

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MARLENE SERRANO, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-1556  
 )  
 DEPARTMENT OF FINANCIAL )  
 SERVICES, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on May 24, 2011, in Orlando, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Marlene Serrano, pro se  
3227 Hillmont Circle  
Orlando, Florida 32817

For Respondent: Linje E. Rivers, Esquire  
Department of Financial Services  
612 Larson Building  
200 East Gaines Street  
Tallahassee, Florida 32399-0333

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner, Marlene Serrano ("Serrano"), should be awarded certification as a firefighter or, in the alternative, whether Serrano should be allowed to re-take the hose operation and ladder operation

portions of the Firefighter Minimum Standards Written and Practical Examination.

PRELIMINARY STATEMENT

By letter dated February 21, 2011, Respondent, Department of Financial Services (the "Department"), through the State Fire Marshall, notified Serrano that she had not successfully completed the minimum requirements of the firefighter examination. Serrano timely filed an Election of Rights form, requesting a formal administrative hearing to challenge the results of the examination.

At the final hearing, Serrano testified on her own behalf and offered two exhibits which were admitted into evidence as Exhibits A and B. The Department called two witnesses: Karl Thompson, standards supervisor; and Kenneth Harper, field representative. The Department's Exhibits A through F were admitted into evidence.

The parties advised that a transcript of the final hearing would be ordered. The parties were given ten days from the date the transcript was filed at the Division of Administrative Hearings ("Division") to submit proposed recommended orders. The Transcript was filed at the Division on June 15, 2011. Each party timely submitted a Proposed Recommended Order, and each was duly considered in the preparation of this Recommended Order.

## FINDINGS OF FACT

1. Serrano was a candidate for certification as a firefighter in the State of Florida.

2. The Department is the state agency responsible for testing all candidates for certification as a firefighter, for conducting such tests, and for issuing a certification upon successful completion of minimum requirements by a candidate. One such examination administered by the Department is the Firefighter Minimum Standards Written and Practical Examination ("Firefighter examination").

3. The Firefighter examination has a written portion, as well as three practical components: Self-Contained Breathing Apparatus, Hose Operations, and Ladder Operations. In order to meet the minimum requirements for certification, a candidate must obtain at least a 70-percent score on each component of the Firefighter examination. If a candidate fails the test, he or she is afforded one chance to take a re-test.

4. The ladder component of the Firefighter examination is scored using a form listing five mandatory steps which the candidate must pass and ten evaluative component steps worth ten points each. A candidate taking the ladder component, who successfully passes the five mandatory steps, receives a total score of the sum of the scores from the ten evaluative component steps. A candidate who does not successfully complete one or

more of the mandatory steps automatically fails the ladder component section and receives a score of zero out of 100 points.

5. Serrano initially took the Firefighter examination on December 22, 2010. That test was administered at the Firefighter Academy, a more controlled environment. She failed to obtain a passing grade on two components of the examination, the hose operations component and the ladder operation component. Specifically, she failed to successfully complete the components within the required time limit of two minutes, 20 seconds; and one minute, 25 seconds, respectively. Her times were two minutes, 40 seconds; and one minute, 41 seconds, respectively. As allowed by law, Serrano was given the opportunity to re-take those components of the examination one time only.

6. On February 15, 2011, Serrano went to a training facility in Ocala, Florida, to re-take the examination. The Ocala site was more open than the Academy site; there were other non-firefighter personnel engaged in activities in close proximity. Thomas Johnson and Kenneth Harper were the examiners assigned to administer the examination to Serrano.

7. Serrano received a score of 100 on the hose operation component of the examination. She completed that portion of the test in one minute and 25 seconds, within the prescribed time.

8. When Serrano finished the hose operation component, she was going to begin the ladder operation section. However, one of the examiners "yelled" at her that her protective face shield was not in place. That is, the shield had been raised to the top of her helmet, rather than being in the lowered position required during testing. The instructor yelled for her to "put your shield down." Serrano interpreted that instruction as a sign that she had failed the prior (hose operation) test. She began to walk toward the examiners, but they pointed her back in the direction of the ladder test.

9. Serrano was confused, but undertook the ladder operation component of the examination anyway. Her concentration was somewhat broken by the examiner's comments, and she was flustered. Then she heard loud noises coming from the field next to the testing site. Apparently, there were military maneuvers of some type going on at the adjacent field. Furthermore, there was a four-wheeler driving around the training ground, creating more distraction for Serrano. However, the Department's field representative said he had administered over 1,000 tests in the same conditions as were present for Serrano's test.

10. During the test, ten points were deducted from Serrano due to her inability to maintain the ladder in a vertical position. Further, Serrano did not complete the ladder

operation component of the examination within the prescribed time frame for that section of the test. Her recorded time was two minutes and 49 seconds, some 29 seconds longer than allowed. The examiner also noted that Serrano almost lost control of the ladder twice during the examination and struggled with the halyard and safety lines.

11. There are numerous events going on at the training site during testing. The training grounds are intentionally somewhat hectic in order to simulate real "fire ground" conditions. There is no attempt made by the examiners to keep the testing site quiet. Conversely, at the Firefighter Academy where firefighters are initially trained, there is less noise and distraction.

#### CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2010).<sup>1/</sup>

13. The Department has jurisdiction over firefighter training and certification in the State of Florida pursuant to Chapter 633, Florida Statutes. Specifically, section 633.35(2) states in pertinent part, as follows:

The [Department] shall issue a certificate of compliance to any person satisfactorily complying with the training program

established in subsection (1), who has successfully passed an examination as prescribed by the [Department], and who possesses the qualifications for employment in s. 633.34, except s. 633.35(5). . . .

14. The Department has also adopted rules governing the training and certification of firefighters. Florida Administrative Code Rule 69A-37.056 sets forth the testing parameters for firefighter candidates. Subsection (6) of that rule states:

Each subject area within the Minimum Standards Course will be tested to validate the acquisition and application of relevant knowledge and skill. All subject area and final tests, both written and practical, given during the Minimum Standards Course shall require maintenance of a percentage score of not less than 70% on each subject listed in the Minimum Standards Course. If a minimum score of 70% is not achieved on any test, the student shall be afforded a one-time make up examination to achieve the required 70%. Students not in compliance with the minimum score requirement shall be dropped from the course.

15. Serrano, as the party, who is applying for certification by the state, has the burden of proof. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

16. Serrano must prove by a preponderance of the evidence that the Firefighter examination was arbitrary or capricious, or that the grading process was devoid of logic and reason.

Espinoza v. Dep't of Bus. & Prof'l Reg., 739 So. 2d 1250 (Fla. 3rd DCA 1999).

17. Serrano did not meet her burden of proof in this matter. The evidence presented did not show that the examination was arbitrary or capricious, as administered, or that the grading process was flawed. By rule, Serrano must be dropped from the course, i.e., her Petition must be denied.

RECOMMENDATION

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

RECOMMENDED that a final order be entered by Respondent, Department of Financial Services, dismissing the Petition of Marlene Serrano, in full.

DONE AND ENTERED this 7th day of July, 2011, in Tallahassee, Leon County, Florida.



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R. BRUCE MCKIBBEN  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 7th day of July, 2011.



ENDNOTE

<sup>1/</sup> Unless specifically stated otherwise, all references to Florida Statutes shall be to the 2010 version.

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.