

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WINONA E. COLEMAN,)
)
 Petitioner,)
)
 vs.) Case No. 02-0998
)
 DEPARTMENT OF CHILDREN)
 AND FAMILY SERVICES)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on May 14, 2002, by video teleconference in Tallahassee, and Jacksonville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Robin Whipple-Hunter, Esquire
Department of Children
and Family Services
Post Office Box 2417
Jacksonville, Florida 32211

For Respondent: Betsy S. Holton, Esquire
816 Broad Street
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner's request for an exemption from disqualification pursuant to Section 435.07, Florida Statutes, should be granted.

PRELIMINARY STATEMENT

By letter dated January 11, 2002, the Department of Children and Family Services (the Department) notified Ms. Winona Coleman that she was disqualified from continuing employment as "child care personnel" in a child care facility based upon failure to meet the screening standards specified by Section 435.04(2), Florida Statutes (1999). As grounds therefore the Department alleged that Petitioner's disqualification status is based on a misdemeanor committed on November 6, 2000.

Petitioner requested an exemption hearing before a district level review committee which took place on or about January 30, 2002. By letter dated February 7, 2002, the Department again notified Petitioner that the Department denied her request for exemption based on an offense dated November 6, 2000.

Petitioner disputed the facts upon which the exemption from disqualification was based and timely requested an administrative hearing to contest the disqualification. The request for hearing was forwarded to the Division of

Administrative Hearings on or about March 12, 2002. A formal hearing was scheduled for May 14, 2002, by video teleconference.

At hearing, Petitioner testified on her own behalf and presented the testimony of one witness, Brenda Rollins. Petitioner's Exhibit numbered 1 was admitted into evidence. Respondent presented no oral testimony. Respondent's Exhibits numbered 1 through 6 were admitted into evidence. Official Recognition was taken of Sections 402.302, and 435.04, Florida Statutes (1999).

The hearing was not transcribed. Petitioner filed a Proposed Recommended Order on May 24, 2002, which has been considered in the preparation of this Recommended Order. The Department did not file a post-hearing submission.

FINDINGS OF FACT

1. At all times material to this proceeding, Petitioner was employed by the City of Jacksonville, Division of Parks and Recreation (the City). She has been employed there for over 25 years.

2. When first employed by the City, she was a recreation leader. While in this position, Petitioner organized and planned after-school programs for children. When promoted to senior recreation leader, her contact with children was diminished somewhat, as her duties became more supervisory. She

was a recreation leader and senior recreation leader for the first 24 years of her employment with the City.

3. Petitioner currently serves in the capacity of recreation supervisor. In this position, Petitioner is responsible for supervising and managing recreation leaders and other employees. Her direct contact with children is considerably less than in her previous positions. Her actual appearance at recreation sites where children are present is approximately eight hours per work week. Her listed duties in her job description include, "visits assigned areas to observe activities and monitor safety and adequacy of facilities; evaluate effectiveness of activities in assigned program area." One such program is called "Club Rec" which is an after-school program located at 13 sites around the City of Jacksonville.

4. In November 2000, Petitioner occasionally spent the night at Brenda Rollins' home but did not reside there. On November 5, 2000, Petitioner entered into an altercation with Ms. Rollins at Ms. Rollins' home. During the altercation, Petitioner and Ms. Rollins were pulling and pushing each other. Petitioner grabbed Ms. Rollins' hair and pulled some hair from Ms. Rollins' head.

5. On November 5, 2000, Petitioner was arrested and charged with domestic battery as defined in Section 784.03, Florida Statutes (1999). At the time of the arrest, Ms. Rollins

informed the arresting police officer that she and Petitioner were sisters. Although they were close friends and occasionally referred to each other as sisters, Petitioner and Ms. Rollins are not related.

6. On November 6, 2000, she entered a plea of no contest and was adjudicated guilty of domestic battery, a misdemeanor. She was ordered to serve two days with two days' credit and was placed on 12 months' probation, with the following conditions: attend a family violence intervention program, pay court costs, and discontinue contact with the victim. Petitioner's probation was terminated early on May 3, 2001.

CONCLUSIONS OF LAW

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

8. In its letter of January 11, 2002, the Department notified Petitioner that she was disqualified from continuing employment as "child care personnel," in a child care facility as defined in Section 402.302(3), Florida Statutes (1999). The Department stated that Petitioner's disqualification is based on her failure to meet the screening standards specified in Section 435.04(2), Florida Statutes. The letter then informed Petitioner that her disqualifying status was based on the November 6, 2000, misdemeanor of domestic battery.

