

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MATTHEW ZULLO,)
)
 Petitioner,)
)
 vs.) Case No. 07-2132
)
 CRIMINAL JUSTICE STANDARDS AND)
 TRAINING COMMISSION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to Sections 120.569 and 120.57(1), Florida Statutes,¹ before Stuart M. Lerner, a duly-designated administrative law judge of the Division of Administrative Hearings (DOAH), on July 16, 2007, by telephone conference call.

APPEARANCES

For Petitioner: Matthew A. Zullo, pro se
117 Drake Way
Sebastian, Florida 32958

For Respondent: Grace A. Jaye, Esquire
Assistant General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
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STATEMENT OF THE ISSUE

Whether Petitioner's challenge to the failing grade he received on the February 28, 2007, State Officer Certification Examination for Correctional Officers should be sustained.

PRELIMINARY STATEMENT

By letter to Respondent dated April 24, 2007, Petitioner requested a hearing to contest the failing score that he had received on the February 28, 2007 State Officer Certification Examination for Correctional Officers.

On May 11, 2007, Respondent referred the matter to DOAH for the assignment of an administrative law judge to conduct the hearing Petitioner had requested.

As noted above, the hearing was held on July 16, 2007. Five witnesses testified at the hearing: Annette Zullo, Respondent, Catherine Miller, Sergeant Edward Lee, and Roy Gunnarsson. In addition to the testimony of these five witnesses, three exhibits (Petitioner's Exhibits 1 and 2, and Respondent's Exhibit 1) were offered and received into evidence.

At the conclusion of the evidentiary portion of the hearing, the undersigned announced, on the record, that post-hearing submittals had to be filed no later than ten days following the date of the filing with DOAH of the transcript of the hearing. The hearing Transcript (consisting of one volume) was filed with DOAH on August 8, 2007.

On August 13, 2007, Respondent timely filed a Proposed

Recommended Order. To date, Respondent has not filed any post-hearing submittal.

FINDINGS OF FACT

Based upon the evidence adduced at hearing and the record as a whole, the following findings of fact are made:

1. Petitioner sat for the State Officer Certification Examination for Correctional Officers administered on February 28, 2007 (February 2007 Certification Examination).
2. To attain a passing score on the February 2007 Certification Examination, candidates needed to answer 199 questions correctly.
3. Petitioner did not attain a passing score. He received credit for answering 198 questions correctly, one shy of the 199 needed to pass the examination.
4. One of the questions he was not given credit for answering correctly was Question 162.
5. Question 162 was a clear and unambiguous multiple choice question with four possible answers to choose from ("a," "b," "c," or "d").
6. The correct answer to Question 162 was "d." Approximately 80 percent of the candidates who sat for the February 2007 Certification Examination gave this answer.
7. The answer that Petitioner selected, "c," was incorrect. Had this answer contained the prefatory language,

"basis for," or other words to same effect, it too would have been correct. Such language, however, was missing from "c," making it an incorrect choice.²

8. Question 162 has appeared on prior Certification Examinations. Over the years, it has been answered a total of 1,422 times, with answer "d" having been selected 1,192 of these occasions and answer "c" having been selected a mere 206 times.

9. Because Petitioner selected an answer to Question 162 that was incorrect, he appropriately received no credit for his answer.

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto pursuant to Chapter 120, Florida Statutes.

11. Respondent is responsible for certifying correctional officers for employment. § 943.1395(1), Fla. Stat.

12. It cannot issue such a certificate, however, "until the person has achieved an acceptable score on the officer certification examination." § 943.1397(1), Fla. Stat.

13. Applicants for certification not "achiev[ing] an acceptable score on the officer certification examination" are entitled to "review their missed examination items and corresponding grading key" and to express their "concerns"

regarding the grading of their answers. Fla. Admin. Code R. 11B-30.012.

14. Florida Administrative Code Rule 11B-30.013 provides:

Should [Respondent] deny an individual's . . . grade review challenge, [Respondent] shall notify the individual by submitting a statement denying the challenge. The statement shall specify the basis for [Respondent's] denial and shall be forwarded to the individual. The individual shall be entitled to a hearing pursuant to the Administrative Procedures Act set forth in Chapter 120, F.S., and the Uniform Rules of Procedure, Rule Chapter 28, F.A.C.

15. At any requested hearing, the burden is on the candidate to establish by a preponderance of the evidence that his or her examination was erroneously or improperly graded. See Espinoza v. Department of Business and Professional Regulation, Florida Board of Professional Engineers, 739 So. 2d 1250, 1251 (Fla. 3rd DCA 1999); 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); and Hall v. Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, No. 06-0393, 2006 Fla. Div. Adm. Hear. LEXIS 234 *9-10 (Fla. DOAH May 31, 2006)(Recommended Order).

16. In the instant case, Petitioner requested a hearing to contest the failing score he attained on the February 2007 Certification Examination. His challenge is directed exclusively

to his failure to have received credit for the answer he gave in response to Question 162. If Petitioner had received credit for this answer, he would have had a passing score on the examination.

17. A review of the record evidence reveals that Petitioner has not made a sufficient showing in support of his position that he was erroneously or improperly denied credit for his answer to Question 162.

18. Petitioner has failed to show that this multiple choice question was unclear, ambiguous or in any other respect unfair or unreasonable. Neither has he established that he correctly answered the question.

19. Accordingly, in declining to award him credit for his answer to the question, those grading his examination did not act arbitrarily or without reason or logic.

20. In view of the foregoing, Petitioner's challenge to the failing score he received on the February 2007 Certification Examination is without merit.

RECOMMENDATION

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

RECOMMENDED that a final order be entered rejecting
Petitioner's challenge to the failing score he received on the
February 2007 Certification Examination.

DONE AND ENTERED this 21st day of August, 2007, in
Tallahassee, Leon County, Florida.

S

STUART M. LERNER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of August, 2007.

ENDNOTES

¹ All references in this Recommended Order to Florida Statutes
are to Florida Statutes (2007).

² The undersigned has not recited the text of Question 162 in
the interest of preserving its confidentiality. See §
943.173(3), Fla. Stat. ("All examinations, assessments, and
instruments and the results of examinations, other than test
scores on officer certification examinations, including
developmental materials and workpapers directly related thereto,
prepared, prescribed, or administered pursuant to ss. 943.13(9)
or (10) and 943.17 are exempt from the provisions of s.
119.07(1) and s. 24(a), Art. I of the State
Constitution. . . .").

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.