materials-Incident Commander;
- 50) Health and Safety Officer;
- 51) Incident Safety Officer;
- 52) Fire Chief Executive Leadership, and Fire and Emergency Services Live Fire Instructor.

The relevant authority for the action taken by and/or available to the Board is provided for in 655 IAC 1-1-7(b)(1) and (3), which states as follows:

The Board may take action with respect to the application for or certification of any fire service person or non-fire service person in accordance with the provisions of Ind. Code § 4-21.5-3-6 and Ind. Code § 22-12-7-7(4) upon information provided to the board the fire service person or non-fire service person has: (1) failed to uphold and respect a student's right to privacy, dignity, and safety and (3) failed to comply with the board's rules." 655 IAC 1-1-7(b)(1) and (3).

First, the Board claimed that Dulaney "did not uphold the Board's practices and policies in his capacity as a **proctor**, in violation of 655 IAC 1-1-13(a)(4)(C)." However, 655 IAC 1-1-

13(a)(4)(C) provides that the qualifications for lead evaluator shall be that the individual has signed a written acknowledgement prepared by the board concerning the applicant's agreement to a commitment to uphold the board's practices and policies. (emphasis added). At no time, in Matthew's findings, the Fire Order, or at the Hearing was there ever any evidence presented to support either: (1) that Dulaney was ever a lead evaluator as required by 655 IAC 1-1-13(a); or (2) that Dulaney ever signed a written acknowledgment as required by 655 IAC 1-1-13(a)(4).

In fact, the findings specifically state that Dulaney committed these violations using "his position as Captain, instructor, and proctor." Ex. B, pp 3. Since the Board is unable to show that Dulaney violated this code, they are unable to sanction Dulaney under 655 IAC 1-1-7.

Next, the Board claimed that Dulaney "discussed test questions and possible answers thereto with students taking examinations," which it claimed was in violation of 655 IAC 1-1-12(j)(12)." That provision states as follows:

(j) The procedures for written cognitive examinations shall be as follows: (12) A proctor shall not discuss any test question or possible answer thereto with any student taking the examination." (emphasis added)

It is clear that this provision intends to cover how a fire examination is administered. Thus, it only governs the time period of when a test is actually being taken. Therefore, to show Dulaney violated this Code, it would have to be shown that Dulaney, while proctoring a fire certification examination, discussed test questions with the students. With respect to firefighting certifications, the evidence shows that Dulaney was only the proctor of one examination – the 2021 Ropes Examination. Thus, to support the violation, DHS would have had to show that during the 2021 Ropes Examination, Dulaney discussed the 2021 Ropes Examination test questions with the students.

However, DHS was equally unable to show the applicability of this standard. Simply put, there was no evidence presented that Dulaney showed test questions *during the exam which he proctored*. Thus, DHS failed, for a second time, to establish clearly defined requirements of the Code. Since DHS was unable to meet its burden to show that Dulaney violated 655 IAC 1-1-12(j)(12), the Board was unable to rely on a violation under this Code section when deciding to revoke Dulaney's certifications under 655 IAC 1-1-7. ALJ Ingram correctly pointed out this discrepancy in the OALP Order.

Finally, the Board claimed that Dulaney committed fraud, in violation of Ind. Code § 35-43-5-4. ALJ Ingram did not find it necessary to go into much detail on this claim, because she was unable to find any legal authority that authorized the Board to revoke Dulaney's certifications based on a violation of this statutory citation.

655 IAC 1-1-7 contains an exclusive list of the grounds for which a Board can revoke a fire certification. Common law fraud is not on that list. Despite this, the Board found that Dulaney violated Indiana Code § 35-43-5-4. Even though Dulaney disputes those findings, the Board did not have authority to revoke under that statute regardless, so any additional analysis is unnecessary. Again, statutory fraud is not a reason listed in 655 IAC 1-1-7.

