

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TIMOTHY JONES,)
)
 Petitioner,)
)
 vs.) Case No. 08-5086
)
 FLORIDA KEYS COMMUNITY COLLEGE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case before Larry J. Sartin, an Administrative Law Judge of the Division of Administrative Hearings, on December 1 and 2, 2008, at Key West, Florida.

APPEARANCES

For Petitioner: Samuel J. Kaufman, Esquire
1509 Josephine Street, Suite 1
Key West, Florida 33040

For Respondent: Robert L. Norton, Esquire
Luke C. Savage, Esquire
Allen, Norton & Blue, P.A.
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STATEMENT OF THE ISSUES

The issues in this case are whether the Respondent Florida Keys Community College had good cause to remove 39 academic credits and an associate in science degree from Petitioner Timothy Jones' academic transcript and whether Respondent has

good cause to terminate Petitioner from employment as professor of marine propulsion.

PRELIMINARY STATEMENT

By letter dated January 3, 2008, the president of Respondent, Dr. Jill Landesberg-Boyle, notified Petitioner Timothy Jones that she had determined that he had not obtained his associate in science degree "under legitimate circumstances." Therefore, she informed Mr. Jones that she was directing that the degree be removed from his academic transcript and that she would be recommending to the Board of Trustees of Respondent that he be terminated from his instructional position with Respondent. Dr. Landesberg-Boyle further informed Respondent of his rights to challenge her recommendation.

By memorandum dated January 5, 2008, Dr. Landesberg-Boyle instructed the Director of Enrollment Services to "remove the 39 credits by exam on Mr. Tim Jones' FKCC transcript that were posted in April 2004. . . ."

On or about January 28, 2008, the Board of Trustees of Respondent voted to terminate Petitioner from his instructional position with Respondent.

On March 10, 2008, Petitioner served an Amended Petition for Administrative Appeal and Hearing. While not informed of a specific right to challenge Dr. Landesberg-Boyle's decision to

remove credits from his academic transcript, Petitioner challenged that decision and the decision of the Board of Trustees to terminate his employment with Respondent in the Amended Petition. Respondent served Respondent's Answer to Petition for Administrative Appeal and Hearing on March 26, 2008.

By letter dated September 25, 2008, addressed to the Clerk of the Division of Administrative Hearings (hereinafter referred to as the "DOAH"), from counsel for Respondent, Respondent requested the assignment of a DOAH administrative law judge to conduct a hearing pursuant to Chapter 120, Florida Statutes (2008), and a contract entered into under the authority of Section 120.65(7), Florida Statutes (2008). That contract was entered into between the DOAH and Respondent on or about September 28, 2008. The request for hearing was designated DOAH Case No. 08-5086 and was assigned to the undersigned.

By Notice of Hearing entered October 20, 2008, the final hearing of this matter was scheduled for December 1 and 2, 2008.

On November 18, 2008, a Joint Pre-Hearing Stipulation was filed by the parties. The Joint Pre-Hearing Stipulation contains agreed upon facts which, to the extent relevant, have been included in this Recommended Order.

At the commencement of the final hearing, it was suggested that, pursuant to Chapter 120, Florida Statutes (2008), it was

the Respondent that has the burden of proof in this matter. Respondent agreed and, consequently, presented its case first. Respondent's case consisted of the testimony of Clifford Colman, Petitioner, and Dr. Jill Landesberg-Boyle. Respondent also had admitted ten exhibits, which were identified as College Exhibits 1 through 10. Petitioner presented the testimony of Maureen Crowley, Sharon Toppino, Erika MacWilliams, Joseph Carbonnell, and Petitioner. Petitioner offered no exhibits.

A two-volume Transcript of the final hearing was filed with the DOAH on December 12, 2008. By agreement of the parties, proposed recommended orders were to be filed on or before January 12, 2009. A Notice of Filing Transcript was entered informing the parties of the filing of the Transcript and the due date for proposed recommended orders. A seven-day extension of the time for filing proposed recommended orders was requested in Respondent's Unopposed Motion for Extension of Time to File Post-Hearing Briefs. The extension was granted.

On January 19, 2009, Petitioner filed Petitioner's Proposed Recommended Order and Respondent filed Florida Keys Community College's Brief. Both submittals have been fully considered in entering this Recommended Order.

All references to Florida Statutes and the Florida Administrative Code in this Recommended Order are to the 2008 version unless otherwise indicated.

