

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HATIM BILAI SEIFUDDIN,)
)
 Petitioner,)
)
 vs.) Case No. 01-4498
)
 DEPARTMENT OF JUVENILE JUSTICE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A formal hearing was conducted in this case on January 30, 2002, in Tallahassee, Florida, before the Division of Administrative Hearings by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCE

For Petitioner: Warren J. Bird, Esquire
128 Salem Court
Tallahassee, Florida 32818

For Respondent: Richard M. Coln, Esquire
Department of Juvenile Justice
Knight Building
2737 Centerview Drive
Tallahassee, Florida 32399-3100

STATEMENT OF THE ISSUE

The issue is whether Respondent should grant Petitioner an exemption from employment disqualification.

PRELIMINARY STATEMENT

By letter dated August 31, 2001, Respondent Department of Juvenile Justice (Respondent) advised Petitioner Hatim Bilai Seifuddin (Petitioner) that his request for an exemption from employment disqualification had been denied. On or about October 9, 2001, Petitioner requested a formal hearing to contest the denial of his request. Respondent referred this case to the Division of Administrative Hearings on November 8, 2001.

A Notice of Hearing dated December 4, 2001, scheduled the case for hearing on January 30, 2002. The parties filed a Pretrial Stipulation on January 22, 2002.

During the hearing, Petitioner testified on his own behalf and presented the testimony of one witness. Petitioner offered two exhibits which were accepted into evidence. Respondent did not present any witness testimony but offered 15 exhibits which were accepted into evidence.

The parties did not file a transcript of the proceedings. Petitioner filed his Proposed Recommended Order on February 4, 2002. Respondent filed its Proposed Recommended Order on February 8, 2002.

FINDINGS OF FACT

1. Respondent, or its predecessor, has employed Petitioner since 1991. Currently, Petitioner is employed by Respondent as a senior juvenile detention officer.

2. On or about June 24, 1996, Petitioner pushed his girlfriend, Yolando Holmes, causing her to fall through a glass table top. The incident occurred when Miss Holmes asked Petitioner to leave her apartment and grabbed Petitioner's arm. Miss Holmes suffered some superficial cuts and scrapes but did not require emergency medical treatment.

3. Petitioner left Miss Holmes's apartment immediately after the incident. However, in the days that followed, Petitioner repeatedly called Miss Holmes on the telephone.

4. Miss Holmes subsequently filed a complaint alleging domestic battery against Petitioner. A circuit judge signed a Probable Cause Affidavit involving this charge on or about July 19, 1996.

5. Petitioner turned himself in on July 25, 1996, shortly after he learned that there was a warrant for his arrest. At or about the same time, Petitioner disclosed the charges against him to his supervisor and others who worked for Respondent in a supervisory capacity.

6. On or about October 10, 1996, Petitioner pled nolo contendere to one count of harassing phone calls and one count

of domestic battery. The court withheld adjudication on both counts, but sentenced Petitioner to one year of probation on the domestic battery charge with a concurrent sentence of six months' probation for the harassing phone calls charge. The court required Petitioner to attend the New Hope Batterer's Intervention Program, to complete 50 hours of community service, and to have no contact with Miss Holmes.

7. The court entered a Termination Notice on September 30, 1997. This notice states that Petitioner had complied with all conditions of his probation.

8. In 2001, a routine criminal background check "revealed" Petitioner's 1996 domestic battery charge. Respondent then advised Petitioner that he was disqualified from his job which involves contact with juveniles. Respondent subsequently denied Petitioner's request for an exemption from employment disqualification.

9. Respondent never disciplined Petitioner even though Respondent was aware that Petitioner had been charged with domestic battery. The charges against Petitioner did not affect his job in any way until Respondent conducted a periodic criminal records background check almost five years later.

10. In the five years since the domestic battery incident, Petitioner has continued to perform his job duties as a senior juvenile detention officer. These duties place Petitioner in

close proximity to potentially violent young people on a daily basis. Petitioner is able to interact with these juveniles in an exemplary fashion.

11. Petitioner's mild, reserved, and controlled nature is extremely well suited for working with juvenile detainees. After their release from the system, Petitioner continues to voluntarily interact with these juveniles in the community, serving as a positive role model on his own time.

12. Petitioner's work performance is of a superlative quality. Petitioner has a special knowledge of the computer systems in Respondent's nerve center. He often serves as a source of training for other employees.

13. Petitioner and Miss Holmes did not continue their romantic involvement after the domestic battery incident. However, Petitioner and Miss Holmes subsequently reestablished their friendship. They maintain frequent contact with each other even though Miss Holmes has moved to another county.

14. Petitioner is remorseful about his behavior in 1996. That incident is the only example of violent behavior by Petitioner before or after July 1996. Petitioner has a healthy relationship with his current "significant other."

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this case. Sections 120.569 and 120.57(1), Florida Statutes.

16. Respondent is required to conduct periodic criminal records background checks of individuals who are employed with Respondent in positions of special trust, such as working in programs for children or youths. See Sections 985.01(2)(b) and 435.04, Florida Statutes.

17. Pursuant to Section 435.04(3)(b), Florida Statutes, individuals like Petitioner, who are guilty of domestic violence as defined in Section 741.30, Florida Statutes, are prohibited from working in a position of special trust, unless they are granted an exemption from employment disqualification under Section 435.07(3), Florida Statutes.

18. Petitioner has the burden to establish by clear and convincing evidence that he should not be disqualified from employment. Section 435.07(3), Florida Statutes, states as follows:

(3) In order for a licensing department to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding

the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if continued employment is allowed. The decision of the licensing department regarding an exemption may be contested through the hearing procedures set forth in chapter 120.

19. In this case, Petitioner met his burden of proving that he will not present a danger if he continues to work as a senior juvenile detention officer. Petitioner has explained and expressed remorse for his actions in July 1996. He successfully completed his probation and has not exhibited any violent behavior since that time. Petitioner continues to perform his job in an exemplary manner, commanding the personal and professional respect of his co-workers. Petitioner has presented sufficient evidence of rehabilitation.

RECOMMENDATION

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

RECOMMENDED:

That Respondent enter a final order granting Petitioner an exemption from employment disqualification.

DONE AND ENTERED this 13th day of February, 2002, in
Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of February, 2002.

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.