

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LEONARD V. SMITH,)
)
 Petitioner,)
)
 vs.) Case No. 07-4004SED
)
 DEPARTMENT OF CHILDREN)
 AND FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A final hearing was conducted in this case on January 10, 2008, in Tallahassee, Florida, before Suzanne F. Hood, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jerry F. Traynham, Esquire
Patterson & Traynham
315 Beard Street
Tallahassee, Florida 32315-4289

For Respondent: Juan R. Collins, Esquire
Department of Children and Families
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STATEMENT OF THE ISSUE

The issue is whether Respondent properly reclassified Petitioner's position as a Senior Management Analyst Supervisor

from career service status to selected exempt status pursuant to Sections 110.205(2)(x) and 447.203(4), Florida Statutes (2001).

PRELIMINARY STATEMENT

On or about July 1, 2001, Respondent Department of Children and Family Services (Respondent) advised Petitioner Leonard V. Smith (Petitioner) that Respondent was transitioning Petitioner's position as Senior Management Analyst Supervisor from career service status to selected exempt service status. By letter dated December 3, 2002, Respondent informed Petitioner that he was being dismissed from his employment position.

According to the December 3, 2002, letter, Respondent took the action pursuant to Part V, Section 110.604, Florida Statutes, covering the selected exempt service system. The letter stated that selected exempt service employees such as Petitioner served at the pleasure of the agency head and were subject to dismissal at the discretion of the agency head. The letter advised Petitioner that his dismissal was exempt from the provision of Chapter 120, Florida Statutes.

In a letter dated July 22, 2003, Respondent gave Petitioner notice that he could challenge Respondent's decision to reclassify his position on the basis that his position did not qualify for selected exempt service status. On August 12, 2003, Petitioner filed a request for a formal administrative hearing.

On September 4, 2007, Respondent referred the hearing request to the Division of Administrative Hearings.

A Notice of Hearing dated September 17, 2007, scheduled the hearing for October 30, 2007. However, on October 24, 2007, the parties filed a Joint Motion to Continue Hearing. On October 25, 2007, the undersigned granted the motion.

The undersigned issued a Notice of Hearing dated November 2, 2007. The notice scheduled the hearing for January 10, 2008.

During the hearing, Petitioner testified on his own behalf and offered three exhibits that were accepted as evidence. Respondent presented the testimony of two witnesses and offered three exhibits that were accepted as evidence.

On January 18, 2008, the court reporter filed the hearing transcript. On January 25, 2008, the parties filed a Joint Motion for Extension of Time to Submit Recommended Orders. On January 28, 2008, the undersigned issued an Order Granting Extension of Time. On February 5, 2008, the parties filed their Proposed Recommended Orders.

FINDINGS OF FACT

1. Petitioner worked for Respondent for approximately 30 years. He was a Board Certified Behavior Analyst and had training as a Risk Manager.

2. During his state employment, Respondent became known as Respondent's expert for the Baker Act, Chapter 394, Part I, Florida Statutes (Baker Act). The Baker Act sets the standard in Florida for determining whether people can be involuntarily examined and treated within public and private mental health facilities.

3. Petitioner's work as Respondent's Baker Act expert involved very independent work. He performed extensive research related to the laws of other states in the mental health area. He analyzed and made recommendations on subjects such as misuse of seclusion and restraints, the absence of documentation or doctor's orders, and the availability of medication upon release from a mental health facility.

4. Petitioner's research and review of national accreditation standards led to the development of standards for state-wide Baker Act procedures and associated clinical care in state-run mental health receiving and treatment facilities. Ensuring compliance with these procedures and/or standards impacted state employees administering state facilities.

5. Petitioner reviewed professional journals to learn federal block grant requirements. Petitioner's research and recommendations often resulted in proposed amendments to state law and associated Florida Administrative Code rules.

6. Petitioner's assignments included answering constituent requests about the Baker Act from stakeholders on behalf of legislators and the Governor's Office. He conducted public hearings on the subject and gathered comments from a variety of sources, including but not limited to, the Florida Psychiatric Society, the Florida Psychological Society, the National Alliance on Mental Illness, the Advocacy Center for Persons with Disabilities, the Florida Council for Community Mental Health, and the Florida Alcohol and Drug Abuse Association.

7. In other words, Respondent relied on Petitioner to answer inquiries about the Baker Act from the following: (a) families with members who have mental illness; (b) Respondent's district staff members; (c) the staff members of private provider agencies; (d) labor unions; (d) trade associations; (e) the judiciary; (f) law enforcement; and (g) legislative staff. To say the least, Petitioner's duties regarding the Baker Act were not of a routine clerical or administrative nature.

