

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF COMMERCE, COMMUNITY AND ECONOMIC
DEVELOPMENT**

IN THE MATTER OF:)
)
 JEROME K. CULP) OAH No. 11-0174-MEC
) Agency No. 2010-000443
_____)

DECISION

I. INTRODUCTION

Jerome Culp applied to be licensed as a mechanical administrator in the heating, cooling, and process piping category. The Division of Corporations, Business and Professional Licensing (Division) denied his application on April 6, 2011.¹ Mr. Culp appealed that decision, and this matter was referred to the Office of Administrative Hearings for a hearing.

A hearing was held on July 12 and July 13, 2011, in Fairbanks Alaska. Mr. Culp was present and represented himself. The Division was represented by Assistant Attorney General Dan Branch. Mr. Culp's exhibits 1 – 23 and the Division's exhibits A – Q were all admitted without objection. Mr. Culp did not call any witnesses other than himself. The Division presented testimony from Mathew Monagle,² Al Nagel,³ Jonathon McCoy,⁴ and Kayla Wilke.⁵

In order to qualify for a mechanical administrator license in the category of heating, cooling, and process piping (HCPP), Mr. Culp was required to pass a test on subjects applicable to this profession.⁶ He was also required to provide satisfactory proof that he has "practical experience as a journeyman in heating, cooling, and process piping work for at least four of the six years immediately before the date of application."⁷ Mr. Culp's application was considered complete in September of 2010, so the applicable six year period considered by the Division began in September of 2004.⁸ The central dispute in this matter is whether enough of the work

¹ Agency Record page 2.

² Former Licensing Examiner for the Division.

³ Investigator and Mechanical Inspection Program Manager for the Department of Labor and Workforce Development.

⁴ Mechanical Inspector for the Department of Labor and Workforce Development.

⁵ Licensing Examiner for the Division.

⁶ See Exhibit 3 for subject areas covered by this test.

⁷ 12 AAC 39.222(1). The other methods of qualifying for this license set out in the regulation are not applicable in this appeal.

⁸ Wilke Testimony; Exhibit A, page 2.

performed by Mr. Culp during this time period qualified as practical experience in the HCPP field so that he had the required 48 months of experience.⁹

Based on the evidence in the record, and the testimony during the hearing, Mr. Culp has not met his burden of proving sufficient experience to obtain this license.

II. FACTS

Mr. Culp received an excellent passing score on the written examination.¹⁰ Mr. Culp also has extensive practical experience working with residential and commercial heating, cooling, and ventilation systems.¹¹ The resume submitted as part of his application shows relevant work experience beginning in October of 2001. He also trained in this field during his four years of military service ending in October of 2001.¹² For the time period relevant to this appeal, he worked as follows:¹³

Dates	Company	Time Claimed
Nov 2004 – Aug 2005	Ellis Environmental	9 months
Dec 2005 – June 2006	MWR/Kingsbay Sub Base	Not claimed
Dec 2006 – Jan 2010	Department of Defense/Eielson AFB	36 months
Aug 2008 – Sept 2010 ¹⁴	Subzero Heating & Air	8 months

The Division allowed Mr. Culp credit for his work at Ellis Environmental.¹⁵

Mr. Culp's application¹⁶ described his Subzero and Eielson Air Forced Base work experience as follows:¹⁷

⁹ Ms. Wilke testified that the Division looked for a total of 48 months worth of experience to determine whether the applicant has four years of appropriate experience. This policy departs from the regulatory definition of a year of experience contained in 12 AAC 39.950 which states that a year of experience is 1500 hours in a continuous 12 month period.

¹⁰ Exhibit 4.

¹¹ Exhibit A; Culp Testimony.

¹² Exhibit 9; Culp Testimony.

¹³ Exhibit A, pages 2 – 4.

¹⁴ Time overlapping other time periods is not counted twice. Time must be prior to date of application.

¹⁵ Notice of Filing Experience Hours Totals, dated July 18, 2011.

¹⁶ Exhibit A, pages 2 and 3.

¹⁷ He described his work in these two positions at different times. He was still working at Eielson AFB when he initially submitted his application in December of 2009, but stopped working there in January of 2010. He has continued to work at Subzero since September of 2010, but since his application was deemed complete as of that date, he cannot count this additional time as credit towards his total experience.

