

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF AGRICULTURE AND)
CONSUMER SERVICES,)
)
Petitioner,)
)
vs.) Case No. 08-2580PL
)
KEITH B. LEWIS,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 1, 2008, in DeFuniak Springs, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: David W. Young, Esquire
Department of Agriculture and
Consumer Services
Mayo Building, Suite 520
407 South Calhoun Street
Tallahassee, Florida 32399-0800

For Respondent: (No appearance)

STATEMENT OF THE ISSUES

The issues in this case are whether Respondent violated Subsections 482.121(1)(a) and 482.121(1)(b), Florida Statutes (2007),¹ and, if so, what discipline should be imposed.

PRELIMINARY STATEMENT

On February 12, 2008, Petitioner, Department of Agriculture and Consumer Services, issued an Administrative Complaint against Respondent, Keith Lewis (Mr. Lewis), alleging that Mr. Lewis had violated Subsections 482.121(1)(a) and 482.121(1)(b), Florida Statutes, by allowing his certificate to be used by a licensee to secure or keep a license, when he was not in charge of the pest control activities in the category or categories covered by his certificate and was not a full-time employee. Mr. Lewis requested an administrative hearing.

The case was forwarded to the Division of Administrative Hearings on May 27, 2008, for assignment to an Administrative Law Judge. The case was originally assigned to Administrative Law Judge Charles C. Adams, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

The final hearing was scheduled to commence at 10:00 a.m. Central Time, and Mr. Lewis was provided notice of the final hearing. At 10:00 a.m., Mr. Lewis had not appeared for the final hearing. The commencement of the hearing was delayed until 10:20 a.m. to allow Mr. Lewis an opportunity to appear, but neither Mr. Lewis nor a representative for Mr. Lewis appeared for the final hearing.

At the final hearing, Petitioner called Michael Page and Michael Walters as its witnesses. Petitioner's Exhibits 1, 2, 3, 5, and 6 were admitted in evidence.

No transcript of the final hearing was filed. Petitioner filed its Proposed Recommended Order on August 8, 2008.

Mr. Lewis did not file any post-hearing submittal.

FINDINGS OF FACT

1. PFSG, Inc., d/b/a US Lawns of Destin (US Lawns),² submitted a Pest Control Business License Application to the Petitioner, listing Mr. Lewis as its certified operator in charge for lawn and ornamental pest control, effective August 9, 2007. Mr. Lewis' certificate number is Jf 13685.

2. US Lawns had been operating on an emergency certificate from June 6, 2007, until Mr. Lewis' employment on August 8, 2007. In its application for a business license, US Lawns requested that its emergency certificate be canceled as of August 8, 2007.

3. In order for a pest control company to operate, the company has to have a certified pest control operator in charge of the pest control activities at the licensed business location. If a company does not have a certified operator to serve as the certified operator in charge, an emergency certificate can be issued and renewed monthly up to a year,

allowing an employee who did not have a certified operator's certificate to serve as the certified operator in charge.

4. As the certified operator in charge for US Lawns, Mr. Lewis applied to Petitioner for a pest control employee identification card, effective August 9, 2007. He listed the commencement of his employment with US Lawns as August 9, 2007. He also stated that his last employment with a pest control company had ended on June 11, 2007. A pest control employee identification card was issued to Mr. Lewis by Petitioner.

5. Mr. Lewis' wife died on July 4, 2007.

6. Petitioner received a complaint that Mr. Lewis was not working full time for US Lawns and was allowing US Lawns to use his certificate to maintain its business license. Based on the complaint, Michael Walters, who is employed by Petitioner as an environmental specialist II, began an investigation.

7. Mr. Walters went to US Lawns' office and made an inspection. On October 31, 2007, Mr. Walters went to see Mr. Lewis at Mr. Lewis' home for the purpose of interviewing Mr. Lewis. Mr. Lewis gave Mr. Walters a signed affidavit, which stated:

I work full time with U.S. Lawns of Santa Rosa Beach. I have been part time since the loss of my wife, but I do go to work at least once a week and check on things. I do all the training for card holders and such. As soon as I feel better I should be back

fulltime. I have been there around 5 yrs.,
minus one year with another company.