8. Sometime after 1997, Respondent reorganized its adult mental health unit into two sections. The state mental health treatment facilities constituted one section consisting of six or seven state-operated or state-contracted facilities for people needing long-term care. The other section consisted of community mental health facilities that provided mental health

services to people in communities, including people in crisis or with forensic involvement.

9. After the reorganization, Petitioner worked primarily in the adult community mental health section with private providers. Petitioner worked with Ron Kizirian, his counterpart in the state mental health treatment facilities section. Petitioner used his Baker Act expertise, working as a team with Mr. Kizirian, to coordinate and address all issues state-wide regarding the Baker Act.

10. Respondent's staff generally considered the adult community mental health services to be more progressive in attempting to provide patients with appropriate services. The state institution services were typically characterized as reactive, custodial, and generally, not positive. Petitioner's duties after the reorganization included explaining the things he did in the community side so that the institutional side would understand the concepts and issues.

11. At the time of the reorganization, there were approximately 550 to 600 private, not-for-profit community mental health providers with state contracts. The adult community mental health section managed these contracts. Petitioner's duties included engaging in preliminary contract discussions with private providers, clarifying issues, and generally participating in the development of the contracts and

their associated budgets and grants. He also was involved in recommending amendments to the contracts.

12. As a contract manager, Petitioner monitored the activities of private providers. He initiated corrective action procedures. Petitioner's duties included the following: (a) making sure private contractors stayed within their budgets; (b) ensuring that private contractors agreed to performance standards; (c) pre-auditing the vouchers of vendors; and (d) submitting vouchers for payment.

13. Petitioner's job included investigating high profile events on Respondent's behalf. For instance, Petitioner was sent to investigate alleged abuses in crisis stabilization units in Orlando, Florida. Petitioner would then draft a report for his superiors.

14. Petitioner would often represent his superiors in meetings. Petitioner also performed as acting supervisor in the absence of his immediate supervisor.

15. On or about October 1, 2000, Petitioner was a career service employee, serving as an Operations and Management Consultant. On March 6, 2001, Respondent changed the title of Petitioner's position to Senior Management Analyst II and then back to Operations and Management Consultant on the same day. On March 16, 2001, Petitioner's position changed again to Senior Management Analyst II.

16. On June 27, 2001, and effective July 1, 2001, Petitioner's position title was reclassified to Senior Management Analyst Supervisor, a selected exempt service position. Petitioner was serving in that capacity when Respondent terminated his employment on December 3, 2002.

17. Petitioner never supervised any other employees except to the extent that he served as acting supervisor in his immediate supervisor's absence. He signed a performance evaluation on March 27, 2002, indicating that critical elements involving directing leadership, staffing, performance appraisal/feedback and discipline administration did not apply to his performance for the rating period from October 30, 2001, to March 6, 2002. Petitioner performed the same duties and functions before and after reclassification from career service to selected exempt services.

18. At the time of reclassification, Petitioner inquired of his immediate supervisor why Respondent changed his position from career service to selected exempt service. The immediate supervisor referred Petitioner's inquiry to next higher level supervisor who advised Petitioner not to challenge the determination but to "just keep his job."

19. During the discovery phase of this proceeding, Respondent contended that Petitioner's position was reclassified for the following reason:

Petitioner's position was reclassified to Select Exempt Service because his position was managerial with [sic] the meaning of Section 447.203(4), Florida Statutes. Petitioner's duties and responsibilities as Senior Management Analyst Supervisor was not of a routine, clerical or ministerial nature and required the exercise of independent judgment and the position also required the Plaintiff [sic] to develop performance guideline for the state mental health facilities, supervise adult mental health staff and facilitate resolution of complex programmatic, management, administrative or regulatory issues affecting state mental health facilities and districts.

20. During the discovery phase of this proceeding, Respondent produced a generic selected exempt service position description for a Senior Management Analyst Supervisor. The position description contains the duties and responsibilities for senior staff in Respondent's state mental health facilities section and Respondent's adult community mental health facilities section.

