

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMAR HALL,

Petitioner,

vs.

Case No. 16-2429EXE

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

A duly-noticed final hearing was held in this case on July 19, 2016, via video teleconference with sites in Tallahassee and Orlando, Florida, before Administrative Law Judge Suzanne Van Wyk.

APPEARANCES

For Petitioner: Jamar Hall, pro se
142 Heather Oak Circle
Lady Lake, Florida 32159

For Respondent: Andrew Langenbach, Esquire
Agency for Persons with Disabilities
Suite S430
400 West Robinson Street
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether the Agency for Persons with Disabilities' (Agency's) intended action to deny Petitioner's application for exemption

from disqualification from employment is an abuse of the Agency's discretion.

PRELIMINARY STATEMENT

By letter dated March 30, 2016, the Agency issued its notice of agency action by which it informed Petitioner that his request for exemption from disqualification was denied. As a result, Petitioner was determined to be "not eligible to be employed, licensed or registered in positions having direct contact with children or developmentally disabled people served in programs regulated by the Agency." In the letter, the Agency reported its determination that Petitioner had "not submitted clear and convincing evidence of [his] rehabilitation."

On April 18, 2016, Petitioner filed a Request for Administrative Hearing with the Agency (Request). In his Request, Petitioner disputed the Agency's determination that he had not proven his rehabilitation. On May 2, 2016, the Agency referred the case to the Division of Administrative Hearings, which scheduled a final hearing for July 19, 2016.

The final hearing commenced as scheduled. Petitioner testified on his own behalf, and offered the testimony of his wife, Jasmine Hall; his daughter, Jasharie Hall; and his father-in-law, Pernell Mitchell. Petitioner's Composite Exhibit P1 was admitted in evidence.

Respondent presented the testimony of Michael Sauvé, the Agency's deputy regional operations manager for the central region. Respondent's Exhibits A through J, M, and N were admitted in evidence.

A one-volume Transcript of the proceedings was filed on August 3, 2016. Respondent timely filed a Proposed Recommended Order. Petitioner filed a letter on August 17, 2016, which is taken as Petitioner's timely-filed proposed recommended order.^{1/} Both parties' post-hearing submissions have been considered in preparing this Recommended Order.

Ruling on Proffered Exhibit

At final hearing, Petitioner sought to introduce as an exhibit an incident report, and arresting officer narrative, from the Leesburg Police Department regarding a domestic disturbance involving Petitioner in November 2008. Petitioner did not disclose the exhibit to the Agency prior to the hearing, pursuant to the Order of Prehearing Instructions, and did not have the exhibit available for review by the undersigned at the hearing. The undersigned allowed Petitioner to proffer the exhibit and provide the undersigned with a copy within five days of the close of the hearing.

Having reviewed the proffered exhibit, the undersigned concludes that the report of an incident which occurred three

years prior to the disqualifying offense is irrelevant and is not admitted in evidence.

FINDINGS OF FACT

Background

1. Petitioner is a 29-year-old male who lives in Leesburg, Florida, with his wife, Jasmine Hall. Petitioner has four daughters whom he is actively engaged in parenting.^{2/}

2. Petitioner is employed by a bail bond agency owned by his father-in-law.

3. Petitioner is pursuing his bachelor's degree in organizational management at Lake Sumter State College and anticipates graduating Spring 2017.

4. Petitioner is the second oldest of five children raised by their mother, not knowing their fathers. Petitioner described his childhood as difficult, being raised without a male role model and in a rough area of town where violent crime was prevalent.

5. Petitioner explained that he was studious, made good grades, and worked odd jobs throughout his childhood and young adulthood to help support the family. Despite his work ethic and good grades, he did make some poor decisions and fell in with the wrong crowd. Petitioner was exposed to violent acts in his community. In one incident, Petitioner witnessed his best friend being shot in the head at a nightclub.

6. Petitioner has overcome many of the hardships he encountered in his childhood and desires to improve the future for himself and his children, provide for his family with a steady full-time job, and be financially secure, rather than living paycheck-to-paycheck as his mother did.

The Disqualifying Offense

7. On April 24, 2011, following a visitation with his two children at the time, Petitioner returned the children to their mother's home. The details of the disqualifying offense are in dispute, but the record supports the following findings.

