

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GREGORY K. CHAPMAN,

Petitioner,

vs.

Case No. 14-4666

FLORIDA DEPARTMENT OF LAW
ENFORCEMENT,

Respondent.

RECOMMENDED ORDER

On May 19, 2015, Administrative Law Judge Lisa Shearer Nelson conducted a duly-noticed hearing pursuant to section 120.57(1), Florida Statutes (2014), in Tallahassee, Florida.

APPEARANCES

For Petitioner: Gregory Chapman, pro se
5870 Westmont Road
Milton, Florida 32583

For Respondent: Linton B. Eason, Esquire
Post Office Box 1489
Tallahassee, Florida 32302-1489

STATEMENT OF THE ISSUE

The issue to be decided is whether Petitioner's challenges to questions on the state officer certification examination should be sustained, resulting in additional points being added to his score.

PRELIMINARY STATEMENT

Petitioner, Gregory Chapman, was notified that he failed to obtain a passing score on the law enforcement state officer certification examination (the Exam) administered on March 30, 2014. Mr. Chapman challenged six questions on the Exam, and was notified by letter dated July 22, 2014, that no additional credit would be awarded based on his challenges to questions on the examination. Petitioner filed a Petition for Formal Hearing before the Florida Division of Administrative Hearing (sic), and on October 8, 2014, the matter was referred to the Division of Administrative Hearings (DOAH) for assignment of an administrative law judge.

The case was originally noticed for hearing to commence on December 8, 2014, and on December 1, 2014, a Protective Order was issued with respect to disclosure of the questions and answers, which are exempt from public disclosure pursuant to section 119.071(1)(a), Florida Statutes (2014). Respondent filed a Motion for Continuance on December 5, 2014, based upon his military commitment for the United States Army Reserves. The matter was continued to February 5, 2015. Another Motion for Continuance was filed, this time at the behest of the Respondent, for good cause shown, and the case was again rescheduled for March 26, 2015.

On the day scheduled for hearing, the parties both appeared. However, Petitioner had retained counsel who requested that yet another continuance be granted to allow him the opportunity to review the questions and answers and adequately prepare for hearing. Over the objection of the Department, a final continuance was granted and the case rescheduled for May 19, 2015. Both parties were admonished that no further continuance would be granted absent extreme emergency.

On May 11, 2015, counsel for Petitioner filed a Motion to Withdraw, which was granted by Order dated May 14, 2015. On the morning of the hearing, Petitioner called the undersigned's office and advised that he would not be able to attend the hearing in person, although no reason was volunteered regarding his inability to appear. Petitioner was allowed to participate in the hearing by telephone.

At the hearing, Petitioner indicated for the first time that he intended to challenge the examination based on the allegation that he received a course book from a different year than the edition used to create the examination. He acknowledged that he had not amended his petition or notified Respondent of his intention to challenge the examination on this basis. Petitioner was advised that the Notice of Hearing indicated that the issue to be resolved was the validity of the six questions challenged,

and absent a motion to amend his petition, the hearing would address the issues described in the Notice of Hearing.

In order to provide structure to the hearing, Respondent presented its case first. This order of presentation did not change the burden of proof. Petitioner presented no witnesses or exhibits, but instead attempted to prove his case through the cross-examination of Respondent's witnesses. Respondent presented the testimony of Roy Gunnarson, and Respondent's Exhibits 2, 4, 5, 6, and 7 were admitted into evidence without objection.

The Transcript of the hearing was filed with the Division on May 27, 2015. Respondent filed a Proposed Recommended Order on June 9, 2015. Petitioner filed what is labeled as a Proposed Recommended Order on that same day, but the document filed appears to be the sample form for a proposed recommended order provided by the Division on its website for pro se litigants. There is, however, no content included related to the facts or the law with respect to this proceeding. Both documents, although filed more than 10 days from the filing of the Transcript, have been reviewed in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner took the state officer certification examination on March 26, 2014. No evidence was placed in the

record with respect to his score on the examination. However, his petition indicates that he failed the examination by two questions, an allegation that Respondent does not appear to dispute.

2. The parties stipulated that the validity of four, as opposed to six, questions are at issue in this proceeding.

3. Questions for the Exam are written by in-house exam development staff, based upon the official training curriculum. The questions are then shared with an advisory team comprising approximately 20 members, who are full-time law enforcement officers in the State of Florida. The team members, who are considered to be subject matter experts, are selected through nominations from their respective agencies and their experience in law enforcement.

4. The subject matter experts review the questions for content to ensure that they are valid for the curriculum that is required for law enforcement officers. Staff then conducts an internal review to ensure that the questions meet their formatting guidelines, and if a question passes successfully through all of those requirements, then the question is placed into a pilot or field-test rotation. Pilot questions are placed on examinations but are not included in an examinee's score, which allows the Department to collect statistical data on the

question to ensure that it is not only valid in terms of content, but that it is also psychometrically and statistically sound.

5. Test questions are examined in accordance with standards established by the American Psychological Association, and the National Council on Measurement in Education that outline the standards for test items. The questions used by Respondent comply with the applicable standards.

6. To reduce the possibility for error with respect to the questions asked, an examination will include multiple questions concerning the same curriculum.

7. The purpose of the law enforcement certification examination is to certify an examinee's knowledge of the official training curriculum that has been established and approved by the Florida Criminal Justice and Training Commission. The Exam was linked directly to the curriculum. If there is a major change as a result of case law that would bring the validity of an item in the test bank into question, the question is removed. However, that rarely happens, because the examination is meant to cover basic principles as opposed to more advanced details related to law enforcement practices.

8. In evaluating the validity of Petitioner's challenged questions, the Department examined certain statistics related to each question. The first statistic deals with the mean difficulty value. The mean difficulty value reflects the

percentage of examinees who have answered the question correctly for the life of the question to date.

