

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FELICIA DENEEN MAYE,

Petitioner,

vs.

Case No. 16-6361EXE

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (DOAH) conducted the final hearing in this matter on January 4, 2017, by video teleconference at locations in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: Felicia Deneen Maye, pro se
3440 Harbor Winds Way
Leesburg, Florida 33801

For Respondent: Jeannette L. Estes, Esquire
Agency for Persons with Disabilities
Suite 422
200 North Kentucky Avenue
Lakeland, Florida 33801

STATEMENT OF THE ISSUES

A. Did Petitioner prove rehabilitation from her guilty plea to a charge of burglary, which disqualified from working with vulnerable adults and children, by clear and convincing evidence?

B. If she did, is the intended denial of Petitioner's request for an exemption from disqualification by Respondent, Agency for Persons with Disabilities (Agency) an abuse of discretion?

PRELIMINARY STATEMENT

By letter dated September 16, 2016, the Agency notified Petitioner that it intended to deny her request for an exemption from disqualification from employment in a position of special trust. Petitioner timely requested a formal administrative hearing to contest the decision. The Agency referred the dispute to DOAH to conduct the requested hearing. The hearing was conducted as noticed.

Petitioner testified. Petitioner's Exhibits 1 through 3 were accepted into evidence. The Agency presented the testimony of Jeffery Smith. Agency Exhibits 1 through 4 were admitted into evidence.

The parties were provided an opportunity to submit proposed recommended orders. The Agency submitted one. Petitioner did not.

FINDINGS OF FACT

1. Petitioner seeks employment with Good Wheels, Inc. Good Wheels serves people with disabilities. As its employee, Petitioner would be directly providing services to people with disabilities. The clients that Good Wheels serves are vulnerable

individuals. They are people with intellectual disabilities, autism, spina bifida, Prader-Willi syndrome, cerebral palsy, Down syndrome, and/or Phelan-McDermid Syndrome. § 393.063(12), Fla. Stat. (2016).^{1/} They are vulnerable people, more at risk for abuse or neglect than the general population because of intellectual deficits or physical disabilities. Consequently, employment as a direct service provider for them is a position of special trust.

2. Because Petitioner wants to work as a direct service provider, the law requires her to comply with background screening requirements. Petitioner's background screening identified a guilty plea to a felony that disqualified her from working with vulnerable individuals, including people with disabilities. The disqualifying offense is burglary, a violation of section 810.02(3), Florida Statutes (1994).

3. Petitioner seeks an exemption from the disqualification, as provided for by sections 393.0655(2) and 435.07, Florida Statutes.

4. Petitioner completed an anger management class and satisfied all other obligations the court imposed upon her in the burglary case.

5. Petitioner's criminal history includes the following offenses, which are not of themselves disqualifying offenses:

(a) an arrest for aggravated battery on September 2, 1994, a violation of section 784.045, Florida Statutes (1994);

(b) an arrest for aggravated assault with a deadly weapon and battery (misdemeanor) on September 4, 1994, violations of sections 784.021(1)(a) and 784.03(1)(a)1., Florida Statutes (1994) (the aggravated assault charge was reduced to a second count of battery; Petitioner was adjudicated guilty of this offense);

(c) an arrest for battery in January 1995, a violation of section 784.03 Florida Statutes (1994);

(d) an arrest for alteration of a tag by any means and driving with no valid driver's license in February 2001, violations of sections 322.03 and 320.061, Florida Statutes (2001);

(e) and an arrest for aggravated battery with a deadly weapon and battery in April 2002, violations of sections 784.045(1)(a)(2) and 784.03(1) Florida Statutes.

6. The disqualifying burglary offense arose from Petitioner's belief that the victim stole rent money from Petitioner's glove box. A friend suggested that Petitioner break into the victim's house to recover the money. She did and was caught.

7. This offense and most of the non-disqualifying offenses occurred when Petitioner was young. The incidents involved

drinking alcohol. Many involved an inability to control her temper and a readiness to resort to violence to solve problems. One example is the 2002 aggravated battery charge. An argument with Petitioner's girlfriend escalated from screaming to shoving to Petitioner breaking a beer bottle on her girlfriend's head. This Petitioner characterized as a "push & shove slap fight" with no life threatening injuries.

8. The aggravated battery charge in September 2, 1994, is another example. It arose from a dispute about Petitioner's girlfriend's failure to repay money loaned by the victim. The person who loaned the money threatened to scratch the girlfriend and infect her with a fatal disease. Petitioner and her girlfriend began to fight with the victim. During the fight Petitioner took a knife from the victim and stabbed him.

9. Petitioner no longer uses alcohol. Her last offense occurred in 2002. She accepts responsibility for her actions and is remorseful for them. But she minimizes them and the injuries they caused somewhat.

10. People who know Petitioner vouch for her. Someone who has known Petitioner five years attests to her work ethic and dedication. She described Petitioner as a "dynamic worker who will go the extra mile on all projects."

