

STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION

NANCY MARADEY,)
)
 Petitioner,)
)
 vs.)
)
 STATE BOARD OF ADMINISTRATION,)
)
 Respondent.)
 _____)

DOAH Case No. 13-4172
SBA Case No. 2012-2573

DIVISION OF
ADMINISTRATIVE
HEARINGS

2014 APR 7 PM 1 06

FILED

FINAL ORDER

On January 16, 2014, Administrative Law Judge Cathy M. Sellers (hereafter "ALJ") submitted her Recommended Order to the State Board of Administration (hereafter "SBA") in this proceeding. A copy of the Recommended Order indicates that copies were served upon counsel for the Petitioner and upon counsel for the Respondent. Both Petitioner and Respondent filed Proposed Recommended Orders. Petitioner timely filed exceptions on January 31, 2014. A copy of the Recommended Order is attached hereto as Exhibit A. The matter is now pending before the Senior Defined Contribution Programs Officer for final agency action.

STATEMENT OF THE ISSUE

The State Board of Administration adopts and incorporates in this Final Order the Statement of the Issue in the Recommended Order as if fully set forth herein.

PRELIMINARY STATEMENT

The State Board of Administration adopts and incorporates in this Final Order the Preliminary Statement in the Recommended Order as if fully set forth herein.

STANDARDS OF AGENCY REVIEW OF RECOMMENDED ORDERS

The findings of fact of an Administrative Law Judge cannot be rejected or modified by a reviewing agency in its final order "...unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings were not based upon competent substantial evidence...." See Section 120.57(1)(l), Florida Statutes. *Accord, Dunham v. Highlands Cty. School Brd*, 652 So.2d 894 (Fla 2nd DCA 1995); *Dietz v. Florida Unemployment Appeals Comm.*, 634 So.2d 272 (Fla. 4th DCA 1994); *Florida Dept. of Corrections v. Bradley*, 510 So.2d 1122 (Fla. 1st DCA 1987). A seminal case defining the "competent substantial evidence" standard is *De Groot v. Sheffield*, 95 So.2d 912, 916 (Fla. 1957), in which the Florida Supreme Court defined it as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."

An agency reviewing a Division of Administrative Hearings ("DOAH") recommended order may not reweigh evidence, resolve conflicts therein, or judge the credibility of witnesses, as those are evidentiary matters within the province of administrative law judges as the triers of the facts. *Belleau v. Dept of Environmental Protection*, 695 So.2d 1305, 1307 (Fla. 1st DCA 1997); *Maynard v. Unemployment Appeals Comm.*, 609 So.2d 143, 145 (Fla. 4th DCA 19932). Thus, if the record discloses any competent substantial evidence supporting finding of fact in the ALJ's Recommended Order, the Final Order will be bound by such factual finding.

Pursuant to Section 120.57(1)(l), Florida Statutes, however, a reviewing agency has the general authority to "reject or modify [an administrative law judge's] conclusions of law

over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction.”

With respect to exceptions, Section 120.57(1)(k), Florida Statutes, provides that “...an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.”

RULINGS ON PETITIONER’S EXCEPTIONS TO THE RECOMMENDED ORDER

Petitioner’s Exception 1: Exception to Finding of Fact 26

Petitioner argues that there is no evidence in the record to show that Petitioner’s relationships with those co-workers that she referred to AZJ Medical Center (“AZJ”) for medical treatment “developed through her employment at MDT.” However, Petitioner admitted during her testimony that during her employment at MDT, she was approached by another co-worker regarding AZJ Medical Center and that she was told by that co-worker that Petitioner could go to AZJ for therapy and receive money from the clinic for doing so. [Hearing Transcript, page 24, lines 14-23; page 25, lines 1-12]. She further directly testified that she had been informed by this co-worker that if she sent other individuals to AZJ, that she would get money and that she then told “several co-workers” to go to AZJ so that they could get money as well. Petitioner noted that she was an MDT employee at the time she told her co-workers about AZJ and the potential for them also to receive money for going there. She further stated that she was physically present in the MDT bus garage at the time she told her co-workers that they could get money from AZJ. Petitioner further noted that she told her co-workers that it was easy to go to AZJ because it was right across the street

from the bus garage. [Hearing Transcript, page 28, lines 24-25; page 29, lines 1-10, lines 22-25; page 30, lines 1-18]. Petitioner admitted that she did not tell anyone who did not work at MDT to go to AZJ so they could get money. [Hearing Transcript, page 36 , lines 23-25]. In response to questions from her own counsel, Petitioner testified that the people she referred to AZJ were in the MDT bus garage when she told them about the clinic, that she would “hang out” with those “bus drivers” after her morning route, and that she told the other bus drivers they could get money if they went to AZJ. [Hearing Transcript, page 52, lines 22-25; page 54, lines 23-25; page 55, lines 15-17]. In his closing argument, Petitioner’s counsel stated that evidence was produced during the hearing that during Petitioner’s off hours, Petitioner told “other bus drivers who were injured” about AZJ and that they could get help there as well as “kickbacks” as a “bonus.” [Hearing Transcript, page 68, lines 8-12]. At no point during her testimony did Petitioner ever refer to any individuals that either introduced her to the AZJ or that she introduced to AZJ as anyone other than a “co-worker.” Petitioner did not testify that any of these individuals were, for example, co-workers and friends, or co-workers and people she went bowling with, etc. All discussions Petitioner had with others concerning AZJ occurred on MDT property. Thus, a review of the entire record demonstrates that this finding of fact was based on competent substantial evidence. Further, Petitioner does not identify the legal basis for the exception. Therefore, Petitioner’s Exception 1 hereby is rejected.