FINDINGS OF FACT

A. The Parties.

1. Respondent, the Florida Keys Community College (hereinafter referred to as the "FKCC"), is a part of the "Florida College System," subject to the provisions of Chapter 1001, Part III, Florida Statutes. FKCC, located in Key West, Florida, is specifically recognized as a Florida "community college" pursuant to Section 1000.21(3)(h), Florida Statutes. FKCC is governed by a local board of trustees. See § 1001.60(3), Fla. Stat.

2. FKCC's president is Jill Landesberg-Boyle, Ph.D.

3. At the times material to this proceeding, Petitioner, Timothy Jones, a full-time faculty member of FKCC, was employed by FKCC as an instructor in, and, for part of his employment, the director of, the Marine Engineering Department.

4. Mr. Jones was initially hired in August 2001. When hired, Mr. Jones, who had no prior teaching experience, possessed an associate of arts degree, which he had earned in the 1970's.

5. Mr. Jones did not possess an associate in science degree with a major in marine propulsion or marine engineering at the time he was hired. He did, however, possess practical experience, having owned and operated a marine outboard sales

and repair business for approximately two years prior to his employment with FKCC.

6. At some point prior to 2004, Mr. Jones became director of the Marine Engineering Department. In addition to his instructional duties, Mr. Jones acted as supervisor for Mark Welsh, another Marine Engineering Department instructor and the Department's faculty advisor.

7. Mr. Jones taught courses dealing with gasoline powered engines, while Mr. Welsh taught courses dealing with diesel powered engines.

B. Mr. Jones' Associate in Science Degree; Marine Engineering, Management & Seamanship.

8. In January or February 2004, Mr. Jones met with Dr. Maureen Crowley, then vice president of instruction for FKCC. At some point during the meeting, Dr. Crowley told Mr. Jones that it appeared that the Southern Association of Colleges and Schools (hereinafter referred to as the "SACS"), would likely be requiring that instructors at FKCC possess a degree in the area in which they were employed to teach. This was not a new requirement, but one that had not previously been enforced by SACS.

9. Dr. Crowley told Mr. Jones that, if SACS did enforce the policy, he would probably not be allowed to continue teaching in the Marine Engineering Department if he did not

obtain an associate in science degree in his area of instruction.

10. Dr. Crowley also told Mr. Jones that the quickest way for him to earn the requisite degree would be to earn course credits from FKCC by "Institutional Credit by Examination." In light of the fact that Mr. Welsh was the Marine Engineering Department's advisor, Dr. Crowley told Mr. Jones to talk to him about how to proceed.

11. The awarding of credits by examination, including "Institutional Examinations," is authorized by FKCC Board of Trustees Rule 7.710 (College Exhibit 3). In particular, Rule 7.710 provides, in pertinent part, the following:

Credit may be earned in certain other College courses by successful completion of an appropriate examination. Evidence of proficiency in the subject is to be presented to the instructor of the course. If, in the opinion of the instructor, the student is eligible to take the examination, the student will be required to pay a non refundable examination fee in accordance with the Fee Schedule (see Financial Information) prior to the administration of the examination. The instructor of the course will administer the examination at an appointed time and assign a final grade.

If the student passes the examination at the 80% level or above . . . credit will be awarded and recorded on the student's permanent record by the Director of Enrollment Services. . . .

12. Despite "opinion" testimony to the contrary, the foregoing Rule is clear as to its requirements, including the requirement that an "examination" designed to test the student's knowledge is to be "administered" before any credits are to be awarded for any course available at FKCC. The Rule does not authorize or contemplate the awarding of course credits simply because the "instructor" believes that the "student" is knowledgeable, based upon prior observation or some review of the student's records.

13. Subsequent to the meeting with Dr. Crowley, Mr. Jones met with Mr. Welsh. Mr. Jones told Mr. Welsh that he, Mr. Jones, needed to earn an associate in science degree or that he would not be allowed to continue his employment with FKCC. Mr. Jones also told Mr. Welsh that Dr. Crowley had told him to talk to Mr. Welsh about the best way for him to earn the requisite degree. According to Mr. Jones, he left the meeting leaving the decision in Mr. Welsh's hands, assuming that Mr. Welsh would do whatever was necessary to ensure that he earned the necessary degree.