8. Petitioner and the children's mother became involved in a verbal altercation, during which Petitioner threw a can of soda at her. The record did not clearly establish that the soda can struck the children's mother, but did establish that soda was splashed on her.

9. After throwing the soda, Petitioner entered his vehicle with the intention to leave. The children's mother followed him and hit the driver's side window of Petitioner's vehicle, causing the driver's door to close before Petitioner's hand was completely inside the vehicle.

10. This angered Petitioner, who then exited the vehicle. The victim ran away from Petitioner, who proceeded to the victim's vehicle and kicked the side of her vehicle leaving a dent in the vehicle. Petitioner then left the scene.

11. Petitioner's children, who were inside their mother's home, did not witness the incident.

12. According to the police report of the incident, the victim had no physical marking on her body, but her shirt was wet at the shoulder consistent with being hit with a soda can.

13. On May 11, 2011, Petitioner pled nolo contendere to one count of domestic battery and one count of criminal mischief in an amount of \$200 or less. Adjudication was withheld and Petitioner was ordered to serve 12 months' probation, which terms required him to make restitution for the property damage, attend a batterer's intervention course, maintain no contact with the victim, and incur no new law violations.

14. Petitioner was granted early termination of probation on November 7, 2011, having complied with all terms of the probation.

Subsequent Criminal History

15. Petitioner has had no criminal history subsequent to the disqualifying offense.

16. Petitioner has been cited for a number of traffic infractions since the incident: three for speeding, one for running a stop sign, and one for driving without a seatbelt.^{3/} Petitioner was also cited for driving without a license in May 2014. Petitioner's license was in effect, but he failed to have it on his person at the time of the traffic stop.

17. Petitioner has disposed of all his traffic infractions.

Subsequent Employment History

18. Petitioner has been continuously employed since the disqualifying offense, mostly as a laborer. He has unloaded trucks and tracked inventory for Target, cleaned the plant and maintained machines for American Cement Company, and worked as a day laborer for Labor Ready.

19. Petitioner began working for Angle Truss in June 2015 in truss fabrication. Angle Truss is owned by Petitioner's father-in-law, Pernell Mitchell.

20. Mr. Mitchell testified on Petitioner's behalf. Mr. Mitchell was, until recently, a law enforcement officer with the Leesburg Police Department, and served as school resource officer and D.A.R.E. instructor at Petitioner's elementary school.^{4/} Mr. Mitchell has known Petitioner since Petitioner was in the fifth grade. Mr. Mitchell has chosen to personally mentor Petitioner, and has had significant interactions with him over the past seven or more years.

21. Mr. Mitchell owns a bail bonding agency. As of the date of the hearing, Petitioner was employed at Mr. Mitchell's bail bond agency. Mr. Mitchell finds Petitioner trustworthy enough to leave him in charge of the agency when Mr. Mitchell is out of town.

22. Mr. Mitchell also owns Wings of Love, a group home and Medicaid Waiver provider in Leesburg, Florida. Mr. Mitchell hosts his group home clients at his personal residence for a family dinner once each week. Petitioner and his family attend the dinners, along with the clients' families. Petitioner interacts with the clients during dinner, and often plays basketball or other games with them following dinner. Mr. Mitchell describes Petitioner as caring, patient, and compassionate with the clients. He has observed that the clients gravitate toward him because he treats them with respect.

Subsequent Education and Personal History

23. Petitioner has attained significant educational goals and taken on many new responsibilities since the 2011 incident.

24. In 2012, Petitioner joined Citadel of Hope, a church in Leesburg. The following year, Petitioner joined the church's security team, volunteering to guard doorways and patrol the parking lot during services. In 2014, Petitioner joined the church's outreach ministry, which raises funds to support missionaries abroad and to provide food and toiletries for the local community in need.

25. Petitioner completed an Associate in Arts degree from Lake Sumter State College in May 2014, and an Associate in Science degree (Criminal Justice Technology) from the college in August 2015. Petitioner continues to pursue his education, and

anticipates completing his Bachelor's degree in organizational management in the spring of 2017. Petitioner has continuously maintained his employment while in school.

26. James Cason, a librarian at the college, submitted a character reference letter for Petitioner's exemption application. Mr. Cason became familiar with Petitioner through Petitioner's use of the library during 2014 and 2015. In the letter, Mr. Cason described Petitioner as determined and having a positive attitude. Mr. Cason was impressed with Petitioner's character, his dependability, and his ability to manage his school and work schedules.