LIST MOST RECENT EMPLOYMENT FIRST

NAME OF EMPLOYER: Subzero Heating & Air
 Contractor License Number, if Alaska Contractor: _____
 MAILING ADDRESS: 1791 Bona St North Pole AK 99705
Street or P.O. Box City State Zip
 DATES OF EMPLOYMENT: 8/2008 9/2010 HOURS WORKED PER WEEK: 30
FROM (month/year) TO (month/year) TOTAL YEARS/MONTHS: 2 yrs / 1 mo
 IN WHAT CAPACITY DID YOU WORK:
 Journeyman Foreman Supervisor Contractor Other, Please specify: _____
 DESCRIBE JOB DUTIES PERFORMED (RELATED TO CATEGORY FOR WHICH YOU ARE APPLYING):
Install, troubleshoot & repair boiler systems. Install boiler controls to increase system efficiency. Provide repair quotes for boiler upgrades & repairs. Perform heat load calculations. Solder hydronic system piping. Replace zone valves. Design system upgrades for customers. Obtain mechanical permits for system replacements. Test HVAC controls for proper operation. Install heat exchangers. Install circulation pumps. Perform combustion tuning on furnaces & boiler systems. Install pipe, valves, pressure reducers, circuit setters, check valves & HVAC controls.
Journeal Culp

NAME OF EMPLOYER: US Air Force "Department of Defense"
 Contractor License Number, if Alaska Contractor: N/A
 MAILING ADDRESS: 2230 Central Ave Eielson AFB AK 99702
Street or P.O. Box City State Zip
 DATES OF EMPLOYMENT: 12/2006 Current HOURS WORKED PER WEEK: 40+
FROM (month/year) TO (month/year) TOTAL YEARS/MONTHS: 3 yrs
 IN WHAT CAPACITY DID YOU WORK:
 Journeyman Foreman Supervisor Contractor Other, Please specify: _____
 DESCRIBE JOB DUTIES PERFORMED (RELATED TO CATEGORY FOR WHICH YOU ARE APPLYING):
Install, troubleshoot, & maintain HVAC equipment throughout US Air Force installation. Including boiler systems, steam systems, fuel oil systems, hydronic systems, & cooling systems. Install steam systems, rebuild traps, heat exchangers, unit heaters, circ pumps. Train shop members on proper electrical troubleshooting, shop safety, haz waste disposal. Provide technical support.

The Division did not accept Mr. Culp's work from either of these positions.¹⁸

During his testimony, Mr. Culp described his understanding of the term HVAC. As he used that term in his application, HVAC includes all types of heating, ventilation, and refrigeration systems.¹⁹ According to Mr. Culp, HCPP work is within the broader scope of the HVAC field. To the extent Mr. Culp uses the term HVAC in his application and testimony, that term does not exclude the type of systems that fit within the HCPP category.

¹⁸ Notice of Filing Experience Hours Totals.

¹⁹ Culp Testimony.

Mr. Culp also extensively described the type of systems he was responsible for at Eielson AFB. He was a supervisor of up to ten people who worked on over 100 different buildings along the flight line and outlying areas of the base. Many of these buildings are supplied steam from a central steam plant. Others have stand alone steam systems or hydronic hot water systems.²⁰ He was responsible for the maintenance and repair of these systems, either doing the work himself or as a supervisor. He was also responsible, in consultation with his supervisor, for deciding whether to repair or replace systems, and whether to retrofit existing systems or install new ones. In addition, he was responsible for new installation or retrofitting of many of the systems that were replaced or retrofitted.

