

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES JONES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-1417  
 )  
 DEPARTMENT OF CHILDREN )  
 AND FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on June 12, 2002, by telephone in Tallahassee, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Linda Barge-Miles, Esquire  
American Federation of State,  
County and Municipal Employees  
111 North Gadsden Street  
Tallahassee, Florida 32301

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

STATEMENT OF THE ISSUE

The issue in this proceeding is whether Petitioner's request for an exemption from disqualification from employment in a position of trust or responsibility should be granted.

PRELIMINARY STATEMENT

By letter dated February 12, 2002, the Department of Children and Family Services (Department) informed Petitioner, James Jones, that his request for exemption from disqualification pursuant to the laws governing background screening had been denied.

Petitioner disputed the denial of exemption from disqualification and requested an administrative hearing. The request for hearing was forwarded to the Division of Administrative Hearings on or about April 10, 2002. A formal hearing was scheduled for June 12, 2002. Prior to the hearing, the parties stipulated that neither party intended to call any witnesses and that a live hearing was not requested or necessary.

At hearing, the parties' Joint Exhibit numbered 1 was admitted into evidence. Official recognition was taken of Chapter 95-228, Laws of Florida.

The hearing was not transcribed. The parties requested more than 10 days in which to file proposed recommended orders. That request was granted and the due date for submission of proposed

recommended orders was established as June 28, 2002. Respondent and Petitioner filed Proposed Recommended Orders on June 24 and 28, 2002, respectively, which have been considered in the preparation of this Recommended Order.

Respondent filed a Motion to Strike Petitioner's Proposed Recommended Order asserting that it had been filed untimely and that the due date had been established as June 24, 2002. Petitioner filed a response objecting to the motion. Respondent's assertion that the proposed recommended orders were due June 24, 2002, is incorrect. The Motion to Strike is denied.

#### FINDINGS OF FACT

1. Petitioner has been employed in a position of trust and seeks an exemption from disqualification.

2. On February 19, 1985, Petitioner entered a plea of guilty to the offense of battery, Case No. 85-MM-137-A, in the County Court of Gadsden County, Florida. Adjudication was withheld and the court placed Petitioner on probation and ordered Petitioner to make restitution for hospital bills and pay court costs.

3. This offense involved Petitioner and Jenean Stewart, with whom Petitioner had lived and with whom Petitioner had resided together in the past as if a family. There was no evidence presented or assertion made that Petitioner and

Ms. Stewart were married at the time of the offense or at any other time.

4. The parties stipulated to the admission of the court documents which describe the incident. The Complaint charged Petitioner with a violation of Section 784.03, Florida Statutes, which is described in both the 1983 and 1985 Florida Statutes as battery, a misdemeanor of the first degree. The Summary of Offense and Probable Cause Affidavit reveals that Petitioner and Ms. Stewart got into a fight and that Petitioner kicked, hit, and choked her and made several threats to do bodily harm to her with a shotgun. It additionally reveals that Ms. Stewart advised the arresting officer that she was pregnant and that Petitioner had struck her in the stomach causing her pain. The Summary of Offense and Probable Cause Affidavit also reveals that no physical marks or injury was found on Ms. Stewart by the officer who signed the affidavit.<sup>1</sup>

5. No evidence was presented that Ms. Stewart was a minor at the time of the offense.

6. Other than this incident, no evidence was presented to indicate that Petitioner has ever been charged with any other crime.

7. No evidence was presented as to any rehabilitation of Petitioner.

CONCLUSIONS OF LAW

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

9. The Department of Children and Family Services is the agency charged with the responsibility of licensing child care facilities in the state of Florida. Chapter 402, Florida Statutes.

10. Section 435.04, Florida Statutes (2001), sets forth disqualifying offenses for persons employed in positions of trust or responsibility. Section 435.07, Florida Statutes (2001), sets forth the basis for exemptions from disqualification. Petitioner argues that the law that created this statute, Chapter 95-228, Laws of Florida, is inapplicable because the effective date of the law was 10 years after the offense cited by Respondent as the disqualifying event. The Department, however, asserts that the screening requirements set forth in Chapter 95-228, Laws of Florida, did not originate in that legislation. To resolve the dispute, it is necessary to consider pertinent statutory provisions.

11. In 1995, the legislature comprehensively amended the statutes which govern those persons seeking to work with children or the developmentally disabled. See Chapter 95-228, Laws of Florida. Among other things, Chapter 95-228 created

Chapter 435, Florida Statutes. Section 64 of Chapter 95-228 provides that the effective date of the law was October 1, 1995, "and shall apply to offenses committed on or after that date."

