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FILED  
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ADMINISTRATIVE  
HEARINGS

STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

JAMES JONES,  
Petitioner,

AP

vs.

Case No. 02-1417  
Rendition No. DCF-02-280 FO

BJS-CWS

DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

**FILED**

Respondent.

NOV 12 2002

DCF Department Clerk

**FINAL ORDER**

THIS CAUSE is before me as the result of a Recommended Order (RO) that was issued by an Administrative Law Judge (ALJ) assigned by the Division of Administrative Hearings, to hear this case. Respondent and Petitioner filed Proposed Recommended Orders. The Respondent filed Exceptions to the ALJ's RO.

1. I accept, adopt and incorporate herein the findings of fact in the ALJ's RO. The Respondent seeks to disqualify the Petitioner for an offense that occurred in 1985, over seventeen years ago. Joint Exhibit 1 was entered into evidence and consisted of the Summary of Offense, a Probable Cause Affidavit and the Court Disposition. The evidence established that, on February 19, 1985, the Petitioner entered a plea of guilty to the charge of battery on his pregnant, live-in paramour. At the time this alleged offense occurred, domestic violence was defined as battery against a spouse.

2. In 1985, the offense the Petitioner pled guilty to was considered to be a simple battery and it did not meet today's definition of an act that constitutes

domestic violence. However, a finding that the Petitioner cannot be disqualified for an act that, although disqualifying today, was not disqualifying in the past, leads to potentially dangerous results. For example, if a person committed murder in the early 1970s, because there were no screening laws at that time, that murder could not be considered today for screening purposes.

3. Such a dangerous result would be contrary to the legislative intent behind screening requirements, of protecting the State's most vulnerable citizens. Therefore, I must respectfully reject the ALJ's conclusion of law in paragraphs 10, 11 and 14. For the same reasons, I respectfully reject the last sentence in the conclusions of law in paragraph 16 and I reject in their entirety, the conclusions of law in paragraph 20 of the ALJ's RO.

4. Also for these reasons, I hereby accept, adopt and incorporate herein by reference, in their entirety, the Respondent's Exceptions. In summary, the Exceptions conclude that "it is the nature of the act itself that determines whether the offense will disqualify a person, and that the act is to be measured by the standards as prescribed by the current applicable law. I find that this interpretation of the law is as or more reasonable than the conclusion of law as stated in the ALJ's RO. I also find that this reasoning is in accord with P.T. v. Department of Health and Rehabilitative Services, 529 So.2d 1224 Fla. 1<sup>st</sup> DCA 1988). See also, Bruner v. Board of Real Estate, 399 So.2d 4 (Fla. 1981).

5. In paragraph 19, although there is no actual conclusion of law, the ALJ seems to infer that, because there is no evidence that a domestic violence injunction was issued against the Petitioner, he cannot be disqualified for a simple battery against a family member. I respectfully disagree with the

conclusion of law that an injunction is required before disqualifying an employee for an act that constitutes domestic violence.

6. I respectfully reject paragraph 19 of the RO and substitute it as follows:

Section 741.30, F.S., does not contain a definition of "domestic violence." Instead, that definition is found in section 741.28, F.S., which provides as follows:

**741.28 Domestic violence; definitions.--As used in ss. 741.28-741.31: (emphasis added)**

"Domestic violence" means any assault, aggravated assault, **battery**, (emphasis added) aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another who is or was residing in the same single dwelling unit.

"The rules of statutory construction require that courts give statutory language its plain and ordinary meaning, unless the words are defined by statute..." State v. Finelli, 780 So.2d 31, 32 (Fla. 2001). The legislature has clearly defined those acts that constitute domestic violence and has instructed that this definition is to be used in ss.741.28–741.31. Based on the clear definition of what constitutes domestic violence, s. 435.04(4)(b), F.S., does not require the issuance of a domestic violence injunction, before an act of domestic violence may be considered for disqualification purposes.

7. The above substituted conclusion of law is as or more reasonable than the rejected conclusion of law in the Recommended Order. To find otherwise places the issue of due process over the paramount concern of

protecting society's most vulnerable citizens. The recommended conclusions of law would eliminate the Department's ability to disqualify an abusive individual from having contact with Department clients, in cases when a victim of abuse refused to get an injunction issued. Even in a case where it has been previously established "beyond a reasonable doubt," or in a case where the Department has numerous credible witnesses to prove that a person committed an egregious act of domestic violence, the Department would be precluded from protecting its vulnerable clients by disqualifying the offender, since it could not establish that an injunction was issued.

8. Upon reviewing the entire record, it is noted that, according to the Exemption Review Report, in December 2000, the Petitioner gave a whipping to his 15-year-old daughter with an extension cord, causing welts and bruises to her legs and arms. This was allegedly witnessed by officials at the child's high school and resulted in an abuse investigation.

9. Although, in reviewing the record it cannot be determined what the Petitioner was originally charged with as a result of this incident, in December 2001, the Petitioner pled guilty to "lesser charges of criminal mischief and disorderly conduct." By pleading to "lesser charges" this infers that the Petitioner was originally charged with "child abuse," which is a third degree felony pursuant to s.827.03(c), F.S.

10. ***"Any criminal offense resulting in physical injury*** or death of one family or household member by another family or household member," is an act that constitutes domestic violence. (Emphasis added). Because physical injury resulted from the criminal offenses the Petitioner pled to in December

2001, this incident unquestionably disqualifies the Petitioner for a position of trust. However, the district chose not to use this event to disqualify the Petitioner.

11. Using the weakest available justification for disqualifying a person from their job invites unnecessary, time consuming and costly litigation. The better practice is to include in the Disqualification Notice, every legitimate basis for the agency action.

12. All other conclusions of law not explicitly rejected are hereby accepted, adopted and incorporated herein by reference. And the undersigned being otherwise duly advised, the Petitioner's request for an exemption is hereby DENIED.

**DONE** and **ORDERED** on this 8<sup>th</sup> day of March, 2002 in Tallahassee, Leon County, Florida.

  
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**LUCY D. HADI, Deputy Secretary**  
**Department of Children and Family Services**

**COPIES FURNISHED:**

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**NOTICE OF RIGHT TO APPEAL**

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, OR with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the rendition of this final order.<sup>1</sup>

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing FINAL ORDER has been sent by U.S. Mail or hand delivery to each of the persons named above on this 12<sup>th</sup> day of November, 2002.

  
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PAUL FLOUNLACKER, Acting Agency Clerk  
Department of Children and Family Services  
1317 Winewood Blvd. Bldg. 2 Room 204  
Tallahassee, FL 32399-0700

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<sup>1</sup>The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.