III. DISCUSSION

A. Regulatory Scheme

A person must have a mechanical administrator's license to perform certain categories of mechanical work.²¹ The mechanical administrator is one who is "responsible for" this work.²² Thus, the administrator may perform the work personally, or supervise the work of someone else.²³

The scope of work within the HCPP category has been defined by regulation:

Heating, cooling, and process piping work includes the installation, alteration, or retrofitting of

- (1) hydronic heating, cooling, and process piping systems, including steam and hot water systems of any temperature-pressure range, chilled water systems, condensing water systems, pressure vessels, heat exchangers, boilers, refrigeration water chillers, cooling towers, fuel oil tanks and piping, and fuel gas piping; and
- (2) steam and hot water boilers, including chimney connections, flues, refractories, burners, fittings, valves, thermal insulations, controls, accessories, and incidental piping.^[24]

An HCPP mechanical administrator may also install or supervise the original installation or retrofitting of all electrical controls, and the retrofitting of control wiring of 48 volts or less

²⁰ A hydronic system is one that heats or cools through the "transfer of heat by a circulating fluid (as water or vapor) in a closed system of pipes." <http://www.merriam-webster.com/dictionary/hydronic>.

²¹ AS 08.40.260. A license is not required for mechanical work on a single family or two family residence not intended for sale at the time of the installation. AS 08.40.390(b)(3).

²² AS 08.40.490(3).

²³ See AS 08.40.400; 12 AAC 39.902.

²⁴ 12 AAC 39.232(b).

related to the HCPP system as long as the installation or retrofitting does not alter the electrical characteristics of the mechanical system.²⁵

There is also a separate mechanical administrator's license available in the unlimited HVAC/sheet metal category.²⁶

(a) The holder of a mechanical administrator license in the unlimited HVAC/sheet metal category may supervise, in accordance with AS 08.40.400,

- (1) all HVAC/sheet metal work described in (b) of this section;
- (2) the work defined under the [HCPP] category ... that is integral to work on an HVAC system;

* * *

(b) HVAC/sheet metal work includes the installation, alteration, or retrofitting of the following as they apply to HVAC systems only:

- (1) all components of the air handling and refrigeration cycle, including fans, coils, evaporative cooling units, self-contained packaged air conditioning and heating units, air handling units, condensing units, furnaces, flues, chimneys, duct work, cooled mechanical air handling and ventilation applications, and related accessories;
- (2) fuel oil tanks and piping and fuel gas piping.^[27]

A mechanical administrator in this category may also supervise installation or retrofitting of controls and control wiring, with limitations similar to those of an HCPP administrator.²⁸

Although the HCPP and HVAC categories were the categories most often referred to during the hearing, there are additional mechanical administrator categories. It was the Division's position at the hearing that all of these categories are mutually exclusive. A person performing HVAC work, could not also be performing HCPP work. Mr. Culp, on the other hand, testified that HVAC was a broad term that encompassed HCPP work as well as other types of mechanical work.

Regardless of how these separate categories are viewed, the language used in the regulations provides for at least some overlap between categories. The scope of work under the HVAC/sheet metal category specifically refers to work defined in the HCPP category,²⁹ as well

²⁵ 12 AAC 39.232(c).

²⁶ HVAC is defined as "heating, ventilation, and air conditioning." 12 AAC 39.992(a)(3).

²⁷ 12 AAC 39.252.

²⁸ 12 AAC 39.252(c).

²⁹ 12 AAC 39.252(a)(2).

as to condensing units, flues, and fuel piping,³⁰ and installation or retrofitting of certain electric controls and control wiring.³¹ The category of unlimited refrigeration includes electric controls and control wiring, chilled water piping, and condensing water piping.³² The temperature control category covers the installation and retrofitting of electric controls and control wiring.³³ Depending on the actual work being performed, an applicant could demonstrate that work in one of these other categories met the definition of work performed in the HCPP category.

B. Required Work Experience

1. Applicable Regulation

In order to be licensed as a mechanical administrator,³⁴ one must have “practical experience as a journeyman in heating, cooling, and process piping work for at least four of the six years immediately before the date of application.”³⁵ There are three elements to this requirement:

- 1) journeyman level practical experience;
- 2) in heating, cooling, and process piping work;
- 3) for four out of the preceding six years.

There is also a prior decision that has interpreted these regulations under a very similar factual situation. Prior decisions after a formal hearing represent a commissioner’s or board’s policy as to how rules and regulations should be interpreted and applied, and are given deference.³⁶ A commissioner or board may overrule or modify a prior decision if the decisionmaker provides a “reasoned analysis that explains why the change is being made.”³⁷ Departure from a prior decision without this reasoned analysis may be considered arbitrary.³⁸ Following precedent in administrative hearings narrows the issues to be litigated, ensures that parties understand the rules that will be applied to their actions, and helps maintain public

³⁰ 12 AAC 39.252(b).