8. In his request for an administrative hearing, Mr. Lewis stated: "I was on vacation for 4 weeks, due to the death of my wife," and I was not working part time ever.

9. The evidence is clear that Mr. Lewis was not working full time for US Lawns from the time of his wife's death until at least the date of his affidavit, October 31, 2007.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2008).

11. Petitioner has the burden of establishing the allegations in the Administrative Complaint by clear and convincing evidence. Department of Banking and Finance v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996). Petitioner has alleged that Mr. Lewis violated Subsections 482.121(1)(a) and 482.121(1)(b), Florida Statutes, which provides:

- (1) A certified operator may not allow her or his certificate to be used by a licensee to secure or keep a license unless:
 - (a) She or he is in charge of the pest control activities of the licensee in the category or categories covered by her or his certificate;
 - (b) She or he is a full-time employee of the licensee . . .

12. Subsection 482.111(6)(a), Florida Statutes, provides:

Each location of each licensed pest control business must have a certified operator in charge who is certified for the particular category of pest control engaged in at that location. A certified operator in charge must be registered with the department pursuant to rules adopted pursuant to this section. A certified operator in charge may be in charge of one or more categories if she or he is certified for those categories.

13. Section 482.152, Florida Statutes, sets forth the duties of a certified operator in charge and states:

A certified operator in charge of the pest control activities of a licensee shall have his or her primary occupation with the licensee and shall be a full time employee of the licensee, and her or his principal duty shall include the responsibility for the personal supervision of and participation in the pest control activities at the business location of the licensee as the same relate to:

- (1) The selection of proper and correct chemicals for the particular pest control work performed.
- (2) The safe and proper use of pesticides used.
- (3) The correct concentration and formulation of pesticides used in all pest control work performed.
- (4) The training of personnel in the proper and acceptable methods of pest control.
- (5) The control measures and procedures used.
- (6) The notification of the department of any accidental poisoning or death connected

with pest control work performed on a job she or he is supervising, within 24 hours after she or he has knowledge of the poisoning or death.

14. Mr. Lewis was the certified operator in charge for US Lawns, for its lawn and ornamental pest control. US Lawns made application to Petitioner for a pest control business license, using Mr. Lewis as its certified operator in charge effective August 9, 2007, and requesting that its emergency certificate be canceled effective upon Mr. Lewis' employment.

15. Petitioner has established by clear and convincing evidence that Mr. Lewis violated Subsection 482.121(1)(a), Florida Statutes. By his own admission, Mr. Lewis stated that he went to US Lawns once a week to check on things. Going to work once a week to "check on things" does not equate to being in charge of the pest control activities for the lawn and ornamental pest control activities of US Lawns.

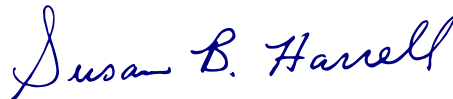
16. Petitioner has established by clear and convincing evidence that Mr. Lewis violated Subsection 482.121(1)(b), Florida Statutes. He was not a full-time employee of US Lawns. By his own admission on October 31, 2007, he had been working part time since the death of his wife. His wife died in July and his employment with US Lawns commenced in August. For at least three months, Mr. Lewis had not been working full time.

17. Subsection 482.121(3), Florida Statutes, provides that a certified operator's certificate may be revoked when it is used in violation of Section 482. 121, Florida Statutes.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered finding that Mr. Lewis violated Subsection 482.121(1)(a) and 482.121(1)(b), Florida Statutes, and revoking his certified operator's certificate.

DONE AND ENTERED this 19th day of August, 2008, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of August, 2008.

ENDNOTES

^{1/} Unless otherwise indicated, all references the Florida Statutes are to the 2007 version.

^{2/} US Lawns has also used the name US Lawns of Fort Walton Beach and US Lawns of Santa Rosa Beach as well as US Lawns of Destin.

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.