

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DOMINIC CHAMBERS,

Petitioner,

vs.

Case No. 16-6521EXE

AGENCY FOR PERSONS WITH  
DISABILITIES,

Respondent.

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RECOMMENDED ORDER

This case came before Administrative Law Judge John G. Van Laningham for final hearing by video teleconference on January 11, 2017, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Dominic Chambers, pro se  
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For Respondent: Jeannette L. Estes, Esquire  
Agency for Persons with Disabilities  
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STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should be granted an exemption from disqualification from employment as a

direct service provider having face-to-face contact with developmentally disabled clients receiving adult day training.

PRELIMINARY STATEMENT

By a letter dated October 13, 2016, the Executive Director of the Agency for Persons with Disabilities, Barbara Palmer, notified Petitioner Dominic Chambers that his request for an exemption from disqualification from employment as a provider of services to developmentally disabled persons would be denied. In a Request for Administrative Hearing, which he signed on October 23, 2016, Mr. Chambers exercised his right to be heard in a formal administrative proceeding. On November 7, 2016, the agency referred the matter to the Division of Administrative Hearings, where the case was assigned to an Administrative Law Judge.

The final hearing took place as scheduled on January 11, 2017, with both parties present. Petitioner testified on his own behalf; presented as his witnesses Donna Shula, Sharron Roberson, and Christa Chambers; and offered no exhibits. Respondent called one additional witness, Rita Castor, and elicited further testimony from Mr. Chambers. Additionally, Respondent's Exhibits A, B, C, and D were received in evidence.

The final hearing was recorded but not transcribed. Each party timely submitted a Proposed Recommended Order on or before the established deadline, which was January 24, 2017.

Unless otherwise indicated, citations to the official statute law of the State of Florida refer to Florida Statutes 2016, except that all references to statutes or rules defining offenses or prescribing penalties for committing such offenses are to the versions that were in effect at the time of the alleged wrongful acts.

#### FINDINGS OF FACT

1. At some time relevant to this case, Petitioner Dominic Chambers ("Chambers") sought employment with, or to perform volunteer services for, The Schott Communities, a private, nonprofit corporation that provides services to adults with disabilities under the regulatory jurisdiction of Respondent Agency for Persons with Disabilities ("APD"). Chambers was required to undergo a background investigation as a condition precedent to taking a position as a personal provider of services to clients of The Schott Communities.

2. Consequently, a criminal records search was conducted, and the results were forwarded to the Department of Children and Families ("DCF"), which administers the background screening process for APD. By letter dated June 7, 2016, DCF notified

Chambers that it had discovered the following two criminal convictions in his past:

- Grand theft of the third degree--December 3, 2007
- Violation of probation--January 21, 2009

DCF alleged that each of the foregoing crimes is a "disqualifying offense" under the applicable screening standards, which rendered Chambers ineligible to work for The Schott Communities without an exemption from such disqualification.

3. DCF was partially mistaken, as a matter of fact and law, for "violation of probation" is not a crime and thus cannot lead to a criminal conviction, nor is it listed among the statutorily designated disqualifying offenses. As will be shown below, however, grand theft *is* a disqualifying offense, and, therefore, DCF correctly advised Chambers that he would need to apply for and obtain an exemption if he wanted a job as a direct service provider.

4. Chambers timely sought an exemption from disqualification from employment, submitting his Request for Exemption to APD in July 2016. By letter dated October 13, 2016, APD informed Chambers that it intended to deny his request based solely on the ground that Chambers had "not submitted clear and convincing evidence of [his]

rehabilitation." In other words, APD determined as a matter of ultimate fact that Chambers was not rehabilitated, which meant (as a matter of law) that the head of the agency had *no discretion* to grant an exemption.<sup>1/</sup> APD did not, as an alternative basis for its proposed agency action, articulate any rationale for denying the exemption notwithstanding a showing of rehabilitation, assuming *arguendo* that such had been made.

5. Chambers initiated the instant proceeding, hoping to prove his rehabilitation. The undersigned has considered the evidence as it relates to the statutory criteria for assessing rehabilitation, and makes the following findings of fact as a predicate for the ultimate determination.

The Circumstances Surrounding the Criminal Incident.

