

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BRIAN HIRSCH,)
)
 Petitioner,)
)
 vs.) Case No. 03-4585
)
 DEPARTMENT OF LAW)
 ENFORCEMENT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing by videoconference on January 20, 2004. Petitioner, Petitioner's counsel, Respondent's witness, and the court reporter attended in Fort Lauderdale, Florida. The Administrative Law Judge and Respondent's counsel attended in Tallahassee, Florida.

APPEARANCES

For Petitioner: Debi George-Alten
Post Office Box 771105
Coral Springs, Florida 33071

For Respondent: Grace A. Jaye
Assistant General Counsel
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

STATEMENT OF THE ISSUE

The issue is whether Petitioner is entitled to an equivalency-of-training exemption from law enforcement officer basic recruit training.

PRELIMINARY STATEMENT

By letter dated October 23, 2003, Respondent informed Petitioner that he was not entitled to an equivalency-of-training exemption from recertification requirements because he had a break in relevant employment of more than eight years' duration. By letter dated November 5, 2003, Petitioner requested a formal hearing.

At the hearing, Petitioner called one witness, and Respondent called one witness. Neither party offered into evidence any exhibits. The court reporter filed the transcript on January 29, 2004.

FINDINGS OF FACT

1. Petitioner is presently employed as a transit security officer on the Miami Metro-Rail. Respondent certified Petitioner as a law enforcement officer on August 23, 1981. However, his last day of certified employment, which was with the Dania Police Department, was July 27, 1987. Petitioner has taken no law enforcement classes since 1987.

2. As part of the process by which he could obtain recertification as a law enforcement officer, Petitioner tried to

enroll in a 92-hour class in May 2003 at the Institute of Public Safety at Broward Community College. The 92-hour classes offered at Broward Community College fill up almost immediately after they are announced. Petitioner eventually was able to enroll for a 92-hour class at Broward Community College that started November 9, 2003.

3. Enrollment in the 92-hour class requires Petitioner to complete basic-recruit training or obtain an exemption from such a requirement due to the completion of comparable training in another jurisdiction. Petitioner thus submitted an equivalency-of-training form (Form CJSTC 76), by which he sought an exemption from the requirement of basic-recruit training.

4. By letter dated October 28, 2003, Respondent advised Petitioner that he was not eligible for the equivalency-of-training exemption because of a break of more than eight years in relevant employment. The letter advises that recent legislation, which had been signed into law on July 11, 2003, prohibited the recognition of an exemption after an eight-year break in employment.

5. Petitioner has failed to establish any basis for estoppel. No one ever provided him with any misinformation whatsoever, nor, of course, did Petitioner rely on any such misinformation. Nothing precluded Petitioner from taking the 92-hour course at a location other than Broward Community

College; evidently, for personal convenience, Petitioner tried to enroll for the course offered only at Broward Community College. Nothing in the record indicates if the 92-hour courses offered at other locations were as difficult to obtain. And, of course, nothing prevented Petitioner from trying to enroll in the 92-hour course more than a couple of months before the new legislation became effective.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 120.569 and 120.57(1), Fla. Stat. (2003).

7. Petitioner has the burden of proof. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

8. The relevant portion of Section 943.131(2), Florida Statutes, provides:

If an applicant seeks an exemption from completing a commission-approved basic recruit training program, the employing agency must verify that the applicant has successfully completed a comparable basic recruit training program for the discipline in which the applicant is seeking certification in another state or for the Federal Government. Further, the employing agency must verify that the applicant has served as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment, as measured from the separation date of the

most recent qualifying employment to the time a complete application is submitted for an exemption under this section.

9. Respondent reasonably interprets the second sentence of the quoted portion of Section 943.131(2), Florida Statutes, as prohibiting the issuance of an equivalency-of-training exemption to the applicant with a break in service of more than eight years. Petitioner has demonstrated no reason in fact or law to set aside Respondent's interpretation or application of the statute in this case.

RECOMMENDATION

It is

RECOMMENDED that the Department of Law Enforcement enter a final order rejecting Petitioner's request for an equivalency-of-training exemption from basic-recruit training due to the break in relevant employment of more than eight years.

DONE AND ENTERED this 10th day of February, 2004, in Tallahassee, Leon County, Florida.



ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of February, 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 must be filed with the agency that will issue the final order in this case.