

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRENDA K. POUCHER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 94-2006
	)	
FLORIDA DEPARTMENT OF LAW	)	
ENFORCEMENT,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Don W. Davis, held a formal hearing in the above-styled case on August 31, 1994, in Tallahassee, Florida.

APPEARANCES

For Petitioner:	Joan Stewart Assistant General Counsel Police Benevolent Association Post Office Box 11239 Tallahassee, Florida 32302
For Respondent:	Monica Atkins White Assistant General Counsel Florida Department of Law Enforcement Post Office Box 1489 Tallahassee, Florida 32302-1489

STATEMENT OF THE ISSUE

Whether Respondent should grant Petitioner's application for certification as a correctional probation officer.

PRELIMINARY STATEMENT

By letter dated August 6, 1993, Respondent's representative informed Petitioner that Petitioner's application for certification as a correctional probation officer was denied. Petitioner requested a formal administrative hearing with regard to Respondent's denial of the application and the matter was forwarded to the Division of Administrative Hearings for conduct of further proceedings.

At the formal hearing, Petitioner presented the testimony of one witness, herself. Respondent presented no testimony. The parties stipulated to the admission of three joint exhibits.

A final transcript of the proceedings was filed with the Division of Administrative Hearings on September 8, 1994. Rulings on proposed findings of fact submitted by the parties are set forth in the Appendix to this Recommended Order.

#### FINDINGS OF FACT

1. Respondent's Criminal Justice Standards And Training Commission (CJSTC) is the governmental agency responsible for the promulgation and implementation of uniform training standards and requirements for the position of corrections probation officer (CPO). Neither Respondent nor CJSTC is an employer of Petitioner.

2. Minimum curriculum requirements of any training academy are created and enforced by CJSTC. One of the minimum curriculum requirements that CPO training academies must teach is the Defensive Tactics course. Further, anyone seeking certification as a CPO must successfully complete this course. To successfully complete the course, the certification applicant must demonstrate proficiency in all the high liability skill areas.

3. CJSTC has created minimum performance requirements within each high liability skill area. As authorized by rule, the CJSTC-6 checklist form serves as an index and lists the proficiency requirements within each required defensive tactic high liability skill area. Every student must successfully demonstrate every technique as directed in the curriculum in order to complete the Defensive Tactics course.

4. Petitioner enrolled in a CJSTC-certified basic training academy for CPOs. By stipulation of the parties, Petitioner admits that she has not successfully demonstrated every high liability defensive tactic skill as required by Rules 11B-35.0024, and 11B-35.0022, Florida Administrative Code. Petitioner maintains she is unable to demonstrate the required proficiency because she has a partial hip and leg bone replacement prosthesis, complicated by obesity.

5. Petitioner did complete all other basic training academy requirements and is currently employed as a temporary CPO with the Florida Department of Corrections.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over this matter. Section 120.57(1), Florida Statutes.

7. Petitioner has the burden of proving by a preponderance of the evidence her entitlement to the certification sought in this proceeding. Florida Department of Transportation v. J. W. C. Company, Inc., 396 So.2d 778 (Fla. 1st DCA 1981).

8. Section 943.12(17), Florida Statutes, provides CJSTC with exclusive authority to:

Promulgate rules for the certification and discipline of officers who engage in those specialized areas found to present a high

risk of harm to the officer or the public at large and which would in turn increase the potential liability of an employing agency.

9. Section 943.13(9), Florida Statutes, provides that all applicants for certification as a correctional probation officer complete a CJSTC approved basic recruit training program.

10. Requirements of Rules 11B-35.0024, and 11B-35.0022, Florida Administrative Code, are unequivocal; successful demonstration of every required defensive tactics high liability skill is necessary for certification. By her own stipulation and admission, Petitioner fails to meet this requirement.

11. The gravamen of Petitioner's response to Respondent's denial of certification is that Respondent, as a result of following its rules, has failed to make accommodation for Petitioner's handicap in the certification process.

12. Petitioner's argument is more appropriate for consideration within the confines of a challenge to an agency's administrative rules, a proceeding conducted pursuant to Section 120.56, Florida Statutes, where the Hearing Officer exercises final authority. In the instant Section 120.57 proceeding, consideration of the merit of Petitioner's application and subsequent recommendation to the referring agency is limited to a determination of whether the rules were properly applied; not whether the rules are infirm.

13. Based on the foregoing findings of fact, it is concluded that Petitioner has not established her entitlement to certification as a correctional probation officer.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that a Final Order be entered denying Petitioner's application for certification as a correctional probation officer.

DONE and ENTERED in Tallahassee, Florida, this 28th day of September, 1994.

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DON W. DAVIS  
Hearing Officer  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-1550  
(904) 488-9675

Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of September, 1994.

#### APPENDIX

In accordance with provisions of Section 120.59, Florida Statutes, the following rulings are made on the proposed findings of fact submitted on behalf of the parties.

Petitioner's Proposed Findings

1. Adopted by reference as to first sentence. Remainder rejected, subordinate.
- 2.-8. Rejected, relevance.
- 9.-10. Rejected, hearsay.
11. Rejected, lack of record citation.
- 12.-13. Adopted by reference.

Respondent's Proposed Findings

1. Adopted by reference.
- 2.-5. Adopted in substance.
6. Rejected, legal conclusion.
7. Adopted by reference.
8. Rejected, cumulative.
9. Relevant to determining the appropriateness of the rule in a challenge to the rule. Rejected in this proceeding on the basis of relevancy.
- 10.-12. Rejected, argument.
13. Rejected, legal conclusion.

COPIES FURNISHED:

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#### NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Recommended Order. All agencies allow each party at least 10 days in which to submit written exceptions. Some agencies allow a larger period within which to submit written exceptions. You should contact the agency that will issue the final order in this case concerning agency rules on the deadline for filing exceptions to this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.