

STATE OF FLORIDA
AGENCY FOR PERSONS WITH DISABILITIES

FALESIA RAWLS,

DOAH Case No.: 14-5549 APD

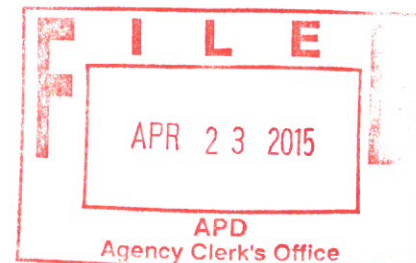
Petitioner,

RENDITION NO: APD-14-15-0508-FO

v.

AGENCY FOR PERSONS WITH DISABILITIES

Respondent.



FINAL ORDER

THIS CAUSE is before the Agency for Persons with Disabilities (the Agency) based upon a Recommended Final Order issued by an Administrative Law Judge (ALJ) for the Division of Administrative Hearings (DOAH). A copy of the Recommended Order is attached to this Final Order.

In a letter dated October 20, 2014, Respondent, Agency for Persons with Disabilities ("APD" or "Agency"), denied the request of Petitioner, Falesia Rawls for an exemption under s. 435.07, F.S., from disqualification from employment under the background screening statutes. Petitioner timely filed a request for an administrative hearing and the matter was referred to DOAH. The hearing was held on January 30, 2015, in Ocala, Florida. The ALJ issued a Recommended Order on March 9, 2015, recommending that the Agency issue a Final Order granting Petitioner's request. Respondent timely filed exceptions to the Recommended Order.

Section 120.57(1)(k), Fla. Stat., states in part:

The agency shall allow each party 15 days in which to submit written exceptions to the Recommended Order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the Recommended Order by page number

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or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

In a proceeding conducted under the Administrative Procedure Act, it is the hearing officer's duty to consider all the evidence presented, resolved conflicts, judge the credibility of witnesses, draw permissible inferences from the evidence, and reach ultimate findings of fact based on competent substantial evidence. Heifetz v. Dep't of Business Regulation, 475 So.2d 1277 (Fla. 1st DCA 1985); Wills v. Florida Election Com'n, 955 So.2d 61 (Fla. 1st DCA 2007). To make a finding of fact is to set out the facts which the hearing officer found from the evidence and testimony to be true. Laney v. Holbrook, 8 So.2d 465 (Fla. 1945); United Health Care v. Department of Health and Rehabilitative Services, 511 So.2d 684 (Fla. 1st DCA 1987); Baptist Hospital Inc. v. Department of Health and Rehabilitative Services, 500 So.2d 620 (Fla. 1st DCA 1986).

A finding of fact is presumed correct. An agency may only reject a finding of fact if, after a review of the entire record, it determines that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Section 120.57(1)(l), F.S. In paragraph 49 of the Recommended Order the ALJ found that the Petitioner met her burden of proof that she has been rehabilitated by clear and convincing evidence. That conclusion is supported by the findings of fact found by the ALJ contained in paragraphs 2, 12 through 18, 20, 21, and 25 through 46. The substantial consistency and corroborative weight behind such facts lead the Agency to conclude that the ALJ's finding is supported by competent substantial evidence.

Exception to Paragraph 54, page 15: Respondent's exception to this paragraph argues that the ALJ's statement that "in order to receive an exemption,

Petitioner has the burden of proving by clear and convincing evidence, that she is rehabilitated” (citation omitted) is a mischaracterization of the law. Respondent believes the ALJ is, in effect, taking the position that the granting of an exemption is mandatory or guaranteed and asserts that this construction violates §393.0655(2) and §435.07, F.S. Respondent is correct that these provisions provide the Agency with discretion in the granting or denial of exceptions under these sections, however, Respondent reads too much into what the ALJ states in the Recommended Order. The ALJ is simply articulating the correct burden the petitioner bears before an exemption can be granted by law. Nowhere does the Recommended Order state the position Respondent attributes to the ALJ, or draw a legal conclusion resulting from such a mischaracterization of law. The ALJ’s legal conclusion and recommendation result from an application of the abuse of discretion standard as cited in the Recommended Order.

