

FILED BEFORE
THE BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION

Administrative Cause No.: DHS-2307-001968

Underlying/State Agency Action No.: 2023-01

Troy Dulaney,)
Petitioner,)
)
v.)
)
Indiana Department of Homeland Security,)
Respondent.)

RESPONDENT'S BRIEF

I. ISSUE

1. Whether the sanctions the Board wishes to impose are permissible actions within the Board's authority.
2. Whether the sanction to permanently revoke all firefighting certifications is appropriate.
3. Whether to uphold Order No. 2023-01 or to accept/modify/dissolve the Non-Final Administrative Decision issued by the Office of Administrative Law Proceedings (OALP).
4. Whether to award attorney fees requested by the Petitioner.

II. SUMMARY OF CASE

The Indiana Department of Homeland Security (IDHS) received an anonymous complaint that Captain Troy Dulaney of the Muncie Fire Department had for a period of five years facilitated cheating on Emergency Medical Services (EMS) and State Fire Certification Exams. Dulaney did so by pressuring recruits to provide him with exam questions and answers from recently taken exams and then sharing those questions with other recruits.

IDHS investigated the complaint and found several of the allegations made to be valid. IDHS staff then presented those investigation findings to the Board of Firefighting Personnel Standards and Education (the Board). The Board found and issued an Order that Dulaney had committed several violations and sanctioned him by permanently revoking all twenty-six (26) of his

firefighting certifications on June 5, 2023. On June 27, 2024, an evidentiary hearing was held by the Office of Administrative Law Proceedings (OALP) after Dulaney appealed the Board's Order. OALP ruled for Dulaney and against the Board regarding all three of the violations brought by the Board and issued a Non-Final Order. The Board now has the authority to approve the Non-Final Order issued by OALP or to modify the Non-Final Order and reinstate the initial Sanction by permanently revoking all Dulaney's firefighting certifications.

III. STATEMENT OF FACTS

On March 10, 2023, IDHS received an anonymous complaint that Dulaney was facilitating a system of cheating on both EMS and State Fire Certification Exams at the Muncie Fire Department. On April 17, 2023, IDHS began an investigation into the allegations of cheating by Dulaney. During the investigation over thirty (30) interviews were conducted with firefighting students, witnesses, firefighters, and Dulaney himself. During those interviews it was found that Dulaney created a group text message with personal cellphone numbers of students that were to take the exams and provided them with test questions and answers. Dulaney pressured those students into continuing the systematic cheating he had created by messaging students, "you owe me," and "reply back to me individually to see how much you are willing to invest back in me," to have them provide him with more exam questions and answers. Interviews with past students and colleagues of Dulaney revealed that students felt pressured to engage in this quid-pro-quo exchange because Dulaney was in a position of authority in the Muncie Fire Department, and they feared repercussions if they did not. At the conclusion of the investigation the findings were presented to the Board, which unanimously voted to permanently revoke all Dulaney's firefighting certifications.

IV. SUMMARY OF ARGUMENT

Dulaney's firefighting certifications must be permanently revoked. Pursuant to Indiana Code § 22-14-2-7(b)(2), the Board, among other things, may "certify fire department instructors who meet qualifications set by the [Board]." And pursuant to Indiana Code § 22-14-2-7(b)(7), the Board has the power to adopt rules to carry out its responsibilities. Included within this power to certify fire department instructors is the power to revoke the certification of the instructors, and pursuant to 655 IAC 1-1-7, the Board may take action against a certificate holder for failing to comply with the Board's rules and if there is information provided to the Board that the fire person has failed to uphold and respect a student's right to privacy, dignity, and safety. One of these rules, which was violated by the Dulaney, is 655 IAC 1-1-12(j)(12), which states that "a proctor shall not discuss any test question or possible answer thereto with any student taking the examination." As Dulaney violated this rule repeatedly, the integrity of the certification process has been damaged and valid certificate holder's credential may become scrutinized for apt skill and authenticity. Not only are the qualified certificate holders damaged, but so too are those certificate holders who may have received certificates under Dulaney's instruction, that do not possess the requisite skill and knowledge. In failing to follow the Board's rules, which may result in the award of certificates to unqualified individuals, the health and safety of the public, other members of the fire service, and the certificate holder is put at risk. As

maintaining a trusted certification process and training program is a key focus of the Board, Dulaney's certifications must be permanently revoked to ensure the certification process maintains credibility and the skill of those individuals certified to protect public safety is proper. Wherefore, Dulaney's certifications must be permanently revoked.