27. In 2014, Petitioner voluntarily took a parenting class. After pursuing premarital counseling, Petitioner married his wife, Jasmine Hall, in June 2015. Together, Petitioner and his wife, along with the birth mother, are raising his four children.

Petitioner's Exemption Request

28. On his exemption questionnaire, Petitioner described the events of the disqualifying offense as follows:

On 4/24/11, the mother of my kids and I had a verbal disagreement as I attempted to return my children home after my weekend visitation. She became irate [and] slammed the car door on my wrist. At that point, I threw the remainder of my soda on her. Although it was wrong at the time I thought it was better than physically retaliating and striking her. I also put a small dent in her vehicle before I left. I was subsequently arrested 15 minutes later.

29. Petitioner indicated that there were no stressors in his life at the time of the incident, but that he "was just a little upset about having [his] wrist shut in [his] car door."

30. Michael Sauvé is the Agency's deputy regional operations manager for the central region. Mr. Sauvé reviewed Petitioner's exemption request and made the recommendation to the director to deny the request.

31. According to Mr. Sauvé, he recommended denial of Petitioner's exemption request because, in his application, Petitioner was not forthcoming with the details of the offense, minimized the offense, shifted blame to the victim, and did not genuinely express remorse. Further, due to the number of moving violations for which Petitioner has been cited since the disqualifying offense, Mr. Sauvé doubts Petitioner's ability to safely transport clients.

32. Mr. Sauvé questioned the veracity of Petitioner's account of the disqualifying offense, particularly with Petitioner's claim that he sustained an injury to his wrist during the altercation. He speculated that Petitioner fabricated the injury "after the fact" to justify his actions on the day in question.

33. In support of this opinion, Mr. Sauvé twice pointed to the fact that the police report contains no documentation of Petitioner's injury. He testified that "[i]f there was something

in the police report that talked about the wrist, if there was something in any of the other documents that we saw that mentioned this injury to his wrist, I would feel a lot differently than I do today.”^{5/}

34. Petitioner testified that he did report his injury to the arresting officer, who did not include it in the report.

35. Petitioner also credibly described, in some detail, how the injury to his wrist occurred during the altercation with the victim.

36. The evidence does not support a finding that Petitioner fabricated the injury.

37. Next, in Mr. Sauvé’s opinion, Petitioner’s response that he “put a small dent in her vehicle” was an attempt to minimize the damage he caused to the victim’s vehicle. Mr. Sauvé explained, “The criminal records show that it--the criminal mischief charge was \$500 in property damage. I don’t know very much about cars, but that seems like it might be more than a small dent.”

38. While the arresting officer estimated the damage to the vehicle at \$500, Petitioner was actually charged with criminal mischief in the amount of \$200 or less. No automobile repair expert is needed to establish that a small dent may very well cost at least \$200 to repair.

39. Mr. Sauvé's conclusion, that Petitioner's response was an attempt to minimize the damage, is inconsistent with Petitioner's response to question four, in which he acknowledged causing approximately \$500 in property damage to the victim's car. It is illogical to conclude that Petitioner was attempting to minimize damage to the vehicle in his answer to question one, when three questions later, Petitioner disclosed the exact amount of vehicle damage reported on the arrest affidavit.

40. Mr. Sauvé was particularly troubled by Petitioner's answer to question number four, which required the applicant to explain the "[d]egree of harm to victim or property (permanent or temporary), damage or injuries[.]" In response to that question, Petitioner wrote, "There was no harm to the victim. There was approximately \$500 worth of property damage to the victims [sic] car that I made restitution for."