Exception 61, page 17:

This exception states that the ALJ improperly concludes that the Agency’s intended action constitutes an abuse of discretion pointing that this standard is highly deferential to Agency use of discretion. Respondent notes that findings of fact 3, 4, 5, and 6 recognize Petitioner’s lengthy criminal record and most significantly reiterates the Agency’s position, at the time of the hearing, that Petitioner’s criminal history *poses* (emphasis added) an undue risk to the Agency’s vulnerable population. The Agency position was premised largely on the representation of Mr. Lewis, noted in finding 47 of the Recommended Order, that “petitioner poses a risk to this population due to her lengthy criminal history and no indication that she has sought impulse control.” The Agency agrees with Respondent’s position that given the information and evidence

provided at the time of the Agency's initial denial of Petitioner's request, it was at a minimum a decision with which reasonable persons could differ and therefore not an abuse of discretion. See, Canakaris v. Canakaris, 382 So.2d 1197 (Fla. 1980). However, the testimony at the hearing and its persuasive impact on the ALJ, the addition of multiple witnesses testifying at the hearing as to the Petitioner's good character not previously known to the Agency, and the specific finding by the ALJ in paragraph 48 of the Recommended Order that the "Petitioner presents no danger to the vulnerable adult population served by the Agency" (which in itself is supported by competent substantial evidence), are entitled to due consideration notwithstanding the Agency's initially intended action.

Exception to Recommendation, page 17:


Respondent's exception to the ALJ's recommendation argues that the ALJ erred in recommending that the Petitioner's request for an exemption be granted because the Agency proposed action was neither arbitrary, fanciful, nor unreasonable and was therefore no abuse of discretion. As noted earlier, the Agency agrees with Respondent that its initial denial of the Petitioner's request for an exemption was not an abuse of discretion. The ALJ and Respondent correctly note that the Agency is not bound by the legal conclusion of the ALJ. In circumstances such as this "the agency head retains the discretion to deny the exemption so long as the final order 'states with particularity its reasons for rejecting or modifying such conclusion of law . . . and makes a finding that its substituted conclusion of law is as or more reasonable than that which was rejected or modified.'" J.D. v. Florida Department of Children and Families, 114 So.3d 1127, at 1133.

The facts underlying the initial Agency denial of the Petitioner's request for an exemption are those stated in paragraph 47 of the Recommended Order that "petitioner poses a risk to this population due to her lengthy criminal history and no indication that she has sought impulse control." However, those facts which were fundamental to the initial denial have been substantially rebutted and eroded by the factual findings of paragraphs 45 and 46 of the Recommended Order. The statement that the Petitioner currently poses a risk to this population due to her lengthy criminal history has, in effect, been nullified by the competent substantial evidence supporting paragraph 48 of the Recommended Order finding that the Petitioner presents no danger to the vulnerable adult population served by the Agency. Based on these facts, the Agency does not believe that a denial of Petitioner's requested exemption at this time is as or more reasonable as a decision to grant the exemption.

CONCLUSION

For the foregoing reasons, the Agency adopts the findings of fact of the ALJ that the Petitioner has met her burden of establishing rehabilitation by clear and convincing evidence. In deference to this finding of fact by the ALJ, the Agency adopts the recommended disposition stated in the Recommended Order. Petitioner's request for an exemption from disqualification is hereby GRANTED.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this ²³~~24~~th day of April, 2015.



Tom Rankin, Deputy Director of Operations
Agency for Persons with Disabilities

RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. Review proceedings shall be conducted in accordance with Florida Rules of Appellate Procedure. The Notices must be filed within thirty (30) days of the rendition of this final order.¹

Copies furnished to:

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Claudia Llado, Clerk
Division of Administrative Hearings
filed via e-ALJ

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail or electronic mail, this 24th day of April, 2015 23



David De La Paz, Esq., Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950

¹ The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.