



Industry Training Appeal Board

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DECISION NO. 2012-ITA-001(a)

In the matter of an appeal under the *Industry Training Authority Act*, S.B.C. 2003, c. 34

BETWEEN: KATHRYN JOHNSTON **APPELLANT**

AND: KEVIN EVANS, CEO **RESPONDENT**
INDUSTRY TRAINING AUTHORITY

BEFORE: A Panel of the Industry Training Appeal Board
Marcia McNeil, Chair
Linda Love, Member
Paula Barnsley, Member

DATE: April 3, 2012

PLACE: Richmond, BC

APPEARING: For the Appellant: Self-represented
For the Respondent: Self-represented

APPEAL

[1] This is an appeal by Kathryn Johnston from the decision of Kevin Evans, the Chief Executive Officer of the Industry Training Authority ("ITA"), denying Ms. Johnston's request to be granted her Professional Cook 3 Red Seal Certification without further examination.

BACKGROUND

[2] Pursuant to s. 8 (1) (e) of the *Industry Training Authority Act* (the "Act"), the ITA has the power to develop examinations and assessment standards and procedures for industry training programs. Pursuant to s. 8 (1) (f) of the *Act*, the ITA has the authority to develop criteria to award industry training credentials.

[3] By virtue of the authority granted pursuant to the *Act*, the ITA has developed a program of study and assessment requirements for professional cooks. Those who achieve the certificate of Professional Cook 3, will be granted a Red Seal Endorsement, (together, the "Red Seal Certification") a certification recognized in other jurisdictions in Canada. In order to grant such an endorsement, the ITA must be satisfied that candidates have achieved a necessary level of competence.

[4] Candidates for the Red Seal Certification may either pursue a course of study recognized by the ITA, following which they may challenge both the written and practical examination, or, alternatively may demonstrate that they have sufficient practical experience to challenge the written and practical exams without a designated course of study.

[5] Ms. Johnston has an extensive background as a cook, and has worked in a variety of settings, primarily institutional settings. She was able to demonstrate to the ITA that she had the required experience to challenge the assessment procedure without pursuing a course of study.

[6] The normal protocol established by the ITA is that candidates must first successfully complete the practical assessment before writing the written examination. A mark of 70% or higher is required to pass the written examination.

[7] During the course of this proceeding, the ITA acknowledged that, in error, Ms. Johnston was scheduled to write the written examination prior to taking the practical assessment. As a result, Ms. Johnston wrote the examination and achieved a successful mark of 81%. Unfortunately, Ms. Johnston was then sent a letter saying that she had successfully completed the requirements of the Red Seal Certification when, in fact, she had not yet successfully completed the practical examination.

[8] Ms. Johnston attended the practical assessment on May 14, 2011. The assessment required her to prepare a five course meal, plus a yeast dough product. Specific criteria were identified for each of the courses, for example, the assessment required that the candidate prepare "one fish to be filleted, one whole bird and one small jointed meat on the bone."

[9] Candidates were required to plan and write a menu for the assessment, and to devise a timeline by which they would prepare each of the items on their menu. The candidates were advised that they would have a 15 minute briefing prior to beginning the assessment, and 30 minutes to set up their workstations, familiarize themselves with the location of the equipment, and to prepare their menu. The candidates then had 6 hours to complete the practical assessment.

[10] Specific ingredients available to be used to complete the assessment were not disclosed in advance.

[11] Candidates were advised in advance that the assessment would be looking for:

- correct selection of ingredients
- correct selection of tools and equipment
- preparation of ingredients
- correct portioning of menu items
- using correct cooking/baking techniques/methods
- appropriate following and adjusting of recipes
- presenting menu/ingredient items – including garnishes, sauces, and accompaniments
- menu item/dish characteristic (visual appeal, taste, doneness, texture, color, portion size, nutritional balance, etc).
- appropriate storage of menu items/ingredients (where applicable)
- following safe work practices and hygiene practices

[12] 10 "Blocks" were identified, the first identified as "Occupational Skills" and the remainder representing various categories for the menu items (for example, 2 of the Blocks were "Vegetables and Fruits" and "Starches"). Candidates were also advised that the criteria to demonstrate competency in any "Block" were as follows:

- Tasks completed within the allocated time
- Tasks performed to the industry standard for quality
- Appropriate safety, hygiene and storage procedures followed during the course of the assessment
- The candidate demonstrating a thorough understanding of the task at hand

[13] Finally, candidates were advised of the criteria to demonstrate overall practical competency as follows:

- The candidate has demonstrated competency in occupational skills (Block A)
- The candidate has demonstrated competency in 7 of the 9 remaining Blocks
- The candidate has demonstrated sound theoretical knowledge

[14] The assessment was conducted on May 14, 2011 at Vancouver Community College ("VCC") by a contractor retained by the ITA. The original assessment panel was comprised of 2 assessors (the "Original Panel").