V. ARGUMENT

1. The Board may permanently revoke Dulaney's certificates.

Pursuant to 655 IAC 1-1-7, "the Board may take action with respect to... the certification of any fire service person or nonfire service person in accordance with the provisions of IC 22-12-7-7(4) upon information provided to the Board that the fire service person or nonfire service person has ... failed to comply with the Board's rules, and if there is information provided to the Board that the fire person has failed to uphold and respect a student's right to privacy, dignity, and safety." And, according to Indiana Code § 22-12-7-7(4)(A) the Board may issue an order to permanently revoke an individual's certificates.

Here the Board was provided information that Dulaney failed to comply with the board's rule (Dulaney violated 655 IAC 1-1-12(j)(12) by discussing test questions and answers). Upon receipt of this information, the Board, within its authority, deliberated and acted, permanently revoking Dulaney's certificates.

2. The Order permanently revoking Dulaney's certificates was appropriate and necessary.

Pursuant to NFPA 1041, which has been adopted in 655 IAC 1-2.1-19, an Instructor I is a "fire service instructor who has demonstrated the knowledge and ability to deliver instruction effectively from a prepared lesson plan, including instructional aids and evaluation instruments; adapt lesson plans to the unique requirements of the students and authority having jurisdiction; organize the learning environment so that learning and safety are maximized; and meet the record keeping requirements of the authority having jurisdiction." Pursuant to 655 IAC 1-1-5.2, "the only individual who is permitted to deliver any class for certification is a lead instructor." A lead instructor must be at least an Instructor I. Additionally, pursuant to 655 IAC 1-1-6.1, an Instructor I is authorized to (1) teach from prepared materials; (2) serve as an evaluator for practical skills examinations; and (3) to serve as a proctor and as a lead evaluator for Indiana mandatory training written and practical skills examinations. Dulaney was also a certified Instructor II/III, along with all his other certifications, which amplifies the seriousness of his misconduct involving his students.

The Board and IDHS give great weight to the Fire Instructor I and Fire Instructor II/III certificates (two of the certifications Dulaney held that were revoked) and publicize that "the Fire Instructor I course is the most important course a firefighter completes in the fire service." The Instructor I certificate is so vital to fire service because it authorizes an individual to teach, evaluate, and help mold future members of the fire service. Instructors teach and evaluate the skills of individuals who ultimately are hoping to obtain a certification in a specific area. These

certificates are meant to demonstrate that the certificate holders are competent to perform the functions and skills covered by the certificates. Not only does IDHS rely on the validity of these certificates and the skills possessed by the holder of the certificate, but so do local fire departments, communities, and the public as a whole.

When the integrity of the certification process established by the State is lost, the certificates carry with them no weight and become futile, and the public will lose all trust in the skill of the fire service and will even lose trust in the certificate holders who have properly demonstrated the skill represented by the certificates they hold. When the public loses trust in the members of their fire service, or their fire departments, they will no longer be relied on to respond in emergency situations and public safety will be damaged. When unqualified individuals become certified due to Dulaney's cheating scheme, and those individuals are called to the scene of an emergency, the lives of the unqualified certificate holder and the individual in need of assistance are put at risk.

It is for the above reasons – the public safety and public trust concerns – that permanent revocation of **all** Dulaney's firefighting certifications is appropriate. Dulaney systematically over a period of several years enacted a cheating scheme that has put countless students, fire service personnel, and public individuals at risk. There is no room to gamble that Dulaney will properly administer his duties as an Instructor or firefighter when human lives and public safety are at stake. Additionally, a strong stance must be taken by the Board, by permanently revoking any Instructor's certifications who may damage the integrity of the certification and put the public's safety at risk. Any less stringent sanction will not suffice to: (1) deter future action; and (2) to demonstrate the Board's commitment to advancing public safety and the ability, skill, training, and knowledge of the members of the fire service it is tasked with certifying.

