

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS


DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS AND)
TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 05-4458PL
)
TENA D. GRANT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

A formal administrative hearing in this case was held on February 15, 2006, in Sebring, Florida, before Bram D.E. Canter, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Joseph S. White, Esquire
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

For Respondent: Tena D. Grant, pro se


STATEMENT OF THE ISSUES

The issues in the case are whether the allegations set forth in the Administrative Complaint filed against the Respondent are true, and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On September 13, 2005, the Criminal Justice Standards and Training Commission (Petitioner) filed an Administrative Complaint against Tena D. Grant (Respondent), seeking to discipline Respondent's correctional officer's license for alleged violations of Chapter 943, Florida Statutes.^{1/} Specifically, Petitioner charged Respondent with violating the provisions of Subsections 943.1395(6) and (7), Florida Statutes, and Florida Administrative Code Rule 11B-27.0011(4)(b), for failing to maintain good moral character in that Respondent was driving a motor vehicle while under the influence of alcoholic beverages. Respondent disputed the allegations of the Administrative Complaint and requested a formal hearing. The request was forwarded to DOAH, which scheduled and conducted the formal hearing.

At the hearing, Petitioner presented the testimony of Corporal Andrew Markham of the City of Sebring Police Department and Deputy Loran Danielson of the Highlands County Sheriff's Office. Petitioner's Exhibit 1 was admitted into evidence. Respondent testified on her own behalf. Respondent's Exhibit 1 was admitted into evidence.

By agreement of the parties, the record was left open to provide Respondent an opportunity to conduct depositions of two persons that Respondent was with shortly before her arrest.

Respondent was directed to conduct the depositions within 20 days of the hearing and to submit the transcripts of the depositions to DOAH. However, Respondent did not conduct the depositions.

The parties were given ten days from the filing of the last transcript (the hearing transcript or the transcript of the depositions) to file any post-hearing submittals. The Transcript of the hearing was filed on March 20, 2006. A Proposed Recommended Order was filed by Petitioner on March 29, 2006. No timely post-hearing submittal was filed by Respondent.

FINDINGS OF FACT

1. Petitioner is the state agency charged with the responsibility for certification of correctional officers within the State of Florida.

2. Respondent holds Correctional Certificate No. 200857, issued to her by Petitioner.

3. Shortly after 2:00 a.m., on January 8, 2005, Corporal Andrew Markham of the City of Sebring Police Department was dispatched to the scene of a reported traffic crash at the intersection of Center Street and Northeast Lakeview Drive in Sebring, Florida. Corporal Markham found no vehicles in the intersection or any evidence of a crash there.

4. Adjacent to the intersection, in the parking lot of the Sebring Public Library, Corporal Markham saw a car with its

brake lights illuminated. He approached the car to determine whether the occupants could provide any information about the reported traffic accident.

5. Corporal Markham observed that the front of the car was damaged from its collision with a low barrier wall that bordered the parking lot. The windshield was also damaged from what Corporal Markham concluded was the impact of the occupants' heads with the windshield when the car hit the barrier.

6. When Corporal Markham approached the car, he saw Respondent exit the driver's seat and begin to walk away. Corporal Markham stopped Respondent to speak with her. Respondent had blood on her face, as did the other occupant of the car.

7. At the time of the incident, Respondent denied being the driver of the car. At the hearing, Respondent admitted that she was the driver.

8. During his conversation with Respondent at the scene, Corporal Markham smelled the odor of alcohol on Respondent, noted that she was unsteady, and that her eyes were red.

9. When Corporal Markham asked Respondent to take field sobriety tests, she continued to insist that she was not the driver of the car and would not take the tests.

10. Based on his observations at the scene, his training, and his 13 years of experience as a police officer, Corporal

Markham believed Respondent was under the influence of alcoholic beverages to the extent that her normal faculties were impaired. Therefore, he arrested Respondent for the offense of driving under the influence of alcohol.

11. Corporal Markham first transported Respondent to the Highlands County Medical Center to receive treatment for her injury. At the Medical Center, Respondent refused medical treatment, and Corporal Markham transported her to the Highlands County Jail.

12. At the jail, Respondent was taken to the area where breath tests are conducted. Corporal Markham read Respondent the "Implied Consent" that informed her that if she refused to take the test, she could lose her driving privilege for up to one year. Respondent refused to take a breath test at the jail.