³¹ 12 AAC 39.252(c).

³² 12 AAC 39.272.

³³ 12 AAC 39.292.

³⁴ Although AS 08.40.300 states that anyone who passes the examination “shall receive a license[,]” AS 08.40.230 authorizes additional regulations establishing categories of mechanical administrator licenses and *the qualifications for those categories*.

³⁵ 12 AAC 39.222(1).

³⁶ *In re C & K.T.*, OAH No. 09-008-PFD (Dept of Revenue 2009).

³⁷ *May v. State*, 168 P.3d 873, 884 (Alaska 2007).

³⁸ *Alaska Public Interest Group v State (AKPIRG)*, 167 P.3d 27, 42 (Alaska 2007).

confidence in the hearing process.³⁹ In an administrative proceeding such as this, any party may suggest that a commissioner or board overrule or modify a prior ruling. But until the prior ruling is changed, it is adopted policy, and that policy is applied to the facts of the particular hearing.⁴⁰

The prior case, *In re Bohart*,⁴¹ involved an application for a mechanical administrator's license in the HCPP category. *Bohart* addressed what constitutes working at the "journeyman" level as required by 12 AAC 39.222(1). That decision held that one was working at the journeyman level when he or she is competent and does not need supervision when installing, diagnosing, or repairing mechanical equipment.⁴² Mr. McCoy testified for the Division and provided a similar definition of journeyman level work.

Bohart also addressed the definition of HCPP work. HCPP work "includes the installation, alteration, or retrofitting"⁴³ of various types of work. The word "includes" is read to mean includes "but not limited to."⁴⁴ However, even though other work beyond installation, alteration, and retrofitting might be qualifying practical experience,⁴⁵ mere maintenance is not. Qualifying work "must involve the actual changing of the way a system works, not merely replacing faulty parts with identical new parts or adjusting a system to work as it was originally intended."⁴⁶ Time spent on maintenance and replacing parts is not included as practical experience in the HCPP category.

2. Journeyman Level Experience

One question raised in this hearing was whether all of Mr. Culp's work was at the journeyman level. Even though some of his work was maintenance and replacement of parts, Mr. Culp was still working at the journeyman level. As noted in *Bohart*

If a customer called him out to inspect a malfunctioning heating system, Mr. Bohart would use his journeyman expertise to advise the homeowner whether the system needed mere cleaning and adjustment, or repairs, i.e. replacement of faulty parts, or to be retrofitted with newer technology or otherwise altered in some way,

³⁹ *AKPIRG*, 167 P.3d at 44.

⁴⁰ Policy changes could also be made by adopting new regulations or by requesting statutory amendments.

⁴¹ *In re Bohart*, OAH No. 06-0350-MEC (Dept of Commerce, Community & Economic Development 2007).

⁴² *Bohart*, page 7.

⁴³ 12 AAC 39.232(b).

⁴⁴ AS 01.10.040(b).

⁴⁵ Time spent developing a specific system to be installed, including the parts to be used and how they will all fit together, would count as practical experience in the HCPP category. Supervising the work of others is also qualifying work. *Bohart*, page 10.

⁴⁶ *Bohart*, page 9. See also 12 AAC 39.992(a)(7)(definition of "repair").

or whether the entire system should be decommissioned and replaced with an entirely new system. Regardless of the particular solution called for on a given job, Mr. Bohart's ability to advise the customer on these options and then perform whichever of them is appropriate constitutes journeyman level work.^[47]

In its post hearing written argument, the Division argues for removing the requirement that a person's practical experience be at the journeyman level. The Division now suggests that any experience in the HCPP field should count towards the required practical experience because there is no official certificate that establishes when one becomes a journeyman. Under the Division's view, a person at the beginning of his or her career in this field would gain practical experience towards a mechanical administrator's license even when working under close supervision.

