

FILED

DEC 5 .. 2016

Docketed by BP



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

JEFFREY ALAN NORKIN,

Petitioner,

vs.

DOAH Case No. 16-1996
DFS Case No. 187983-16-AG

DEPARTMENT OF FINANCIAL
SERVICES, DIVISION OF INSURANCE
AGENT AND AGENCY SERVICES,

Respondent.

FINAL ORDER

THIS CAUSE came for consideration and final agency action on the Recommended Order issued on August 30, 2016.

Petitioner filed numerous exceptions¹ to the Recommended Order, all of which must be rejected. The Department 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. § 120.57(1)(k), Fla. Stat.

The following of petitioner's exceptions must be rejected for failure to clearly identify the disputed portion of the recommended order: Section I (pages 1-5); Section II (pages 5-10); and Overall Exceptions A, B, and C (page 39). The remainder of petitioner's exceptions cite to his appendix, which includes the Recommended Order. Although none of petitioner's exceptions

¹ The Department has attempted to conform to petitioner's haphazard labeling of his exceptions.

explicitly cite to the Recommended Order, the Department was able to determine which portion of the Recommended Order the remainder of petitioner's exceptions disputed based on his citations to the appendix.

The following of petitioner's exceptions must be rejected for failure to identify the legal basis for the exception: Section I (pages 1-5); Section III, 1 (pages 10-11); Numbered Paragraphs 42, 45-48, 50, 52-56; and Overall Exceptions A, B, and C (page 39). Petitioner's continued reliance on the phrase "violated every legal principle and right conceivable" does not identify the basis for the exceptions.

The following of petitioner's exceptions must be rejected for failure to include appropriate and specific cites to the record: Section II (pages 5-10); Section III, 1-5 (pages 10-29); Numbered Paragraphs 41-46, 48-50, 52-53; and Overall Exceptions A, B, and C (page 39). Petitioner's continual reference to his "six witnesses, 40 exhibits, and a court file" are not appropriate and specific cites to the record. Despite submitting an appendix and exhibits with his exceptions, petitioner's only specific citations to his appendix were to the recommended order. Indeed, petitioner merely asserts the excepted findings are "false," without demonstrating that the record lacks competent substantial evidence to support them.

It is well-settled that it is the administrative law judge's (ALJ) function to review and weigh the evidence, to judge the credibility of the witnesses, and make findings of fact, which may be rejected only when there exists no competent substantial evidence to substantiate the findings. *See Heifetz v. Dep't of Bus. Regulation, Div. of Alcoholic Beverages & Tobacco*, 475 So. 2d 1277 (Fla. 1st DCA 1985). The following of petitioner's exceptions must be rejected as an attempt to reweigh the evidence presented to the ALJ: Section I (pages 1-5); Section II (pages 5-

10); Section III, 1-5 (pages 10-29); Numbered Paragraphs 41, 42, 45-46, 48, 50, 52-56; and Overall Exceptions B, and C (page 39).

Likewise, it is well-settled that the Department does not have the substantive jurisdiction to disturb an ALJ's findings concerning the admissibility of hearsay. *See Barfield v. Dep't of Health*, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2001). The following of petitioner's exceptions must be rejected as attacks on the ALJ's evidentiary rulings regarding hearsay: Section II (pages 5-10); Section III, 1-5 (pages 10-29); and Numbered Paragraphs 43-44. Hearsay evidence is admissible in an administrative proceeding, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. § 120.57(1)(c), Fla. Stat.; *See, e.g., Johnson v. Dep't of Health & Rehab. Servs.*, 546 So. 2d 741, 743 (Fla. 1st DCA 1989) (“[S]uch evidence must be corroborated by non-hearsay, or the hearsay evidence must be admissible under some established exception to the hearsay rule.”); *See also Russell v. State*, 920 So. 2d 683, 684, fn. 1 (Fla. 5th DCA 2006), *approved*, 982 So. 2d 642 (Fla. 2008). The ALJ made extensive findings that petitioner's admissions, disciplinary history, and conduct throughout the course of the administrative proceeding corroborated his lack of fitness and trustworthiness to sell insurance. (RO at 44, 50-56):

Petitioner raises several constitutional challenges that are also outside the Department's jurisdiction. *See Florida Hosp. v. Agency for Health Care Admin.*, 823 So. 2d 844, 849 (Fla. 1st DCA 2002) (internal citations omitted) (“Administrative agencies lack the power to consider or determine constitutional issues.”). The Department declines to rule on exceptions that are outside of its jurisdiction.

Petitioner, only after receiving an unfavorable ruling, alleges the ALJ should have recused herself from considering this matter. The only argument or record evidence presented by

petitioner on this point is the unfavorable recommended order. A judge's adverse ruling may not serve as a ground for disqualification. *See Gieseke v. Grossman*, 418 So.2d 1055, 1057 (Fla. 4th DCA 1982).

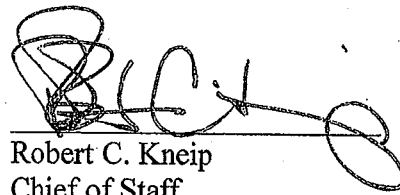
Finally, petitioner raises exceptions to the ALJ's pre-trial order denying his request for official recognition. In essence, petitioner argues that by denying his motion for official recognition, the ALJ denied petitioner the opportunity to present a defense. However, nothing in the ruling on his motion prevented petitioner from presenting evidence relevant to his cause at the final hearing. Throughout this proceeding, petitioner attempted to relitigate the disciplinary action taken against him by the Florida Bar. The ALJ properly held that such argument was outside the scope of this administrative proceeding. Moreover, the exception is not directed to the recommended order and is rejected.

After reviewing the record, including admitted exhibits, considering applicable law, and otherwise being fully apprised in all material premises, the recommended order is hereby fully adopted.

Accordingly, Respondent's application for licensure as a life, including variable annuity and health insurance agent is denied.

DONE and ORDERED this 5th day of December, 2016.




Robert C. Kneip
Chief of Staff

NOTICE OF RIGHT TO APPEAL

A party adversely affected by this final order may seek judicial review as provided in section 120.68, Florida Statutes, and Florida Rule of Appellate Procedure 9.190. Judicial review is initiated by filing a notice of appeal with the Agency Clerk, and a copy of the notice of appeal, accompanied by the filing fee, with the appropriate district court of appeal. The notice of appeal must conform to the requirements of Florida Rule of Appellate Procedure 9.110(d), and must be filed (i.e., received by the Agency Clerk) within thirty days of rendition of this final order.

Filing with the Department's Agency Clerk may be accomplished via U.S. Mail, express overnight delivery, hand delivery, facsimile transmission, or electronic mail. The address for overnight delivery or hand delivery is Julie Jones, DFS Agency Clerk, Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390. The facsimile number is (850) 488-0697. The email address is Julie.Jones@myfloridacfo.com.

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