6. On or about May 31, 2007, Chambers stole a cell phone valued at approximately \$350.00 from a package in the possession of his employer, United Parcel Service ("UPS"). At hearing, Chambers testified that he committed this crime at the instance of a fellow employee, whom he knew from high school. He and his accomplice were arrested in June 2007 and charged with grand theft of the third degree, a felony offense as defined in section 812.014, Florida Statutes. The other man was not prosecuted, however, apparently for want of evidence.

7. At the time of the offense, Chambers, then 18 years old, was taking classes at the local community college, in

addition to working at UPS. Obviously, he lost his job with UPS due to the theft. On December 3, 2007, appearing before the Circuit Court in and for the Seventeenth Judicial Circuit of Florida, Chambers entered a plea of nolo contendere to the criminal charge, was convicted by plea (adjudication withheld), and was sentenced to 18 months' probation with orders to make restitution and complete anti-theft and counseling courses.

8. Chambers completed the term of probation in 2009 and complied with all of the other conditions imposed by the court.

9. APD contends that Chambers's account of the criminal incident (on which the findings above are based) differs in some respects from the police reports prepared at the time of his arrest, which Chambers provided APD in connection with his exemption request. The police reports, however, which are themselves hearsay if offered for the truth of the matters asserted therein, contain multiple layers of embedded hearsay, making them relatively useless as substantive evidence. More important, APD is quibbling about details, none of which make Chambers's crime "worse," even if believed, or impugn Chambers's fundamental credibility as a witness.

The Time Period That Has Elapsed Since the Incident.

10. The disqualifying offense was committed about ten years ago, when Chambers was a young adult. He thus has had ample time to restore his reputation and usefulness to society

as a law abiding citizen following his conviction, and to mature into an older, more responsible adult.

The Nature of the Harm Caused to the Victim.

11. Chambers did not cause personal injury to any person in the commission of his crime. The stolen property (a \$350.00 cell phone) was returned to UPS. In addition, Chambers was ordered to make restitution, and did, although the details of this transaction are not available in the record. Therefore, the economic harm caused by Chambers's theft appears to have been minimal. (Just to be clear, the undersigned is not implying that the *crime* was minor; he is merely finding, as the statute requires, that as crimes go, this one fortunately caused little harm, if any. Further, to be even clearer, the undersigned recognizes that Chambers's criminal activity might have caused much greater harm had he not been caught so quickly.)

The History of the Applicant Since the Incident.

12. Since his conviction, Chambers has continued taking college level courses, at Florida International University and Broward College, where he hopes to earn an Associate of Arts degree in the area of behavioral analysis. In 2011, he completed a program of training to become a nursing assistant, although he has not applied for licensure as a certified nursing assistant. In 2016, Chambers obtained a certification in

Professional Crisis Management, after successfully completing a course in reactive strategies for controlling the behavior of persons with developmental disabilities.

13. Chambers has been working with special needs children for a number of years. For the eight years before, and through, the instant proceeding, Chambers served as a patient care assistant to the adult son of Donna Shula,<sup>2/</sup> whose name is T.C. T.C. is currently 26 years old, over six feet tall, and can be difficult to handle due to his disabilities. Chambers assists directly in the care of T.C., primarily in the home, both on a volunteer and privately paid basis.

14. Chambers also worked for several years as a behavioral tech at Broward Academy, a private school for children with disabilities. In this capacity, he worked in a classroom setting, teaching life skills, social skills, and academics.

15. APD argues that Chambers has failed to "take responsibility" for his criminal behavior and "appeared to show a lack of remorse." These arguments are not well founded in fact. While it is true that Chambers believes, mistakenly, that the theft of property worth \$350.00 would have been classified as a misdemeanor offense until the statute was, he claims, amended shortly before he stole the cell phone (it was not), this does not impress the undersigned as a sufficient basis for finding that Chambers considers his conviction insignificant or



illegitimate. Indeed, that Chambers wants others to think of his crime as less serious (based on his misunderstanding of the law) implies a sense of shame that might be consistent with remorse. In any event, Chambers has owned up to his wrongdoing and accepted his punishment. As for remorse, this can be difficult both to discern in another person, and to differentiate from other emotions; it would be challenging indeed for that person to prove he is experiencing remorse. The undersigned cannot find, based on the evidence of record, that Chambers is constantly wracked with guilt, but he seemed sincerely sorry for what he had done and credibly disclaimed the capacity to repeat the mistake.

