

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JENNY LANCETT,)
)
 Petitioner,)
)
 vs.) Case Nos. 05-4544
) 06-0325
 FLORIDA DEPARTMENT OF LAW)
 ENFORCEMENT, CRIMINAL JUSTICE)
 STANDARDS AND TRAINING)
 COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice a formal hearing was held in this case on April 5, 2006, by video teleconference with the Petitioner appearing from West Palm Beach, Florida, before J. D. Parrish, a designated Administrative Law Judge of the Division of Administrative Hearings in Tallahassee, Florida. Counsel for all parties appeared in Tallahassee.

APPEARANCES

For Petitioner: Bruce Alexander Minnick, Esquire
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For Respondent: Linton B. Eason, Esquire
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STATEMENT OF THE ISSUE

Whether the Petitioner, Jenny Lancett (Petitioner) is

entitled to additional credit for the answers she provided to challenged examination questions. The Petitioner has challenged the State Officers Certification Examination (SOCE) for Law Enforcement Officers given in July of 2005 (DOAH Case No. 05-4544) and September of 2005 (DOAH Case No. 06-0325).

PRELIMINARY STATEMENT

The Petitioner maintains she is entitled to additional credit for the answers she provided to the challenged examination questions, and that, if granted, her overall score for the examination(s) would have resulted in a "pass" grade. The Respondent, the Criminal Justice Standards and Training Commission (Respondent or Commission) claims that the Petitioner's examinations were appropriately graded and scored and that she failed both.

These cases began in May of 2005. The Petitioner first took the SOCE in May of 2005 and received an overall "fail" score. That examination was not challenged. The Petitioner then took the SOCE again on July 27, 2005, and also received an overall "fail" score. The July exam results were timely challenged and the matter was timely forwarded to the Division of Administrative Hearings for formal proceedings (DOAH Case No. 05-4544). At hearing, the Petitioner challenged 13 questions from this test date (Questions 45, 56, 90, 141, 151, 156, 161, 163, 207, 227, 234, 238, and 242). The challenge to

question 238 was later withdrawn and is not in contention.

Similarly, the Petitioner took the September 2005 SOCE and did not achieve the minimum passing grade. For this examination the Petitioner challenged 12 questions (Questions 44, 63, 134, 160, 162, 165, 166, 178, 189, 194, 195, and 208).

The challenged examinations are of particular concern to the Petitioner because, coupled with the failed examination results from the May (2005) test date, she has not achieved a passing score on three occasions. Based upon that, unless she is entitled to sufficient credit from the questions challenged, the Petitioner will be not be able to establish that she has achieved a pass grade as provided for in Florida Administrative Code Rule 11B-30.0062.

At the hearing, the parties presented Joint Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, which were received in evidence by stipulation. The Petitioner testified in her behalf and presented testimony from Timothy Kozyra, Roy Gunnarsson, Ralph Stacy Lehman, and Carol Hendrix.

On May 17, 2006, the Petitioner requested additional time within which to file a Proposed Recommended Order. That request was granted, and both parties were granted leave until June 20, 2006, to file proposed orders. Both parties filed proposed orders that have been reviewed in the preparation of this Recommended Order.

FINDINGS OF FACT

1. The Petitioner is an applicant for certification as a law enforcement officer. In order to be eligible to sit for the state examination, the Petitioner successfully completed an academy course that was sponsored by the Palm Beach County Sheriff's Office. To become fully certified, the Petitioner must take and achieve a passing score on the SOCE. The Petitioner took the SOCE on July 27, 2005, but did not pass. She also took the SOCE on September 21, 2005, and did not pass.

2. The Respondent is the state agency charged with the responsibility of administering examinations for certification for the SOCE.

3. After the July and September examinations for the SOCE were administered and the Petitioner received failing scores, she requested and attended examination review sessions conducted at the Respondent's headquarters in Tallahassee, Florida.

4. The review sessions were held at the Florida Department of Law Enforcement and the Petitioner was given copies of the examination questions for which she did not provide the correct answers. The Petitioner was not told the correct answers.

5. As to the July examination, the Petitioner timely

challenged Questions 45, 56, 90, 141, 151, 156, 161, 163, 207, 227, 234, 238, and 242. That examination challenge was forwarded to the Division of Administrative Hearings on December 14, 2005, and was designated as DOAH Case No. 05-4544. The Petitioner withdrew her challenge to Question 238.

6. As to the September examination, the Petitioner timely challenged Questions 44, 63, 134, 160, 162, 165, 166, 178, 189, 194, 195, and 208. That examination challenge was forwarded to the Division of Administrative Hearings on January 26, 2006, and was assigned DOAH Case No. 06-0325.