41. Mr. Sauvé questioned Petitioner's conclusion that there was no harm to the victim. He explained, as follows:

If I give him the benefit of the doubt by his statements and I go back to his account that's set forth on page 27, question 1, it-- it doesn't sound to me like there was no harm that the [mother of his children] encountered. She--he took a soda and threw it at her. When you throw something at someone and physically injure them, whether or not it's something that just leaves a bruise or anything, that's scary.^{6/}

42. Apparently, Mr. Sauvé would have liked Petitioner to state, in answer to this question, that Petitioner scared the victim. The victim may have indeed been fearful, but the question does not ask the applicant to speculate as to the victim's state of mind at the time of the incident. The question is phrased to elicit factual information from the applicant. Petitioner's statement that the victim suffered no physical harm is both factual and supported by the police officer's observation at the scene that the victim had no physical markings on her.^{7/}

43. Mr. Sauvé's recommendation to deny the exemption request was further influenced by his belief that the children witnessed the altercation between their parents. He testified as follows:

It's especially scary when the children that he just finished his visitation with were potentially within earshot. The statements in the police report indicate that the children were--they had just went [sic] inside the house. So if they're outside--in my mind, was trying to envision the circumstances. And in my mind, I saw them outside, the children inside. I don't know if they heard. I don't know what happened.^{8/}

44. The only evidence on this issue is the arresting officer's statement, as advised by the children's mother, that the children went inside the house before the altercation took place. There is no evidence to support a finding that the children either witnessed or overheard the altercation between

their parents. Mr. Sauvé's speculation, or his "envision[ing of] the circumstances," is irrelevant. The factual circumstances surrounding the incident are relevant, not what Mr. Sauvé saw in his mind.

45. Finally, in Mr. Sauvé's opinion, Petitioner's answers on the questionnaire do not express remorse for the disqualifying offense.

46. In particular, Mr. Sauvé pointed to the following two statements made by Petitioner on the questionnaire:

(1) "Although it was wrong at the time I thought it was better than physically retaliating and striking her"; and (2) "I regret that I reacted during the situation as opposed to calling the police and filing a report for the physical pain that I endured."

47. In Mr. Sauvé's opinion, the first statement was "peculiar and off putting" and he was concerned that five years after the incident, Petitioner would remark (in Mr. Sauvé's words), "well, I didn't hit her."

48. On the one hand, Petitioner's statement does appear to minimize the offense. However, it cannot be overlooked that, on the continuum of battery offenses, throwing soda at a person (with a force such that it leaves absolutely no physical mark) is on the lower, or minimal, end of the scale.

49. On the other hand, the first statement documents Petitioner's awareness that he had other choices available to him

during the incident, and that, even during the heat of the moment, Petitioner exercised some degree of restraint. Throwing the soda was indeed a better choice than hitting the mother of his children.

50. The second statement is indeed concerning. It is flippant and may be interpreted to shift blame to the victim. It is understandable how Mr. Sauvé could have been persuaded, based solely on these two statements, that Petitioner was not sincerely remorseful for his offense. Fortunately, the undersigned had an advantage not afforded the Agency--live testimony from the Petitioner in connection with his application.

Final Hearing

51. At the final hearing, Petitioner exhibited none of the flippant attitude that might be gleaned from the two statements discussed above. Petitioner took responsibility for his actions and admitted that he knew it was wrong to throw the soda on the victim. In fact, Petitioner testified that he never should have let the incident escalate and he should have avoided reacting at all.

52. Petitioner presented as a soft-spoken, intelligent, and earnest individual, whose concern for both his family and the developmentally-disabled community was profound and genuine. His testimony underlined his motivation to improve his circumstances,

attain meaningful employment, and provide a better quality of life for his family.

53. Petitioner was justifiably proud of the educational achievements he has attained since the offense. His dedication to school was equaled by his dedication to the church and the ministries with which he has chosen to volunteer.

54. While the Agency did consider a character reference letter from Mr. Mitchell, which was included in Petitioner's application, the Agency did not have the benefit of Mr. Mitchell's live testimony. The letter did not cover the extent of the relationship between Mr. Mitchell and the Petitioner, nor Mr. Mitchell's dedication to mentoring Petitioner over the last several years.

55. Mr. Mitchell's testimony was both credible and compelling. He exhibited a deep understanding of the negative social circumstances Petitioner has overcome, and wisdom regarding the excellent role model Petitioner could serve for young black men and boys. The fact that Mr. Mitchell has been, since June 2015, Petitioner's father-in-law, does not diminish the credibility of his testimony. To the contrary, the fact that Petitioner has so recently married into Mr. Mitchell's family is strong evidence of the trust and confidence that has been earned by Petitioner. Moreover, Mr. Mitchell is Petitioner's current employer, a fact not evident from his character reference letter.