3. The Board should uphold the original Sanction of the Board and modify the OALP Non-Final Order.

On June 5, 2023, the Board issued Order 2023-01 permanently revoking all of Troy Dulaney's firefighting certificates. After an investigation and deliberation by the Board this was determined to be the appropriate sanction for Dulaney's actions. On September 24, 2024, OALP issued a non-final order in this matter that ruled in favor of the Petitioner, Dulaney. Pursuant to an updated version of IC 4-21.5-3, the OALP would be the ultimate authority and the actions for the Board to take would be limited to affirm, modify, or remand it back to the administrative law judge (ALJ) for further proceedings if this proceeding commenced after July 1, 2024. However, this administrative proceeding falls under the old statute which gave ultimate authority in this matter to the Board.

The ALJ made a few errors in its non-final order that IDHS objected to and should be the basis for modifying the non-final order. The ALJ concluded that IDHS failed to meet its burden that Dulaney violated 655 IAC 1-1-12(j)(12). In reaching this conclusion, the ALJ noted that there was "insufficient credible evidence that Dulaney showed examinees questions and answers **during** the examination." This conclusion by the ALJ places a time restraint on the Board rule where there was not one to begin with. 655 IAC 1-1-12(j)(12) provides that "[a] proctor shall not discuss any test question or possible answer thereto with any student taking the examination."

Nothing in the rule requires that this prohibition on discussing test questions and answers happen during the actual time and duration of the examination. It also includes the discussion of test questions and answers **before** the examination, or after. Any other interpretation would create an absurd result where proctors could discuss test questions and answers right before an exam and avoid any liability and potential sanction. There is sufficient credible evidence in the record to support the conclusion that Dulaney showed examinees questions and answers before the examination.

Additionally, the ALJ did not address whether Dulaney failed to uphold a student's right to dignity as alleged in the Firefighting Board's original order. The evidentiary record readily finds that students suffered indignities because of Dulaney's actions.

Wherefore, based on the errors made by the ALJ in the issued non-final order, the Board should modify the non-final order, and issue a final order reinstating its original sanction permanently revoking all Dulaney's firefighting certifications.

4. The Board should not award attorney fees requested by the Petitioner.

On October 16, 2024, Dulaney's attorney sent a letter to the Board requesting attorney fees by awarded to Dulaney based off the ALJ's non-final order, citing Indiana Code § 4-21.5-3-27.5. However, this request is inappropriate and incorrect at this point in the administrative review process. First, Indiana Code § 4-21.5-3-27.5 states "the administrative law judge shall order the agency to pay reasonable attorney's fees incurred in the proceeding by the prevailing party challenging the agency action." There is no mention of the Board awarding attorney fees, and the ALJ in this matter did not find that, "(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 in bad faith; (2) the agency action was based on an invalid rule; or (3) the agency has failed to demonstrate that the agency acted within its legal authority."

Further, Indiana Code § 4-21.5-3-27.5 was amended, similarly to the ultimate authority issue raised already, in 2024 and it slightly changed the statute cited by Dulaney's attorney. Dulaney's attorney states they believe "the Board acted in bad faith when it issued its revocations on June 5, that agency's actions were not supported by a statute or valid rule, and that the Board failed to act within its legal authority." The ALJ did not rule that the Board acted in bad faith or that it failed to act within its legal authority, nor did the Petitioner raise that argument at the administrative hearing. Additionally, Dulaney's attorney is relying on an amended version of the statute that does not pertain to this proceeding for the allegation that the agency's actions were not supported by a statute or valid rule. Under the old version of the statute that does pertain to this proceeding the agency action must have been "based on an **invalid** rule."

For these reasons the Board should not award attorney fees to the Petitioner.

VI. CONCLUSION

In conclusion, Dulaney's certifications must be permanently revoked. Operating as an instructor and an evaluator is the most integral function of the fire service. Instructors are tasked

with teaching and evaluating all member of the fire service from chief to recruit – they are the individuals who mold the quality of the fire service and are tasked with training the individuals who are expected to respond in emergency situations. There can be no leniency for instructors who put at risk the integrity of the certifications issued by the Board, and the health, safety, and welfare of the public. It is for these reasons that the Petitioner's certifications must be permanently revoked.

Date: 2-27-2025

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SW', with a long horizontal flourish extending to the right.

Sean Wooding

Attorney for the Respondent

Deputy General Counsel

Department of Homeland Security

302 W. Washington St., Room E208

Indianapolis, IN 46204

swooding@dhs.in.gov