The Division's new position on this issue would make it easier for Mr. Culp to obtain his license since he would not need to show that his practical experience was earned after becoming a journeyman. There are advantages to adopting this as the standard for the HCPP mechanical administrator license given the lack of an applicable journeyman certificate. At the same time, adopting this standard would require ignoring the words "as a journeyman" in 12 AAC 39.222. It would also require ignoring the commissioner's decision in *Bohart*. Thus, Mr. Culp must show he has been working as a journeyman.⁴⁸

Mr. Culp learned his trade in the military, and worked several years for various companies before being hired by Ellis Environmental in November of 2004. By that date, he was working at a journeyman level. A person who has not yet reached the journeyman level can install, retrofit, or repair mechanical equipment but would not be making the professional judgment as to what needs to be repaired versus what needs to be replaced, retrofitted, or completely decommissioned. Nor would such a person be able to work without supervision. Mr. Culp has been exercising that level of professional judgment during the past six years. Not only has he been working without supervision, he was in fact a supervisor of others performing this type of work while working at Eielson AFB. In addition to his own testimony, three people have certified that Mr. Culp has been working at the journeyman level since 2004.⁴⁹ The Division accepted work for Ellis Environmental from November 2004 through December 2005 as being

⁴⁷ *Bohart*, page 8.

⁴⁸ The difficulty of requiring journeyman level experience in a field with no journeyman certificate was noted in *Bohart*. That this language remains in the regulation 4 ½ years later is an indication that the Department of Commerce, Community and Economic Development continues to believe this language is appropriate.

⁴⁹ Exhibits B, C, & D.

practical experience at the journeyman level.⁵⁰ There is no evidence that Mr. Culp's skill level deteriorated below the journeyman level after that time. Mr. Culp met his burden of proof that he has been working at the journeyman level.

3. Heating, Cooling, and Process Piping

The next element, performing HCPP work, was also discussed in the *Bohart* decision. While Mr. Culp was working at the journeyman level, that does not mean all of the work he performed qualified as practical experience towards a mechanical administrator's license. Only practical experience in HCPP work counts towards the required four years of experience. As noted above, this work must involve more than just maintaining an existing system, or replacing parts in an existing system. The evidence in the record clearly established that at least some of Mr. Culp's experience during the last six years has been in the HCPP field. The more difficult question is whether he has four years of applicable experience.

4. Four Years of Experience

a. Eielson AFB Experience

The Division argues that none of Mr. Culp's work at Eielson AFB should count towards the required practical experience. This argument is based on a Department of Labor and Workforce Development (DLWD) memorandum that limits who may sit for a certificate of fitness examination to be certified as a journeyman electrician or a journeyman plumber.⁵¹ This memorandum does not preclude counting Mr. Culp's work at Eielson AFB.

The language used in the memorandum says it applies to work performed by active duty military personnel, and does not say it also applies to civilian contractors or Department of Defense civilian employees. The memorandum is also based on an assumption that plumbing and electrical work performed on military installation is not performed to the standards in the applicable building codes.⁵² The evidence at the hearing did not establish that mechanical work on military installations was not performed to the mechanical code standards. Finally, the DLWD memorandum had not been adopted by the Division prior to the decision to deny Mr.

⁵⁰ Division's Notice of Filing Experience Hours Totals.

⁵¹ Exhibit J.

⁵² This assumption may not be accurate. Mr. Culp's job description stated that he must adhere rigidly to the National Electric Code. Exhibit 11, page 5.

Culp's application.⁵³ Exhibit 23 is a copy of an e-mail message from Jennifer Strickler dated March 30, 2010.⁵⁴ Referring to the DLWD memorandum, she states

I would like to adopt this same policy for Electrical Administrator and Mechanical Administrator applicants. If you have any questions, please let me know.^[55]

Ms. Strickler had determined to deny Mr. Culp's application prior to her March 30 e-mail.⁵⁶ Even if this has become the Division's policy, it did not become so until after it was decided that Mr. Culp's application would be denied.