655 IAC 1-1-7(b)(2), which the Board did not rely upon when issuing the Fire Order, states that action can be taken if the firefighter has "been **convicted** of an offense" but only then if the acts had a "direct bearing" on whether the person accused should be entrusted to perform firefighting duties. Of course, Dulaney was never charged or convicted of a crime. Nor was there any evidence – even if he had been – that his alleged misconduct had a direct bearing on his firefighting duties. Therefore, the mere fact that the Board believed Dulaney violated Ind. Code §

35-43-5-4 was of no consequence. The Board was not permitted to go beyond its statutory authority to act – which it did. The OALP Order was correct and appropriate on these matters.

The Board strayed outside the bounds of its legal authority when it revoked Dulaney's fire certificates listed above. The Board relied on provisions of the Indiana Code that were not applicable, and took measures outside of its administrative authority for actions that did not apply – and without any evidence having been presented on key components of the authority which would have supported such revocation.

These mistakes were made because the DHS, through the Board, rushed the investigation given the media involvement in the cheating allegations. Had DHS taken more time and conducted a more thorough investigation which was based firmly in legal authority, the discrepancies discussed in this brief likely would have presented themselves much earlier. In sum, the Board erred in permanently revoking Dulaney's firefighting certifications. ALJ Ingram was correct when she reversed the Board's June Order and Dulaney respectfully requests that the Board uphold and confirm the ALJ's Order.

B. Dulaney is entitled to recover his attorney fees because the Board's revocation of his licenses was frivolous, groundless, and/or pursued in bad faith because it reflected a complete disregard for the legal boundaries afforded to the Board in such actions.

Because the OALP Order completely and thoroughly eviscerate the original revocation – indeed, finding that there was not even statutory authority for the same – qualifies Dulaney to have his attorney fees reimbursed. The applicable Indiana law states as follows:

In a proceeding under this chapter concerning an agency action, the administrative law judge shall order the agency to pay the reasonable attorney's fees incurred in the proceeding by the prevailing party challenging the agency action if: (1) the party challenging the agency action proves, by a preponderance of the evidence that: (A) the agency's action was frivolous or groundless; or (B) the agency pursued the action bad faith."

Ind. Code § 4-21.5-3-27.5.

The proper procedure here is to return to ALJ Ingram and request that she award him his attorney fees. However, to save the parties additional time and expense, Dulaney respectfully requests that the Board authorize the same here so that this matter can be resolved. As described in detail above, the Board revocation of Dulaney's certifications was groundless. The investigation that they relied upon was cursory at best and the violations the Board claimed Dulaney committed were clearly not supported by any credible evidence and, indeed, were not even authorized by the underlying administrative code. Yet DHS, and thus the Board, continued to pursue this matter for the past twenty (20) months. As a result of the Board continuing to pursue this revocation, Dulaney has incurred, and continues to incur significant attorney fees.

Dulaney would ask that the Board approve his request for fees and give him an additional twenty (20) days to submit a corresponding attorney fee affidavit and summary so that the amounts paid up through the hearing can be included in the reimbursement.

C. The Board should affirm the findings and analysis of an impartial attorney and judge instead of its person animosity towards Dulaney.

The law changed since Dulaney's OALP case was initiated. Now, OALP is the final authority, and this matter would not come back to the Board for final action if it were to happen today. *See* Ind. Code § 4-15-10.5-12. That change reflects the notion that sometimes impartial and objective viewpoints are necessary to achieve justice in the face of personal emotion. Indeed, Dulaney acknowledges that he has garnered anger through this process. There are some who feel he should have just taken his punishment and gone about his business. But it was his right to pursue an appeal – and he won. The Board would be best served to yield the findings of a disinterested and unbiased lawyer, ALJ Ingram, who affirmed Dulaney's allegation that the retribution sought against him was hastily initiated and imprudently pursued.

For these reasons, Dulaney requests that the Board set aside its personal feelings on the matter and affirm the holding in the OALP Order so that all parties can move on and put this matter to rest for good. Dulaney, through his counsel, also requests that his request for attorney fees be granted and that he be given an additional twenty (20) days to provide supporting documentation.

CONCLUSION

Petitioner, Troy Dulaney, respectfully requests this Board confirm ALJ Ingram's order, reinstate his certifications in their entirety, and award Dulaney attorney fees to be determined after the March 13, 2025 hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'C. Jeter', written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served this 27th day of February 2025, via e-mail on all counsel of record.



Christopher Jeter