

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VERNON JACKSON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-2672  
 )  
 DEPARTMENT OF CHILDREN AND )  
 FAMILY SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis conducted a formal hearing in the above-styled case on September 18, 2002, in Quincy, Florida. The following appearances were entered:

For Petitioner: Ben R. Patterson, Esquire  
315 Beard Street  
Post Office Box 4289  
Tallahassee, Florida 32315-4289

For Respondent: John R. Perry, Esquire  
Department of Children and  
Family Services  
2639 North Monroe Street  
Building A, Room 104  
Tallahassee, Florida 32399-2949

STATEMENT OF THE ISSUE

The issue is whether Petitioner should be granted an exemption from disqualification for working in a position of trust with disabled adults and children pursuant to the provisions of Chapter 435, Florida Statutes.

PRELIMINARY STATEMENT

By letter dated May 30, 2002, Respondent advised Petitioner that Petitioner's request for exemption had been denied. Petitioner timely requested formal administrative proceedings with regard to Respondent's exemption denial and the matter was transferred to the Division of Administrative Hearings.

At the final hearing, Petitioner testified in his own behalf and presented the testimony of three other witnesses. Respondent presented testimony of two witnesses and four exhibits.

No transcript was provided. The parties submitted Proposed Recommended Orders which have been reviewed in the course of preparation of this Recommended Order.

FINDINGS OF FACT

1. Since 1979, Petitioner, Vernon Jackson (Petitioner), has been employed by the Department of Children and Family Services (Respondent) or its predecessor government agency, with the exception of a period in 1996-97. He is presently classified as a psychiatric aide.

2. Petitioner worked in a unit of the Florida State Hospital in Chattahoochee, Florida, which provides care to the patients of the facility, and he is a caregiver. It is in that capacity that he is subject to the employment screening requirements of Chapter 435 of the Florida Statutes.

3. On August 23, 1980, Petitioner's girlfriend, Willie Thomas, got into an argument with a 17-year-old girl named Gwendolyn Arnold. When the argument between Thomas and Arnold escalated into a physical fight, Petitioner became involved in the fray. Arnold's 15-year-old brother also joined in the activity. As a result of the incident, Petitioner was charged with the misdemeanor offenses of disorderly conduct, resisting arrest without violence, and battery.

4. Petitioner pled guilty to all three of the charged offenses. Adjudication of guilt was withheld by the court. Petitioner paid a fine of \$50, plus costs, for the first two counts, disorderly conduct and resisting arrest without violence, and a fine of \$100, plus costs, for the battery charge. In conjunction with the battery charge he was placed on probation for a period of one year.

5. Petitioner's next criminal episode also involved Willie Thomas, his earlier girlfriend. On April 16, 1981, Petitioner was arrested and pled guilty to trespassing at Thomas' home. He was required to pay a fine of \$50. Although, adjudication was again withheld, he was placed on probation to run concurrently with his earlier probation sentence.

6. Some months later, on November 19, 1981, Petitioner pled guilty to disorderly conduct involving a public brawl with

two men. He paid a fine of \$75 and adjudication of guilt was withheld.

7. Employment screening at the Florida State Hospital was commenced in 1997 for positions of employment similar to that held by Petitioner. Petitioner's 1980 offense and 1981 plea was overlooked until this year. On or about April 20, 2002, after discovery of the battery offense, a decision was made to remove him from a caregiver position pending resolution of his request for an exemption.

8. With a birth date of January 21, 1960, Petitioner was 20 years of age at the time of his first offense and 21 years of age when he last committed a criminal offense.

9. Several supervisors of Petitioner testified that he was at all times a caring and diligent worker. Those supervisors included Karen Alford ("He was good."); Freddie Culver (described Mr. Jackson as showing a lot of care and kindness); and Helen Conrad ("Excellent").

10. The parties stipulated that Julia Thomas and Barry Moore would testify to similar conclusion and opinions as to the quality of Petitioner's employment. Petitioner's performance appraisals were at least satisfactory.

## CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of the above styled cause. Section 120.57(1) Florida Statutes.

12. Respondent disqualified Petitioner for an offense that occurred before October 1, 1995. The provisions of Chapter 95-228 of the Laws of Florida that created Chapter 435 of the Florida Statutes provided that employment screening provisions of the statute did not become effective until October 1, 1995, and did not apply to offenses committed before that date.<sup>1</sup> It is also axiomatic that a preexisting interest may be not be taken by legislation passed subsequent to the creation of that interest. For those reasons Mr. Jackson should not be disqualified in 2002 for offenses to which he pled in 1980. See Florida Public Employees Council 79, AFSCME v. Department of Children and Family Services, 794 So. 2d 733 (Fla. 1st DCA 2001); Guest v. Department of Juvenile Justice, 786 So. 2d 677 (Fla. 1st DCA 2001).

13. In the Guest decision, the court considered the appeal of Mr. Guest concerning a claim that Chapter 435, Florida Statutes, was unconstitutional. The court upheld the decision of the circuit court that required Mr. Guest to exhaust his administrative remedies. As to Guest's claim that the statute was facially unconstitutional, the court said:

As to the facial constitutional challenge, we conclude that the appellant does not have standing. Florida Law Chapter 95-228 created Chapter 435, Florida Statutes, on employment screening. In section 64 of the act, the legislature stated that "this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date." Ch. 95-228, Sec. 64, at 2076, Laws of Fla. In as much as the appellant allegedly committed his offenses in 1985, the appellant does not have standing to raise any facial constitutionality issues concerning Chapter 435. Thus, we affirm the appealed order without reaching the merits of the facial constitutionality challenge. See, Singletary v. State, 322 So. 2d 551 (Fla. 1975).

Id.

14. Even if Petitioner were subject to disqualification from his employment on the basis of his prior offenses committed in 1980-81, he should be granted an exemption. The first offense occurred in 1980 when he was but 20 years of age. There were no serious injuries, and Petitioner has had no criminal problems since 1981. His employment history shows that he is a dependable, conscientious, and diligent employee.

#### RECOMMENDATION

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

RECOMMENDED that a final order be entered granting Petitioner an exemption from disqualification.

DONE AND ENTERED this 17th day of October, 2002, in  
Tallahassee, Leon County, Florida.

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DON W. DAVIS  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of October, 2002.

ENDNOTE

1/ Section 64 of Chapter 95-228 provides, "Except as otherwise provided herein, this act shall take effect October 1, 1995, and shall apply to offenses committed on or after that date."

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.