21. The position description sets forth some of Petitioner's duties relative to the Baker Act for state-wide public and private mental health institutions and/or facilities and relative to other mental health issues in adult community mental health facilities as follows: (a) provides consultation to the state mental health treatment facilities and districts on operational and programmatic mental health system issues; (b) facilitates resolution of complex programmatic, management,

administrative or regulatory issues affecting state mental health treatment facilities and districts; (c) develops/coordinates development of performance guidelines for state mental health treatment facilities; (d) reviews/analyzes data and develops written reports as needed; (e) coordinates or participates as a member of various workgroups and project teams to address issues affecting provision of mental health services within the state; (f) assists with negotiating or developing contracts with private providers as needed; (g) prepares various reports and correspondence; (h) assists with the development of budget and rate amendments for mental health entities; (i) develops and utilizes consultant expertise as need in various projects; (j) researches information regarding mental health programs/systems; and (k) provides on-site visits to districts and state facilities to provide technical assistance regarding administrative and/or programmatic issues.

CONCLUSIONS OF LAW

22. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2007).

23. This case preceded to hearing based upon the holding in Reinshuttle v. Agency for Health Care Administration, 849 So. 2d 439 (Fla. 1st DCA 2003). The purpose was to factually

determine whether Petitioner's position as Senior Management Analyst Supervisor was properly reclassified from career service to selected exempt service consistent with the expectations set forth in Section 110.205(2)(x), Florida Statutes (2001).

24. Because Respondent reclassified the employment position from career service to selected exempt service, it bears the burden of proving by a preponderance of the evidence that the reclassification met statutory expectations. See Young v. Department of Community Affairs, 625 So. 2d 831 (Fla. 1993); Florida Dept. of Transportation v. J.W.C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

25. Section 110.205(1), Florida Statutes (2001), provides that "[t]he career service to which this part applies includes all positions not specifically exempted by this part, any other provision of the Florida Statutes to the contrary notwithstanding." The exempted positions are listed in Section 110.205(2), Florida Statutes (2001). Material to this case, Section 110.205(2)(x), Florida Statutes (2001), specifically lists managerial employees, as defined in Section 447.203(4), Florida Statutes (2001), as selected exempt service employees effective July 1, 2001. The facts do not reveal that Petitioner served as a "supervisory employee" or acted as a "confidential

employee" pursuant to Section 110.205(2)(x), Florida Statutes (2001).

26. Managerial employees are defined in Section 447.203(4) as follows in pertinent part:

(4) "Managerial employees" are those employees who:

(a) Perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one of more of the following applies:

1. They formulate or assist in formulating policies which are applicable to bargaining unit employees.

* * *

7. They have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.

27. Based upon the facts, Petitioner's duties and responsibilities met the criteria for a "managerial employee" pursuant to Sections 447.203(4)(a)1. and 447.203(4)(a)7., Florida Statutes (2001). All other criteria that might establish Petitioner's role as a "managerial employee" set forth in Section 447.203(4), Florida Statutes (2001), do not pertain here.

28. Petitioner was more than a consultant. He conducted research and made recommendations regarding mental health standards and policies requiring independent judgment. Respondent relied on Petitioner to work with legislative staff

and other stakeholders to draft statutes and administrative rules relating to the Baker Act. He was the go-to person for any public or private inquiries about the Baker Act. He was charged with the responsibility of investigating and making reports on high-profile issues about abuse in mental health facilities. Petitioner's job met the criteria established in Section 447.203(4)(a), Florida Statutes (2001).

29. Petitioner used his Baker Act expertise to assist Respondent in formulating policies applicable to public mental health institutions and to private community mental health facilities. Once approved by his superiors, Petitioner's recommendations formed the basis for standards and policies that were applicable to bargaining unit employees charged with ensuring compliance by state institutions and employees actually operating state mental health receiving and treatment facilities. Petitioner's job met the criterion for "managerial employees" set forth in Section 447.203(4)(a)1., Florida Statutes (2001).

30. Petitioner also played a significant role in managing the contracts of private providers by participating in contract and budget development, monitoring budget activities, initiating corrective budget and contract procedures, conducting pre-audit of vouchers, and submitting vouchers for payment. Petitioner's function as a manager of private provider contracts was more

than a processor or functionary with no authority to make substantive decisions about contract performance. Petitioner's job met the criterion for "managerial employees" set forth in Section 447.203(4)(a)7., Florida Statutes (2001).

31. Petitioner's duties and responsibilities qualified him as a managerial employee consistent with statutory expectations. Respondent properly reclassified his position to selected exempt service effective July 1, 2001.

RECOMMENDATION

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

RECOMMENDED:

That Respondent enter a final order finding that Petitioner's position of Senior Management Analyst Supervisor was that of a select exempt employee.

DONE AND ENTERED this 3rd day of March, 2008, in Tallahassee, Leon Country, Florida.

Suzanne F. Hood

SUZANNE F. HOOD
Administrative Law Judge
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Filed with the Clerk of the
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this 3rd day of March, 2008.

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.