

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CYRRIL WHITE,)
)
 Petitioner,)
 and)
)
 METROPOLITAN DADE COUNTY,)
)
 Intervenor,)
)
 vs.) CASE NO. 88-6448
)
)
 FLORIDA DEPARTMENT OF LAW)
 ENFORCEMENT, CRIMINAL JUSTICE)
 STANDARDS AND TRAINING COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Claude B. Arrington, held a formal hearing in the above-styled case on April 11, 1989, in Miami, Florida.

APPEARANCES

For Petitioner: Kathryn Knieriem Estevez, Esquire
10680 N. W. 25 Street
Miami, Florida 33172

For Respondent: Joseph S. White, Esquire
Assistant General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Intervenor: Lee Kraftchick, Esquire
Assistant County Attorney
in and for Dade County Metro Dade Center
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128

STATEMENT OF THE ISSUES

At issue in this proceeding is whether Petitioner possesses the requisite good moral character for certification as a correctional officer.

PRELIMINARY STATEMENT

The record in the instant case consists of the testimony and exhibits offered at the hearing held on April 11, 1989, as well as the generic record

developed during the course of hearing on April 3-4, 1989. At the hearing held April 11, 1989, Petitioner testified on his own behalf and called six additional witnesses. Petitioner introduced two documentary exhibits which were accepted into evidence. Respondent called one witness and offered no documentary exhibits.

A generic record was developed because this case is one of a series of formal hearings heard on a docket which began April 3, 1989. Certain evidence, which pertains to this case as well as almost all of the other cases on the docket, was heard by Hearing Officer William J. Kendrick on April 3 and 4, 1989. This generic evidence will be considered as part of the record of this case by stipulation of the parties and by order of Hearing Officer Kendrick. The generic record consisted of the testimony of two witnesses called by the Intervenor, the testimony of one witness called by Respondent, and the testimony of two witnesses called by Petitioner. Documentary evidence was received into evidence as follows: Hearing Officer's Exhibits 1-38; Respondent's Composite Exhibit 1, and Petitioner's Exhibit 1. The only documentary exhibit not accepted into evidence was marked for identification purposes as Intervenor's Exhibit 1.

Metropolitan Dade County, Intervenor, participated in the presentation of the generic evidence on April 3 and 4, 1989, and submitted a post hearing brief in this case, but did not otherwise participate or appear at the formal hearing on April 11, 1989.

At the parties' request, a deadline was established for filing proposed findings of fact or other post hearing submissions that was more than ten days after the filing of the transcript in May. Consequently, the parties waived the requirement that a recommended order be rendered within thirty days after the transcript is filed. Rule 22I-6.031, Florida Administrative Code. The parties' proposed findings have been addressed in the appendix to this recommended order.

FINDINGS OF FACT

Background

1. In June 1988, Respondent, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, acting on a tip from local media that intervenor, Metropolitan Dade County, Department of Corrections and Rehabilitation (Metro Dade Corrections), had in its employ a number of correctional officers who were not certified, undertook a review of the employment records of Metro Dade Corrections. As a result of this review, Respondent identified 363 individuals, including Petitioner, who were employed by Metro Dade Corrections as correctional officers but who had not been certified by Respondent.

2. On August 10-11, 1988, personnel employed by Respondent visited the Metro Dade Corrections personnel office and audited the personnel file maintained by Metro Dade Corrections of each of the 363 individuals in question, including Petitioner's personnel file. The audit demonstrated that the files were disorganized, lacking documentation required by Rule 11B-27.002, Florida Administrative Code, to apply for certification, and that Metro Dade Corrections had failed to apply for certification on behalf of the 363 officers.

3. Over the course of their two-day visit, employees of Respondent worked with employees of Metro Dade Corrections to complete the documentation on each file. Various, they prepared registration forms and affidavits of compliance

and assembled other missing documentation, such as birth certificate and fingerprint cards.

4. The 363 completed applications for certification were returned to Tallahassee by Respondent for processing. The vast majority of the individuals were certified; however, Respondent declined, for reasons hereinafter discussed, to certify Petitioner. The pending application

5. Petitioner has been employed by the Metropolitan Dade County Department of Corrections and Rehabilitation (hereinafter called Metro Dade Corrections) as a correctional officer since April 21, 1988 without benefit of certification.

