

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JEFFREY BATES,)
)
 Petitioner,)
)
 vs.) Case No. 09-5264
)
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on February 26, 2010, in Orlando, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jeffrey Bates, pro se
Post Office Box 1399
Minneola, Florida 34755

For Respondent: Regina M. Keenan, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner's application for certification as a firesafety inspector should be granted.

PRELIMINARY STATEMENT

Respondent, Department of Financial Services (Department), issued Petitioner, Jeffrey Bates (Mr. Bates), a State Fire Marshall, Bureau of Fire Standards and Training (Bureau) Examination Grade Report, notifying Mr. Bates that he failed to achieve a passing score for the firesafety inspector examination given on June 27, 2009. Mr. Bates requested an administrative hearing concerning the examination results, and the case was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge. The case was originally assigned to Administrative Law Judge J.D. Parrish, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

At the final hearing, Mr. Bates testified in his own behalf. Petitioner's Exhibits 1 through 4 were admitted in evidence. The Department called Charles Brush as its witness. Respondent's Exhibits 1 through 5 were admitted in evidence.

The Transcript was filed on March 24, 2010. A corrected Transcript was filed on March 26, 2010. At the final hearing, the parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. The Department filed its Proposed Recommended Order on April 5, 2010. As of the date of this Recommended Order, Mr. Bates had filed no post-hearing submittals.

FINDINGS OF FACT

1. The Department is the state agency responsible for the certification of firesafety inspectors in the State of Florida pursuant to Chapter 633, Florida Statutes (2009).¹

2. In September 2008, Mr. Bates completed his coursework for certification as a firesafety inspector. In November 2008, Mr. Bates submitted an application for certification as a firesafety inspector.

3. Sometime between November 19, 2008, and December 5, 2008, the Department notified Mr. Bates that the Department did not have a copy of his high school diploma and the certificate showing that course work for the building construction for the fire service had been completed. On December 5, 2008, the Department received documentation showing that Mr. Bates had graduated from high school and had completed the course work for the building construction for the fire service.

4. Scheduling a time to take the firesafety inspector examination can be done online by going to the Pearson Vue testing center website and entering the ID and password provided by the Bureau. Mr. Bates attempted to schedule the examination by telephone and was unsuccessful, but he did not attempt to schedule the examination online. Sometime during January or February 2009, Mr. Bates was able to obtain a date for the examination.

5. Mr. Bates took the examination for firesafety inspector certification for the first time on February 13, 2009. A passing score on the examination was 70 percent. The Bureau sent a notice to Mr. Bates that his score was 56 percent. The notice of the test results advised that he could retake the examination within six months of his test date of February 13, 2009, and that he could review his test questions by contacting the Promissor at www.promissor.com.

6. On April 3, 2009, Mr. Bates contacted Charles Brush, who was the standards supervisor for the Bureau, to schedule a review of his examination taken in February. Mr. Brush was responsible for the testing for certifications and renewals issued by the Bureau. Due to miscommunications with the Bureau, Pearson Vue testing center, and Mr. Bates, Mr. Bates was not scheduled for a review of his examination until May 2009.

7. Mr. Bates reviewed his examination in May 2009; however, after he had gone through the examination one time, he was not allowed to again review the examination. This restriction on the review process is designed to prevent applicants from memorizing questions from the examination. Many of the questions on the examination may be used again in another examination.

8. Because of the communication issues concerning the test review, Mr. Brush gave Mr. Bates an open-ended time extension to

retake the examination. Sometime between February 13, 2009, and June 27, 2009, Mr. Bates took a weekend course to practice for the examination.

9. On June 27, 2009, Mr. Bates retook the firesafety inspector examination and again scored 56 percent, which was a failing score. The notice of the test results provided that "[s]hould you fail the retest or waive your right to a retest, the only way to obtain certification is retake the course(s) required, submit a new application for approval, and pass the certification examination."

10. Mr. Bates does not contest the scores that he received on the examinations. He contends that he should be entitled to be certified as a firesafety inspector due to the amount of time that passed between the completion of his coursework in September 2008 and the taking of the examinations in February and June 2009. He was not able to retain coursework information from September 2008, when he completed his courses, until February 2009, when he first took the test.

CONCLUSIONS OF LAW

11. 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.

12. Subsection 633.081(2)(f), Florida Statutes, states that certification as a firesafety inspector is conditioned on,

among other things, the passing of the firesafety inspector certification examination. Florida Administrative Code Rule 69A-39.007 requires that a minimum score of 70 percent is necessary to pass the examination.

13. Mr. Bates bears the ultimate burden of proving his entitlement to a firesafety inspector certification. Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). He must establish by a preponderance of the evidence that he satisfied relevant statutory criteria to be certified as a firesafety inspector.

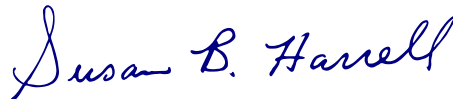
14. In order to establish that he should be granted certification, Mr. Bates must demonstrate that he received or should have received a passing score on the examination. He must show that the examination was faulty, arbitrarily or capriciously worded or graded, or that he was arbitrarily or capriciously denied credit through a grading process devoid of logic or reason. Harac v. Department of Professional Regulation, 484 So. 2d 1333, 1338 (Fla. 3rd DCA 1986); State ex rel. I.H. Topp v. Board of Electrical Examiners for Jacksonville Beach, Florida, 101 So. 2d 583 (Fla. 1st DCA 1958). Mr. Bates has failed to meet this burden. His score on both examinations was 56 percent, a failing score. He is ineligible for certification as a firesafety inspector.

15. Mr. Bates' contention that he should be granted certification, regardless of his test score, is without merit. There is no statutory provision that would allow Mr. Bates to be certified without having received a passing score.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered denying Mr. Bates' request that he be certified as a firesafety inspector.

DONE AND ENTERED this 20th day of April, 2010, in Tallahassee, Leon County, Florida.



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

Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of April, 2010.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida Statutes are to the 2009 version.

COPIES FURNISHED:

Jeffrey Bates
Post Office Box 1399
Minneola, Florida 34755

Regina M. Keenan, Esquire
Department of Financial Services
612 Larson Building
200 East Gaines Street
Tallahassee, Florida 32399

Julie Jones, CP, FRP, Agency Clerk
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-0390

Honorable Alex Sink
Chief Financial Officer
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0300

Benjamin Diamond, General Counsel
Department of Financial Services
The Capitol, Plaza Level 11
Tallahassee, Florida 32399-0307

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.