

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF LAW ENFORCEMENT,)
CRIMINAL JUSTICE STANDARDS)
AND TRAINING COMMISSION,)
)
Petitioner,)
)
vs.) Case No. 07-0668PL
)
CURTIS COLEMAN, JR.,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Notice was provided and on April 17, 2007, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes (2006). The hearing location was the Alachua County Civil Courthouse, 201 East University Avenue, Gainesville, Florida. The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

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

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Should the Criminal Justice Standards and Training Commission (the Commission) impose discipline on Respondent in association with his Correctional Officer Certificate?

PRELIMINARY STATEMENT

On August 24, 2006, by an Administrative Complaint in Case No. 23134, the Commission accused Respondent of unlawfully committing a battery upon Misty J. Quarles, by actually touching or striking Ms. Quarles or intentionally causing bodily harm to Ms. Quarles against her will. The incident is alleged to have occurred on October 28, 2004. By these actions, Respondent was alleged to have violated the provisions of Section 784.03, Florida Statutes (2004), or any lesser included offense as well as Section 943.1395(6) and (7), Florida Statutes (2004), and Florida Administrative Code Rule 11B-27.0011(4)(b), by the failure to maintain the qualifications established in Section 943.13(7), Florida Statutes (2004), required of a correctional officer in Florida, that is the maintenance of good moral character.

The Commission provided Respondent an opportunity to elect a response to the charges by executing a form provided him. Respondent choose the option to dispute the allegations of fact in the Administrative Complaint. That choice was checked on the form and was considered a petition for a formal hearing pursuant

to Section 120.57(1), Florida Statutes (2006). The choice was executed on November 27, 2006, before a notary public in Georgia. By this election, Respondent wrote in that he disputed "the allegations that are being charged against me." This is understood to refer to the underlying factual allegations concerning an alleged battery committed upon Ms. Quarles. Respondent in executing the Election of Rights form noted his address as 1203 Alta Town Lake Circle, Pooler, Georgia 31322.

On February 9, 2007, the Division of Administrative Hearings (DOAH) received the case from the Department of Law Enforcement (FDLE) requesting the assignment of an Administrative Law Judge to conduct a formal hearing to resolve material facts in dispute. The case was assigned as DOAH Case No. 07-0668PL to be considered by the undersigned.

On February 23, 2007, a Notice of Hearing was provided the parties setting forth April 17, 2007, as the hearing date. Respondent's Pooler, Georgia, address reflected in the executed Elections of Rights form was used in providing notice. That same address had been used in an Initial Order dated February 9, 2007, and an Order of Pre-hearing Instructions dated February 23, 2007, sent to Respondent. The orders and Notice of Hearing were sent to Respondent by ordinary mail. None of those items were returned as undeliverable.

Respondent did not attend the hearing. No one attended the hearing in his behalf. No explanation was provided concerning the lack of attendance either at that time or since. It was determined that the Respondent had been appropriately noticed and Petitioner was allowed to proceed with its case.

§ 120.569(2)(b), Fla. Stat. This choice recognized that Respondent had disputed the underlying factual allegations that formed the basis for the Administrative Complaint when provided that opportunity and had never withdrawn the request for formal hearing.

Petitioner presented Misty Quarles, Carol Hunter, R.N., and Deputy Robert Wesley as its witnesses. Petitioner's Exhibits numbered one and two were admitted.

On May 3, 2007, a hearing Transcript was filed with DOAH.

Petitioner filed a Proposed Recommended Order which has been considered in preparing the Recommended Order.

FINDINGS OF FACT

1. Having considered Respondent's comment in requesting a formal hearing, it is inferred that Respondent holds a correctional officer's certificate issued by the Commission.

2. On October 28, 2004, Respondent and Misty Quarles were living together in Gainesville, Florida, as a couple. Ms. Quarles describes their relationship as boyfriend and girlfriend. Respondent determined to end the relationship, to

include removing Ms. Quarles' name from the lease for the apartment. An argument ensued. Ms. Quarles left the bedroom and went to the bathroom and closed the door. Respondent opened it and started yelling at Ms. Quarles. Respondent was angry. Respondent pushed Ms. Quarles forcefully. She fell to the ground. When Respondent pushed her down, Ms. Quarles hit her head on the and door the impact left a knot on her head. She got up and pushed Respondent back. The argument continued. Respondent pushed Ms. Quarles again and she landed on the bed in the bedroom. Ms. Quarles then began to pack her belongings to leave. Respondent started gathering some of her clothing and other effects to throw in the dumpster outside the apartment. Ms. Quarles knocked those items out of Respondent's hands. Respondent began yelling again and punched Ms. Quarles on her leg while holding her down on the bed. In trying to stop Respondent from punching her, Ms. Quarles used her right hand to resist the Respondent. He pushed against a joint in her hand, causing a right thumb fracture at the base of the first metacarpal. After that, Ms. Quarles asked Respondent to take her for medical treatment. Respondent took Ms. Quarles to North Florida Regional Medical Center where she was observed to have the fracture, together with abrasions on her nose, under her left eye, and a contusion on her right forehead. Her right hand was also swollen. Ms. Quarles received a splint and was told to use ice

and employ elevation and rest to deal with her fracture. She was provided pain medication and referred to an orthopedic physician. Petitioner's Exhibit numbered one is a composite exhibit containing a series of photographs depicting Ms. Quarles physical state after her encounter with the Respondent leading to her injuries.

