

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHERRY A. BLOW-BEASLEY,)
)
 Petitioner,)
)
 vs.) Case No. 08-2487SED
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 30, 2008, by video teleconference with connecting sites in Lauderdale Lakes and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sherry A. Blow-Beasley, pro se
Post Office Box 1681
Hallandale, Florida 33008

For Respondent: Jacob C. Jackson, Esquire
Department of Children and
Family Services
201 West Broward Boulevard, Suite 502
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner's position was properly reclassified by Respondent under the

Service First Initiative from Career Service to Select Exempt Service.

PRELIMINARY STATEMENT

Sherry A. Blow-Beasley, a/k/a Sherry A. Blow, a/k/a Sherry A. Strange-Blow a/k/a Sherry A. Beasley, hereinafter Ms. Blow-Beasley, was notified by the Department of Children and Family Services, hereinafter DCFS, that her employment position was reclassified under Service First from Career Service to Select Exempt Service (SES). Ms. Blow-Beasley challenged the classification and requested a hearing.¹ On May 21, 2008, this matter was referred to the Division of Administrative Hearings.

Prior to the final hearing the parties filed a Revised Joint Stipulation of Facts. At hearing, DCFS' Motion to Dismiss, which was filed prior to hearing, was heard. After hearing the parties' arguments, the motion was denied. Ms. Blow-Beasley testified in her own behalf and entered no exhibits into evidence. DCFS did not present the testimony of any witnesses and entered two exhibits (Respondent's Exhibits numbered 1 and 2) into evidence.

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on October 20, 2008. The parties timely filed their post-hearing submissions,

which were considered in the preparation of this Recommended Order.²

FINDINGS OF FACT³

1. Ms. Blow-Beasley was employed with DCFS, formerly known as Department of Health and Rehabilitative Services, hereinafter HRS, in Broward County, Florida from February 1, 1988 to June 7, 2002.

2. From August 3, 2000 to July 2001, as part of her employment with DCFS, Ms. Blow-Beasley worked for Economic Services.

3. On September 29, 2000, Ms. Blow-Beasley was hired as a Public Assistance Specialist Supervisor by DCFS, which was a Career Service position.

4. From September 29, 2000 to July 2001, a Public Assistance Specialist Supervisor was a supervisory position with HRS and/or DCFS.

5. From September 29, 2000 to July 1, 2001, in her role as a Public Assistance Specialist Supervisor, Ms. Blow-Beasley supervised two or more employees.

6. As part of her duties as a Public Assistance Specialist Supervisor, Ms. Blow-Beasley reviewed and approved employee time (work time, sick leave, annual leave, vacation, etc.) of employees under her supervision.

7. Also, as part of her duties as a Public Assistance Specialist Supervisor, Ms. Blow-Beasley reviewed the work and performance of employees under her supervision.

8. Additionally, as part of her duties as a Public Assistance Specialist Supervisor, Ms. Blow-Beasley was responsible for ensuring that employees under her supervision met certain DCFS' performance standards and measures.

9. Further, as part of her duties as a Public Assistance Specialist Supervisor, Ms. Blow-Beasley was responsible for ensuring that employees under her supervision complied with certain state and federal laws.

10. Furthermore, as part of her duties as a Public Assistance Specialist Supervisor, Ms. Blow-Beasley conducted, approved and/or executed performance evaluations for those persons whom she supervised.

11. By letter dated June 15, 2001, Ms. Blow-Beasley was notified by DCFS that her position in Career Service was being "transferred" to SES, effective July 1, 2001. Her position in Career Service was reclassified as a SES position.

12. Ms. Blow-Beasley informed her supervisor that she did not want to remain in SES and would accept a demotion to be in Career Service. Her request was not granted.

13. From July 2001 to June 7, 2002, as part of her employment with DCFS, Ms. Blow-Beasley worked for the Economic Self-Sufficiency, hereinafter ESS, Program.

14. From July 2001 to June 7, 2002, Ms. Blow-Beasley's position title was, and she was employed as, ESS Supervisor Specialist.

15. From July 2001 to June 7, 2002, an ESS Supervisor Specialist was a supervisory position with DCFS.

16. As part of her duties as an ESS Supervisor Specialist, Ms. Blow-Beasley reviewed and approved employee time (work time, sick leave, annual leave, vacation, etc.) of employees under her supervision.

17. Also, as part of her duties as an ESS Supervisor Specialist, Ms. Blow-Beasley reviewed the work and performance of employees under her supervision.

