

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

AMELIA KANE-CRAWFORD,)
)
 Petitioner,)
)
 vs.) Case No. 08-3493SED
)
 DEPARTMENT OF CHILDREN)
 AND FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

On September 30, 2008, a duly-noticed hearing was held in Tallahassee, Florida, with Lisa Shearer Nelson, Administrative Law Judge, presiding.

APPEARANCES

For Petitioner: No appearance

For Respondent: Juan Collins, Esquire
Department of Children and
Family Services
1317 Winewood Boulevard
Building Two, Room 204
Tallahassee, Florida 32399-0700

STATEMENT OF THE ISSUE

Whether the classification of Petitioner's position from career service to selected exempt service was appropriate.

PRELIMINARY STATEMENT

Because of the procedural nature of the findings in this case, the statements normally contained in the Preliminary Statement are reflected in the Findings of Fact below.

FINDINGS OF FACT

1. On July 22, 2003, Petitioner received notice from the Department of Children and Family Services (DFCS or the Department) of a clear point of entry to challenge the reclassification of her position from career service to select exempt service. Petitioner filed a request for hearing on August 19, 2003, which apparently lay unaddressed for some time.

2. On March 6, 2008, the Department issued an Order on Status, advising Petitioner that her request for hearing filed August 19, 2003, did not comply with Section 120.569(2)(c), Florida Statutes, or Florida Administrative Code Rule 28-106.201(2). The Order directed Petitioner to file an amended request for hearing within 30 days or the case would be dismissed.

3. On May 6, 2008, the Department entered a Final Order Closing File, indicating no response had been received to its Order on Status. On May 29, 2008, Petitioner wrote to the Department indicating that the Final Order Closing File was the first correspondence she had received from the Department, and that the documents had been sent to a wrong address, notwithstanding that the Department had been supplied the correct address.

4. On July 18, 2008, the matter was referred to the Division of Administrative Hearings and an Initial Order was issued. No timely response was received to the Initial Order

from either party, and the matter was duly noticed for hearing for September 30, 2008.

5. On September 30, 2008, the hearing commenced as scheduled at 9:30 a.m. Respondent was present and ready to proceed. Petitioner was not present. The Division had, the day before, received a telephone call from Petitioner indicating that she might not appear, and she was advised of the need to either withdraw her request for hearing or request a continuance.

6. The undersigned recessed the hearing to give Petitioner every opportunity to arrive. In addition, the undersigned questioned her assistant and checked the official docket of the Division of Administrative Hearings to determine if any document had been filed on the docket of the Division or any telephone call was received indicating Petitioner was delayed. No such communication had been received.

7. Counsel for Respondent represented that he had not heard from the Petitioner in the days leading up to the hearing. In light of Petitioner's failure to appear, the hearing was adjourned at 10:03 a.m.

CONCLUSIONS OF LAW

8. 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 (2008).

9. Petitioner has the burden of demonstrating that her position with the Department was reclassified in error. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Florida Department of Transportation v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health & Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

10. In light of Petitioner's failure to appear, she has failed to meet her burden in this proceeding.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered dismissing Petitioner's request for hearing.

DONE AND ENTERED this 6th day of October, 2008, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of October, 2008.

COPIES FURNISHED:

Amelia E. Kane-Crawford
144 Durance Drive
Flintstone, Georgia 30725

Juan Collins, Esquire
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 204
Tallahassee, Florida 32399-0700

Gregory Venz, Agency Clerk
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 204B
Tallahassee, Florida 32399-0700

John J. Copelan, General Counsel
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 204
Tallahassee, Florida 32399-0700

George Sheldon, Interim Secretary
Department of Children and
Family Services
1317 Winewood Boulevard
Building 2, Room 202
Tallahassee, Florida 32399-0700

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.