As an employer, Mr. Mitchell has been in a position to observe Petitioner's ability to cope with stressful situations in a business setting.

56. Mr. Mitchell's account of Petitioner's interaction with current clients at Wings of Love was also unavailable to the Agency during formulation of its intended decision to deny. This testimony was compelling as it underscores Petitioner's compassion toward persons with developmental disabilities, and his demonstrated ability to deal with them respectfully.

57. In addition, Petitioner introduced in evidence three letters of reference which were not included with his application.

58. The most significant of the letters was submitted by Tanya Harris-Rocker. Ms. Harris-Rocker was one of Petitioner's college instructors with whom he remains in contact. She described Petitioner as both diligent and personable. Ms. Harris-Rocker observed that Petitioner meets deadlines, submits quality work, and puts in many hours toward his studies. She highlighted Petitioner as an independent thinker and praised him for his ability to separate himself from his peers who have chosen less productive paths. Ms. Harris-Rocker attested to Petitioner's goals of attaining educational achievements and providing an exemplary role model for his children.

59. Despite the isolated incident occurring more than five years ago, Petitioner has a cordial relationship with the mother of his children and they work cooperatively to raise their children in a positive environment. Petitioner is determined to give his children the stability and support of two loving, devoted parents, an advantage he was denied.

60. The record is devoid of evidence that Petitioner would pose a threat to residents of a group home for the developmentally disabled.

CONCLUSIONS OF LAW

61. The Division of Administrative Hearings has jurisdiction over the subject matter of the proceeding, and the parties thereto, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).^{9/}

62. Section 435.04, Florida Statutes, provides, in pertinent part, that:

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may

include local criminal records checks through local law enforcement agencies.

* * *

(3) The security background investigations under this section must ensure that no person subject to this section has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense that constitutes domestic violence as defined in s. 741.28, whether such act was committed in this state or in another jurisdiction.

63. The Agency based its disqualification of Petitioner on his 2011 nolo contendere plea to battery.

64. Pursuant to section 741.28(2), Florida Statutes, Petitioner's battery offense constituted "domestic violence."

65. Section 435.07 establishes a process by which persons with criminal offenses in their backgrounds, that would disqualify them from acting in a position of special trust working with children or vulnerable adults, may seek an exemption from disqualification. That section provides:

435.07 Exemptions from disqualification.-- Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this chapter, regardless of whether those disqualifying offenses are listed in this chapter or other laws.

(1)(a) The head of the appropriate agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

1. Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying felony;

* * *

(3) (a) In order for the head of an agency to grant an exemption to any employee, the employee must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment. Employees seeking an exemption have the burden of setting forth clear and convincing evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which an exemption is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed.

* * *

(c) The decision of the head of an agency regarding an exemption may be contested through the hearing procedures set forth in chapter 120. The standard of review by the administrative law judge is whether the agency's intended decision is an abuse of discretion.

66. An exemption from a statute enacted to protect the public welfare is strictly construed against the person claiming the exemption. See Heburn v. Dep't of Child. & Fams., 772 So. 2d 561 (Fla. 1st DCA 2000).

67. The abuse of discretion standard of review set forth in section 435.07(3)(c) has been described as follows:

If reasonable men could differ as to the propriety of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness.

* * *

The discretionary power that is exercised by a trial judge is not, however, without limitation [T]he trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner.

Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980); Kareff v. Kareff, 943 So. 2d 890, 893 (Fla. 4th DCA 2006) (holding that, pursuant to the abuse of discretion standard, the test is "whether any reasonable person" could take the position under review).

68. The statutorily-enumerated factors to be considered by the Agency in evaluating an exemption application are the circumstances surrounding the incident, the time period that has elapsed since the incident, the nature of the harm caused to the victim, and the history of the employee since the incident, or "any other evidence or circumstances indicating that the employee will not present a danger if employment or continued employment is allowed." § 435.07(3)(a), Fla. Stat.

69. The circumstances surrounding the incident in question include an emotionally-charged situation between two parents, whose personal relationship had deteriorated, but who were nevertheless forced to interact due to shared parenting. Jealousy and anger were at play, and the outcome was fairly typical--harsh words were exchanged and both parties reacted with some degree of violence. The evidence established that the incident was a singular, isolated event. The evidence does not support a finding that a similar circumstance would arise in the group home environment, triggering the type of emotions that surfaced during the incident. However, assuming those emotions were stirred in Petitioner, he has demonstrated that he has the self-control to react without violence.