[15] Two days after the assessment, Ms. Johnston contacted a representative of the contractor to advise of her concerns regarding problems with equipment and procedures, including safety concerns, which had occurred during her practical assessment at VCC. The ITA was also advised of these concerns on June 13, 2011.

[16] One example of an issue identified by Ms. Johnston was that the original assessors modified the schedule she had prepared, requiring Ms. Johnston to produce menu items earlier than she had planned. While Ms. Johnston was of the view that the change in timing did not negatively impact the quality of the food she produced during the practical assessment, during the course of the hearing the ITA recognized that the scheduling change may have had an impact on the outcome of the assessment.

[17] Ms. Johnston was advised in correspondence from the ITA dated June 8, 2011 that she had not been successful in the practical assessment. Specifically, she was advised that she had successfully completed the Mandatory Occupational Skills Block, but that she had only succeeded in one of the remaining 9 Blocks, namely, Baked Goods and Desserts. She had been assessed as having not demonstrated competence in the remaining 8 Blocks, namely:

- Stocks, Soups and Sauces
- Vegetables and Fruits
- Starches
- Meats
- Poultry
- Seafood
- Garde-Manger
- Eggs, Breakfast Cookery and Dairy

[18] Throughout the months of June, July and August, there were numerous mail, telephone and email exchanges between Ms. Johnston, her husband, and the ITA as well as with a representative of the contractor who had overseen the practical assessment. As a result of various concerns Ms. Johnston raised with the venue and safety issues, the ITA offered Ms. Johnston the opportunity to be re-evaluated on the Blocks in which she had been unsuccessful, after demonstrating that she had undertaken steps to improve her skills in this area.

[19] Unfortunately, Ms. Johnston was not advised of her right of reconsideration as set out in the *Act* until the fall of 2011. Ultimately, Ms. Johnston submitted a request for reconsideration pursuant to the *Act* on November 8, 2011.

[20] To conduct the reconsideration of the practical assessment, the ITA constituted a three person review panel (the "Review Panel") from a list of ITA-registered assessors, and contracted them to review material from Ms. Johnston's original assessment to determine whether to uphold or amend the results of the Original Panel. In particular, the Review Panel was provided:

- Photographs of the completed menu items prepared by Ms. Johnston on May 14, 2011
- Copies of the Original Panel's marking sheets and handwritten notes
- Submissions provided by Ms. Johnston regarding her concerns with the original assessment process

[21] Upon review of the material described above, the three panelists each prepared their own reassessment, noting where they would support the Original Panel's decision, or where they would vary the original decision with respect to each of the outstanding Blocks. The three panelists then met by way of conference call, and shared their conclusions. Ultimately, the Review Panel came to a consensus opinion, determining that of the 8 Blocks in which Ms. Johnston had been unsuccessful, she was deemed to have been successful on three additional Blocks, namely:

- Stocks, Soups and Sauces
- Meats
- Poultry

[22] However, she was deemed to have not successfully completed 5 Blocks, namely:

- Vegetables and Fruits
- Starches
- Seafood
- Garde-Manger
- Eggs, Breakfast Cookery and Dairy

[23] As a result, she was deemed to have not met the requirement to demonstrate competence in a minimum of 7 of the 9 Blocks, and was not granted the Red Seal Certification.

[24] Ms. Johnston was advised of the results of the Review Panel's decision by letter dated December 7, 2011. Ms. Johnston was advised of her right of appeal to the Industry Training Appeal Board, and did so on January 3, 2012.

ADDITIONAL BACKGROUND INFORMATION

[25] Beginning within a few days of having completed the practical assessment, Ms. Johnston advised a representative of the contractor who had conducted the practical assessment, and later the ITA of a variety of concerns she had with the setting of the practical assessment, as well as with how the practical assessment was conducted.

