

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KIM LASHAWN EDMONDS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 09-6970  
 )  
 DEPARTMENT OF FINANCIAL )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case for the Division of Administrative Hearings (DOAH) on February 23, 2010, by video teleconference in Tallahassee and St. Petersburg, Florida.

APPEARANCES

For Petitioner: Kim Lashawn Edmonds, pro se  
2641 19th Street, South  
St. Petersburg, Florida 33712

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 is whether Respondent should deny an application for certification as a Firefighter II on the alleged grounds

that Petitioner failed the Firefighter Minimum Standards Equivalency Examination.

PRELIMINARY STATEMENT

By Notice of Intent to Deny (Notice of Denial) dated November 20, 2009, Respondent notified Petitioner that Respondent proposed to deny Petitioner's certification as a Firefighter II. Petitioner timely requested a formal hearing, and Respondent referred the matter to DOAH to conduct the hearing.

At the hearing, Petitioner presented the testimony of one witness and submitted 14 exhibits for admission into evidence. Respondent presented the testimony of two expert witnesses and submitted five exhibits for admission into evidence.

The identity of the witnesses and exhibits, and the rulings regarding each, are reported in the one-volume Transcript of the hearing filed on March 5, 2010. Petitioner and Respondent each requested a Transcript of the hearing.

Petitioner requested an extension of time to file a proposed recommended order (PRO). The ALJ entered an Order, extending the time for each party to file the party's respective PRO until March 19, 2010. Respondent timely filed its PRO on March 19, 2010. Petitioner filed her PRO on March 22, 2010.

FINDINGS OF FACT

1. Respondent is the state agency responsible for the certification of firefighters in the State of Florida, pursuant to Chapter 633, Florida Statutes (2009).<sup>1</sup> At a date not disclosed in the record, Petitioner applied for a certification as a Firefighter II.

2. On September 21, 2009, Petitioner took the Firefighter Minimum Standards Equivalency Examination ("initial examination"). Petitioner failed to pass the Ladder, Hose, and Self Contained Breathing Apparatus (SCBA) components of the practical portion of the initial examination.

3. On November 17, 2009, Petitioner took the Firefighter Minimum Standards Equivalency Examination Re-test ("examination re-test") for the Ladder, Hose, and SCBA components. Petitioner failed to pass the Ladder component of the examination re-test.

4. By Notice of Denial dated November 20, 2009, Respondent notified Petitioner that Petitioner had failed the Firefighter Minimum Standards Equivalency Examination. Petitioner requested an administrative hearing.

5. Petitioner alleges that, during her initial examination on September 21, 2009, there was an equipment malfunction during the Ladder component of the practical portion of the examination. Petitioner bases her allegations on the Ladder component score sheet for the initial examination ("score

sheet") that was received by Petitioner after she completed the initial examination and examination re-test.

6. The score sheet for the initial examination states that Petitioner failed the Ladder component of the initial examination because Petitioner exceeded the time period to complete the ladder evolution and failed to fully extend the ladder with the dogs locked. In the "Comments Required for Failure" section, the score sheet listed, "Safety latch on dawgs [sic] stuck in top of rung. Unsafe act. Over time."

7. Petitioner alleges that the statement that a piece of equipment was "stuck" is proof of an equipment malfunction. Two experts testified during the hearing that the "stuck" equipment was caused by operator error rather than an equipment malfunction. The testimony of the two experts was credible and persuasive.

8. Petitioner, as the examinee, could have remedied the "stuck" equipment by raising the ladder to release the finger and then lowering the ladder to allow the dogs to lock onto the rung. The failure to do so was an "unsafe act" that created a safety hazard in which the fly section of the ladder could have fallen down to the ground.

9. A preponderance of the evidence does not show that Petitioner failed the Ladder component of the initial examination because of an equipment malfunction. Rather, the

preponderance of evidence shows that Petitioner failed to have the dogs locked, which is required by the examination.

10. A preponderance of the evidence also shows that Petitioner did not complete the ladder evolution within the required time during the re-take examination. The excessive time resulted in an automatic failure of the re-take examination.

#### CONCLUSIONS OF LAW

11. DOAH has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1). DOAH provided the parties with adequate notice of the final hearing.

12. Petitioner bears the ultimate burden of proving her entitlement to a license. Florida Department of Transportation v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). Petitioner must show by a preponderance of the evidence that she satisfied relevant statutory criteria to be certified as a Firefighter II.

13. Petitioner must show by a preponderance of evidence that the examination was faulty, arbitrarily or capriciously worded or graded, or that Respondent arbitrarily or capriciously denied credit through a grading process devoid of logic or reason. Espinoza v. Department of Business and Professional Regulation, 739 So. 2d 1250, 1251 (Fla. 3d DCA 1999), citing Harac v. Department of Professional Regulation, 484 So. 2d 1333,

1338 (Fla. 3d DCA 1986); State ex rel Glaser v. J.M. Pepper,  
155 So. 2d 383 (Fla. 1st DCA 1963); State ex rel I.H Topp v.  
Board of Electrical Contractors for Jacksonville Beach, Florida,  
101 So. 2d 583 (Fla. 1st DCA 1958). Petitioner did not satisfy  
her burden of proof. Petitioner is not eligible for  
certification as a Firefighter II. § 633.35(2); Fla. Admin.  
Code R. 69A-37.056(6).

RECOMMENDATION

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

RECOMMENDED that the Department of Financial Services enter  
a final order denying Kim Lashawn Edmonds' application for  
certification as a Firefighter II.

DONE AND ENTERED this 16th day of April, 2010, in  
Tallahassee, Leon County, Florida.



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DANIEL MANRY  
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 16th day of April, 2010.

ENDNOTE

<sup>1/</sup> References to chapters, sections, and subsections are to Florida Statutes (2009), unless stated otherwise.

COPIES FURNISHED:

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

Kim Lashawn Edmonds  
2641 19th Street, South  
St. Petersburg, Florida 33712

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.