14. Mr. Jones heard nothing more about the matter until April of 2004, when Mr. Welsh presented him with 13 completed Applications for Credit by Institutional Examination (hereinafter referred to as the "Applications"). At the top of

each Application is the following explanation, which consistently explains the requirements of Rule 7.710:

Students who are currently enrolled in a credit course other than that being challenged or have not taken an institutional exam for the course at any previous time or not previously taken the course at FKCC or through transfer credit may earn credit in a number of college courses for which no CLEP, DAN TES, or Excelsior examination is available. A score of at least 80% on a comprehensive written examination and/or demonstration of satisfactory ability in performance skills will be required. Credit may not be earned in a course in which the student is enrolled or for which he has earned credit. Only one attempt at credit by institutional examination will be permitted per course. A maximum of 75% of associate degree requirements or 50% of certificate requirements may be earned by institutional examination or other acceleration mechanisms. Evidence of proficiency in the subject is to be presented to the instructor of the course. If, in the opinion of the instructor, the student is eligible to take the examination, the student will proceed to the Business Office for payment of the non-refundable \$20 per credit examination fee before taking the examination. The instructor will administer the exam, at an agreed upon time, and will assign a final grade. The completed form will be forwarded to the Director of Enrollment Services who will then inform the student in writing of the results of the examination and will record credit earned by institutional examination on the transcript, if appropriate. The following sections should be completed in sequence.

Mr. Jones did not read the instructions on the Application or follow them.

15. The instructions on the Application add certain requirements for obtaining credits by institutional examination not contained in Rule 7.710: the "examination" may be a "comprehensive written examination and/or demonstration of satisfactory ability in performance skills"; and no more than a "maximum of 75% of associate degree requirements or 50% of certificate requirements may be earned by institutional examination."

16. The first section to be completed on the Applications is a section containing a space for the student's name and social security number, the course number and name, and the credit hours for the course. There is also a space for the student to list the "specific reasons why I wish to take a challenge examination" Finally, this section ends with a place for the student to date and sign the Application, noting that "[e]vidence of prior related experience is attached" and that, by the student's signature, the student acknowledges that he or she has "read and understand[s] the criteria and procedure for credit by institutional examination."

17. The first section of the 13 Applications was signed by Mr. Jones on April 20, 21, or 22, 2004. The Applications were for 13 different courses totally 39 credit hours. All information written into this section, other than Mr. Jones' signature, was already written on the Applications when

presented to Mr. Jones for signature. No "specific reasons" why Mr. Jones wished to take a challenge examination in the courses was included on the 13 Applications and no "prior related experience" as attached to the Applications. Mr. Jones' acknowledgement, by signing the Applications, that he had "read and understand[s] the criteria and procedure for credit by institutional examination" was false.

18. The next section of the Applications to be "completed in sequence" is a section for the "Instructor" of the course to sign recommending the student for credit by institutional examination and agreeing to "administer a supplementary skills performance test." All 13 of the Applications were signed by Mr. Welsh, Mr. Jones' subordinate, and were dated the same day that Mr. Jones signed them, except for one, which was signed by Mr. Welsh the day after the date Mr. Jones had signed it.

(Whether this section of the Applications was signed by Mr. Welsh in April, as it now appears, or were actually dated in February is questionable based upon a cursory review of College Exhibit 2).

19. The next section of the Applications is a section for the "cashier's validation." This section is intended to be signed by a cashier of FKCC to acknowledge receipt of payment for the credit by institutional examination, along with the amount paid and the date. The section states in all capital

letters, "TO BE VALIDATED BEFORE EXAMINATION DATE." All 13 Applications were signed by the cashier on April 22, 2004. This date is after the date Mr. Welsh indicates the "examinations" took place, as discussed, infra.

20. The next-to-the-last section of the Applications, which should have been executed after the Applications were instituted by the student, after the instructor had accepted the Applications, and after payment for the credits had been made and acknowledged, is a section to be completed by the instructor of the course verifying the following:

I examined the above student in the indicated course on (date) _____. According to the standards for the award by credit by institutional examination, I do/do not (strike one) recommend the credit be awarded based on the student's grade of _____. Documentation of the examination results is attached.

21. All 13 Applications were signed by Mr. Welsh indicating that Mr. Jones had earned an "A" in each of the 13 courses and that the "examination" had been administered on February 20, 21, or 22, 2004, two months before Mr. Jones signed the Applications. None of the 13 Applications had "documentation of the examination results" attached to them. Mr. Welsh indicated on the Applications that the "examination" had been given two months before Mr. Jones signed the

Applications, in complete disregard for the instructions on the Application and contrary to Rule 7.710.

