

CAUSE NO: 12-38

NAME: ZELLER ELEVATOR

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE OF COMMISSION FINAL ACTION: JULY 8, 2013

COMMISSION ACTION: FINAL

FINAL ORDER OF
THE FIRE PREVENTION AND BUILDING SAFETY COMMISSION

You are hereby notified that the Fire Prevention and Building Safety Commission has affirmed, without modification, the “Nonfinal Order Addressing Agency Order Denying Elevator Alteration Permit” entered in this proceeding as the final order of the Fire Prevention and Building Safety Commission. The Commission is the ultimate authority and this action is its final determination. A person who wishes to seek judicial review of this final determination must file a petition for review in an appropriate court within 30 days of this notice and must otherwise comply with IC 4-21.5-5.

Date: July 8, 2013

FINDINGS OF FACT

Summary of earlier Findings of Fact

In that earlier case I found several things as facts which I concluded supported my decision that an alteration permit was necessary. First, I found that the subject elevator was hydraulically actuated and that prior to April 27, 2012 its cylinder had begun leaking. By that date Zeller had been retained to diagnose the cause of the leak and to correct the problem and no one applied for an alteration permit prior to beginning the corrective work. I also determined that since there was no evidence Zeller had done any research or made or taken any measurements on the subject elevator there was no way to say with certainty that whatever parts might be installed were exact replacement parts.

As part of that same decision, I found that Zeller had begun working on the subject elevator and that there was no cylinder protection system protecting the cylinder from galvanic or electrolytic action or salt water or other underground conditions. I also found that Zeller was going to add a cylinder protection system and that he had already, and would in the future, be performing welding on the subject cylinder. I also found that there was no evidence regarding Mr. Zeller's welding skills other than his testimony about his experience.

Findings of Fact For Current Case

1. Zeller made several improper or incomplete attempts, between mid-October of 2012 and early December of 2012, to obtain an Alteration Permit for the subject elevator located at 1111 South Green River Road, Evansville, Indiana.
2. Those attempts were defective in several ways including using the incorrect form once and not providing all of the required documentation, information or plans on other attempts.

3. Zeller's attempts to obtain the alteration permit contained the Zeller Elevator Company Standard Hydraulic Jack Installation document.

4. Zeller's Standard Hydraulic Jack installation plan illustrates the Zeller plan to first coat the cylinder with, "coal tar" and then place the hydraulic cylinder inside a cylinder which is made of PVC plastic and is capped at the bottom. Once that was accomplished the unfilled volume between the outside of the hydraulic cylinder and the inside of the PVC cylinder would be filled with concrete.

5. The referenced design for protection of elevator hydraulic cylinders has not been submitted by Zeller for independent testing.

6. Zeller presented an expert witness who is a registered and licensed mechanical engineer in the State of Indiana.

7. Notwithstanding the lack of independent testing, Zeller's expert witness mechanical engineer offered the opinion that the subject design would, and does, meet all of the code requirements for protecting the cylinder from electrolytic and galvanic action.

8. Mr. Tom Hendricks, the Agency's witness and Chief Inspector of the Elevator/Amusements Ride Safety Section of the Division of Fire and Building Code Enforcement testified that if there were an affidavit from Zeller that concrete filled all the gaps between the exterior of the hydraulic cylinder and the interior of the PVC pipe he would expect the Agency's elevator inspectors to approve such an installation.

9. Mr. Hendricks also testified that if all the work was done in compliance with the cylinder protection plan and design submitted by Zeller then that should comply with the Elevator Safety Code.

10. The portion of the hydraulic cylinder which was removed by Zeller consisted of

schedule 40 welded black pipe. The pipe that Zeller replaced on the subject hydraulic cylinder consisted of schedule 40 welded black pipe of the same size as that which was removed.

11. The welding done to the subject hydraulic cylinder by Zeller was checked and observed by Zeller's mechanical engineer witness and found to be good and effective welding.

