

2-1-02

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS

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BENNY CHESTNUT,

Petitioner,

vs.

Case No: DC 01-10

DOAH Case No: 01-0604

SIX-CLOS

DEPARTMENT OF CORRECTIONS,

Respondent.

**FINAL ORDER**

This cause came before the Department of Corrections for consideration and final agency action. A formal administrative hearing was conducted pursuant to Sections 120.569 and 120.57 (1), Florida Statutes, on October 10 and November 8, 2001, before Diane Cleavinger, a duly assigned Administrative Law Judge of the Division of Administrative Hearings (DOAH). A Recommended Order was submitted by the Administrative Law Judge on February 1, 2002, a copy of which is attached. Respondent, Department of Corrections, timely filed exceptions.

**FINDINGS OF FACT**

Because they appear to be supported by competent and substantial evidence, the Department hereby adopts the proposed findings of fact set forth in Judge Cleavinger's recommended order with the following exceptions:

(1) Recommended finding number 19 states that "Pursuant to section 943.139 (1) and (2), the Department is required to notify the Public Employees Relations Commission . . ."  
Respondent has filed an exception to this finding, contending that the Department of Corrections is required to notify the Criminal Justice Standards and Training Commission, not the Public Employees Relations Commission. Petitioner's response to exceptions concurs with this

analysis. Accordingly, Respondent's exception number one is granted and the phrase "Public Employees Relations Commission" in finding of fact number 19 is replaced with "Criminal Justice Standards and Training Commission."

(2) To the limited extent that recommended facts number 24, 30, and 31 can be read to represent conclusions of law as to what constitutes legal standards for sexual harassment, these findings are rejected.

### **CONCLUSIONS OF LAW**

In considering the nature of this case, it must be emphasized that the purpose of the hearing here was not to protect a property interest in petitioner's former position with the Department of Corrections; rather, it was to ensure the protection of Chestnut's liberty interest in the clearing of his name. To wit, Chestnut, alleged that he had been stigmatized by the Department of Corrections (DOC) because DOC indicated on a form that it provided to the Florida Department of Law Enforcement (FDLE) that Chestnut had been terminated for sexual harassment. In order to ensure the protection of Chestnut's liberty interest, the Department provided him with a name-clearing hearing before DOAH. The right to such a hearing is not found in any statute or rule; rather, it has been developed through case law interpreting the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution. Codd v. Velger, 429 U.S. 624 (1977); Buxton v. City of Plant City, Florida, 871 F. 2d 1037 (11<sup>th</sup> Cir. 1989). Thus, it is appropriate to consider federal case law in the resolution of this issue.

First, it is noted that the right to a name-clearing hearing is very limited—essentially it is *solely* "to provide the person an opportunity to clear his name." Codd, 429 U.S. at 627. Petitioner is not necessarily entitled to a full trial-type evidentiary hearing with its attendant procedural rules. Id. Indeed, all that is required to implement the right to a name-clearing

hearing is to convene a tribunal that will listen to plaintiff's side of the matter. The tribunal need not even make any findings. Here, Chestnut received more than the minimal process due, in that Judge Cleavinger did in fact render factual determinations. Given that these findings appear to be supported by competent substantial evidence, as stated above, the Department adopted (with minor exceptions) those findings.

The Department is not compelled, however, to similarly accept Judge Cleavinger's conclusions of law. Given the limited nature of a name-clearing hearing, such findings are superfluous and unnecessary for a full and constitutionally adequate name clearing. Chestnut's right was the right to be heard, not a legal analysis of elements of a sexual harassment case. Thus, other than the conclusion of law contained in paragraph #32 (finding that DOAH has jurisdiction over subject matter and parties), DOAH's conclusions of law are rejected. Accordingly, agency exceptions 2-5 are denied as moot.

Lastly, the Department rejects Judge Cleavinger's recommendation that a final order be entered clearing Benny Chestnut's name and notifying FDLE that any reference to substantial sexual harassment charges as the underlying reason for termination of petitioner's employment be removed from his record. The Department has adopted with minor exceptions, the findings of fact of DOAH—it is not required to engage in any additional administrative actions. Chestnut had his opportunity to be heard and his remarks as well as the recommended and final orders generated in this case are public records.

Moreover, Chestnut has every right to provide these documents and a record of the hearing to FDLE should he so desire. The Department's responsibilities, however, have been discharged by allowing Chestnut the opportunity to be heard in the context of the instant name-clearing hearing. Chestnut received a constitutionally adequate name-clearing hearing and no

further action by the Department is required.

DONE AND ORDERED THIS 12<sup>th</sup> DAY OF March, 2002.



MICHAEL W. MOORE, SECRETARY  
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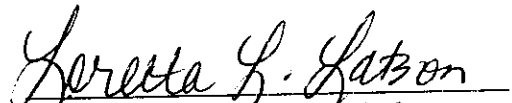
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DOAH

CERTIFICATE OF CLERK

Filed in the official records of the Department of Corrections on this 12<sup>th</sup> day of March, 2002.

  
Loretta Latson, Agency Clerk