

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RENITA KENON,)
)
 Petitioner,)
)
 vs.) Case No. 02-0170
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Don W. Davis, an Administrative Law Judge of the Division of Administrative Hearings, held a final hearing in the above-styled cause on March 19, 2002, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Renita Kenon, pro se
9338 Salem Road
Quincy, Florida 32351

For Respondent: John R. Perry, Esquire
Department of Children and
Family Services
2639 North Monroe Street, Suite 252-A
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

Is Petitioner entitled to exemption from disqualification with regard to working in a position of special trust and responsibility related to children, disabled adults, and elderly persons?

PRELIMINARY STATEMENT

By letter dated December 18, 2001, Respondent notified Petitioner that her request for exemption from disqualification was denied. The letter of denial created the option for Petitioner to seek a hearing pursuant to Chapter 120, Florida Statutes, to contest the preliminary decision denying the exemption.

Petitioner requested a formal hearing to seek an exemption from disqualification by letter which Respondent received on December 27, 2001. In turn, Respondent forwarded the case to the Division of Administrative Hearings to conduct a formal hearing.

At the final hearing, Petitioner presented testimony of two witnesses, including herself, and presented one composite exhibit, admitted only to the extent that such material was corroborative of direct testimony. Respondent presented one witness and 11 exhibits.

The parties were provided the opportunity to file proposed recommended orders. Respondent filed a Proposed Recommended Order. Where possible that written post-hearing submission has been utilized in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner Renita Kenon is 20 years of age. Prior to her disqualification, she was employed in a position of special

trust with the Leon Advocacy and Resource Center (LARC) where she worked with developmentally disabled clients.

2. As a juvenile, Petitioner compiled an extensive history with law enforcement. A petit theft charge in juvenile court against Petitioner was disposed of non-judicially on April 17, 1997. A second offense of petit theft resulted in a disposition by the juvenile court through withholding adjudication of delinquency on October 5, 1997. A third offense for petit theft resulted in an adjudication of delinquency on March 11, 1998.

3. On October 14, 1998, Petitioner pled nolo contendere to a charge of grand theft. An accompanying charge of resisting arrest without violence was dismissed by prosecutors as a part of the plea bargain effected by Petitioner.

4. On February 11, 1999, Petitioner was again adjudicated delinquent for two additional counts of petit theft.

5. Petitioner has never been charged with a crime as an adult. Her entire criminal history consists of offenses for theft. All the incidents were handled through the juvenile justice system.

6. Petitioner's testimony was direct, candid, and creditable. She previously engaged in a life-style that is no longer compatible with her present involvement with work and

community. Three years have elapsed since adjudication of Petitioner's last disqualifying event.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties hereto pursuant to Section 120.57(1), Florida Statutes.

8. The entire basis of Petitioner's disqualification from working in a position of special trust relates to juvenile court records which are normally not subject to public scrutiny. However, a notable exception in Section 39.0123(6)(d), Florida Statutes, permits use of those records in this proceeding and reads as follows:

(6) No court record of proceedings under this chapter shall be admissible in evidence in any other civil or criminal proceeding, except that:

* * *

d) Records of proceedings under this chapter may be used to prove disqualification pursuant to s. 435.06 and for proof regarding such disqualification in a chapter 120 proceeding.

9. Section 435.07, Florida Statutes, permits Respondent to grant Petitioner, and similarly situated persons, exemptions from disqualification upon conclusion of a three-year period following commission of a disqualifying felony, provided there has been a demonstration by "clear and convincing evidence" on

the part of the one seeking the exemption that it should be granted.

10. Section 435.07(3), Florida Statutes, reads as follows:

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.

11. A standard of demonstrating through "clear and convincing evidence" that one should not be disqualified, places a heavy burden on Petitioner. Petitioner in the present case, while impressive in her testimony, presented insufficient corroborating testimony, or other evidence, indicating that she would not revert to old patterns of irresponsible behavior and thereby present a danger should continued employment be permitted.

12. Evidence presented by Petitioner is not deemed "clear and convincing" in this instance so as to support a reasonable belief that she will not again engage in lawless behavior. The

evidence presented militates against granting the exemption at this time.

RECOMMENDATION

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

RECOMMENDED that a final order be entered denying Petitioner's request for exemption from disqualification to work in positions of special trust.

DONE AND ENTERED this 8th day of April, 2002, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of April, 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.