6. As part of the pre-employment process, Petitioner submitted to Metro Dade Corrections an affidavit dated April 21, 1988, which provides in pertinent part:

I fully understand that, in order to qualify as a law enforcement or correctional officer, I must fully comply with the provisions of Section 943.13, Florida Statutes, as follows:

* * *

7. Be of good moral character.

I further understand that by executing this document I am attesting that I have met the qualifications as specified...

7. Metro Dade Corrections, as the employing agency, is responsible for conducting a thorough background investigation to determine the moral character of an applicant. Consistent with such mandate, Metro Dade Corrections routinely uses previous employment data, law enforcement records, credit agency records, inquiries of the applicant's neighbors and associates, and a pre-employment interview, at which a polygraph examination is administered, to assess an applicant's moral character. At the time Petitioner began employment on April 21, 1988, Metro Dade Corrections had completed its investigation into Petitioner's background and had concluded that Petitioner possessed the good moral character required for certification.

8. Fred Crawford, the Metro Dade Corrections director, executed an affidavit of compliance on April 21, 1988 that contained the following sworn statement:

I hereby certify that I have collected, verified, and am maintaining on file evidence that the applicant has met the provisions of Section 943.13(1)-(8) and Section 943.131, Florida Statutes, or any rules adopted pursuant thereto.

9. There is no evidence that a complete application package for Petitioner's certification was prepared before August 11, 1988. Respondent did not receive a complete application for certification on Petitioner's behalf until August 11, 1988, when Metro Dade Corrections, as the employing agency, submitted to Respondent a complete application package for certification of Petitioner as a correctional officer. This was the first application for certification submitted on Petitioner's behalf.

10. By letter dated November 7, 1988, Respondent notified Petitioner that his application for certification was denied because Petitioner did not possess the requisite good moral character for certification as a correctional officer. Respondent gave the following as its reasons for concluding that Petitioner lacked good moral character:

You have unlawfully and knowingly obtained or used or endeavored to obtain or to use a generator and lawn mower, the property of Builders Square with the intent to either temporarily or permanently deprive the owner of a right to the property or a benefit therefrom or to appropriate the property to your own use or to the use of any persons not entitled thereto.

11. At the time of the hearing, Petitioner made a prima facie showing of good moral character. Petitioner offered no competent evidence that Petitioner had committed any of the acts contained in its letter of denial, or which otherwise rendered questionable the prima facie showing of good moral character demonstrated by Petitioner.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes.

13. The ultimate burden of persuasion of whether an application for certification as a correctional officer should be approved rests with the applicant. See Rule 28-6.08(3), Florida Administrative Code, and Florida Department of Transportation v. J. W. C. Company, 396 So.2d 778 (Fla. 1st DCA 1981). In this case, the applicant has met his burden of proof by presenting a prima facie showing of good moral character, which the Commission has failed to rebut or contradict.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law it is:

RECOMMENDED that the Commission enter a final order approving White's application for certification as a correctional officer.

DONE and ENTERED this 7th day of July, 1989, in Tallahassee, Leon County, Florida.

CLAUDE B. ARRINGTON
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of July, 1989.

APPENDIX

The proposed findings of fact submitted on behalf of Petitioner, individually, are addressed as follows:

1. Addressed in paragraph 5.
2. Addressed in paragraph 6.
3. Addressed in paragraph 8.
- 4-16. Rejected as being unnecessary to the result reached or as being subordinate to the conclusions reached.
- 17-26. Rejected as being subordinate to the conclusions reached.
- 27-36. Rejected as being recitation of testimony and as being subordinate to the conclusions reached.

The proposed findings of fact submitted for petitioner on the generic record are addressed as follows:

- 1-14. Rejected as recitation of witness testimony, and not findings of fact. The matters have, however, been addressed in paragraphs 7 so far as deemed necessary to the result reached.
- 15, 16, 18-20. Addressed in paragraphs 1-4.
17. Rejected as unnecessary to the result reached.
21. Addressed in paragraph 7, otherwise rejected as unnecessary to the result reached in a legal conclusion.
- 22-27. Rejected as subordinate to the conclusion reached.
28. Rejected as misleading and not supported by competent proof.
- 29-30. Rejected as being subordinate to the conclusion reached or not supported by competent evidence.

The proposed findings of fact submitted on behalf of Respondent are addressed as follows:

- 1-3. Addressed in paragraphs 9-10.
4. Rejected as being unnecessary to the result reached.
- 5-10. Rejected as being unnecessary to the result reached or as being subordinate to the conclusions reached.
11. Addressed in paragraph 5.

COPIES FURNISHED:

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