22. Finally, the last section on the Applications is for the signature of the Director of Enrollment Services. All 13 Applications are signed and dated April 22, 2004.

23. The 13 courses for which Mr. Jones "applied" and was granted credit by institutional examination are Marine Diesel Engine Overhaul; 2 & 4 Cycle Outboard Repair and Maintenance; Marine Diesel Systems; Marine Engine Installation and Repower Procedures; Fiberglassing Theory; Applied Marine Electricity; Gas and Electric Welding; Basic Seamanship; Diesel Engine Testing and Troubleshooting Procedure; Marine Corrosion and Corrosion Prevention; Diesel Fuel Injection Systems; Marine Gearcases, Outdrives & Transmission Systems; and Marine Auxiliary Equipment Servicing.

24. Of the 13 awarded courses, Mr. Jones had taught only six. Mr. Welsh had never taught any of the six courses taught by Mr. Jones. While Mr. Welsh had taught six other courses, Mr. Jones had not. One course, Gas and Electric Welding, had not been taught by Mr. Jones or Mr. Welsh. These facts, along with the fact that Mr. Welsh was Mr. Jones' subordinate, raise serious questions about the appropriateness of the award of the 39 credits and an associate in science degree to Mr. Jones which any reasonable person should have been concerned about.

25. As a result of the completion and submission of the 13 Applications, Mr. Jones was awarded 39 credit hours for the 13 courses and, as a consequence, was awarded an Associate in Science degree by FKCC on or about May 3, 2004.

26. Mr. Jones acknowledges that he did not take any examination, written or by "demonstration of satisfactory ability in performance skills," for any of the 13 courses for which he was given credit. In fact, Mr. Jones acknowledges and the evidence proved that all he did was to tell Mr. Welsh about his need to obtain a degree and sign the 13 Applications.

27. Despite all the indications to the contrary, Mr. Jones simply followed Mr. Welsh's directions, signing whatever documents Mr. Welsh provided to him, purportedly because "he knew of my abilities and I could pass the examination if he took the time to do it." Volume I, Page 93, Lines 20-21, Transcript.

C. Scholarship Funding for the 13 Applications.

28. In order to pay for the courses for which credit was awarded pursuant to the 13 Applications, Mr. Jones applied for employee/dependent scholarship aid.

29. While employee/dependent scholarship aid is available for the payment of tuition, it is not intended for use in paying for the \$20.00 application fee for credit by institutional examination.

30. Employee/dependent scholarship aid is also limited to 12 hours per term and 24 hours per year.

31. Mr. Jones completed a Scholarship Aid Request for the 39 credit hours by institutional examination he was awarded. The funds were approved and used to fund the costs of the 39 hours of credit.

32. As with the award of the 39 credits by institutional examination, at no time did Mr. Jones inquire as to the appropriateness or legality of using scholarship aid to fund the award of his Associate in Science degree.

D. FKCC's Investigation.

33. On or about August 1, 2007, Dr. Landesberg-Boyle, who had served some months as president-designee of FKCC, was hired by the FKCC Board of Trustees (hereinafter referred to as the "Board"), as FKCC president.

34. One of Dr. Landesberg-Boyle's first official acts was to create the position of provost and to fill that position with Clifford Colman. Mr. Colman possesses extensive experience in academia. Proposed findings concerning Mr. Colman's background are accurately reflected on page 6 of Florida Keys Community College's Brief and are hereby incorporated into this Recommended Order by reference.

35. Among Mr. Colman's duties as the provost, the FKCC's chief academic officer, was the responsibility to ensure that

FKCC faculty were possessed of the requisite credentials required by FKCC and the State of Florida.

36. In late September or early October, 2007 a comment was made to Mr. Colman during a conversation he was having with the then Director of Marine Engineering and another faculty member about Mr. Jones' credentials, or purported lack thereof. One of the individuals said in effect that Mr. Jones did not possess a degree in his discipline and that the rumor around the campus was essentially that he had "pulled a fast one on the college and had gotten a degree without doing any work for it."

37. In reasonable response to these comments, Mr. Colman began an investigation. He first went to the records office and reviewed Mr. Jones' academic transcript. He noticed the credit for the 13 courses totaling 39 hours of credit awarded to Mr. Jones. Mr. Colman was alarmed because, in his experience, a full-time student would normally require one and a half academic years to complete that much course work. Mr. Jones had been awarded the 39 credits for a single academic term.