It is also important that the DLWD memorandum discusses how one can earn experience to become a journeyman, and not what experience would count towards additional advancement in the licensing scheme after one has become a journeyman. An apprentice is learning the trade and how to perform work subject to the applicable building code. A journeyman has already learned to perform work subject to the code, and the mechanical administrator's test measure's the applicant's knowledge of the code. It is not immediately apparent that the same policy considerations that led to the development of this memorandum would apply to someone who already is a journeyman. Any HCPP work performed by Mr. Culp at Eielson AFB counts as practical experience towards a mechanical administrator's license.

b. Subzero Heating and Air Experience

The Division did not accept Mr. Culp's experience working for Subzero Heating and Air for two reasons.⁵⁷ First, the experience was not verified by anyone other than Mr. Culp. To receive a mechanical administrator license, Mr. Culp must prove that he had sufficient practical experience in the HCPP category. Because he is the sole proprietor of Subzero, it is difficult for him to obtain verification of his work. That makes it more difficult for him to meet his burden of proof, but it does not automatically require that his work for Subzero be ignored.⁵⁸

The second reason stated for not counting this work is that there was no mechanical administrator supervising the work. A person may not act as a mechanical administrator unless

⁵³ No ruling is made here as to whether this policy is one that can only be adopted as a regulation pursuant to the Administrative Procedure Act. See *Squires v. Alaska Board of Architects, Engineers & Land Surveyors*, 205 P.3d 326, 333 – 336 (Alaska 2009)(discussing when a policy must be adopted as a regulation pursuant to the APA).

⁵⁴ This document also appears on page 41 of the agency record.

⁵⁵ Exhibit 23.

⁵⁶ In an e-mail dated March 17, 2010, Ms. Strickler states "I officially denied Mr. Culp his license." Record at 36.

⁵⁷ Notice of Filing Experience Hours Totals.

⁵⁸ See *Bohart*, page 16 (proof of experience without verification form).

he or she has the appropriate license, or is performing work that is excluded from this requirement.⁵⁹ The relevant exclusion here is for “mechanical installation on a single-family or two-family residence that is not intended for sale at the time of making the installation.”⁶⁰ Mr. Culp testified that he only worked on single-family or two-family homes not intended for sale. There was no evidence offered to contradict his testimony. Thus, there was no requirement that this work be performed by or supervised by a mechanical administrator. Thus, the work may be counted towards his practical experience so long as it is HCPP work.

Finally, it was suggested at the hearing that this time should not count because Mr. Culp does not have a contractor’s license. Mechanical contractor is defined as a “contractor” who does certain types of mechanical work.⁶¹ A contractor is someone who “construct[s], alter[s], repair[s], move[s], demolish[es], a building, highway, road, railroad, or any type of fixed structure . . .”⁶² Thus, a mechanical contractor is someone who does mechanical work as part of the process of constructing, altering, repair, moving, or demolishing a fixed structure. Mr. Culp’s work at Subzero involved repairing and installing heating systems. While that work could occur while a building is being constructed, repaired, or altered, it can also occur when the only work involves the heating system; work that does not alter the building. Because at least some of this work can be performed legally without a contractor’s license, this work should not be automatically excluded from consideration.

5. Mr. Culp’s Experience

A year of experience is defined as work in the required field for at least 1500 hours during a continuous 12 month period.⁶³ As noted in footnote 3, above, the Division counts months of work towards a total of 48 months rather than requiring at least four 12-month periods. Thus, Mr. Culp could establish sufficient experience by showing 1500 hours of work during four 12 month periods, or by showing 125 hours of work in the required field during each of 48 separate months.⁶⁴

As noted above, the Division has accepted Mr. Culp’s 9 months of experience at Ellis Environmental as HCPP work. At Eielson AFB, Mr. Culp was the supervisor of a crew of 9 or

⁵⁹ AS 08.40.260.

⁶⁰ AS 08.40.390(b)(3).

⁶¹ AS 08.18.171(12).

⁶² AS 08.18.171(4).

⁶³ 12 AAC 39.950.

⁶⁴ 1500 hours per year divided by 12 months a year equals 125 hours per month.