[26] During the course of the proceedings before this Panel, the ITA offered an apology to Ms. Johnston for the many procedural and practical concerns which she had raised, and demonstrated that it had taken concrete steps to address those issues.

[27] Ms. Johnston accepted the ITA's apology, and recognized that the ITA had taken steps to ameliorate the concerns that had arisen during her assessment.

POSITION OF THE PARTIES

[28] Ms. Johnston's position in this hearing was that she had adequately demonstrated her competence during the practical assessment in May 2011, and that, she should therefore be awarded her Red Seal Certification without the requirement to undertake further examination or assessment.

[29] In response, the ITA acknowledged that there were a number of issues with the assessment of Ms. Johnston which may have affected her ability to be successful. Further, the ITA acknowledged that the Original Panel did not provide sufficient feedback regarding their rationale for concluding that Ms. Johnston did not successfully demonstrate competence in the remaining Blocks. The ITA's position however, was that it is unable to grant the Red Seal Certification without being satisfied that a candidate has demonstrated competence in the required areas. The ITA submitted that it is not currently able to confirm that Ms. Johnston has demonstrated her competence in the required areas.

[30] The ITA proposed that Ms. Johnston be provided a new opportunity to demonstrate her competence in only those specific Blocks which remain outstanding, by undertaking another practical assessment at no cost to Ms. Johnston, with new assessors unfamiliar with Ms. Johnston or the circumstances leading up to the proposed reassessment.

[31] Accordingly, the issue for this Panel is whether Ms. Johnston has already sufficiently demonstrated her competence as a cook, to be awarded, without further assessment, the Red Seal Certification.

[32] As noted above, Ms. Johnston identified, and the ITA has accepted, that there were a number of difficulties that she experienced during the practical assessment conducted on May 14, 2011. Despite these difficulties, Ms. Johnston remains of the view that she did in fact, adequately demonstrate her competence during the course of the assessment, such that she should be awarded her Red Seal Certification without further assessment.

[33] In particular, Ms. Johnston notes that when one reviews the notes of each of the two original assessors, and the three review panel assessors, with respect to all but one Block, at least one assessor has deemed that she was competent. In other

words, although the decision of the Original Panel and the Review Panel do not agree on which Blocks Ms. Johnston demonstrated her competence, taken overall, there is endorsement from at least one assessor of her competence in all but one Block.

[34] In fact, Ms. Johnston herself recognized that during the practical assessment she had difficulty with one aspect of the "Dairy" Block, an area which she asserted that she had significant experience, but that caused her some difficulty on the day of the assessment. She was therefore prepared to accept that she had not demonstrated her competence in the Dairy Block on May 14, 2011. She testified that she was satisfied that she would have no difficulty demonstrating her competence in this area in a different assessment.

[35] In response, the ITA acknowledged that the Review Panel was limited in its ability to reassess Ms. Johnston's competence as it was required to rely only on handwritten notes by the Original Panel, and photographs of the menu items Ms. Johnston completed. However, the ITA asserted that both the Original Panel of two assessors and the Review Panel of three assessors operated on a consensus model, where, after they recorded their initial thoughts and viewpoints, there was an opportunity to meet and discuss the outcome, and arrive at a consensus decision. The ITA concluded that both panels had effectively come to the same conclusion, namely, that Ms. Johnston had not demonstrated competence in sufficient Blocks to meet the requirement to successfully complete the practical assessment.

[36] Both in her written materials, and in her presentation to this Panel, Ms. Johnston carefully reviewed the specific notes of each of the assessors, and was critical of the terminology used by the assessors, and in particular, of the failure to articulate or adhere to specific "standards" for the assessment. For example, in its comments about the fish that she had prepared, one of the original assessors commented that the fish was overcooked. Her concern in this regard was that no temperature had been taken of the fish to establish a "standard" by which she was being judged. Similar concerns were raised about items on her menu being described as bland or unseasoned.

[37] Further, Ms. Johnston criticized the assessment as having focused on requirements for a fine dining establishment, despite the fact that the Cook Level 3 certificate applies to both cooks in fine dining establishments, as well as institutional settings. In particular, Ms. Johnston was critical of reference to food being bland or unseasoned, noting that her intent was to make healthy menu choices as might be used in an institutional setting, and that, for example she used less salt than might be used in a fine dining establishment.