38. Mr. Colman was also concerned because the 39 hours of credit, according to the transcript, had been awarded by "Institutional" examination. Therefore, Mr. Colman next retrieved the supporting documentation for the courses, including the 13 Applications. Concerned about the amount of credits awarded, the fact that they were all awarded in a short

period of time, the fact that Mr. Jones had been given an "A" in each course, and the fact that Mr. Welsh was Mr. Jones' subordinate, Mr. Colman investigated further.

39. Mr. Colman next spoke on more than one occasion by telephone with Mr. Welsh, who was no longer employed at FKCC or living in the area. Those conversations took place in October 2007. Dr. Landesberg-Boyle participated in one of the conversations. Although the accuracy of what Mr. Welsh told Mr. Colman and Dr. Landesberg-Boyle is hearsay and, therefore, is not reported in this Recommended Order nor relied upon by the undersigned in the ultimate decisions in this case, what Mr. Welsh said about the events gave Dr. Landesberg-Boyle reasonable cause to take the actions she took in this matter.

40. After completing his investigation, Mr. Colman and the Board attorney, William "Buck" DeVane, met with Mr. Jones. Although not given any notice of what the meeting was for, Mr. Jones was informed of Mr. Colman's findings and given an opportunity to speak to the findings. Mr. Jones was then told that he could resign his position or, if chose not to, FKCC would pursue termination proceedings. Mr. Jones requested and was given a few days to consider his options. Ultimately, Mr. Jones declined the opportunity to resign.

41. While Mr. Jones complained at hearing about his perceived lack of opportunity to respond to Mr. Colman's

findings, he has been afforded his complete due process rights through this proceeding.

42. Following Mr. Jones' decision not to resign, Mr. Colman recommended that Dr. Landesberg-Boyle take action to terminate Mr. Jones' employment with FKCC.

E. Dr. Landesberg-Boyle's Decision and Recommendation to the Board, the Board's Decision, and Mr. Jones' Request for Hearing.

43. Dr. Landesberg-Boyle wrote a letter dated January 3, 2008, to Mr. Jones informing him that she was "directing Enrollment Services to remove [the associate in science] degree from your academic transcript." She also told Mr. Jones that she intended to recommend to the Board at their meeting on January 26, 2008, that his position with FKCC be terminated. Finally, Dr. Landesberg-Boyle advised Mr. Jones that he had the right to a hearing pursuant to Chapter 120, Florida Statutes. Although she did not specifically inform Mr. Jones of his right to challenge her decision to direct the removal of his associate in science degree from his transcript, he has been afforded that opportunity through this proceeding.

44. On January 5, 2008, Dr. Landesberg-Boyle instructed Cheryl Malsheimer, Director Enrollment Services, by memorandum, to "remove the 39 credits by exam on Mr. Tim Jones' FKCC transcript that were posted in April 2004. . . ."

45. On January 26, 2008, the Board accepted the recommendation to terminate Mr. Jones' employment with FKCC.

46. Mr. Jones exercised his right to challenge both actions: the removal of the 39 credits by exam and his Associate in Science degree from his transcript and the decision of the Board to terminate his employment with FKCC.

47. By the conduct of this proceeding, Mr. Jones was afforded his due process rights pursuant to Chapter 120, Florida Statutes, as to both the decision of Dr. Landesberg-Boyle to remove the credits and degree from his transcript and the decision of the Board to terminate his employment.

F. Good Cause for Dr. Landesberg-Boyle's Decision.

48. Based upon the foregoing, it is clear that the action of Dr. Landesberg-Boyle in ordering the removal of the 39 credits by institutional examination and the Associate in Science degree from Mr. Jones' transcript was done with good cause. Mr. Jones' suggestion that he simply did what he was instructed to do is simply not reasonable for any number of reasons:

a. The person who "awarded" him the credits was his subordinate;

b. Being awarded a degree for simply signing your name to the 13 Applications, without reading the forms or asking any

questions was totally unreasonable for any college instructor and especially the head of the department;

c. Accepting an award of credits for courses for which Mr. Jones had no experience and had not taught was unreasonable; and

d. Accepting an award of credits for courses for which Mr. Jones had some expertise from an individual who did not possess the same expertise was unreasonable.