70. Other relevant circumstances include that the incident was brief and the children were not witnesses. Moreover, the nature of the harm to the victim was minor, the police report noting that the victim "did not have any physical markings on her."

71. In considering the factor of time, the Agency took the position that not enough time had passed since the incident for Petitioner to have demonstrated rehabilitation. On the contrary, five years is significant in the case at hand. The passing of five years in a person's 20s can bring about significant changes and maturity. Petitioner has grown from a young, single man

of 24, trudging through low-paying labor-related jobs, to a married man of 29 with more responsible employment, dedicated to the pursuit of his education and the betterment of his family.

72. As to the last factor, Petitioner has a marked personal, professional, and educational history since the incident. Petitioner has been employed in a professional business, and entrusted, at times, with management of that business. Petitioner has engaged with the substantial support system of a church, actively participating in the ministries thereof and volunteering his time to serve both his immediate community and communities abroad. Petitioner has also embarked on one of the most serious adult relationships by committing to marriage. He is matched by his wife in dedication to raising his children in a loving and stable environment. Finally, Petitioner's educational achievements evidence his pursuit to improve his life and the life of his family.

73. Petitioner proved his rehabilitation, clearly and convincingly, with substantial evidence that was not before the Agency when formulating its intended action to deny Petitioner's request.

74. Having determined that Petitioner carried his burden to establish rehabilitation, the inquiry turns to whether the Agency's intended action to deny Petitioner's request for exemption constitutes an abuse of discretion. In J.D. v.

Department of Children and Families, 114 So. 3d 1127, 1132

(Fla. 1st DCA 2013), the First District Court of Appeal

established that:

[A]lthough the ultimate legal issue to be determined by the ALJ in a proceeding under section 435.07(3)(c) is whether the agency head's intended action was an "abuse of discretion," the ALJ is to evaluate that question based on the facts determined from the evidence presented at a de novo chapter 120 hearing.

75. Based on Mr. Sauv e's testimony at the final hearing, the Agency's intended action to deny Petitioner's application appears to have been based on speculation about the circumstances surrounding the incident and his opinion that Petitioner was untruthful in his responses on the questionnaire. As discussed in the Findings of Fact, Mr. Sauv e's speculation was irrelevant, and his opinion as to Petitioner's veracity unfounded. Given the facts determined at the hearing, it is unreasonable to conclude that Petitioner would pose a threat to developmentally-disabled adults or children in a group home setting.

76. While it may not have been an abuse of discretion for the Agency to deny Petitioner's request based solely on the information submitted with his exemption application, the clear and convincing evidence adduced at the final hearing leads the undersigned to conclude that Petitioner does not currently present a danger to vulnerable clients of the Agency if employed

as a direct care service provider for developmentally-disabled persons. In light thereof, it would constitute an abuse of discretion for the Agency to deny his request for an exemption from disqualification.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order by the Agency for Persons with Disabilities be entered granting Petitioner's request for an exemption from disqualification.

DONE AND ENTERED this 20th day of September, 2016, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of September, 2016.

ENDNOTES

^{1/} The Agency filed no objection to the timeliness of Petitioner's post-hearing submittal.

^{2/} The record does not clearly establish which, if any, of the children reside with Petitioner and his wife.

3/ The Comprehensive Case Information System report regarding Petitioner includes another traffic infraction noted as "Datashare Traffic Infraction" but does not list either the number or title of the statute violated. The evidence is insufficient to find that Petitioner has had more than six traffic infractions since the disqualifying event.

4/ Mr. Mitchell has subsequently retired from the Leesburg Police Department.

5/ T38:10-13.

6/ T40:18-25.

7/ It is important to note that physical injury is not a required element of the crime of battery. See § 784.03(1), Fla. Stat. (Battery occurs when a person either "[a]ctually and intentionally touches or strikes another person against the will of the other;" or "[i]ntentionally causes bodily harm to another person.") Therefore, the Agency cannot infer from Petitioner's nolo plea that the victim actually suffered bodily injury.

8/ T41:1-8.

9/ All references herein to the Florida Statutes are to the 2015 version.

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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.