

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTOPHER DINAPOLI,)
)
 Petitioner,)
)
 vs.) Case No. 10-7420
)
 DEPARTMENT OF FINANCIAL)
 SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On October 15, 2010, a hearing in this case was conducted by video teleconference in Tallahassee and Sarasota, Florida, by William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Guy E. Burnette, Jr., Esquire
3020 North Shannon Lakes Drive
Tallahassee, Florida 32309

For Respondent: James Bruce Culpepper, Esquire
Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether the Respondent, Department of Financial Services, properly denied the

application for firefighter certification filed by the Petitioner, Christopher Dinapoli.

PRELIMINARY STATEMENT

The Petitioner is seeking to become certified as a firefighter by the Division of the State Fire Marshall, a unit within the Florida Department of Financial Services.

By letter dated March 26, 2010, the Respondent notified the Petitioner that on March 25, 2010, he failed to achieve a passing score on the practical skills examination. The Petitioner disputed the test results and requested a hearing.

On August 11, 2010, the Petitioner forwarded the request to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner testified on his own behalf, presented the testimony of three additional witnesses, and had Exhibits 2 through 15 admitted into evidence. The Respondent presented the testimony of three witnesses and had Exhibits A through D admitted into evidence. The Transcript of the hearing was filed on November 2, 2010. Both parties filed Proposed Recommended Orders that have been considered in the preparation of this Recommended Order.

Prior to the hearing, the parties filed a stipulation of admitted facts that have been fully adopted and which are incorporated as necessary herein.

FINDINGS OF FACT

1. The Petitioner is a candidate for certification as a firefighter in the State of Florida.

2. Candidates for such certification are required to complete a Minimum Standards Course and to pass a two-part test that includes a written portion and a practical skills examination. A candidate is permitted to take the test twice before being required to re-take the Minimum Standards Course and re-apply for certification.

3. The practical skills examination, administered by the Florida State Fire College (Fire College) under the Division of the State Fire Marshall, includes four components: self-contained breathing apparatus, hose operation, ladder operation, and fireground skills. Field representatives of the Fire College observe and score the candidate's performance in the practical skills examination.

4. On February 16, 2010, the Petitioner took the practical skills examination at the Sarasota County Technical Institute and received a grade of "fail" on the hose operation and ladder operation components.

5. The Petitioner's failure to pass the two components was documented by the Fire College field representative by notations on the Petitioner's score sheet.

6. The Petitioner asserts that the assignment of the "fail" grade on February 16, 2010, was erroneous. The field representative who observed the Petitioner on February 16, 2010, testified that the Petitioner failed to extend the ladder properly. The field representative's testimony was clear and persuasive and has been credited.

7. On March 25, 2010, the Petitioner retook the hose operation and ladder operation components at the Fire College. The Petitioner received a grade of "pass" on the hose operation component and a grade of "fail" on the ladder operation component.

8. Successful completion of the ladder operation component requires a candidate to fully extend the ladder at the correct position and to complete the operation (including retrieval and positioning of the ladder) in a time not exceeding two minutes and 20 seconds (2:20).

9. The Petitioner's failure to pass the ladder operation component was documented by the Fire College field representative by notation on the Petitioner's score sheet.

10. The Petitioner asserts that the assignment of the "fail" grade on March 25, 2010, was erroneous. The field representative who observed the Petitioner on March 25, 2010, testified at the hearing that the Petitioner exceeded the 2:20 time allotted for completion of the ladder operation. The field

representative's testimony as to the administration of the test lacked clarity and was not persuasive.

11. The March 25, 2010, score sheet for the ladder operation portion of the test was altered at some point after the completion of the test process. The time recorded on the score sheet was initially marked as "2:00," and a "3" was subsequently written over the "2." The field representative's testimony about the circumstances of the alteration lacked clarity sufficient to establish that either notation was reliable.

12. Additionally, the candidate identification number within the Petitioner's score sheet package was stated inconsistently. The cover sheet of the Petitioner's score sheet package identified the Petitioner as Candidate No. 4, but the "4" was crossed out and a handwritten "3" was written on the cover sheet. The candidate number on the Petitioner's score sheet was handwritten as Candidate No. 3.

13. The Petitioner asserted that he successfully completed the ladder operation within the allotted time on March 25, 2010, and offered anecdotal testimony in support of the assertion. No other timing device was utilized during the ladder operation test, as the Respondent prohibits any use of timing devices by persons other than the field representative administering the test.

14. While it is reasonable to presume that, given the level of training by all participants in the testing process, a difference of 60 seconds in test completion time would be perceptible, the Petitioner's anecdotal evidence was insufficient to establish that the ladder operation test was completed within the allotted time.

15. There was no credible evidence, other than as stated herein, that the Respondent failed to comply with the procedures adopted by rule that govern the certification process.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2010).

17. The Respondent is responsible for training and certification of firefighters in the State of Florida. § 633.35, Fla. Stat. (2010).

18. In a challenge to the results of a licensure examination, the applicant has the burden of establishing the material allegations of the challenge by a preponderance of the evidence. Department of Transportation v. J. W. C. Company, Inc., 396 So. 2d 778 (Fla. 1st DCA 1981). In order to prevail, the Petitioner must show that the scoring was arbitrary and capricious or constitutes an abuse of discretion. Espinoza v. Department of Business and Professional Regulation, 739 So. 2d

1250 (Fla. 3d DCA 1999); State ex rel. Glasser v. J.M. Pepper, 155 So. 2d 383 (Fla. 1st DCA 1963); and Topp v. Board of Electrical Examiners, 101 So. 2d 583 (Fla. 1st DCA 1958).

19. In this case, the burden has been met as to the administration of the ladder operation component of the practical skills examination on March 25, 2010. The score sheet on which the referenced exam results were recorded was materially altered at some point after the test results were recorded. The score initially recorded would have resulted in a grade of "pass." The alteration of the score resulted in a grade of "fail." The field representative's testimony about the time and place of the alteration was inconsistent, lacked credibility, and has been rejected.

20. A capricious action is one which is taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic, or despotic. Agrico Chemical Co. v. State Department of Environmental Regulation, 365 So. 2d 759, 763 (Fla. 1st DCA 1978), cert. den., 376 So. 2d 74 (Fla. 1979). The field representative's determination of the Petitioner's grade on the referenced ladder operation test was capricious and arbitrary.

21. A candidate for firefighter certification who does not initially achieve a successful score on all portions of the practical examination is provided one opportunity to re-take the

portion(s) of the examination not successfully completed. See Fla. Admin. Code R. 69A-27.056(6). Based thereon, the following recommendation is set forth.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Financial Services issue a final order invalidating the results of the March 25, 2010, ladder operation test administered to the Petitioner and permitting the Petitioner one opportunity to re-take the ladder operation test.

DONE AND ENTERED this 9th day of December, 2010, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of December, 2010.

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.