G. Good Cause for the Board's Decision.

49. Based upon the foregoing, it is also clear that the decision of the Board to terminate Mr. Jones was made with good cause.

50. Regardless of whether Mr. Jones possesses the skills and ability to teach marine engineering, his actions in accepting 39 credits and an associate in science degree by simply signing the 13 Applications and by inappropriately using employee/dependent financial aid to pay for those credits support the Board's decision. Whether, as FKCC suggests, Mr. Jones was part of a fraudulent scheme to protect his job, or he simply followed what he was told, his actions were inconsistent with what the Board may reasonably expect and demand from instructional staff at FKCC.

CONCLUSIONS OF LAW

A. Jurisdiction.

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

52. This is a de novo proceeding. See § 120.57(1)(k), Fla. Stat. As such, the goal of the proceeding is to formulate final agency action regarding Mr. Jones' Associate in Science degree and his employment with FKCC, not to review the decisions made by Dr. Landesberg-Boyle or the Board as initially made. See generally McDonald v. Department of Banking and Finance, 346 So. 2d 569 (Fla. 1st DCA 1977). Resolution of the issues in this case are not dependant upon whether Dr. Landesberg-Boyle and the Board had good cause for the actions they took, when taken, or even whether they took those actions without malice toward Mr. Jones, but whether the totality of the evidence presented during the formal hearing of this matter proves that good cause exists to justify removal of Mr. Jones' Associate in Science degree and the termination of his employment.

53. Although not ultimately relevant to the resolution of his matter, the evidence failed to prove that Dr. Landesberg-Boyle or the Board took any action with malice or that they did not believe was in the interest of FKCC.

B. The Burden and Standard of Proof.

54. This matter arose when FKCC removed 39 credit hours from Mr. Jones' transcript and the Board voted to terminate his employment with FKCC. FKCC, by changing the status quo, therefore, has the burden of proving that it had good cause to take those actions. Department of Banking and Finance, Division of Securities and Investor Protection v. Osborne Stern and Co., 670 So. 2d 932 (Fla. 1996); Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987); and Nair v. Department of Business & Professional Regulation, 654 So. 2d 205, 207 (Fla. 1st DCA 1995).

55. Pursuant to Section 120.57(1)(j), Florida Statutes, the burden of proof is by preponderance of the evidence.

C. The Removal of Mr. Jones' 13 Courses.

56. Neither party has addressed the authority or lack thereof for the president of a community college to direct the removal of course credits and/or a degree previously awarded by the institution. Presumably that authority comes from Section 1001.65, Florida Statutes. Regardless, the parties have stipulated that the issue as to the removal of the credits and the degree turns on whether "good cause" exists for the action.

57. Whether good cause exists to justify removal of the 13 course credits and the degree turns on whether the credits were awarded in such a way that they violated Rule 7.710, quoted above. That Rule establishes the procedures which must be

followed in order for an individual to be entitled to an award of credits by Institutional Examination.

58. Rule 7.710 requires, at a minimum, the following:

a. The presentation of evidence of proficiency must first be presented to the instructor;

b. The student, if the instructor finds the evidence adequate, must pay for the course; and

c. The instructor is then required to "administer the examination at an appointed time and assign a final grade."

59. At best, and limited to the six courses which Mr. Welsh was aware Mr. Jones taught, Mr. Jones may have satisfied the first one of the three requirements of the Rule. Although he did not technically present evidence to Mr. Welsh of his expertise in those six courses, Mr. Welsh was clearly aware that Mr. Jones had been teaching the courses for some time. Giving Mr. Jones the benefit of the doubt, even though Mr. Welsh had not taught those courses, he was probably qualified to conclude that Mr. Jones had expertise in those areas sufficient for him to be given an examination.

60. As to the courses that Mr. Jones did not teach, no evidence of any expertise was presented to Mr. Welsh and, therefore, Mr. Jones did not meet the first requirement, that he justify being given an examination, with regard to those courses for which he received an award of credit.

61. As to the second requirement, Mr. Jones did nothing to ensure that payment had been made for the courses. In fact, Mr. Jones was apparently not even aware that payment was required since he neither read the Rule or the instructions on the 13 Applications. Worse, he obtained credit inconsistently with FKCC policies with regard to employee/dependent scholarship aid.

62. Finally, and most critically, no examination of any kind was scheduled by Mr. Welsh or taken by Mr. Jones. Without such an examination, the assignment of an "A" by a subordinate of Mr. Jones, a subordinate that lacked the expertise to determine the proficiency of his supervisor in many of the courses, was nothing but a sham.