[38] The Review Panelists' notations do acknowledge that in many respects, the Original Panel's written comments were insufficiently descriptive. At least one assessor noted that descriptions such as bland or unseasoned were subjective, and without further clarification, were insufficient by themselves to demonstrate a lack of competence.

[39] Ms. Johnston also noted that the materials which she was provided to prepare for the assessment process indicated that the assessors would ask questions during the course of the assessment. She indicates that had she been asked, she could have clarified her seasoning methods, and addressed any concerns that the assessors had with her methodology.

DECISION

[40] Having reviewed the material presented, and the very thorough submissions of both parties, we agree with the position of the Respondent that it would be premature to grant Ms. Johnston her Red Seal Certification without further examination.

[41] Although the ITA recognized that the assessment conducted of Ms. Johnston was fraught with a number of difficulties, we are unable to conclude that Ms. Johnston has demonstrated the necessary requirements to be granted her Red Seal Certification.

[42] Ms. Johnston correctly notes that at least one of the five original assessors or review assessors determined that she had demonstrated her competency in all but one of the nine Blocks. On this point, we agree with the position of the ITA that it was appropriate for the assessors to compare their respective views and positions, and to arrive at a consensus decision. Ultimately, neither the consensus decision reached by the Original Panel nor the Review Panel accepted that Ms. Johnston had demonstrated her competence in sufficient Blocks to be granted her certification.

[43] Although we agree that many of the concerns identified by the Original Panel were not well-articulated, we also note that the Challenger Practical Assessment Guide describes that the assessor will be looking for, among other things "Menu item/dish characteristics (visual appeal, doneness, taste, texture, color, portion size, nutritional balance, etc.)." Although the choice of descriptions by the assessors such as "bland" or "overcooked" may not provide sufficient feedback to Ms. Johnston for her to make constructive changes to her methodology, they are reflective of the types of characteristics that candidates were advised the assessors would be reviewing as part of the practical assessment.

[44] We also agree with the argument submitted on behalf of the Respondent in this case that the practical assessment of cooks will require an element of subjectivity, and that the standards against which the candidates are assessed will not always be able to be articulated precisely. In particular, we accept that taste of the food prepared and its texture, are two areas where entirely objective "standards" may not be achievable.

[45] That being said, we also accept Ms. Johnston's criticism that if the assessors had asked her about her preparation methods, or her intentions with her menu, she may have had an opportunity to explain her seasoning methods, and in particular explain that her intention was to prepare food for an institutional setting rather than a fine-dining establishment. We cannot speak to whether this opportunity to explain her procedures or discuss her methodology with the assessors would have altered the outcome. However, we agree that as the Assessment Guide anticipates that there would be an opportunity to respond to questions from the assessors and receive feedback, it is unfortunate that the assessors chose not to do so in this case.

[46] Ultimately, we accept that Ms. Johnston did not have a fair opportunity to demonstrate her skills as a professional cook during her practical assessment. However, although Ms. Johnston did not have a fair opportunity to demonstrate her competence, neither can we accept, based on the evidence before us, that she has

demonstrated that she should be granted her Red Seal Certification without further examination.

[47] For these reasons, we accept the proposal made by the ITA in this proceeding, that Ms. Johnston be given another opportunity, at no cost, to challenge the practical assessment. In any new assessment, Ms. Johnston will be required to achieve only three of the following five Blocks: Vegetables and Fruits; Starches; Seafood; Garde-Manger and Eggs Breakfast Cookery and Dairy. We also approve of the proposal of the ITA that the next assessment take place at a different facility convenient to Ms. Johnston, and with assessors who have not previously been involved, either in the initial assessment, or the reassessment. We agree that Ms. Johnston should not be required to demonstrate any further training or course of study in these areas before the assessment takes place.

[48] If Ms. Johnston successfully demonstrates her competence in three of the five identified Blocks, we understand that she will have met all requirements of the Red Seal Certification, and that it will be immediately awarded to her.

"Marcia McNeil"

Marcia McNeil, Chair
Industry Training Appeal Board

"Linda Love"

Linda Love, Member
Industry Training Appeal Board

"Paula Barnsley"

Paula Barnsley, Member
Industry Training Appeal Board

May 10, 2012