

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of the Appeal by)
RONALD K. S. LINDEN from Denial)
of His Application and Invalida-)
tion of His Operator Certification)
Examination)

ORDER NO. WQC 80-9

BY BOARD MEMBER MITCHELL:

On January 31, 1979, Ronald K. S. Linden submitted an application with the State Board's Office of Operator Certification (Office) for certification as a Grade V wastewater treatment plant operator.^{1/} Upon review of Mr. Linden's application, the Office determined that Mr. Linden had only enough experience to qualify him for Grade IV certification. Consequently, he was notified that his application for Grade V was denied, but that he would be admitted to the examination for Grade IV. On April 7, 1979, Mr. Linden took the Grade IV examination which he passed.

On May 15, 1979, the Office received a petition from 17 certified operators protesting Mr. Linden's admission to the Grade IV examination. After an exchange of letters with Mr. Linden's supervisor and a meeting with several individuals on June 21, 1979, the Office determined that Mr. Linden did not have enough experience to qualify him for certification as a Grade IV operator. On

1. The Office of Operator Certification is a unit of the Division of Water Quality.

July 31, 1979, the Office notified Mr. Linden by letter that his application was denied and his Grade IV examination was invalidated.

On September 14, 1979, the Board's Executive Director received Mr. Linden's appeal from the invalidation and denial. On November 15, 1979, the State Board granted Mr. Linden a hearing on his appeal. The hearing was held on January 18, 1980, before Board Member L. L. Mitchell. The issue for hearing was whether Mr. Linden had sufficient qualifying experience prior to the examination administered to him on April 7, 1979, to obtain a Grade IV certification. Evidence and arguments were submitted at the hearing. The record remained open until January 25, 1980, at 5:00 p.m. to allow Mr. Linden to provide comments in writing in response to the written statements received during the hearing. Mr. Linden submitted his written comments on January 25, 1980.

I. BACKGROUND

Ronald K. S. Linden is an engineer with experience in wastewater treatment plant operation and maintenance. He received a degree in civil and sanitary engineering from Chalmers University of Technology, Sweden. His translated transcript shows that his degree is equivalent to a Bachelor's Degree earned at a university in the United States. He also has taken a training course in water sanitation for sanitary engineers from Scandinavian countries, comprising 225 hours. He has worked for Sacramento County since September 1, 1974, in the Water Quality Division as a Sanitary Engineer in the Design Branch.

Mr. Linden submitted his application for Grade V certification on January 31, 1979, to the Office. The Office conducted an investigation into Mr. Linden's experience. The investigation included discussions with various persons familiar with Mr. Linden's duties for Sacramento County. Included were discussions with Mr. Linden's supervisor, Terry Tice, Chief of the Design Branch, Water Quality Division, County of Sacramento; Ray Collison, a Grade V operator who was superintendent of operation for all Sacramento County wastewater treatment plants; Norman Farnum, superintendent of Sacramento County's Central Plant; and Mr. John Brady, who was Chief of the Operations Branch, Water Quality Division, in Sacramento County. After completion of the investigation, the Office determined that 50 percent of Mr. Linden's claimed 28 months of experience working for Sacramento County between May 25, 1975, and January 31, 1979, was acceptable qualifying experience. Additionally, the Office determined that a total of 10 months of experience claimed by Mr. Linden for experience prior to May 25, 1975, was acceptable qualifying experience. The accepted experience thus totalled 24 months, the exact experience requirement, coupled with a bachelor's degree related to the wastewater treatment field, needed to qualify Mr. Linden for a Grade IV certificate if he passed the examination.

Accordingly, Mr. Linden was notified that his Grade V application was denied for lack of necessary qualifying experience, but that he was qualified to take the Grade IV examination. He took the Grade IV examination on April 17, 1979.

On May 15, 1979, the Office received a petition protesting Mr. Linden's admission to the Grade IV examination. The petition was signed by 17 certified operators who work for Sacramento County in the Water Quality Division. The petition was addressed to the attention of Mr. Bob Daigh, SWRCB Operator Certification, and stated:

"We, the undersigned certified Treatment Plant Operators, wish to formally protest the allowing of Mr. Ronnie Linden to write the Grade IV, Treatment Plant Operator Certification examination on April 17, 1979.