63. Mr. Jones' defense, that he simply relied upon Mr. Welsh and assumed that Mr. Welsh knew what he was doing, defies common sense and logic. Mr. Jones' explanation, in light of the fact that he knew that he was being given a degree for simply signing, without even bothering to read, the 13 Applications is rejected as unreasonable.

64. Mr. Jones' suggestion that he could have demonstrated his proficiency in all the courses is also not enough. Even if he were correct, the fact remains that no one took the time to ensure that the Rule was followed and that he actually demonstrated that proficiency.

65. Clearly, more is expected from a college instructor and head of a department. Any person in Mr. Jones' position had to have realized that something was wrong with an associate degree being awarded under the circumstances of this case. At the very least, Mr. Jones should have made inquiry.

66. The evidence in this case proved without question that Mr. Jones was awarded 39 credit hours for 13 courses and, as a result, an associate in science degree contrary to Rule 7.710. His acceptance of those credits and the degree without any inquiry as to whether those actions were consistent with FKCC rules, constitutes good cause for the removal of both.

67. In Petitioner's Proposed Recommended Order, Mr. Jones has suggested that FKCC "violated his (1) Sections 1002.21(1), 1002.21(3), and 1002.22(3)(c) and (2) the due process clause of the Florida and federal Constitutions." While Mr. Jones has not explained with any particularity how FKCC violated these provisions, in light of the fact that the statutory provisions all deal with rights of post-secondary students with regard to their records, it is assumed that Mr. Jones is suggesting that he was denied his procedural rights with regard to the decision to remove the 39 credits and the associate in science degree. This argument is without merit.

68. Ultimately, through this Chapter 120, Florida Statutes, proceeding, Mr. Jones has been fully afforded all of

his due process rights. He has been afforded the opportunity to challenge the decision, he has forced FKCC through this de novo proceeding to justify the decision, and he has been given a full opportunity to be heard before an impartial tribunal.

D. The Termination of Mr. Jones' Employment.

69. The Board has the authority to impose discipline on instructional staff, including their removal, pursuant to Section 1001.64(18), Florida Statutes, and Florida Administrative Code Rule 6A-14.0411(5)(a).

70. Florida Administrative Code Rule 6A-14.0411(5)(a) provides as follows:

The college may dismiss an employee under continuing contract or return the employee to an annual contract upon recommendation by the president and approval by the board. The president shall notify the employee in writing of the recommendation, and upon approval by the board, shall afford the employee the right to a hearing in accordance with the policies and procedures of the college. As an alternative to the hearing rights provided by college policies and procedures, the employee may elect to request an administrative hearing in accordance with the guidelines of Chapter 120, Florida Statutes, by filing a petition with the board within twenty-one (21) days of receipt of the recommendation of the president.

71. Dr. Landesberg-Boyle and the Board complied with the foregoing procedures and Mr. Jones exercised his right to

request an administrative hearing to contest the Board's decision.

72. Both parties have stipulated that Mr. Jones' termination from employment must be based upon "good cause." FKCC argues that his actions in accepting the 38 credits by institutional examination and the Associate in Science degree in violation of FKCC rules constitutes "good cause." The evidence supports FKCC's position.

73. Mr. Jones disregard for FKCC's rule governing the award of credits by institutional examination and the use of scholarship aid to fund his degree more than justifies the Board's decision to terminate Mr. Jones' employment with FKCC. His actions in not inquiring as to the legitimacy and appropriateness of the award, were unreasonable and constituted at a minimum a lack of good judgment on Mr. Jones' part.

74. Mr. Jones' effort to demonstrate that he has the technical knowledge and expertise to continue as an instructor in the marine engineering department ignores his failure to demonstrate good judgment in this matter. That lack of good judgment, not his lack of subject matter knowledge, constitutes good cause for the Board's decision to terminate his employment.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Board of Trustees of the Florida

Keys Community College enter a final order finding that there is good cause to eliminate 39 credits awarded to Timothy Jones by institutional examination, and the associate in science degree awarded as a consequence thereof, and terminating Mr. Jones from employment with Florida Keys Community College.

DONE AND ENTERED this 13th day of February, 2009, in Tallahassee, Leon County, Florida.



LARRY J. SARTIN
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of February, 2009.

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Tallahassee, Florida 32399-0400

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.