3. Respondent's actions against Ms. Quarles were against her will and intentionally caused bodily harm.

4. Deputy Robert Wesley of the Alachua County Sheriff's Office came to the hospital to investigate. Based upon his investigation, he arrested Respondent for felony domestic battery involving the incident with Ms. Quarles. The disposition of that arrest was not explained at hearing.

5. There is no indication that Respondent has had prior discipline imposed on his correctional officer's certificate.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case consistent with Sections 120.569 and 120.57(1), Florida Statutes (2006).

7. By this action, the Commission seeks to discipline Respondent concerning his correctional officer's certificate. Petitioner bears the burden of proving the allegations in the Administrative Complaint before discipline can be imposed against Respondent's certificate. The nature of that proof must be by

clear and convincing evidence. Department of Banking and Finance Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

8. The meaning of clear and convincing evidence is explained in the case In Re: Davey 645 So. 2d 398 (Fla. 1994), quoting with approval from Slomowitz v. Walker, 429 So. 2d 797 (Fla. 4th DCA 1983).

9. Concerning the factual allegations in the case the Administrative Complaint alleges at paragraph two:

On or about October 28, 2004, the Respondent, Curtis Coleman, Jr., did unlawfully commit a battery upon Misty J. Quarles, by actually touching or striking Misty J. Quarles or intentionally causing bodily harm to Misty J. Quarles against her will.

10. Among the grounds for discipline referred to in the Administrative Complaint is Section 943.1395(6), Florida Statutes (2004), which states in pertinent part:

The commission shall revoke the certification of any officer who is not in compliance with the provisions of s. 943.13(4) or who intentionally executes a false affidavit established in s. 943.13(8), s. 943.133(2), or s. 943.139(2).

* * *

11. Section 943.1395(6), Florida Statutes (2004), when compared to the underlying factual allegations in the Administrative Complaint is not relevant, in that there is no

allegation of conviction of a felony or misdemeanor involving perjury or false statements, dishonorable discharge from the Armed Forces, or provision of false affidavits concerning employment.

12. In the alternative, the Respondent is being prosecuted pursuant to Section 943.1395(7), Florida Statutes (2004), which states:

(7) Upon a finding by the commission that a certified officer has not maintained good moral character, the definition of which has been adopted by rule and is established as a statewide standard, as required by s 943.13(7), the commission may enter an order imposing one or more of the following penalties.

(a) Revocation of certification.

(b) Suspension of certification for a period not to exceed 2 years.

(c) Placement on a probationary status for a period not to exceed 2 years, subject to terms and conditions imposed by the commission. Upon the violation of such terms and conditions, the commission may revoke certification or impose additional penalties as enumerated in this subsection.

(d) Successful completion by the officer of any basic recruit, advanced, or career development training or such retraining deemed appropriate by the commission.

(e) Issuance of a reprimand.

13. A rule referred to in the Administrative Complaint that deals with the maintenance of good moral character is Florida Administrative Code Rule 11B-27.0011(4)(b), which states:

For the purposes of the Criminal Justice Standards and Training Commission's implementation of any of the penalties specified in Section 943.1395 . . . (7), F.S., a certified officer's failure to maintain good moral character required by Section 943.13(7), F.S., is defined as . . . the perpetration by an officer of any act that would constitute any of the following misdemeanors or criminal offenses whether criminally prosecuted or not: . . . 784.03, F.S.

14. Section 943.13(7), Florida Statutes (2004), mentioned in the Administrative Complaint and the aforementioned rule, refers to the need for an officer to have a "good moral character as determined by background investigation under procedures established by the Commission."

15. Section 784.03, Florida Statutes (2004), states:

Battery; felony battery.-

(1)(a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or

2. Intentionally causes bodily harm to another person.

(b) Except as provided in subsection (2), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.

16. There was no showing that Respondent had been criminally prosecuted for battery as set out in Section 784.03, Florida Statutes (2004), but clear and convincing evidence was presented that on October 28, 2004, Respondent did commit a battery on Misty Quarles by pushing her, causing her to strike her head on a door and leaving a knot on her head, pushing her again, punching her on her leg, holding her down on the bed, and fracturing her thumb, all against her will and with intent.

17. Disciplinary guidelines are established in Florida Administrative Code Rule 11B-27.005 pertaining to the violations described. With those guidelines in mind, a recommendation for punishment is offered based upon the facts found and conclusions of law reached, absent a prior disciplinary history.

RECOMMENDATION

Based upon the consideration of the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a final order be entered finding violations of the statutes and rules referred to and revoking Respondent's correctional officer's certificate.

DONE AND ENTERED this 31st day of May, 2007, in Tallahassee, Leon County, Florida.

S

CHARLES C. ADAMS
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 31st day of May, 2007

COPIES FURNISHED:

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

Curtis Coleman, Jr.

Michael Crews, Program Director
Division of Criminal Justice
Professionalism Services
Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

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

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.