7. On February 3, 2006, in response to the Joint Motion to Consolidate, the cases were consolidated for formal hearing and rescheduled for hearing to March 21-22, 2006. The case was heard on April 5, 2006.

8. As to each challenged examination, the applicant must answer 250 questions and achieve at least 180 correct answers. Twenty-five questions of the 250 do not count but are considered "throw-away" questions. All questions are posed in English. All questions are multiple choice and an applicant is given credit for only the correct answer. The Respondent deems the correct answer to be the best choice from among the options offered.

9. The Petitioner is an Hispanic female who reads, writes, and speaks English. Although she inquired about

accommodations, the Petitioner was not afforded any accommodations while taking the challenged examinations based upon English as her non-native language. The Commission requires that all applicants take the examination in English. Similarly, accommodations are not afforded applicants who maintain "test anxiety" as a basis for concern.

10. All questions and answers for the challenged examinations are considered confidential as a matter of law.

11. As to each of the questions challenged by the Petitioner, the Petitioner failed to select the correct and best option from the multiple-choice selections noted.

12. As to each of the questions challenged by the Petitioner, the wording and options noted are clearly stated and are within the curriculum covered by the academy.

13. Of the numerous Hispanic candidates who have successfully completed the Palm Beach County academy during Mr. Kozyra's tenure, only two have failed to achieve a passing score on the SOCE within three attempts.

14. The Petitioner submitted no credible evidence to support her claim that the answers she provided on the challenged examination questions were correct or that the questions in their wording or grading were flawed. The persuasive weight of the evidence was to the contrary.

15. A question which asks the applicant to provide a

response that is "most accurately" describing the situation (as did Question 56 on the July examination) means that of the choices offered only one can be considered "most accurate." If the applicant chooses an answer that is not the "most accurate," credit is not given. Many of the Petitioner's responses fell into this type of erroneous response. The Petitioner simply failed to provide the "most accurate" from the selections offered.

16. As to each of the selections chosen by the Petitioner, a clear majority of the applicants taking the examinations selected the correct option. None of the examinations questions challenged by the Petitioner were incorrectly answered by a majority of the applicants. In some instances as many as 94 percent of the test takers chose the correct answer whereas the Petitioner did not.

17. The Respondent provided sufficient explanation and the record clearly establishes that as to each of the erroneous answers provided by this Petitioner, the correct answer (as scored by the Respondent) was the best or correct answer. The Petitioner cannot be entitled to additional credit when her answers were not correct.

CONCLUSIONS OF LAW

18. 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. (2005).

19. As the applicant, the Petitioner has the burden of proof in this matter to show by a preponderance of the evidence that the examination questions were faulty, arbitrarily or capriciously worded or graded, or that the Petitioner was arbitrarily or capriciously denied credit through a grading process devoid of logic or reason. See Harac v Department of Professional Regulation, Board of Architecture, 484 So. 2d 1333, 1338 (Fla. 3d DCA 1986); Florida Department of Health and Rehabilitative Services v. Career Service Commission, 289 So. 2d 412, 414 (Fla. 4th DCA 1974); State ex. rel. Glaser v. J.M. Pepper, 155 So. 2d 383 (Fla. 1st DCA 1986); and State ex. rel. I.H. Topp v. Board of Electrical Contractors for Jacksonville Beach, Florida, 101 So. 2d 583 (Fla. 1st DCA 1958).

20. Section 943.1397, Florida Statutes (2005), provides that an applicant shall not take the SOCE more than three times, unless the applicant has enrolled in, and successfully completed the basic recruit training program. Thus, the Petitioner's concern and status as applicant for certification afford her standing to challenge the examinations. Indeed, the Petitioner must pass the SOCE to become certified. Nevertheless, the Petitioner failed to meet her burden of

proof in this matter. The answers provided by the Petitioner were not correct. Moreover, the questions challenged were not vague, ambiguous, flawed, or faultily worded. The Respondent did not act arbitrarily or capriciously in the wording or grading of the examinations. The examination process was not devoid of logic or reason. While the Petitioner may have had test anxiety or a language disadvantage, the examinations were not unduly burdensome to any applicant. All applicants are placed in the stressful environment of the examination. All Hispanic applicants (who must take the examination in a non-native language) are required to achieve a passing grade on the English-only test. In fact, the vast majority of the Hispanic candidates who, like the Petitioner successfully completed the Palm Beach County academy, have achieved a passing score on the SOCE.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Petitioner's challenges to the July and September 2005 certification examinations be denied.

DONE AND ENTERED this 28th day of June, 2006, in
Tallahassee, Leon County, Florida.



J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
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this 28th day of June, 2006.

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.