

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARJORIE BLANC,)
)
 Petitioner,)
)
 vs.) Case No. 03-4586
)
 FLORIDA DEPARTMENT OF LAW)
 ENFORCEMENT, CRIMINAL JUSTICE)
 STANDARDS & TRAINING COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case by video teleconference on January 5, 2005, with the Petitioner appearing from Miami, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ronald J. Cohen, Esquire
8100 Oak Lane, Suite 403
Miami Lakes, Florida 33016

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

STATEMENT OF THE ISSUE

Whether the Petitioner submitted a false test result to the

Miami-Dade College School of Justice in order to register for the Correctional Officer Basic Recruit Training Course.

PRELIMINARY STATEMENT

On August 22, 2003, the Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission (Respondent) issued a letter notifying the Petitioner, Marjorie Blanc, that she had engaged in conduct that subverts the Basic Abilities Test process and that her test results for any test taken after May 22, 2003, would be nullified. The notice further advised Petitioner that she would be prohibited from taking a Basic Abilities Test for a period of five years. More specifically, the notice claimed that the Petitioner had submitted or caused to be submitted an altered grade on the Basics Abilities Test (BAT) in order to register for a Basic Recruit Training Program at Miami-Dade College. The Petitioner submitted an Election of Rights that disputed the allegations and requested a formal hearing. The matter was then forwarded to the Division of Administrative Hearings for formal proceedings on December 5, 2003.

After numerous delays and continuances requested by the parties, the case went to hearing on January 5, 2005. At that time, the Respondent presented testimony from the Petitioner, Melinda Griffin, Carmen Banos, James Connolly, Donna Jennings,

and Tom Hood. Petitioner's Exhibit 1 and Respondent's Exhibits 3-7 were admitted into evidence.

The Respondent requested official recognition for the items identified as Respondent's Exhibits 1 and 2. The request was granted. The transcript of the case was filed on January 21, 2005. Thereafter, the Petitioner requested an extension of the time to file a proposed recommended order. The request was granted. All parties were granted leave until February 4, 2005, to file proposed recommended orders. Only the Respondent filed a Proposed Recommended Order. It has been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is an applicant to become a corrections officer. As such, she was required to take and pass the BAT as a prerequisite to the Corrections Officer Basic Recruit Training course. It was Petitioner's intention to take the requisite course offered at Miami-Dade College.

2. The Respondent is the state agency responsible for the licensing and certification of all corrections officers.

3. On February 7, 2002, the Petitioner took the BAT for corrections officers. The Petitioner scored a 58 percent on the BAT and was given a "fail." In order to pass the BAT, a score of 68 percent must be achieved. Those who fail the BAT may

retake the test not sooner than 30 days after the original test administration date.

4. According to the Petitioner, she did not understand that she had failed the BAT. Petitioner alleged that two men who she thought worked for Miami-Dade County advised her that she had passed the examination. More specifically, the men told Petitioner of the need for Haitian corrections officers and they promised to help her obtain employment as a corrections officer. In return, the Petitioner was to pay the men a certain amount of money as compensation for their help.

5. In truth, the men were not connected to Miami-Dade County. There is no evidence that such individuals were authorized to procure Haitians such as this Petitioner for employment as corrections officers. Moreover, the test results that they furnished to Petitioner, which she then gave to Miami-Dade College, represented she had taken the BAT on March 7, 2002.

6. Petitioner did not take the examination on March 7, 2002. The BAT results dated March 7, 2002 represented Petitioner had achieved a "pass" on the test.

7. Petitioner knew or should have known that a test date of March 7, 2002, was not accurate or possible since she did not take the BAT on that date. Additionally, she should have realized that the only test date that could be stated as her own

was February 7, 2002 as that was the only date Petitioner took the BAT.

8. In order to register for the corrections officer basic recruit course at Miami-Dade College, Petitioner gave the BAT results with the March 7, 2002, date to the registering agent. The March 7, 2002, "pass" result did not accurately reflect the Petitioner's performance on the BAT.

9. The Petitioner maintains that the two men who sought her money in exchange for their help in obtaining the corrections officer job perpetrated any wrongdoing and that she was an innocent dupe in their plot. Neither of the individuals testified in this case, and according to Petitioner, their whereabouts is unknown.

10. The Petitioner turned in the March 7, 2002, BAT results in order to register for the basic recruit course.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, and 120.57(1), Fla. Stat. (2004).

12. Section 943.17(1)(g), Florida Statutes (2004), provides that the Respondent:

(g) Assure that entrance into the basic recruit training program for law enforcement, correctional, and correctional probation officers be limited to those who

have passed a basic skills examination and assessment instrument, based on a job task analysis in each discipline and adopted by the commission.

13. In this case, the Petitioner registered for the Basic Recruit Training Course in reliance on a BAT result that was erroneous. Petitioner knew she did not take the BAT on March 7, 2002. Submitting a test result from that date was impossible since Petitioner did not take the BAT on that date. The BAT results had been altered to reflect the March 7, 2002 test date and a passing score. While Petitioner may not have realized the passing score was altered, she could have readily discovered that the test date was incorrect. Had she questioned the BAT sheet before turning it in she would have avoided the instant dispute. Instead, Petitioner chose to submit a BAT document that she knew or should have known was not accurate.

14. Florida Administrative Code Rule 11B-35.0011 specifies that applicants (such as Petitioner) shall not possess altered BAT documents and shall not engage in conduct that attempts to subvert the BAT process. It is evident the Petitioner possessed erroneous and altered BAT results. The rule further specifies that applicants who violate the provision must wait five years to re-take the BAT. In this case, the Petitioner has demonstrated no credible explanation for why she possessed the erroneous BAT results or why she registered for the basic

recruit course with a BAT result that clearly indicated an erroneous test date. Finally, Petitioner has not shown that she passed the BAT on any date.

15. In this case, the Respondent has demonstrated by clear and convincing evidence that the Petitioner submitted an altered BAT result and relied on that BAT in order to register for the basic recruit course.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Respondent enter a final order disqualifying the Petitioner from taking the BAT for a period of five years in accordance with Florida Administrative Code Rule 11B-35.0011(5).

DONE AND ENTERED this 8th day of March, 2005, in Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of March, 2005.

COPIES FURNISHED:

Michael Ramage, General Counsel
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

Grace A. Jaye, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

Ronald J. Cohen, Esquire
Ronald J. Cohen, P.A.
8100 Oak Lane, Suite 403
Miami Lakes, Florida 33016

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.