12. Any item which is denominated a Finding of Fact which should be considered a Conclusion of Law is hereby incorporated by reference into the Conclusions of Law.

CONCLUSIONS OF LAW

1. The Department of Homeland Security is an agency within the meaning of I.C. 4-21.5.

2. The Agency is the state entity charged with building safety within the State of Indiana.

3. I.C. 4-21.5, I.C. 22-12 and 675 IAC apply to this proceeding. Specifically 675 IAC 21-3-1 adopts ANSI/ASME A17.1, 2007, Safety Code for Elevators and Escalators, published by the American Society of Mechanical Engineers, by reference as the Indiana Elevator Safety Code.

4. The Fire Prevention and Building Safety Commission is the ultimate authority within the meaning of IC 4-21.5 with respect to Agency actions taken, violations, or alleged violations of the Indiana Building Code.

5. Pursuant to 675 IAC 21-1-1 an alteration permit is required if an elevator is altered.

6. The Elevator Safety Code definition of, "alteration" is, "any change to equipment including its parts, components, and/or subsystems, other than maintenance, repair or

replacement.”

7. The Elevator Safety Code definition of, “maintenance” is, “ a process of routine examination, lubrication, cleaning, and adjustment of parts, components and/or subsystems for the purpose of ensuring performance in accordance with the applicable Code requirements.”

8. The Elevator Safety Code definition of, “repair” is, “reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with applicable Code requirements.”

9. The Elevator Safety Code definition of, “replacement” is, “the substitution of a device or component and/or subsystems, in its entirety, with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with the applicable Code requirements.”

10. The addition of a cylinder protection system for a hydraulic cylinder which did not previously have a cylinder protection system is “not maintenance, repair or replacement” as those terms are defined in the Elevator Safety Code. Rather, the addition of a cylinder protection system for a hydraulic cylinder which did not previously have one is “alteration” as that term is defined in the elevator safety code.

11. Section 8.6.12.4.1 of the Elevator Safety Code provides:

Unless otherwise required in 8.6.12.5, any repair of damaged or worn parts or components shall be with parts of material and strength equivalent to or better than the original manufacturer’s design. Any changes in the design of components other than those specified in 8.6.12.5 or 8.7 that might affect the safe operation of the equipment shall be certified for use by a professional engineer. A copy of the certification shall be retained by the contractor and recorded in the log book.

12. Those portions of the subject elevator hydraulic cylinder which were removed by Zeller were replaced with parts of material and strength equivalent to or better than the original

manufacturer's design.

13. Zeller's welding on the subject hydraulic cylinder meets the requirements of the Elevator Safety Code.

14. Zeller's design for a hydraulic cylinder protection system, as submitted in evidence in this case, meets the requirements of the Indiana Elevator Safety Code

15. Any item which is denominated a Conclusion of Law which should be considered a Finding of Fact is hereby incorporated by reference into the Findings of Fact.

DECISION AND ORDER

The decision of the Administrative Law Judge in this matter is that, to the extent that Zeller has not yet submitted one proper and complete application package seeking an Alteration Permit for the subject elevator located at 1111 South Green River Road in Evansville, Indiana, the denial of such a permit is AFFIRMED. Once such an application package has been properly and completely submitted, or to the extent that one proper and complete application package has already been submitted, the denial of an Alteration Permit is REVERSED. The Administrative Law Judge expects the parties to resolve when a complete and proper application has been submitted between themselves in the interest of good faith and cooperation.

If there hadn't been sufficient evidence before, there is now ample evidence to convince the Administrative Law Judge that the cylinder protection system employed by Zeller is an effective and code compliant system of cylinder protection. Further, there has now been ample evidence provided that the welding on the subject elevator's hydraulic cylinder is code compliant and there is sufficient evidence that the parts which Zeller replaced were of equivalent, or better, material and strength as the original parts. Once a proper and complete application package is submitted there is no reason to deny an Alteration Permit for this elevator.