

CAUSE NO. 11-04F
NAME: DAVID CHERRONE
ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS
DATE: JULY 25, 2011
COMMISSION ACTION: AFFIRMED

FINDINGS OF FACT

1. At all relevant times Mr. Cherrone was the Fire Marshal for the Clay Fire Territory in Saint Joseph County, Indiana.
2. Mr. Cherrone had held the Fire Instructor II/III certification for a period of time with the most recent certification issued on November 15, 2007 and expiring on November 15, 2010.
3. Mr. Cherrone sought to have his expired Fire Instructor II/III certification reinstated on or about February 23, 2011. That variance request was denied at the Board's March 21, 2011 meeting.
4. Mr. Cherrone had completed all of his continuing education and/or service prerequisites to recertification in a timely and acceptable manner. The last service hour for which he sought credit was served on October 26, 2010.
5. On October 4, 2010 the Board granted a variance and reinstated an expired Fire Instructor I certification which had expired in April of 2010. The recipient of that reinstated certification also received a disciplinary letter warning him that this would be the last time that he could expect to have his expired certification reinstated.
6. On December 6, 2010 the Board granted a variance and reinstated an expired Fire Instructor II/III which had expired in January of 2010. The recipient of that reinstated certification did not receive any warning letter.

7. At the March 21, 2011 meeting the Board's staff recommended denial of Mr. Cherrone's variance request and also recommended denial of a variance requesting reinstatement of a lapsed Fire Instructor I certification.

8. The Board's staff placed a notice in the February 2010 edition of *The Indiana Volunteer Firefighter* newspaper/magazine which advised Instructors that it was their responsibility to check their respective certification expiration dates and that the State was no longer sending notices of impending expirations by mail. That notice also advised instructors that they could receive electronic notification of their expirations if they made sure they were on the staff's email list.

9. On August 18, 2010 the Board's staff executive sent an email to the State Fire Marshal, who forwarded it to all persons on the staff's email list, which contained a list of all certified fire instructors whose certifications would expire between September 1, 2010 and January 1, 2011. Mr. Cherrone is listed on that list.

10. Mr. Cherrone admitted he had been advised in August of 2010 that his certification would expire in November of 2010.

11. No expired certifications as a Fire Instructor II/III have been reinstated by the Board in 2011.

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

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 the responsibility of certifying Instructors for Firefighter Certification within the State of Indiana.

3. I.C. 4-21.5, I.C. 22-14-2 and 655 IAC apply to this proceeding.

4. 655 IAC 1-2.1-20 (c) provides:

c) To maintain certification, the candidate shall accrue a minimum of thirty (30) hours of continuing education, consisting of at least eighteen (18) hours of teaching classes in public safety and emergency response, at least six (6) hours of evaluating practical skills, and at least six (6) hours of attendance at classes in training in adult education, for example:

(1) learning objectives;

(2) test construction; or

(3) classroom teaching;

that shall be reported, on a form approved by the training division every three (3) years. **The report shall be received by the board not later than thirty (30) days after the expiration of the three (3) year period** that commenced on the date of initial certification or the applicable three (3) year anniversary of the date. (emphasis added)

5. Mr. Cherrone violated this rule of the Board notwithstanding his admission that he had received notification in August of 2010 that his Fire Instructor II/III certification would expire in November 2010.

6. 655 IAC 1-2.1-20 has a built-in “grace period” which grants thirty (30) days after the expiration of the certification in which to submit the appropriate documentation and still keep the certification.

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

DECISION

The Board's decision to deny a variance to Mr. Cherrone reinstating his expired Fire Instructor II/III certification is affirmed in all regards. There can be no dispute that Mr. Cherrone was in violation of the Board's rules by not getting his recertification application and report of continuing education filed in a timely fashion. He also admitted to having received notification from the Board's staff in August of 2010 that his certification was due to expire in November of 2010. There can be no claim that he just didn't know he had to take care of maintaining his certification.

Certainly, the Board has granted variances and reinstated certifications in the past. Discerning a pattern as to which variances would be granted can be difficult. Nevertheless, the Board has spoken clearly that any inconsistent practices that may have existed in the past concerning the granting of variances must end. Ending, or preventing, any inconsistent practices which may have existed in the past brings the Board, the Board's staff, and those persons subject to the Board's jurisdiction and rules into compliance with the statutes and duly enacted rules with which the Board interacts and that needs to happen.