

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARLOS A. REDDING,)
)
 Petitioner,)
)
 vs.) Case No. 07-5068
)
)
 CRIMINAL JUSTICE STANDARDS)
 AND TRAINING COMMISSION,)
)
 Respondent.)
)
 _____)

RECOMMENDED ORDER

On January 8, 2008, a hearing was held in Tallahassee, Florida, pursuant to Sections 120.569 and 120.57(1), Florida Statutes. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: Carlos Redding, pro se
514 South Main Street
Quincy, Florida 32351

For Respondent: Grace A. Jaye, Esquire
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

STATEMENT OF THE ISSUE

Whether Petitioner's challenge to the State Officer's examination should be sustained.

PRELIMINARY STATEMENT

This case arose because Petitioner failed to pass the State Officer Certification examination. On October 9, 2007,

Respondent wrote to Petitioner and advised him that no credit would be added to his original score based on an expert review of the items he challenged from the examination. He was instructed regarding his right to dispute the decision and request a hearing.

On October 13, 2007, Petitioner wrote the Department's representative, stating he disputed the agency's decision with respect to the 11 questions he challenged. The Department responded October 22, 2007, advising Petitioner that his request for formal hearing was being denied because it did not conform to the requirements of Sections 120.569 and 120.57, Florida Statutes, and Florida Administrative Code Rule 28-106.201. Petitioner was given the opportunity to file an amended petition within fifteen days.

On November 1, 2007, Petitioner filed Petitioner's Request for a Formal Hearing and Challenge to Examination results, limited to challenging questions 128 and 150. On November 5, 2007, Petitioner's request was forwarded to the Division of Administrative Hearings for assignment of an administrative law judge. The matter was duly noticed for hearing to be conducted January 8, 2008.

On December 28, 2007, Respondent filed a Motion for Protective Order, and at the commencement of the hearing, argument was heard on the Motion, which was unopposed. The Motion was granted to prevent the actual test questions and

responses from being publicly divulged in any manner by those having access to them as a result of this proceeding. Pursuant to the Protective Order, questions and answers from the examination, to the extent they are included in the record, have been sealed in the record and, in accordance with law, shall not be available for public inspection. Likewise, the transcript of the proceeding shall not be disseminated without redaction of those portions that contain the text of the questions and answers to the examination.

At hearing, Petitioner testified on his own behalf and Petitioner's Exhibits numbered 1-3 were admitted into evidence. The Department presented two witnesses and Respondent's Composite Exhibit 1 was admitted. At the conclusion of the hearing, the parties were advised to file proposed recommended orders within ten days of the filing of the transcript. The transcript was filed with the Division on January 22, 2008, and both Proposed Recommended Orders were timely filed. Both submissions have been carefully considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner took the State Officers Certification Examination (SOCE) on August 29, 2007. This was Petitioner's third time taking the examination, which he did not pass.

2. While it is clear that Petitioner did not pass, no evidence was presented indicating what score was achieved on the examination. Likewise, no evidence was presented regarding the value of the questions challenged in this proceeding. Therefore, it cannot be determined on this record whether awarding credit for or discarding the two challenged questions would result in a passing score.

3. Question 128^{1/} required the applicant to demonstrate knowledge of the formula used for calculating the speed a car was traveling from skid marks. The scenario in the question provided enough information for the test taker to answer the question correctly. The proposed answers placed different factors from the scenario in the formula. The correct answer fitting the formula was answer choice "C". Petitioner answered "B".

4. Petitioner challenged the question because the correct answer reflected a whole number and resulted from "rounding up," when the training materials provided instructed students not to "round up."

5. The question did not ask the applicant for the exact number, but asked that they identify the answer with the correct formula components. Petitioner's answer did not include the appropriate formula components. The correctness of Petitioner's answer was in no way affected by his complaint about "rounding up." Indeed, all of the available answers were whole numbers.

6. Question 128 is statistically valid. Eighty-two percent of all applicants who have answered this question have answered it correctly. The question has been answered by 3,606 students. Of that number, 2,960 students have answered the question correctly, while only 399 have chosen the answer selected by Petitioner.

7. Question 150 required the applicant to determine what charges could be considered against a person going under or attempting to go under a crime-scene tape. The scenario in the question provided enough information for the test-taker to answer the question correctly. Given the facts presented in the scenario for question 150, the correct answer was "D". Petitioner answered "C".

8. Petitioner's challenge to the question is based upon assumptions related to the scenario that were not presented in the examination, coupled with a misreading of the training materials. Moreover, of the 1,126 applicants who have answered question 150, 757 students have answered the question correctly. Only 353 applicants have chosen the answer selected by Petitioner.

9. Petitioner has failed to show that either question 128 or question 150 was unclear, ambiguous or in any respect unfair or unreasonable. Neither has he established that he answered either question correctly.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

11. Section 943.17(1)(e), Florida Statutes, requires the Criminal Justice Standards and Training Commission to implement, administer, maintain and revise a job-related certification for each discipline the Commission certifies.

12. Section 943.1397, Florida Statutes, provides in pertinent part:

(1) Except as provided in subsection (4), on and after July 1, 1993, the commission shall not certify any person as an officer until the person has achieved an acceptable score on the officer certification examination for the applicable criminal justice discipline. The commission shall establish procedures by rule for the administration of the officer certification examinations and student examination reviews. Further, the commission shall establish standards for acceptable performance on each officer certification examination.

(2) For any applicant who fails to achieve an acceptable score on an officer certification examination, the commission shall, by rule, establish a procedure for retaking the examination, and the rule may include a remedial training program requirement. An applicant shall not take an officer certification examination more than three times, unless the applicant has reenrolled in, and successfully completed, the basic recruit training program.

13. Petitioner bears the burden of proof in this proceeding, and must show by a preponderance of the evidence that he actually passed the SOCE examination. He must prove that Respondent capriciously and arbitrarily failed to give petitioner the grade he earned on the exam. Harac v. Department of Professional Regulation, 484 So. 2d 1333, 1338 (Fla. 3d DCA 1986); State ex rel. Glaser v. Pepper, 155 So. 2d 383, 384 (Fla. 1st DCA 1963); State ex rel. Topp v. Board of Electrical Contractors of Jacksonville Beach, 101 So. 2d 583, 586 (Fla. 1st DCA 1958).

14. In this case, Petitioner has failed to meet his burden. As a preliminary matter, it cannot be determined on this record whether credit for or the discarding of the challenged questions would result in a passing score on the examination.

15. Even assuming that receiving credit for the challenged questions would result in a passing score, Petitioner has failed to present any evidence that he was erroneously or improperly denied credit for his responses to Questions 128 and 150. He has failed to show that either question was unclear, ambiguous, misleading, or unfair or unreasonable in any way. Nor has Petitioner established that he correctly answered either of the disputed questions. Accordingly, Petitioner's challenge to questions 128 and 150 must fail.

RECOMMENDATION

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

RECOMMENDED:

That the Florida Department of Law Enforcement enter a final order rejecting Petitioner's challenge to the scoring on questions 128 and 150 of the SOCE and dismiss the petition in this proceeding.

DONE AND ENTERED this 12th day of February, 2008, in Tallahassee, Leon County, Florida.

S

LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of February, 2008.

ENDNOTE

^{1/} The text of the questions challenged have not been recited in order to preserve their confidentiality. § 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 work papers directly related thereto, prepared,

prescribed, or administered pursuant to §§ 943.13(9) or (10) and 943.17 are exempt from the provisions of § 119.07(1) and § 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.