"We do not feel that Mr. Linden has the two (2) years of qualifying operational background as required by your regulations."

In response to this petition, Mr. Daigh undertook a reexamination of Mr. Linden's experience. He wrote a letter to the petitioning operators telling them a review of the case was being conducted and that they would be notified of the results. He also wrote a letter, dated June 5, 1979, to Mr. Tice, who was Mr. Linden's supervisor, requesting further analysis of Mr. Linden's experience. Mr. Tice responded by letter of June 14, 1979, stating that Mr. Linden had spent roughly half his time since joining the Division of Water Quality on problems which Mr. Tice characterized as classic examples of trouble-shooting and start-up experience. Specific problems cited by Mr. Tice were start-up of a blower at the Central Treatment Plant and start-up of a disinfection system at the same plant.

On June 21, 1979, Mr. Daigh met with Mr. John Brady, Chief of the Operations Branch, Water Quality Division, Sacramento County; Mr. Ken Kerri, Chairman of Operation Certification

Advisory Committee; and Mr. Lawrence Jackson, Operations Supervisor, Water Quality Division, Sacramento County. At the meeting, Mr. Daigh concluded that some of Mr. Linden's experience was more in the line of maintenance and design work rather than operation and process control work, and that Mr. Linden therefore had less qualifying experience than had previously been credited to him. Mr. Daigh testified at the hearing that, after this meeting, he subtracted three months of experience from that previously credited to Mr. Linden, and that the subtracted experience had to do with time spent on start-up of a new blower at the Central Treatment Plant. It was unclear, however, whether Mr. Daigh had previously disallowed the same experience in originally determining that Mr. Linden should only be allowed a credit of 14 months experience out of the 28 months claimed by him for the period of May 25, 1975, and January 31, 1979, while employed for Sacramento County.

On July 31, 1979, Mr. Daigh sent Mr. Linden a letter notifying him that his application for the Grade IV examination was denied and the examination invalidated. At the same time Mr. Daigh informed Mr. Linden that he had received a passing grade in the examination. The reason given for denial was that "some of the experience previously accepted was more in the maintenance field rather than process control of the wastewater treatment facility". Subsequently Mr. Linden appealed Mr. Daigh's determination and was granted a hearing by the Board. Board Member Mitchell acted as hearing officer.

II. DISCUSSION

Whether Mr. Linden is qualified for Grade IV certification depends on his meeting the requirement of Title 23, California Administrative Code, Section 2480(d)(1). Section 2480(d)(1), in pertinent part, requires the following qualifications for Grade IV certification:

"A Bachelor's degree with a major related to the wastewater treatment field and two years experience in wastewater treatment satisfactory to the division,...."

Mr. Linden's equivalent of at least a Bachelor's degree has not been cited as a factor in his disqualification. Consequently, the only issue is whether he has "two years experience in wastewater treatment satisfactory to the division".

A guideline published by the Division of Water Quality defines wastewater treatment satisfactory to the Division as follows:

"Qualifying experience accepted as wastewater treatment satisfactory to the division shall include in addition to the actual operation and maintenance of wastewater treatment facilities, the following:

1. Startup of new wastewater treatment facilities; which may include training of operators in plant operation and maintenance;
2. Trouble-shooting operational problems at wastewater treatment facilities;
3. Operation of pilot plants providing there is a substantial flow to the plant and the pilot plant itself has more than one phase of operation, i.e., primary-secondary or primary-sludge digestion."

The above guideline allows experience other than "hands on" operation experience to qualify an operator. Among the

alternate types of experience allowable are start-up and trouble-shooting activities. Mr. Linden has claimed all of his experience in these two categories.

III. ISSUES AND FINDINGS

1. Issue: The essential issue in our minds is whether there was good reason for the Office to subtract three months of qualifying time after Mr. Linden's experience had been investigated, 24 months of qualifying time had been allowed. Mr. Linden has been so notified, and he had been allowed to take the Grade IV examination.