9. Subsections 402.302(2) and (3), Florida Statutes (1999), read in pertinent part as follows:

(2) "Child care facility" includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. The following are not included:

(a) Public schools and nonpublic schools and their integral programs, except as provided in s. 402.0325;

(b) Summer camps having children in full-time residence;

(c) Summer day camps;

(d) Bible schools normally conducted during vacation periods; and

(e) Operators of transient establishments, as defined in chapter 509, which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel of the establishment are screened according to the level 2 screening requirements of chapter 435.

(3) "Child care personnel" means all owners, operators, employees, and volunteers working in a child care facility. The term does not include persons who work in a child care facility after hours when children are not present or parents of children in Head Start. . . .

10. Petitioner argues that her position does not constitute "child care personnel." Although Petitioner has less direct contact with the children in the City's recreation program now that she is in a supervisory position, Petitioner

still meets the definition of "child care personnel" as set forth in Section 402.302(3), Florida Statutes (1999).

11. Section 435.04, Florida Statutes (1999), reads in pertinent part as follows:

(1) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. . . .

* * *

(3) Standards must also ensure that the person:

* * *

(b) Has not committed an act that constitutes domestic violence as defined in s. 741.30.

12. Section 741.30, Florida Statutes (1999), does not contain a definition of domestic violence. Rather, the statute reads in pertinent part:

(1) There is created a cause of action for an injunction for protection against domestic violence.

(a) Any person described in paragraph (e), who is the victim of any act of domestic violence, or has reasonable cause to believe he or she is in imminent danger of becoming the victim of any act of domestic violence, has standing in the circuit court to file a sworn petition for an injunction for protection against domestic violence.

* * *

(6)(a) Upon notice and hearing, the court may grant such relief as the court deems proper, including an injunction:

1. Restraining the respondent from committing any acts of domestic violence.
2. Awarding to the petitioner the exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner.
3. On the same basis as provided in chapter 61, awarding temporary custody of, or temporary visitation rights with regard to, a minor child or children of the parties.
4. On the same basis as provided in chapter 61, establishing temporary support for a minor child or children or the petitioner.
5. Ordering the respondent to participate in treatment, intervention, or counseling services to be paid for by the respondent. . . .
6. Referring a petitioner to a certified domestic violence center. . . .
7. Ordering such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies, as provided in this section.

13. Section 435.07, Florida Statutes (1999), states in pertinent part:

435.07 Exemptions from disqualification.-- Unless otherwise provided by law, the provisions of this section shall apply to the exemptions from disqualification.

(1) The appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

- (a) Felonies committed more than 3 years prior to the date of disqualification;
- (b) Misdemeanors prohibited under any of the Florida Statutes cited in this chapter

or under similar statutes of other jurisdictions;

* * *

(e) Commissions of acts of domestic violence as defined in s. 741.30;

* * *

(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.

14. Petitioner has not committed an act that constitutes domestic violence as defined in Section 741.30, Florida Statutes (1999). That section of the law does not apply here because there is no evidence that a court ever issued an injunction for protection against domestic violence against Petitioner or that Ms. Rollins ever sought an injunction as contemplated by Section 741.30, Florida Statutes (1999).

15. The November 6, 2000, offense of domestic battery was the only offense enumerated in the January 11, 2002, Notice of Disqualification from Continuing Employment as Child Care Personnel and in the February 7, 2002, letter to Petitioner setting forth her rights to request an administrative hearing. Accordingly, Petitioner has met her burden of proof as set forth in Section 435.04(3), Florida Statutes (1999).¹ While that section enumerates criteria for the Petitioner to prove to establish rehabilitation, these criteria need not be addressed since the disqualifying event was not one that is contemplated by Section 435.07, Florida Statutes (1999).

RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Department of Children and Family Services enter a final order rescinding its Notice of Disqualification from Continuing Employment as Child Care Personnel or in the alternative, granting Petitioner an exemption from disqualification.

DONE AND ENTERED this 7th day of June, 2002, in
Tallahassee, Leon County, Florida.

BARBARA J. STAROS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of June, 2002.

ENDNOTE

1/ Petitioner argued that her due process rights were violated at the district level review committee because the committee considered offenses from years past which were not referenced in the notice of disqualification received by Petitioner. However, the committee's actions resulted in the February 7, 2002, letter which notified Petitioner of her rights to an administrative hearing and which also only referenced the November 6, 2000, offense. Moreover, the instant proceeding is de novo, Section 120.57(1)(k), Florida Statutes, the parameters of which are limited to those offenses contained in the charging document giving Petitioner notice of the intended agency action.

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.