10 people who worked on over 100 different buildings. When needed, Mr. Culp would perform work himself, other times he would supervise the work of his crew.⁶⁵ According to his testimony, only about half of the work performed by himself or his crew was actual installation, alteration, or retrofitting work. The remainder of the work involved maintaining or repairing equipment. To the extent Mr. Culp was personally replacing parts with new parts or adjusting systems, he was not engaged in HCPP work. Many repairs, however, are more extensive than simply replacing parts with new parts. Although not quantified, at least some of Mr. Culp's time would have been more than replacing parts with like parts, or adjusting systems to work as designed.⁶⁶

In addition, as the supervisor of a crew of workers, Mr. Culp spent time supervising others. As the supervisor, he had responsibility for evaluating HCPP systems and determining whether systems needed to be repaired, altered, or replaced. For even the simple replacement of parts, Mr. Culp would be responsible for ensuring that the repair was done properly.

As noted in section III B 1, above, HCPP work includes *but is not limited to* installation, alteration, or retrofitting of HCPP systems.⁶⁷ “Planning, overseeing and inspecting are the kinds of work that administrators do.”⁶⁸ Four years of practical experience in the HCPP field ensures that an applicant has an understanding of HCPP systems. This experience need not be of a highly technical nature, however. Installation of hydronic pipes in a home counts as experience towards the four year requirement.⁶⁹ The initial installation of zone valves in a hydronic system would count, even though the subsequent replacement of a faulty valve would not. Experience supervising others who are working on HCPP systems is more complex than simply repairing systems as “repair” is defined by regulation.⁷⁰ This is true regardless of whether the people being supervised are simply replacing parts, performing more extensive repairs, modifying an existing system, or installing a new system. Supervising is what mechanical administrators do. And while a worker may replace parts on a HCPP system without supervision from a mechanical administrator, a person supervising in that situation is gaining the type of experience that ensures

⁶⁵ Culp testimony.

⁶⁶ 12 AAC 39.992(a)(7) (definition of “repair”).

⁶⁷ 12 AAC 39.232(b).

⁶⁸ *Bohart*, page 10.

⁶⁹ *Bohart*, page 10.

⁷⁰ 12 AAC 39.992(a)(7) (repair defined as replacing parts with like parts and adjusting a system to operate as designed.)

the required understanding of HCPP systems. Accordingly, Mr. Culp's 36 months of experience at Eielson AFB counts towards the required minimum four years of experience.

Between his Ellis Environmental and Eielson AFB work, Mr. Culp has a total of 45 months experience. He needs an additional three months experience from his Subzero work to qualify for a mechanical administrator license.

Based on the description in his application, some of Mr. Culp's work with Subzero qualifies as HCPP experience. For example, time spent installing boiler systems and controls, or designing upgrades would count. Other work, such as replacing zone valves and combustion tuning would not.⁷¹ It was Mr. Culp's burden to show that he has the required number of hours of practical experience.⁷² Mr. Culp need not have devoted his full efforts to work in the HCPP category, but he did need to spend about 75% of his time working in that category.⁷³ Mr. Culp's testimony established that some portion of his practical experience at Subzero has been in the HCPP category. He has not proven that at least 75% of his time at Subzero has been in the HCPP category. Mr. Culp is three months short of the required experience as of September 2010 when his application was completed.⁷⁴

IV. CONCLUSION

Mr. Culp has extensive experience in the heating, cooling, and process piping field. He has not proven, however, that he has the required number of hours of experience during the last six years to be licensed as a mechanical administrator in that category. Accordingly, the Division correctly denied his application to be licensed as a mechanical administrator.

DATED as of this 15th day of August, 2011.

By: Signed
Jeffrey A. Friedman
Administrative Law Judge

⁷¹ Exhibit A, page 2 (Mr. Culp's description of his work).

⁷² AS 44.62.460(e)(2).

⁷³ The definition of one year's experience is 1500 hours during 12 continuous months. At 40 hours per week for 50 weeks per year (allowing for some vacation time), full time effort is 2000 hours. 1500 hours is 75% of 2000 hours.

⁷⁴ If Mr. Culp reapplies for this license, it is possible that his Ellis Environmental experience will be outside the six year time frame, and he may therefore need more than three months experience at Subzero.

Adoption

The undersigned adopts this decision as final under the authority of AS 44.64.060(e)(1). Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 44.62.560 and Alaska R. App. P. 602(a)(2) within 30 days after the date of this decision.

DATED this 30th day of September, 2011.

By: Signed
Signature
Susan K. Bell
Name
Commissioner
Title

[This document has been modified to conform to the technical standards for publication.]