9. The focal difficulty value is the percentage of examinees who answered the question correctly during the administration of the examination that Petitioner is challenging.

10. The mean point-biserial correlation is a quality control measure that correlates performance on a particular question to overall performance on the exam. A positive value indicates that the question is statistically sound. A negative value indicates that there may be a problem with the question.

11. The next value examined is the focal point-biserial correlation, which is calculated using the examinees in the administration of the examination being challenged. Like the point-biserial correlation, the calculation should yield a positive number to indicate an acceptable question.

12. Also examined is the number of students who have answered the question, and the number of students who chose the correct answer. The final value examined is the number of examinees who chose the same (incorrect) answer as the person challenging the examination.

13. Petitioner challenged questions 59, 126, 179, and 185.

14. With respect to question 59, the correct answer was "c." Petitioner chose answer "b."

15. The question, which will not be repeated verbatim here, involved the use of force and the concept of objective reasonableness. The subject matter was adequately covered in the curriculum, which has not changed from 2012 to the present with respect to this issue.

16. The mean difficulty value for question 59 was .83. The focal difficulty value was .79. Both the mean point-biserial correlation and the focal point-biserial correlation were .29. A total of 2,535 examinees had answered the question, and 2,109 answered it correctly.

17. Question 59 is a statistically-valid question, and Petitioner presented no evidence to indicate that his answer should be considered the correct answer.

18. Question 126 involved what kind of treatment should be considered for gunshot wounds to the torso. The correct answer was "c." Petitioner chose answer "b." The subject matter was adequately covered in the curriculum, which has not changed from 2012 to the present with respect to this issue.

19. The mean difficulty value for question 126 was .56. The focal difficulty value was .60. The mean point-biserial correlation was .23 and the focal point-biserial correlation was .20. A total of 2,542 examinees had answered the question, and 1,411 answered it correctly.

20. Question 126 is a statistically-valid question, and Petitioner presented no evidence to indicate that his answer should be considered the correct answer.

21. Question 179 addressed field sobriety tests. The correct answer was "a." Petitioner chose answer "b." The subject matter was adequately covered in the curriculum, which has not changed from 2012 to the present with respect to this issue.

22. The mean difficulty value for question 179 was .77. The focal difficulty value was also .77. The mean point-biserial correlation was .20 and the focal point-biserial correlation was .09. A total of 2,566 examinees had answered the question, and 1,967 answered it correctly.

23. Question 179 is a statistically-valid question, and Petitioner presented no evidence to indicate that his answer should be considered the correct answer.

24. Finally, question 185 addressed proper traffic stops. The correct answer was "a." Petitioner chose answer "d." The subject matter was adequately covered in the curriculum, which has not changed from 2012 to the present with respect to this issue.

25. The mean difficulty value for question 185 was .90. The focal difficulty value was .84. The mean point-biserial correlation was .17 and the focal point-biserial correlation was

.08. A total of 2,867 examinees had answered the question, and 2,574 answered it correctly.

26. Question 185 is a statistically-valid question, and Petitioner presented no evidence to indicate that his answer should be considered the correct answer.

27. Petitioner failed to demonstrate that any of the questions challenged were unclear, ambiguous, or in any respect unfair or unreasonable. Neither has he established that he answered any of the challenged questions correctly.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1).

29. Section 943.17(1)(e), Florida Statutes (2014), requires the Criminal Justice Standards and Training Commission to implement, administer, maintain, and revise a job-related certification for each discipline the Commission certifies.

30. Section 943.1397 provides in pertinent part:

(1) Except as provided in subsection (4), on and after July 1, 1993, the commission shall not certify any person as an officer until the person has achieved an acceptable score on the officer certification examination for the applicable criminal justice discipline. The commission shall establish procedures by rule for the administration of the officer certification examinations and student examination reviews. Further, the commission shall establish standards for acceptable

performance on each officer certification examination.

(2) For any applicant who fails to achieve an acceptable score on an officer certification examination, the commission shall, by rule, establish a procedure for retaking the examination, and the rule may include a remedial training program requirement. An applicant shall not take an officer certification examination more than three times, unless the applicant has reenrolled in, and successfully completed, the basic recruit training program.

31. Petitioner bears the burden of proof in this proceeding, and must show by a preponderance of the evidence that he actually passed the Exam. He must prove that Respondent capriciously and arbitrarily failed to give Petitioner the grade he earned on the exam. Harac v. Dep't of Prof'l Reg., 484 So. 2d 1333, 1338 (Fla. 3d DCA 1986); State ex rel. Glaser v. Pepper, 155 So. 2d 383, 384 (Fla. 1st DCA 1963); State ex rel. Topp v. Bd. of Elec. Contractors of Jacksonville Beach, 101 So. 2d 583, 586 (Fla. 1st DCA 1958).

32. In this case, Petitioner has failed to meet his burden. As a preliminary matter, it cannot be determined on this record whether credit for or the discarding of the challenged questions would result in a passing score on the examination.

33. Even assuming that receiving credit for the challenged questions would result in a passing score, Petitioner has failed to present any evidence that he was erroneously or improperly denied credit for his responses to questions 59, 126, 179, or

185. He has failed to show that any of the challenged questions were unclear, ambiguous, misleading, or unfair or unreasonable in any way. Nor has Petitioner established that he correctly answered any of the disputed questions. Accordingly, Petitioner's challenge to questions 59, 126, 179, and 185 must fail.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Department of Law Enforcement enter a Final Order rejecting Petitioner's challenge to the scoring of questions 59, 126, 179, and 185, and dismiss the petition in this proceeding.

DONE AND ENTERED this 8th day of July, 2015, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of July, 2015.

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.