

Cause No. 06-32A
Name: David Foster
Administrative Law Judge: William K. Teeguarden
Date: December 11, 2006
Commission Action: Affirmed

FINDINGS OF FACT

1. The Agency is an agency within the meaning of IC 4-21.5.
2. IC 4-21.5 and IC 22-12 and 15 apply to this proceeding.
3. The Agency is the state entity charged with the responsibility of regulating the installation and operation of elevators including the regulation of elevator mechanics within the State of Indiana.
4. In February of 2006, the Agency received information that an elevator installation was being performed by unlicensed persons at 30 West Vermont Street in Indianapolis, Indiana.
5. The Agency sent John Walsh, a duly authorized employee of the Agency with 13 years of elevator inspection experience to the site.
6. The inspector discovered Foster installing parts on the elevator.
7. The inspector asked to see Foster's elevator mechanics license and Foster told the inspector he did not have one.
8. Foster also admitted he had done all the work visible on this installation including the control panel.
9. Foster also advised the inspector that no certified mechanic had been involved in the installation to date.
10. The inspector placed an out of service seal on the elevator and filed the appropriate inspection report with his supervisor.
11. The supervisor is Debra Jackson, a nine year Agency employee who holds appropriate certifications for elevator inspections.
12. In May of 2006, Jackson received more information about an unlicensed installation of this same elevator.
13. Jackson decided to check this information out personally on May 31, 2006.
14. Upon arriving at the building, she found the state seal placed on the elevator by Walsh had been removed without Agency approval and that Foster was continuing to work on the unit.
15. Foster still did not have a mechanics certificate and was not working under the direct, onsite supervision of anyone who was certified.
16. Foster was advised this was a serious violation and he said he would get a mechanic's certificate.
17. On June 16, 2006, Foster completed his application for an Indiana Elevator Mechanics license.
18. The Fee for issuance of a mechanics license is \$100.
19. Foster was issued a license which at the time of the hearing was suspended because his check to the Agency bounced.

20. On July 27, 2006, the Agency issued two separate orders; one governing the violation discovered by Walsh in February and one governing the violation discovered by Jackson on May 31.
21. The orders (attached as Exhibits A and B) imposed fines of \$250 and \$500 respectively for violations of IC 22-15-5-12(a).
22. IC 22-15-5-12(a) states "After May 1, 2003, an individual may not act as an elevator mechanic unless the individual holds an elevator mechanics licensed issued under this chapter."
23. IC 22-15-5-6 defines "Elevator mechanic" as "...an individual who engages in the construction, reconstruction, alteration, maintenance, mechanical, or electrical work or adjustments of a regulated lifting device."
24. Foster acted as an unlicensed elevator mechanic on both the occasions cited and thus violated IC22-15-5-12(a).
25. IC 22-12-7-7 allows a civil penalty of \$250 per day for each day of violation.
26. Had Foster immediately attempted to obtain a mechanic's license after the Walsh inspection in February of 2006, the trier of fact could find some mitigating circumstances and reduce the civil penalty.
27. However, not only did Foster not attempt to obtain his license, but in May of 2006 was still working on the elevator after being instructed to stop until a licensed mechanic was present.
28. Foster made no effort to obtain a license until after the May inspection.
29. Because of the above, the trier of fact concludes that a civil penalty of \$250 for each violation is appropriate.
30. The Orders should be affirmed.

NONFINAL ORDER

The Notices of Violation, Orders, and Fines issued July 27, 2006, by the Department of Homeland Security to David Foster are hereby affirmed. A total fine of Five Hundred Dollars (\$500) for the two violations is also affirmed.