

Cause #: 00-50B and 56B

Name: Frank Hinegardner

Administrative Law Judge: William K. Teeguarden

Date: November 1, 2000

Commission Action: Affirmed.

## **FINDINGS OF FACT**

1. The SBC is an agency within the meaning of IC 4-21.5.
2. The SBC is the state agency responsible for regulating Boiler and Pressure Vessels in the State of Indiana.
3. IC 4-21.5, IC 22-12, IC 22-15, and 680 IAC 203 apply to this proceeding.
4. The FPBSC is the ultimate authority within the meaning of IC 4-21.5 with respect to orders issued by the SBC.
5. At all times relevant to this proceeding, Hinegardner held the License issued by the SBC.
6. Hinegardner, an employee (or former employee) of Safeco Insurance Company, had the status of a “third party inspector” licensed pursuant to IC 22-15-6-4.
7. Periodic inspections of certified boiler and pressure vessels in the state are required and often performed by licensed third party inspectors who are employees of the insurance company writing the coverage of the units.
8. All such inspections, whether performed by a state employee, a licensed employee of the property owner, or a licensed employee of an insurance company are reported to the Division of Boiler and Pressure Vessels (“Division”) of the SBC.
9. The Director of the Division then issued certificates of operation or, if necessary, issues violation notices or correction orders.
10. On June 13, 2000, the SBC issued an Order permanently revoking the License of Hinegardner.
11. Hinegardner petitioned for administrative for review.
12. Prior to this Order, the SBC issued an EO in which Hinegardner’s License was suspended for 90 days.

13. The EO was appealed and upheld following a hearing.
14. During the hearing on the License revocation, the administrative law judge took official notice without objection of all evidence introduced during the hearing on the EO.
15. The evidence presented during the EO hearing showed that in February of 2000, Hinegardner had recommended a two year certification with no restrictions be given to boilers designated 213604 and 213605.
16. These boilers were operating at greatly reduced capacity as a result of violations discovered during prior inspections.
17. The Director investigated the discrepancy and discovered that the prior violations had not been corrected, the vessels were still operating at a reduced level, and the vessels were not certifiable.
18. At the hearing on the Order seeking revocation, the Director introduced evidence of prior faulty inspections and efforts by the SBC to improve Hindgardner's performance.
19. The Director introduced evidence of a prior attempt by the SBC to improve performance.
20. In 1993, the License was placed on probation and the petitioner was required to pass an examination prior to regaining an unrestricted License. See Exhibit 1.
21. In 1995, the Director became aware of a request for certification of a pressure vessel based on an external inspection by Hinegardner.
22. An internal inspection of the unit in question was required. See Exhibit 1.
23. In 1998, the Director documented an instance where Hinegardner recommended certifying a vessel which was disconnected and placed in storage.
24. After becoming aware of the 2000 incident, the Director issued the EO and Order.
25. All of the above incidents were referred to Hinegardner's employer.
26. The trier of fact takes official notice that a parallel action was brought by the SBC against the employer (In Re: Safeco Insurance Company, Cause Number 00-51) for failing to properly supervise its employee.

27. The evidence at this hearing shows that the employer made very little effort to require improved performance.
28. The Order includes a paragraph permanently revoking the license.
29. Only because the employer paid little attention to the correspondence from the SBC and failed to make a serious effort to educate and supervise the employee, the trier of fact concludes the proposed penalty is excessive.
30. Hinegardner's License should be suspended for a minimum of three years.<sup>1</sup>
31. Further, reinstatement should be dependent on reasonable conditions imposed by the SBC with respect to supervision by the employer.

#### **NONFINAL ORDER**

Boiler and Pressure Vessel Inspector License Number 1292 issued by the State Building Commissioner to Frank Hinegardner is hereby suspended from April 25, 2000, to April 25, 2003, a period of three years. Further, any Boiler and Pressure Vessel Inspector License issued after April 25, 2003, to Frank Hinegardner shall contain reasonable conditions imposed by the State Building Commissioner with respect to training and supervision to ensure adequate performance.

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<sup>1</sup> The License is currently suspended because after the hearing on the EO, Hinegardner was terminated thus automatically suspending his inspection authority until reemployed. See IC 22-15-6(b).