

CAUSE NO: 12-05A

NAME: ZELLER ELEVATOR

ADMINISTRATIVE LAW JUDGE: GARY W. BIPPUS

DATE: JULY 5, 2012

COMMISSION ACTION: OBJECTIONS FILED

UNDISPUTED FACTS AND QUESTIONS OF LAW

The undisputed facts are that the annual safety test report form contains a printed location for the licensed elevator mechanic who is performing the required safety tests to sign his or her name verifying that those tests were performed. That same report form also contains a location for a Qualified Elevator Inspector to sign attesting that all of the required tests have been performed by persons qualified to perform such services and that the regulated lifting device is compliant with the applicable building and equipment codes in effect at the time of installation and all applicable building and equipment codes in effect at the time(s) of any alteration(s). Mr. Zeller holds both an elevator mechanic license and a Qualified Elevator Mechanic certification. The particular report form in question does not contain language specifying that one person cannot sign both lines so Mr. Zeller signed both lines. This completed report is submitted to the Agency in the course of applying for renewal of the operating permit. The Agency then declined to renew the operating permits of all the elevators signed in this way.

The pertinent, current, elevator code sections are Sections 8.11.1.1.2 (a) and (b) of ANSI/ASME A17.1, 2007, Safety Code for Elevators and Escalators as adopted in 675 Indiana Administrative Code 21-3-1. Section 8.11.1.1.2(a) provides:

A qualified inspector shall attest to the Category 1, Category 3 and Category 5 Periodic Test Requirements. This qualified inspector shall sign such an attestation for each test that reads, "I hereby attest under penalty of perjury that :

- (A) all of the required tests have been completed by persons qualified to perform such services; and
- (B) the regulated lifting device conforms to all applicable building and equipment codes in effect at the time of installation and all applicable

building and equipment codes effective as applicable to and for each alteration.

Section 8.11.1.1.2(b) provides

The Owner or the Owner's authorized agent shall have all of the tests required by 8.11.2, 8.11.3, 8.11.4, and 8.11.5 made by persons qualified to perform such service. For the Category 1, Category 3, and Category 5 Test Requirements, the owner or the owner's authorized agent shall have these tests attested to by a qualified inspector in the manner specified in 8.11.1.1.2(a).

Petitioner Zeller has accurately quoted prior versions of these same sections in the petition for review. The language of the two earlier versions left no doubt that two different people had to sign since the earlier code made reference to the work being done, "in the presence of the inspector" and that the work had to be, "witnessed by an inspector." (Rhetorical Paragraph 13 of Petition). Petitioner is assuming that since this particular language, along with some other language, was changed that must mean that the requirement for two separate people to be involved has been removed. If Petitioner's view is accepted that one person who is both a licensed elevator mechanic and a QEI could sign both places then Mr. Zeller would sign once saying he did the work and once more saying, in effect, he really meant it when he signed the first time. That is an absurd result. Further, the testing required to obtain an operating permit is all about safety. One very clear reason to have two sets of eyes involved in the testing process is so that one set of eyes may pick up something dangerous which the first set did not see.

The Agency's view is that a mechanic must sign and a different person who is a QEI must sign indicating that he or she personally observed the testing. Petitioner, through this administrative review is attempting to assert that his view or interpretation of the elevator code is better or more appropriate than that of the Agency. The Administrative Law Judge finds that the law is with the Agency on this point.

It makes no difference whether Petitioner may have articulated a reasonable view and interpretation of the applicable codes or even if Petitioner may have stated a better view and interpretation of those codes than the Agency's interpretation. What Petitioner has failed to do is prove that the Agency's interpretation is unreasonable. The relevant codes in this matter are codes directly related to elevator safety. The Agency is charged with enforcing elevator safety laws and codes in Indiana. "When [an administrative law judge] is faced with two reasonable interpretations of a [code], one of which is supplied by an administrative agency charged with enforcing the [code] the [administrative law judge] should defer to the agency." *Shaffer v. State*, 795 N.E. 2d 1072, 1076 (Ind. App, 2003); *Beaty Construction v. Board of Safety Review*, 912 N.E.2d 824 (Ind. App., 2009); *Murphy v. Curtis*, 930 N.E.2d 1228 (Ind. App., 2010). Further, "When [an administrative law judge] determines that an administrative agency's interpretation is reasonable; it should 'terminate its analysis' and not address the reasonableness of the other party's interpretation." *Shaffer* at 1076. I conclude that the Agency's interpretation is reasonable and the Petitioner was fully aware of that interpretation in advance of his election to sign as both the elevator mechanic and the QEI who observed the testing. The denial of Petitioner's customer's elevator operating permits is **AFFIRMED**.