18. Additionally, as part of her duties as an ESS Supervisor Specialist, Ms. Blow-Beasley was responsible for ensuring that employees under her supervision met certain DCFS' performance standards and measures.

19. Further, as part of her duties as an ESS Supervisor Specialist, Ms. Blow-Beasley was responsible for ensuring that employees under her supervision complied with certain state and federal laws.

20. Furthermore, as part of her duties as an ESS Supervisor Specialist, Ms. Blow-Beasley conducted, approved and/or executed performance evaluations for those persons whom she supervised.

21. Ms. Blow-Beasley does not dispute that, from September 29, 2000 to June 7, 2002, she was a supervisor and had been in both Career Service and SES as a supervisor.

22. Ms. Blow-Beasley does not dispute that, when her position was reclassified from Career Service to SES, her duties and responsibilities did not change, but remained the same.

23. No direct evidence was presented to demonstrate that Ms. Blow-Beasley had the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees. However, an inference is drawn and a finding of fact is made that, based on her duties, she had the authority to effectively recommend the action to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees.

24. Approximately one year after the reclassification, on June 7, 2002, Ms. Blow-Beasley was dismissed from employment with DCFS. On the said date, she signed a letter acknowledging receipt of the notice of dismissal from DCFS.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2008).

26. These proceedings are de novo. § 120.57(1)(k), Fla. Stat. (2008).

27. The general rule is that "the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal." Florida Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778, 788 (Fla. 1st DCA 1981). DCFS has the burden of proof to show by the preponderance of the evidence that its reclassification of Ms. Blow-Beasley's position from Career Service to SES was proper. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996); J. W. C. Company, Inc., supra.; § 120.57(1)(j), Fla. Stat. (2008).

28. In 2001, the Florida Legislature directed the Department of Management Services (DMS) to restructure the State's personnel system and mandated DMS to create a position classification system for Career Service and SES positions; state agencies were responsible for the application of the system and had the responsibility to reclassify established

agency positions within the classes established by DMS. See Fuller v. Department of Education, 927 So. 2d 28, 29, 30 (Fla. 1st DCA 2006).

29. State employees were deemed to be in Career Service positions unless positions were exempted. § 110.205(1), Fla. Stat. (2001).

30. Section 110.205, Florida Statutes (2001), provides in pertinent part:

(2) EXEMPT POSITIONS. --The exempt positions that are not covered by this part include the following:

* * *

(x) Managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. . . . (emphasis in original)

31. The evidence demonstrates that Ms. Blow-Beasley's Career Service position was a supervisory position and that, when the position was reclassified to SES, it remained a supervisory position. The evidence further demonstrates that

her duties associated with her Career Service position did not change when the position was reclassified to an SES position.

32. Additionally, the evidence demonstrates that Ms. Blow-Beasley's duties in her reclassified position did not differ from, but remained the same as, the duties in her Career Service position.

33. Moreover, the evidence demonstrates that Ms. Blow-Beasley's position met the criteria for an exempt position. § 110.205(2)(x), Fla. Stat. (2001).

34. Hence, DCFS met its burden in demonstrating that Ms. Blow-Beasley's Career Service position was properly reclassified as an SES position.

35. This Administrative Law Judge is without authority in this proceeding to address Ms. Blow-Beasley's position that she did not wish to remain in the position that was reclassified and requested a demotion to return to Career Service, but her request was not granted.

RECOMMENDATION

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

RECOMMENDED that the Department of Children and Family Services enter a final order finding that Ms. Sherry A. Blow-Beasley's Career Service position was properly reclassified as a Select Exempt Service position.

DONE AND ENTERED this 18th day of November 2008, in
Tallahassee, Leon County, Florida.

Errol H. Powell

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of November, 2008.

ENDNOTES

^{1/} The record in this matter reflects that DCFS' letter, notifying Ms. Blow-Beasley of her right to an administrative hearing based on the reclassification, is dated July 22, 2003 and that Ms. Blow-Beasley's Request for Hearing is dated May 3, 2008. No explanation was provided by DCFS regarding these two documents.

^{2/} Ms. Blow-Beasley attached to and incorporated in her post-hearing submission two letters, one notarized, which were not admitted into evidence at hearing and were, therefore, not considered. Additionally, DCFS attached and incorporated in its post-hearing submission two exhibits, which were not admitted into evidence at hearing and were, therefore, not considered.

^{3/} Findings of Fact numbered 1 through 10, 13 through 20, and 24 are facts stipulated to by the parties although not verbatim.

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.