Petitioner’s Exception 2: Exception to Finding of Fact 27

This exception is similar to Petitioner’s Exception 1, in that Petitioner is arguing there is no reason to believe Petitioner did not already know other MDT employees before her employment with MDT or that she did not have other access to them. However, as

noted in the response to Petitioner's Exception 1, above, Petitioner throughout her testimony only referred to the individuals she sent to AZJ as "co-workers." Petitioner testified that all discussions she had with these individuals occurred at their place of employment. Petitioner further testified she did not tell anyone who did not work at MDT to go to AZJ so they could get money. Thus, there is sufficient evidence to establish a substantial basis of fact from which to infer that Petitioner developed her relationships with the individuals she referred to AZJ through access she gained while she was present at her place of employment- MDT. Thus, a review of the entire record demonstrates that this finding of fact was based on competent substantial evidence. Further, Petitioner does not identify the legal basis for the exception. Therefore, Petitioner's Exception 2 hereby is rejected.

Petitioner's Exception 3: Exception to Conclusion of Law 45

As in the case of the other two exceptions she has proffered, Petitioner again argues that there is no evidence to show that but for Petitioner's employment, she would not have become involved with the criminal activity in which she had engaged and she would not have had access to other MDT employees to help her to continue to engage in the activity. However, as noted under the response to Petitioner's Exception 1, above, Petitioner clearly admitted during her testimony that during her employment at MDT, she was approached by another co-worker regarding AZJ Medical Center and that she was told by that co-worker that she could go to AZJ and receive money from the clinic for doing so. [Hearing Transcript, page 24, lines 14-23; page 25, lines 1-12]. Also, as discussed in the responses to Exceptions 1 and 2 above, Petitioner only referred "co-workers" to AZJ. She specifically admitted she did not refer to AZJ anyone other than individuals who worked for MDT. [Hearing Transcript, page 36, lines 23-25]. Also, as discussed previously, all discussions

concerning AZJ with the individuals she referred there occurred on the property of MDT, specifically in the MDT bus garage. Petitioner admitted the bus garage was across the street from AZJ, so it was convenient for her co-workers to go there, get their treatment and a payment of money. Thus, Petitioner was introduced to the criminal activity through an individual she agreed was a "co-worker." And she continued the criminal activity through access to MDT employees that, the record clearly indicates, occurred only on MDT property. And, the criminal activity was facilitated due to the fact that access to AZJ was quick and easy for all of the individuals that Petitioner referred there. Even if Petitioner did have a prior relationship with any of the individuals she referred to AZJ, the record shows that it was not until these individuals became her co-workers at MDT and she had ready access to them at the MDT garage between routes that Petitioner decided to inform them about AZJ the potential for them to receive money for treatments that they received. Further, Petitioner does not identify the legal basis for the exception. Therefore, Petitioner's Exception 3 hereby is rejected.

FINDINGS OF FACT

The State Board of Administration adopts and incorporates in this Final Order the Findings of Fact set forth in the Recommended Order as if fully set forth herein.

CONCLUSIONS OF LAW

The State Board of Administration adopts and incorporates in this Final Order the Conclusions of Law set forth in the Recommended Order as if fully set forth herein.

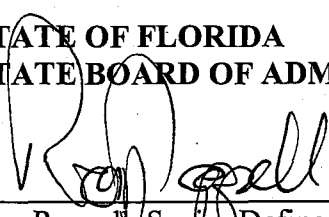
ORDERED

The Recommended Order (Exhibit A) is hereby adopted in its entirety. The Petitioner has forfeited her Florida Retirement System Investment Plan account benefit under Section 112.3173, Florida Statutes by having pled guilty/nolo contendere to felony counts of insurance fraud, grand theft and patient brokering.

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the State Board of Administration in the Office of the General Counsel, State Board of Administration, 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida, 32308, and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal. The Notice of Appeal must be filed within thirty (30) days from the date the Final Order is filed with the Clerk of the State Board of Administration.


DONE AND ORDERED this 4th day of April, 2014, in Tallahassee, Florida.

**STATE OF FLORIDA
STATE BOARD OF ADMINISTRATION**



Ron Poppell, Senior Defined Contribution
Programs Officer
State Board of Administration
1801 Hermitage Boulevard, Suite 100
Tallahassee, Florida 32308
(850) 488-4406

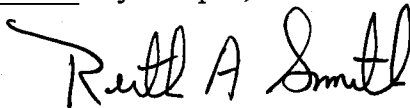
FILED ON THIS DATE PURSUANT TO
SECTION 120.52, FLORIDA STATUTES
WITH THE DESIGNATED CLERK OF THE
STATE BOARD OF ADMINISTRATION,
RECEIPT OF WHICH IS HEREBY
ACKNOWLEDGED.



Tina Joanos,
Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order was sent by UPS to Marc Chattah, Counsel for Petitioner, 815 Ponce de Leon Boulevard, Suite 203, Coral Gables, Florida 33134 and by U.S. mail to Brian Newman and Brandice Dickson, Esq., at Pennington, Moore, Wilkinson, Bell & Dunbar, P.A., P.O. Box 10095, Tallahassee, Florida 32302-2095, this 4th day of April, 2014.



Ruth A. Smith
Assistant General Counsel
State Board of Administration of Florida
1801 Hermitage Boulevard
Suite 100
Tallahassee, FL 32308