

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRITTON TOWNSEND, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 03-4263SED  
 )  
 DEPARTMENT OF EDUCATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On March 2, 2004, an administrative hearing in this case was held in Palmetto, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Britton Townsend, pro se  
331 11th Avenue, West  
Palmetto, Florida 34221

For Respondent: Maria N. Sorolis, Esquire  
Allen, Norton & Blue, P.A.  
324 South Hyde Park Boulevard  
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STATEMENT OF THE ISSUE

The issue in the case is whether the Petitioner's employment position was properly reclassified from Career Service to Selected Exempt Service pursuant to Section 110.205(2)(x), Florida Statutes (2001).

PRELIMINARY STATEMENT

In July 2001, the Department of Education (Respondent) reclassified the position of "Vocational Rehabilitation Supervisor" from the Career Service System to the Selected Exempt System pursuant to Section 110.205(2(x), Florida Statutes (2001). At the time of the reclassification, Britton Townsend (Petitioner) was employed by the Respondent as a Vocational Rehabilitation Supervisor.

Following the decision rendered in Reinshuttle v. Agency for Health Care Admin., 849 So. 2d 434 (Fla. 1st DCA 2003), the Petitioner was notified by Respondent's letter dated July 22, 2003, that he could file a petition challenging the reclassification of his position. The Petitioner petitioned for review of the reclassification. The Respondent forwarded the petition to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner testified on his own behalf. The Respondent presented the testimony of one witness, and had Exhibits numbered 1 through 5, 7, and 8 admitted into evidence. The Respondent filed a proposed recommended order.

FINDINGS OF FACT

1. At all times material to this case, the Petitioner was employed by the Respondent as a Vocational Rehabilitation Supervisor.

2. As a Vocational Rehabilitation Supervisor, the Petitioner was responsible for supervising the performance of counselors and other employees in the Manatee County office.

3. The Manatee County office employed nine persons, including five Vocational Counselors and four clerical and administrative employees.

4. The position description applicable to the Petitioner's employment provided that he was responsible for hiring, evaluating, training, and managing employees in the office. He was responsible for managing and coordinating the fiscal resources available to the office. He was responsible for recruitment of new employees, and for the performance evaluation of existing employees.

5. The Petitioner developed criteria used to hire new employees, created interview questions, and participated in the interview process. The Petitioner's employment recommendations were always approved by his supervisor.

6. The review of the Petitioner's job performance focused primarily on his success in supervising his employees. He received an evaluation of "excellent" and "effective" in such categories as planning based on the missions and goals of the agency, implementation of quality control standards, efficient work organization, budget management, leadership, staff

management and discipline, and effective evaluation of subordinates.

7. As part of his supervisory responsibilities, the Petitioner was responsible for approval of all leave requests and travel reimbursement. He was also responsible for the employee evaluation process, including recommending staff members for performance based bonuses.

8. The Petitioner was also responsible for any disciplinary action taken related to his subordinate employees.

9. There is no evidence that the Petitioner did not perform his duties as described by the applicable position description. At the hearing, the Petitioner acknowledged that he was the supervisor for the office and its employees.

#### CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. § 120.57(1), Fla. Stat. (2003).

11. Section 110.602, Florida Statutes (2001), creates the Selected Exempt Service employment classification as follows:

Selected Exempt Service; creation, coverage.--The Selected Exempt Service is created as a separate system of personnel administration for select exempt positions. Such positions shall include, and shall be limited to, those positions which are exempt from the Career Service System pursuant to s. 110.205(2) and (5) and for which the salaries and benefits are set by the

department in accordance with the rules of the Selected Exempt Service. The department shall designate all positions included in the Selected Exempt Service as either managerial/policymaking, professional, or nonmanagerial/nonpolicymaking.

12. In relevant part, Section 110.205(2)(x), Florida Statutes (2001), exempts from the Career Service System, certain employees described as follows:

Effective July 1, 2001, managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. (Emphasis supplied.)

13. The Respondent has the burden of establishing by a preponderance of the evidence that the reclassification of the Petitioner's employment position was proper under the applicable statutes. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977). See also Section 120.57(1)(j), Florida Statutes (2003), providing that "[f]indings of fact shall be based upon a preponderance of the evidence, except in penal or licensure

disciplinary proceedings or except as otherwise provided by statute . . . ." In this case, the burden has been met.

14. The Petitioner's employment position, both as identified in the position description, and as actually performed, meet the definition of "supervisory" as described above. Accordingly, the reclassification of the position from Career Service to Selected Exempt is clearly authorized by the statute.

15. The Petitioner testified at the hearing that in December of 2002, his employment was terminated. The Petitioner disputes the reason provided for the termination of his employment. Such issues are outside the scope of this proceeding. Section 110.604, Florida Statutes (2003), provides as follows:

Suspensions, dismissals, reductions in pay, demotions, and transfers.--Employees in the Selected Exempt Service shall serve at the pleasure of the agency head and shall be subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head. Such personnel actions are exempt from the provisions of chapter 120.

#### RECOMMENDATION

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

RECOMMENDED that the Department of Education enter a Final Order finding that the "Vocational Rehabilitation Supervisor"

position held by Britton Townsend on July 1, 2001, was properly classified into the Selected Exempt Service.

DONE AND ORDERED this 13th day of April, 2004, in Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 13th day of April, 2004.

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.