13. Deputy Loran Danielson of the Highlands County Sheriff's Office was the officer on duty to conduct the breath tests at the jail. When Deputy Danielson met Respondent, he noted that her breath smelled strongly of alcohol, her eyes were bloodshot, her speech was slurred, and she was unsteady on her feet. Based on his observations of Respondent, his training, and his 10 years of experience as a Deputy Sheriff, Deputy Danielson was of the opinion that Respondent was under the influence of alcoholic beverages to the extent that her normal faculties were impaired.

14. During the time that Deputy Danielson talked to Respondent, she told him that she had consumed "many" drinks, and if she took the breath test, it would show "I'm drunk."

15. On September 27, 2004, less than four months before the incident at issue in this case, Petitioner issued Respondent a Letter of Acknowledgement for an earlier driving under the influence (DUI) violation by Respondent.

16. At the hearing, Respondent admitted that she had "a few drinks" with friends at a bar just prior to her arrest, but she denied that she was intoxicated. Respondent said the crash occurred because she had taken her eyes off the road to speak to passengers in the back seat. Respondent said she refused to take the field sobriety tests or the breath test at the jail because she was scared. Respondent explained that one term of her probation for the prior DUI conviction was that she was not to drink alcohol.

17. Respondent expressed remorse for her behavior on January 8, 2005, and claimed she has stopped drinking alcohol. Respondent stated that her career as a correctional officer is very important to her, and she requested another opportunity to prove she is a responsible person and capable correctional officer.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to Sections 120.569, 120.57, and 943.1395, Florida Statutes.

19. Petitioner has the burden of proof to show by clear and convincing evidence that Respondent committed the acts alleged in the Administrative Complaint. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

20. The "clear and convincing" evidence standard has been described as follows:

[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

21. The Administrative Complaint charged Respondent with violating Subsections 943.1395(6) "and/or" (7), Florida Statutes. Petitioner did not pursue the charge regarding Subsection 943.1395(6), Florida Statutes, in its Proposed Recommended Order. Subsection 943.1395(6), Florida Statutes,

relates to felony convictions and there is no record evidence regarding whether Respondent was formally convicted of the crime of driving under the influence as a result of her arrest on January 8, 2006. Petitioner did not meet its burden to prove by clear and convincing evidence that Respondent violated Subsection 943.1395(6), Florida Statutes.

22. Subsection 943.1395(7), Florida Statutes, provides that Petitioner may take disciplinary action against a correctional officer who has not maintained good moral character.

23. Florida Administrative Code Rule 11B-27.0011(4) provides that a violation of Section 316.193, Florida Statutes (driving under the influence of alcoholic beverages to the extent that the person's normal faculties are impaired), whether or not the violation was criminally prosecuted, constitutes a failure to maintain good moral character.^{2/}

24. Through the testimony of Corporal Markham and Deputy Danielson, Petitioner proved by clear and convincing evidence that on January 8, 2005, Respondent was driving under the influence of alcoholic beverages to the extent that her normal faculties were impaired. Therefore, Petitioner met its burden to demonstrate that Respondent failed to maintain good moral character.

25. Florida Administrative Code Rule 11B-27.005(5)10. sets forth the disciplinary guideline applicable to this case. The guideline penalty for the offense of driving under the influence is probation with substance abuse counseling or, in the case of a second offense, suspension or revocation of the officer's certification.

26. Because this is Respondent's second DUI offense, and it occurred so close in time to the first DUI disciplinary action, Petitioner is seeking to revoke Respondent's certification.

27. For the reasons advanced by Petitioner and because Respondent still refuses to tell the truth about the events of January 8, 2005, the revocation of her certification is a fair and reasonable penalty.

RECOMMENDATION

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

RECOMMENDED that Petitioner Department of Law Enforcement, Criminal Justice Standards and Training Commission, enter a final order finding that Respondent Tena D. Grant failed to demonstrate good moral character as required by Subsection 943.13(7), Florida Statutes, and ordering that her certification as a correctional officer be revoked.

DONE AND ENTERED this 4th day of April, 2006, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of April, 2006.

ENDNOTES

^{1/} All references to the Florida Statutes are to Florida
Statutes (2005).

^{2/} In its Administrative Complaint, Petitioner charged
Respondent with violating Florida Administrative Code Rule
11B-27.0011(4). However, the purpose of this Rule is to define
the term "good moral character," and one cannot "violate" a
definition.

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.