Findings: Prior to the examination, Mr. Daigh, Chief of the Office of Operator Certification conducted an investigation of the prior experience of Mr. Linden. Either Mr. Daigh or his staff consulted with Mr. Tice, Mr. Brady, Mr. Farnum, and Mr. Collison concerning Mr. Linden's work for the County of Sacramento, Water Quality Division. After investigation, Mr. Daigh determined that Mr. Linden had 24 months of qualifying experience, including 3 months with K-Komelt in Sweden between October 1, 1970, and January 31, 1972; 4 months with Brown and Caldwell Consulting Engineers between April 1, 1972, and September 1, 1974; 3 months with the County of Sacramento, Water Quality Division, between September 1, 1974, and May 25, 1975, and 14 months with County of Sacramento, Water Quality Division, between May 25, 1975, and January 31, 1979. Only the 14 months allowed for work between May 25, 1975, and January 31, 1979, has been questioned.

At the hearing, no reliable factual evidence was presented to show that the initial determination by Mr. Daigh was in error. Mr. Tice's letter to Mr. Daigh after the examination clearly supports the allowance of at least the 14 months in question. There is no evidence in the record that the June 21, 1979, meeting between Mr. Brady, Mr. Jackson, Mr. Kerri, and Mr. Daigh produced any additional facts which would justify subtraction of an additional three months of qualifying experience from Mr. Linden. As a matter of fact, on the record before us, it is entirely possible that the three months additional disallowance was already included in the 14 months of time initially disallowed by Mr. Daigh.

We think that Mr. Linden had the burden of proving that his experience qualified him for the certification grade which he sought prior to the determination by the Office. We also believe that once the Office had conducted an investigation of Mr. Linden's application and had made a formal determination that sufficient qualification had been demonstrated, the burden of justifying the subsequent disallowance of experience fell on the Division. The Office has simply not carried its burden on the facts of this case.

2. Issue: Were the procedures employed by the Office of Operator Certification appropriate for considering the protest submitted by the 17 certified operators? In substance, Mr. Daigh, who had previously permitted Mr. Linden to take the examination, instituted an investigation to review his own decision, and subsequently reversed himself.

Finding: The procedures were inappropriate. The Division, in effect, made a final decision when, after investigation, it notified Mr. Linden that he was qualified for the Grade IV examination. Our regulations then call for protests and decisions thereon to be made by the Board.^{2/} We intend to evaluate this and other program problems.^{3/}

IV. CONCLUSION

After review of the record we have reached the following conclusion:

1. The Office of Operator Certification, Division of Water Quality, formally determined that Mr. Linden had the necessary qualifying experience for Grade IV wastewater treatment plant operator examination on April 7, 1979.
2. The Office of Operator Certification has failed to justify its subsequent reversal of that formal decision.
3. Mr. Linden passed the necessary examination and should receive his Grade IV certificate.

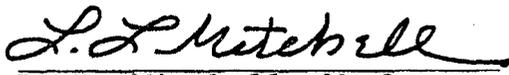
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2. "Protests to any determination of the division must be made in writing to the board within thirty (30) days of the announcement of examination results or notification of a division determination. The board on its own motion or upon the request of any aggrieved party may hold a hearing or designate a hearing officer to obtain evidence to assist in deciding upon any matter protested or appealed."
Title 23, California Administrative Code, Section 2474.
 3. Our review of this situation has made it apparent that the operator certification program and the procedures and guidelines related thereto are not entirely satisfactory to the Division, the operators subject to the program, or other persons involved in the program. The Board intends to work with all parties involved with the program, including the Advisory Committee, to modify the operator certification program so that it fulfills its objective more effectively.

V. ORDER

IT IS, THEREFORE, ORDERED that Mr. Ronald K. S. Linden be issued a Grade IV certificate as a wastewater treatment plant operator, dated retroactively to April 7, 1979.

Dated: APR 17 1980

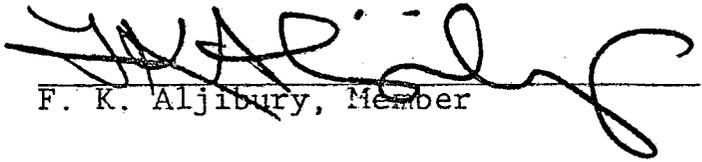
WE CONCUR:


L. L. Mitchell, Member


Carla M. Bard, Chairwoman


William J. Miller Vice Chairman


Jill B. Dunlap, Member


F. K. Aljibury, Member