11. A chronically ill person for whom Petitioner has been a primary caregiver for more than three years praises her. She

describes her as compassionate and positive. She emphasizes Petitioner's ability to stay calm and cool even when the ill person devolved into "terrible rages."

12. Petitioner has satisfied the requirements to qualify for the "Federal Bonding Program" offered by a company that offers employee bonds from Travelers Property Casualty Insurance Company. The record does not establish what the requirements to qualify for a bond are.

13. Petitioner's employer from February 27, 2006, through May 10, 2014, MV Transportation, has repeatedly recognized her achievements. It awarded her a certificate of excellence as Division Operator of the Quarter in recognition of valuable contributions to safety excellence and customer service. In 2012 Petitioner was paratransit driver of the year. In 2013 MV's Senior Vice President of Safety commended Petitioner for her six years of accident-free driving and commitment to safety.

14. The information in paragraphs 10 through 13 comes from documents, not witness testimony. Consequently, the statements are hearsay. Their authors were not subject to cross examination by the Agency to test any bias of the authors, the distinctness of their memories, or the basis of their conclusions.

15. Petitioner attends church regularly and participates in church activities. She credits her faith for the motivation and resolve to end the pattern of harmful and illegal behavior

demonstrated in earlier years. Petitioner also participates in a motorcycle club that conducts events to raise funds for community service.

CONCLUSIONS OF LAW

16. Sections 120.569 and 120.57(1), Florida Statutes, grant DOAH jurisdiction over the parties to and the subject matter of this proceeding.

17. Petitioner seeks a position directly serving vulnerable persons. Serving in that position requires successful completion of Level 2 background screening under section 393.0655.

18. Petitioner's 1994 guilty plea disqualified her from employment directly serving the vulnerable. Petitioner seeks an exemption from disqualification under sections 393.0655(2) and 435.07. Petitioner is eligible to seek exemption from disqualification.

19. Section 435.07(3)(a) states that individuals seeking an exemption "must demonstrate by clear and convincing evidence that the employee should not be disqualified from employment." It goes on to state that employees bear "the burden of setting forth clear and convincing evidence of rehabilitation." The repetition emphasizes the importance of the requirement.

20. Clear and convincing evidence must be credible. The memories of witnesses must be clear and not confused. The evidence must produce a firm belief that the truth of allegations

has been established. Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). Evidence that conflicts with other evidence may be clear and convincing. The trier of fact must resolve conflicts in the evidence. G.W.B. v. J.S.W. (in Re Baby E.A.W.), 658 So. 2d 961, 967 (Fla. 1995).

21. If the employee proves rehabilitation by clear and convincing evidence, the employee must also prove that denial of an exemption is an abuse of discretion. § 435.07(3)(c), Fla Stat. In J. D. v. Florida Department of Children & Families, 114 So. 3d 1127, 1130 (Fla. 1st DCA 2013), Judge Wetherell described the abuse of discretion review standard thus:

An agency's decision to grant or deny an exemption is subject to the deferential abuse of discretion standard of review. See Heburn v. Dep't of Children & Families, 772 So. 2d 561, 563 (Fla. 1st DCA 2000). Under this standard, "[i]f reasonable men could differ as to the propriety of the action taken by the [lower tribunal], then the action is not unreasonable and there can be no finding of an abuse of discretion." Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980); see also id. ("Discretion . . . is abused when the . . . action is arbitrary, fanciful, or unreasonable . . .") (quoting Delno v. Market Street Railway Co., 124 F.2d 965, 967 (9th Cir. 1942)).

22. Petitioner relies on only her testimony and documents containing statements of others. As noted in paragraph 14, the record does not contain evidence demonstrating how much weight or credibility the statements in those documents should receive.

The record does prove that until about 15 years ago, Petitioner would resort to violence to resolve conflicts.

23. The law places a difficult burden of proof on Petitioner. She must prove rehabilitation by clear and convincing evidence, not just a preponderance. She has not satisfied it.

24. As a whole, the record does not prove Petitioner's rehabilitation by clear and convincing evidence. The evidence, although it indicates rehabilitation, does not leave a firm belief that Petitioner is rehabilitated.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Agency for Persons with Disabilities, enter its final order denying Petitioner's exemption request.

DONE AND ENTERED this 24th day of February, 2017, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of February, 2017.

ENDNOTE

^{1/} All citations to Florida Statutes are to the 2016 codification unless otherwise noted.

COPIES FURNISHED:

Jeannette L. Estes, Esquire
Agency for Persons with Disabilities
Suite 422
200 North Kentucky Avenue
Lakeland, Florida 33801
(eServed)

Felicia Deneen Maye
3440 Harbor Winds Way
Leesburg, Florida 34748

Barbara Palmer, Director
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

Richard D. Tritschler, General Counsel
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

Michele Lucas, Agency Clerk
Agency for Persons with Disabilities
4030 Esplanade Way, Suite 380
Tallahassee, Florida 32399-0950
(eServed)

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.