

9-17-04



STATE OF FLORIDA
DEPARTMENT OF ELDER AFFAIRS

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DEC 16 2004

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DOEA
Lena H. Baulkmon
Agency Clerk
DIVISION OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF:

AT

CANDACE C. MCMAHON

CASE NO.: 2003-005

74-0875 SED
BJS-CWS

FINAL ORDER

THIS MATTER came before the Department of Elder Affairs ("Department") for consideration and final agency action. On July 21, 2003, a notice was issued by the Department to the Petitioner, Candace C. McMahon, advising her of her right to challenge the reclassification of her position from career service to selected exempt service. Petitioner timely filed a request for a proceeding pursuant to section 120.57(1), Florida Statutes. Pursuant to notice, the matter was heard before Barbara J. Staros, Administrative Law Judge, Division of Administrative Hearings, on July 9, 2004.

After consideration of the record and argument presented at hearing, the Administrative Law Judge issued her Recommended Order on September 17, 2004. (Attached as Exhibit A). The Administrative Law Judge recommended that the Department enter a final order finding that the position held by Petitioner on July 1, 2001, was properly classified into the selected exempt service.

On September 24, 2004, Petitioner timely filed exceptions to the Recommended Order. The exceptions were to Findings of Fact and the Recommendation. The Department did not file any exceptions or responses to the Petitioner's exceptions. The exceptions will be addressed below.

RULINGS ON THE PETITIONER'S EXCEPTIONS

In her exception to the Division of Administrative Hearing's Recommended Order, Findings of Fact #11 and #17, Petitioner takes the position that those findings are not supported by competent substantial evidence and fail to give appropriate consideration to the evidence presented at hearing; and urges the Department to reject those two Findings of Fact and thus, DOAH's recommendation. The primary thrust of Petitioner's exceptions is the argument that Petitioner did not spend enough time on supervisory activities to be considered a supervisor. The Petitioner is asking the Department to substitute her interpretation of the evidence for the Administrative Law Judge's interpretation.

Section 120.57(1)(l), Florida Statutes (F.S.), imposes strict legal limitations on an agency's authority to modify or reject an Administrative Law Judge's findings of fact. Specifically, Section 120.57(1)(l), F.S., states in pertinent part: "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence . . ." Section 120.57(1)(l), F.S. (emphasis added). This provision makes abundantly clear that an agency is not free to reject or change the Findings of Fact in the Recommended Order unless it determines, from a review of the complete record, that the Administrative Law Judge's Findings of Fact were not supported by competent substantial evidence. A review of the record in this case reveals no such deficiency. Indeed, the Administrative Law Judge's Findings of Fact (and specifically Findings of Fact #11 and #17) are supported by abundant competent evidence, consisting of the testimony of Tom Reimers (Petitioner's supervisor), the Position Description for the Operations Management Consultant

Manager (Petitioner's Exhibit 1), as well as Petitioner's own testimony at the hearing. Such competent substantial evidence supports the Findings made by the Administrative Law Judge.

Petitioner is asking the Department to reject the reasonable inference made by the Administrative Law Judge with regard to whether Mr. Reimers considered Petitioner to be a full-time supervisor (#11) and whether the weight of the evidence supports a conclusion that the Petitioner spent a majority of her time supervising employees (#17).

Where reasonable people can differ about the facts, an agency is bound by the hearing officer's reasonable inference based on the conflicting inferences arising from the evidence. Greseth v. Department of Health and Rehabilitative Services, 573 So.2d 1004, 1006-1007 (Fla. 4th DCA 1991). In Heifeitz v. Dep't of Bus. Reg., 475 So.2d 1277 (Fla. 1st DCA 1985), the Court held:

Factual issues susceptible of ordinary methods of proof that are not infused with policy considerations are the prerogative of the hearing officer as the finder of fact . . . It is the hearing officer's function to consider all the evidence presented, resolve conflicts, judge credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent, substantial evidence . . . If, as is often the case, the evidence presented supports two inconsistent findings, it is the hearing officer's role to decide the issue one way or the other. The agency may not reject the hearing officer's finding unless there is no competent substantial evidence from which the finding could reasonably be inferred. The agency is not authorized to weigh the evidence presented, judge the credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion.

The First District Court of Appeal reiterated this position more recently in Tedder v. Florida Parole Com'n., 842 So.2d 1022 (Fla. 1st DCA 2003).

The record clearly is not lacking competent substantial evidence in this case, and, therefore, the Department is not legally permitted to reject or modify the Administrative Law Judge's Findings of Fact regarding whether Mr. Reimers considered Petitioner to be a full-time supervisor, and whether the weight of the evidence supports a conclusion that Petitioner spent a

majority of her time supervising employees. The Findings of Fact of the Administrative Law Judge are supported by competent substantial evidence and the invitation to reweigh the evidence is declined.

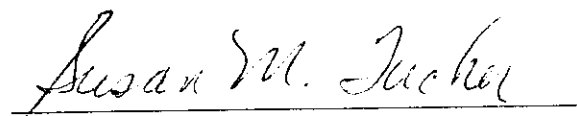
Accordingly, Petitioner's exceptions are rejected.

Therefore, upon careful consideration of the entire record, the submissions of the parties, including the exceptions filed, and being otherwise fully advised in the premises, it is ORDERED:

1. The Findings of Fact of the Administrative Law Judge are adopted in full as the Department's Findings of Fact.
2. The Conclusions of Law of the Administrative Law Judge are adopted in full as the Department's Conclusions of Law.
3. The Administrative Law Judge's recommendation that the Department enter a Final Order finding that the position held by Petitioner on July 1, 2001, was properly classified into the selected exempt service is approved and accepted as being the appropriate disposition in this case.

ACCORDINGLY, it is ORDERED that Petitioner's CANDACE C. MCMAHON's petition challenging the reclassification of her employment position from the career service system to the selected exempt system pursuant to section 110.205(2)(x), Florida Statutes, is dismissed.

DONE AND ORDERED this 16th day of December, 2004.



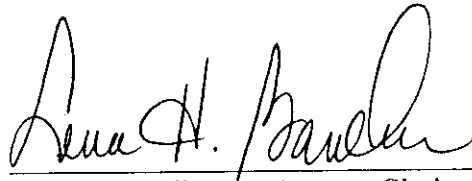
SUSAN M. TUCKER
Deputy Secretary

NOTICE OF RIGHTS

A party who is adversely affected by this Order is entitled to seek judicial review pursuant to section 120.68, Florida Statutes, and Rule 9.110, Florida Rules of Appellate Procedure. Review proceedings must be instituted by filing a petition or Notice of Appeal with the Agency Clerk at Department of Elder Affairs, 4040 Esplanade Way, Ste. 315, Tallahassee, Florida 32399-7000, and a copy of the same with the filing fee to the appropriate District Court of Appeal within thirty (30) days of the rendition of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail or interoffice mail to the persons named below on this 16th day of December, 2004.



Lena H. Baulkmon, Agency Clerk
Department of Elder Affairs

Copies furnished to:

Alma R. Gonzalez, Esq.
Florida Public Employees Counsel 79
AFSCME, AFL-CIO
3064 Highland Oaks Terrace
Tallahassee, Florida 32301
Attorney for Petitioner

Honorable Barbara J. Staros
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
Administrative Law Judge

Michael Mattimore, Esq.
Allen, Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, Florida 32303
Attorney for Respondent

Susan E. Avellone, Esq.
Office of the General Counsel
Department of Elder Affairs
4040 Esplanade Way, Suite 315
Tallahassee, Florida 32399-7000
Attorney For Respondent