12. However, The predecessor to current Sections 435.04 and 435.07, Florida Statutes, was Section 393.0655, Florida Statutes, which was created by Chapter 85-54, Laws of Florida. That section set forth minimum standards for caretakers of developmentally disabled persons and stated in pertinent part as follows:

(1) MINIMUM STANDARDS.-The department shall establish minimum standards as to good moral character, based on screening, for caretakers who are unrelated to their clients. Such minimum standards for screening shall ensure that no caretaker unrelated to his client has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any felony prohibited under any of the provisions of the Florida Statutes or under any similar statute of another jurisdiction:

\* \* \*

(y) Section 784.03, relating to battery, if the victim of the offense was a minor.

\* \* \*

Such standards for screening shall also ensure that the person has not . . . committed an act which constitutes domestic violence as defined in Section 741.30 . . . the Department may grant an exemption from such a disqualification if the department has clear and convincing evidence to support a reasonable belief that the person is of

good moral character as to justify an exemption.

The person shall bear the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the incident, the time period that has elapsed since the incident, the nature of the harm occasioned to the victim, and the history of the person since the incident or such other circumstances that shall by the aforementioned standards indicate that the person will not present a danger to the safety or well-being of children.  
(emphasis supplied)

13. Section 741.30, Florida Statutes, (1985) contains the following definitions:

741.30(1) As used in this section, the term:

(a) "Domestic violence" means any assault, battery, or sexual battery by a person against the person's spouse.

(b) "Spouse" means a person to whom another person has been married or a person to whom another person has been married and from whom such person is now separated or divorced.

14. Thus, in 1985, the offense committed by Petitioner was not a disqualifying offense as there is no evidence that Petitioner was nor had been married to the victim.

15. The language of Section 339.0655, Florida Statutes, was amended over time. Section 393.0655(2)(c), Florida Statutes (1994), which was in effect before Section 435.04, Florida Statutes, contains a reference to domestic violence which read

as follows: "Has not committed an act which constitutes domestic violence as defined in s.741.28." This language was repealed by Section 35, Chapter 95-228, Laws of Florida.

16. In relation to the definition of domestic violence referenced in the prior paragraph, Chapters 94-134 and 94-135, Laws of Florida, created definitions of "domestic violence" and "family or household member," as follows:

741.28 Domestic violence; definitions.--  
As used in ss. 741.28-741.31:

(1) "Domestic violence" means any assault, battery, sexual assault, sexual battery, 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.

(2) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family and persons who have a child in common regardless of whether they have been married or have resided together at any time.

Section 36, Chapter 94-134 and Section 36, Chapter 94-135, Laws of Florida, provide for applicability of this statutory language to offenses committed on or after July 1, 1994. Thus, the expanded definitions of domestic violence and who is considered a family member for purposes of what constitutes domestic violence could not apply to Petitioner's offense.



17. Section 393.0655, Florida Statutes (1995) requires employment screening pursuant to level 2 screening standards set forth in Chapter 435, Florida Statutes, which was created by the same act, Chapter 95-228, Laws of Florida.

18. Section 435.04, Florida Statutes (1995), sets forth level 2 screening standards. Subsection (h) continues to reference Section 784.03 relating to battery if the victim of the offense was a minor. The 1995 version of the law also requires the screening standards to ensure that the employee has not committed an act that constitutes domestic violence as defined in Section 741.30, Florida Statutes (1995), not Section 741.28, Florida Statutes (1995), which no longer pertained.

19. Section 741.30, Florida Statutes (1995), does not contain a definition of domestic violence but rather creates a cause of action for an injunction for protection against domestic violence. There is no evidence that a court ever issued an injunction for protection against domestic violence as contemplated by Section 741.30, Florida Statutes (1995).

20. In summary, when the screening law was created in 1985, the offense committed by Petitioner was not a disqualifying offense. The 1994 amendments to the definition of "domestic violence" and the broader definition of "family or household member", rather than the more limited definition of "spouse" that existed in 1985, do not apply to Petitioner.

Finally, the 1995 amendment struck the reference to Section 741.28 which contained those expanded definitions of "domestic violence" and "family member" which the Department seeks to apply and instead references 741.30 which specifically deals with injunctions, which is inapplicable to the circumstances herein. Accordingly, Petitioner has not committed a disqualifying offense.

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 granting Petitioner an exemption from disqualification.

DONE AND ENTERED this 18th day of July, 2002, in Tallahassee, Leon County, Florida.

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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 18th day of July, 2002.

ENDNOTE

1/ The Summary of Offense and Probable Cause Affidavit indicated there was a second page on the reverse of the first page. The fact that a page appeared to be missing was pointed out to counsel during the hearing and a complete exhibit was to be filed on or before the due date for the proposed recommended orders, but no additional page or complete exhibit was ever filed.

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.