16. APD severely faults Chambers for so-called omissions from his responses on the exemption questionnaire, which is part of the exemption request form. The form asks the applicant to "write your DETAILED version of the events and be specific" with respect to "EACH criminal offense appearing on your record." APD argues that Chambers failed to provide detailed information about the circumstances surrounding his "non-disqualifying offense" of violation of probation (the fact of which he did disclose), and that he failed to disclose an "arrest" by U.S Customs and Border Patrol. There is nothing to these arguments.

17. First, violation of probation ("VOP") is not a disqualifying offense, as APD acknowledges. Moreover, VOP is

not itself an independent criminal offense for which a probationer may be punished.<sup>3/</sup> If the state proves by the greater weight of the evidence that the probationer committed a willful and substantial violation of the conditions of his probation,<sup>4/</sup> then the court may, among other things, revoke probation and resentence the probationer *on the original charge*.<sup>5/</sup> Because VOP is not a criminal offense, APD's exemption questionnaire does not unambiguously require an applicant to provide details concerning a VOP incident. Chambers cannot fairly be criticized for not volunteering information in addition to that which APD specifically sought.

18. At hearing, Chambers testified about the VOP charge against him. He was arrested in December 2008 for shoplifting at a Walmart. Chambers claims that he "forgot to pay" for a jacket that he had put on in the store. The undersigned considers this explanation to be minimally plausible but not particularly credible. Whether Chambers actually committed a crime is irrelevant, however, because he was not prosecuted and convicted of theft. Instead, Chambers was arrested for VOP, and, in January 2009, the court modified his probation by adding two months to the term.

19. The upshot of the VOP incident is that it shows Chambers was not rehabilitated as of December 2008, about one year after the commission of his disqualifying offense. The

question at issue, however, is whether he is rehabilitated now. The VOP is only marginally relevant, if at all, to that determination.

20. The incident involving Customs is murkier as the record contains no useful documentation of it. Based on Chambers's testimony, a brief summary of the situation can be given. Chambers is a legal permanent resident of the United States—not a citizen. In November 2011, while attempting to leave the country on a cruise, Chambers was detained by Customs officials and warned that, due to his felony conviction for grand theft, he might be deemed an "inadmissible alien" upon his return, which could preclude him from reentering the United States. See 8 U.S.C. § 1182. Chambers's attorney "straightened things out," and he was released.

21. APD asserts that Chambers was "arrested" by Customs, which might be literally true in that he was, it seems, detained and held involuntarily in the custody of federal officials for a period of time. There is, however, no evidence of any kind that Chambers was arrested for, charged with, or convicted of any crime in connection with this matter. Indeed, there is no basis in the record for finding that simply being an inadmissible alien is even a criminal offense. To top it off, it appears highly unlikely that Chambers, a lawful permanent resident, would have been regarded as seeking "admission" (and thus

subject to the grounds of inadmissibility) after merely taking a brief, innocent, casual cruise outside of the U.S. See 8 U.S.C. § 1101(a) (13) (C).

22. The bottom line is that the Customs incident did not involve a criminal offense or conviction. Chambers's testimony that he did not believe the matter needed to be reported to APD is highly credible; his belief was, in fact, both reasonable and correct. Chambers was under no duty to disclose this matter on the exemption questionnaire because APD's form does not unambiguously request such information.

23. APD makes much of the fact that, since his disqualifying offense, Chambers has been given roughly a dozen tickets for noncriminal traffic infractions such as speeding. The undersigned views these as of little significance. To begin, it is a matter of common knowledge that many law abiding folks receive similar tickets without ever, as a result, being regarded by others as threats to society. What should not be lost sight of, here, is that the issue at hand is whether Chambers is a good person, not whether he is a good driver. The undersigned finds nothing in the fact of the tickets, which he has considered, that sheds persuasive light on the question of whether Chambers is a reformed criminal.

Circumstances Showing Applicant Poses No Danger.

24. Chambers presented three character witnesses at hearing, each of whom gave compelling testimony about Chambers's rehabilitation. Sharron Roberson, who had supervised Chambers at Broward Academy, was able to watch Chambers closely while he worked with special needs children, and she testified credibly about her perception of his rehabilitation. Chambers's sister, Christa, testified believably in support of her brother's good moral character, although, to be sure, her relationship to Chambers reduces the value of her opinion, which cannot be considered impartial.

