

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF INSURANCE,)
DIVISION OF STATE FIRE MARSHAL)
)
Petitioner,)
)
vs.) Case No. 01-0256PL
)
WALTER GWIAZDA,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in Gainesville, Florida, on April 3, 2001, before the undersigned Administrative Law Judge.

APPEARANCES

For Petitioner: William Fred Whitson, Esquire
Department of Insurance
Division of Legal Services
200 East Gaines Street
612 Larson Building
Tallahassee, Florida 32399-0333

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether the Department of Insurance, Division of State Fire Marshal, should revoke Respondent's Firefighter Certificate because of Respondent's conviction of a felony.

PRELIMINARY STATEMENT

On October 2, 2000, Petitioner filed an administrative complaint against Respondent. Petitioner charged Respondent with violating Section 633.351, Florida Statutes. Respondent, on October 23, 2000, disputed the allegations of fact in the administrative complaint and requested a formal hearing. On January 17, 2001, Petitioner referred the matter to the Division of Administrative Hearings.

At the hearing, Petitioner presented the testimony of one witness and offered three exhibits which were accepted into evidence. Respondent did not appear personally or through counsel at the final hearing.

No transcript was filed. Petitioner timely filed a Proposed Recommended Order. The Respondent did not.

FINDINGS OF FACT

1. Respondent is currently certified as a firefighter in the State of Florida by the Department of Insurance, Division of State Fire Marshal.

2. Respondent was initially certified as a firefighter in the State of Florida while employed by the Palatka Fire Department.

3. On or about January 12, 1991, Respondent resigned from the Palatka Fire Department and went to work for the Gainesville, Florida Fire Department.

4. On August 29, 2000, Respondent was convicted by a jury of the felony of aggravated fleeing and attempting to elude in violation of Section 316.193(5), Florida Statutes. Adjudication was withheld. The conviction occurred in the Circuit Court of the Eighth Judicial Circuit in and for Bradford County, Florida.

5. Respondent was placed on community control for two years, to be followed by probation for a period of three years.

CONCLUSIONS OF LAW

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

7. Pursuant to Chapter 633 and Section 20.13, Florida Statutes, the Department of Insurance, Division of State Fire Marshal, has jurisdiction over Respondent's certification as a firefighter.

8. The material allegations set forth in the administrative complaint must be proven by Petitioner by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Company, Inc., 670 So. 2d 932 (Fla. 1996) and Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

9. Section 633.351(2), Florida Statutes, provides as follows:

(2) The certification of a firefighter who is convicted of a felony, or who is convicted of a misdemeanor relating to misleading or false statements, or who pleads nolo contendere to any charge of a felony shall be revoked until the firefighter complies with s. 112.011(2)(b). However, if sentence upon such felony or such misdemeanor charge is suspended or adjudication is withheld, the fire fighter's certification shall be revoked until she or he completes any probation.

10. The facts adduced at the hearing demonstrated by clear and convincing evidence that Respondent, while a certified fire fighter, was found guilty of a felony.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That the Insurance Commissioner and Treasurer enter a Final Order revoking Respondent's Certificate as a Firefighter until such time as his probation is completed.

DONE AND ENTERED this 18th day of April, 2001, in
Tallahassee, Leon County, Florida.

HARRY L. HOOPER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of April, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.