

November 2016

Fit and proper person

Introduction

Legislation

Regulation 38(b) of the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 requires an applicant for a certificate of competence (CoC) to be a fit and proper person. The Board needs to be satisfied of this before issuing a CoC.

Definition of 'fit and proper person'

The Board considers a fit and proper person to be a person who:

- is of good character and has due regard for the laws of New Zealand, and is likely to continue to do so while in possession of a CoC ('proper'), and
- has the relevant qualifications and experience prescribed under regulation 34 of the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016 for a holder of a CoC ('fit').

Establishing whether someone is a fit and proper person involves assessing their previous conduct to help decide whether they have the competence, ability, attitude, and honesty expected of someone holding the particular CoC applied for.

Process

The New Zealand Mining Board of Examiners (the Board) makes the decision to issue or decline an application for a CoC under regulation 41 of the Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016.

This policy outlines guidelines used by the Board to assess whether an applicant is a 'fit and proper person' (FPP).

These guidelines apply to new applicants, and applicants renewing their current CoCs.

Factors taken into consideration will include:

- criminal history (within New Zealand and/or overseas).

Each applicant will be looked at on a case-by-case basis. The Board is not confined to the matters listed above, and may consider any other relevant information provided.

Natural justice and fairness

The Board will ensure an applicant is afforded natural justice. Natural justice involves the concept of fair play. Decision-making should be free from bias and not lead to outcomes that adversely affect people's rights without first giving them an opportunity to put forward their side of the story.

To achieve this, only relevant factors will be considered when deciding whether an applicant is a fit and proper person, and any actual or perceived biases will be avoided. A decision will only be made once the relevant information has been assessed - there will be no predetermination.

An agreement must be reached by a quorum of seven Board members in order to grant or decline an application for a CoC.

If the Board is unable to reach the quorum the Chair - WorkSafe Chief Inspector will make the decision.

Confidentiality

All information supplied with an application will be held by WorkSafe on behalf of the Board. It will be stored securely in electronic form and dealt with in accordance with the Privacy Act 1993, including Principle 9 (Agency not to keep personal information for longer than necessary).

Criminal history

Applicants are required to provide evidence that they are fit and proper, and the Board may refuse an application if there is insufficient information to satisfy the Board that the applicant is a fit and proper person to hold the CoC applied for. To that end, applicants are asked to provide a current (obtained within the past three months) copy of their New Zealand criminal record from the Ministry of Justice. This record must be provided even if there are no convictions to be listed. If the applicant has lived overseas for a period of 12 months or more within the five years before making their application, they must also provide a criminal history from that country.

A firearms licence is not considered to be an adequate alternative to a Ministry of Justice criminal record. Matters relevant for evaluating a fit and proper person are different to those required for a firearms licence.

The Board will consider conviction history and pay particular regard to offences indicating a propensity toward (violence, dishonesty, health and safety offences and serious or recidivist driving related offences). Applicants will generally be expected to have no history of:

- serious criminal offending within the five years prior (eg health and safety convictions or convictions for which they received a sentence of more than 12 months)
- serious driving related offences within the five years prior (eg alcohol/drug impaired driving, reckless or dangerous driving)
- other criminal offending within the two years prior.

Applicants may be asked to demonstrate that they have been successfully rehabilitated. This could include:

- a written statement from the applicant explaining the circumstances of the conviction, and why they should be allowed to hold a CoC
- two written statements from independent referees (this may include employers, lawyers, parole officers, or anyone seen as having good standing within the community).

The Board can obtain additional information from the applicant if it (the Board) doesn't have enough to satisfy that a person is fit and proper. If the conviction history shows a serious driving related offence, the Board could consider requiring the applicant to provide their traffic history so as to ascertain whether there was a pattern of behaviour.

Driver licensing convictions

Operating heavy machinery is a large component of many roles authorised by mining and quarrying CoCs.

A history of driving-related convictions, including but not limited to:

- driving with excess blood alcohol levels
- dangerous driving, or
- a pattern of recidivist driving-related offending.

This will call into question the applicant's propensity to conform to safety procedures with vehicles. The Board considers these kinds of convictions to be relevant to its assessment as to whether an applicant is a fit and proper person, regardless of whether a prison sentence resulted.

If a the conviction history shows a serious driving related offence, the Board could consider requiring the applicant to provide their traffic history so as to ascertain whether there was a pattern of behaviour.

Pending criminal charges

Applicants are asked to inform the Board if they are presently facing charges for any criminal or driving-related offences. The Board may, if it considers it appropriate in the circumstances, refuse the application, in which case the applicant should wait until the charges have been disposed of.

Failure to report pending criminal charges will be relevant to the assessment of whether the applicant is a fit and proper person for the purposes of the CoC applied for.

Convictions obtained after being granted a CoC

Holders of CoCs are expected to report any convictions obtained after a CoC has been granted. This may result in the Board reassessing the holder to see whether they remain a fit and proper person, and may result in no further action being taken, or with the CoC being cancelled under Reg 45(2)(c). In such an event, the Board will give the holder at least 14 days notice of the intention to suspend or cancel. The holder will be provided the opportunity to be heard by way of a formal written statement, or in person.

Clean Slate Act 2004

Applicants are not required to declare convictions covered by the Criminal Records (Clean Slate) Act 2004, if they meet all the conditions of section 7 of that Act. In particular, it must have been at least seven years since they were last sentenced. The Act should be consulted for further information; it includes a complete list of the convictions that are covered.

Any convictions disclosed to the Board that are covered by the Criminal Records (Clean Slate) Act 2004 will not be taken into account.

Infringements

The Board will be particularly interested if the driving history shows, within the five years preceding the application:

- a pattern of recidivist driving-related offending
- the applicant has been disqualified from holding a driver licence
- their drivers licence was suspended due to demerit points.

The Board will take into account the circumstances of an applicant's infringement history. To enable this, the applicant may be asked to provide:

- a written statement from the applicant explaining the circumstances of the infringements, and why they should be allowed to hold a CoC
- supporting character referees.

Other sources of information

The Board may receive information from sources other than the New Zealand Police or Ministry of Justice (eg another Government agency, or anonymous informant) that may be prejudicial to an application. Any decision on whether such information is relevant to the application and can be taken into account will be decided on a case-by-case basis.

If the Board proposes to take it into account, the applicant will be given the opportunity to refute or comment on it.

Note: In certain circumstances, the Board may need to withhold the identity of a source in accordance with the terms of the Privacy Act 1992.

Providing false, misleading or failing to disclose information

The provision of false or misleading information, and the failure to disclose information, will be relevant to the Board's assessment of whether the applicant is a fit and proper person.

Secretariat team – fit and proper person process

This process is only relevant if an applicant Ministry of Justice Criminal Check or Overseas Criminal Check shows criminal convictions.