25. The strongest character evidence was the testimony of Ms. Shula, who as mentioned above is the mother of a special needs adult for whom Chambers has provided in-home care and services. Her testimony that she totally trusts Chambers—who she believes has a "heart of gold"—and considers him to be a part of her family is given great weight because she has no apparent reason to fudge the truth on these issues. Further, Ms. Shula walks the walk, which is most impressive. It is highly unlikely, if not inconceivable, the undersigned finds, that Ms. Shula would allow Chambers into her home if she felt he posed even the slightest danger to her family, her son, or herself. The fact that she does allow Chambers to work in her

house, and has done so for more than eight years, is compelling proof of her confidence in him.

26. The undersigned finds without hesitation that Chambers would likely *not* present a danger in the future if an exemption from disqualification were granted.

Ultimate Factual Determination

27. The undersigned has determined, based on clear and convincing evidence, including sufficient persuasive evidence of rehabilitation, that Chambers should not be disqualified from employment because he is, in fact, rehabilitated.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569, 120.57(1), and 435.07(3)(c), Florida Statutes.

29. Chambers seeks to volunteer for, or be an employee of, a facility that serves persons with disabilities. Thus, the position that Chambers seeks to hold falls under the classification of "direct service provider." See § 393.063(13), Fla. Stat. (defining "direct service provider" to include persons having "face-to-face contact with a client while providing services to the client.").

30. Section 393.0655(1), Florida Statutes, provides that APD "shall require level 2 employment screening pursuant to chapter 435 for direct service providers who are unrelated to

their clients, including support coordinators, and managers and supervisors of residential facilities or comprehensive transitional education programs licensed under this chapter and any other person, including volunteers, who provide care or services, who have access to a client's living areas, or who have access to a client's funds or personal property."

31. The level 2 screening standards to which section 393.0655(1) refers are set forth in section 435.04, in pertinent part, as follows:

(2) The security background investigations under this section must ensure that no persons subject to the provisions of this section have been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under any of the following provisions of state law or similar law of another jurisdiction:

\* \* \*

(cc) Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.

32. Having been found guilty of grand theft of the third degree, Chambers is disqualified from employment as a direct service provider unless he "is granted an exemption from disqualification pursuant to s. 435.07." See § 435.06(2), Fla. Stat.

33. Section 393.0655(2) provides that APD "may grant exemptions from disqualification from working with children or adults with developmental disabilities only as provided in s. 435.07."

34. Under section 435.07, the head of APD is granted authority to exempt *some* employees from disqualification. Employees whom the agency head may exempt (as opposed to employees he or she may *not* exempt) include, as relevant, those whose disqualifying convictions were 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 nonmonetary condition imposed by the court for the disqualifying felony.

§ 435.07(1)(a), Fla. Stat.

35. The agency head is prohibited, however, from granting exemptions to all employees who are "exemptible" under section 435.07(1). Section 435.07(3)(a) provides:

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.

(Emphasis added). Further, the "agency may consider as part of its deliberations of the employee's rehabilitation the fact that the employee has, subsequent to the conviction for the disqualifying offense for which the exemption is being sought, been arrested for or convicted of another crime, even if that crime is not a disqualifying offense." § 435.07(3)(b), Fla. Stat.

36. Thus, to fall within the agency's power to award an exemption from disqualification, an employee must be not only "exemptible" under section 435.07(1), but also able to prove successfully, by clear and convincing evidence, that he or she has been rehabilitated, according to the standards prescribed in section 435.07(3)(a).

37. A clearly rehabilitated, "exemptible" employee is not *entitled* to an exemption, but is merely *eligible* to be granted one at the agency's broad discretion. See Heburn v. Dep't of Child. & Fams., 772 So. 2d 561 (Fla. 1st DCA 2000), rev. denied, 790 So. 2d 1104 (Fla. 2001); Phillips v. Dep't of Juv. Just., 736 So. 2d 118 (Fla. 4th DCA 1999). "However, an agency's discretion is not unbridled; discretionary agency action is subject to a review for reasonableness." K.J.S. v. Dep't of

Child. & Fam. Servs., 974 So. 2d 1106, 1109 (Fla. 1st DCA 2007). Further, whether the employee has been rehabilitated is a question of fact; the agency may not reject or modify a finding on this issue unless it first determines, based on a review of the entire record, that the finding is not supported by competent substantial evidence. Id.; see § 120.57(1)(1), Fla. Stat.; accord, B.J. v. Dep't of Child. & Fam. Servs., 983 So. 2d 11, 13 (Fla. 1st DCA 2008) (agency improperly reweighed ALJ's factual findings regarding employee's rehabilitation), reh. denied, 983 So. 2d 11, 16 (agency may not reject ALJ's findings of fact regarding credibility, which are within the discretion of the ALJ and may not be reweighed).

38. In this case, as found above, Chambers carried his burden of establishing rehabilitation clearly and convincingly. Therefore, Chambers is eligible, in fact, for an exemption. See J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013) ("The ultimate issue of fact to be determined in a proceeding under section 435.07 is whether the applicant has demonstrated rehabilitation by clear and convincing evidence.").

39. Had APD's intended action on Chambers's exemption request involved the exercise of discretion, then the undersigned would have been required to "reach the legal conclusion as to whether the proposed decision was an abuse of discretion." Id. at 1133; see also § 435.07(3)(c), Fla. Stat.

APD found, however, that Chambers was not, as a matter of fact, eligible for an exemption, and thus, having so found, deprived itself of any discretion over the proposed decision. This is because the decision to deny the exemption request of an *ineligible* applicant is not a matter of discretion but a clear legal duty.

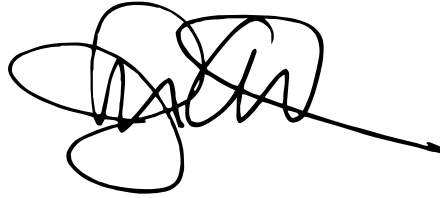
40. There is, accordingly, no discretionary decision for the undersigned to review.

41. The undersigned's opinion as to whether or not Chambers should be granted an exemption is practically worthless since the agency retains the discretion to do what it wants, regardless, within the confines of section 120.57(1)(1). See, e.g., J.D., 114 So. 3d at 1133. As the courts in Heburn and Phillips made clear, moreover, the denial of an exemption to an eligible employee will not generally be considered an abuse of discretion.<sup>6/</sup> The undersigned will, therefore, refrain from making what would be, in effect, a futile recommendation.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Persons with Disabilities enter a final order, consistent herewith, either granting or denying Dominic Chambers the exemption from disqualification for which he is, in fact, eligible.

DONE AND ENTERED this 10th day of February, 2017, in  
Tallahassee, Leon County, Florida.



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JOHN G. VAN LANINGHAM  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 10th day of February, 2017.

ENDNOTES

<sup>1/</sup> The question of whether to grant an exemption is committed to the agency head's discretion *if and only if* the employee has proved his rehabilitation by clear and convincing evidence. See § 435.07(3)(a), Fla. Stat. If the employee is not rehabilitated, then the agency head has *no choice* but to deny the exemption—there is no discretion to be exercised in that event. Id.

<sup>2/</sup> Yes, she is the daughter of the legendary coach.

<sup>3/</sup> See, e.g., Lee v. State, 54 So. 3d 573, 573-74 (Fla. 1st DCA 2011).

<sup>4/</sup> Melton v. State, 65 So. 3d 96, 97 (Fla. 1st DCA 2011).

<sup>5/</sup> See § 948.06, Fla. Stat.

<sup>6/</sup> In Heburn, 772 So. 2d at 563, the court wrote that the agency's "exercise of discretion [in granting or denying an exemption to an eligible employee] is circumscribed by the

standards set forth in section 435.07(3)." These standards specifically bear on the issue of rehabilitation, a fact which an "exemptible" applicant must establish, by clear and convincing evidence, in order simply to be eligible for an exemption. Since the agency has no discretion to exempt ineligible applicants but instead may grant exemptions only to those who are eligible and hence who, by definition, have adequately demonstrated rehabilitation pursuant to the section 435.07(3) standards, it is not entirely clear how those same standards are to be applied in distinguishing between eligible applicants who, in the exercise of sound discretion, reasonably should be exempted from disqualification and those who reasonably should not be. In any event, when denying an exemption to an eligible applicant such as Chambers, the agency ideally should articulate the facts and circumstances upon which its discretionary decision has been based, so that the outcome will not appear to be arbitrary or capricious, and also to enable a reviewing court to determine whether or not the agency's discretion was abused, if the disappointed applicant appeals.

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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.