

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARLA JOHNSON-LANE,

Petitioner,

vs.

Case No. 17-3087EXE

AGENCY FOR PERSONS WITH
DISABILITIES,

Respondent.

_____ /

RECOMMENDED ORDER

On August 1, 2017, Administrative Law Judge Yolonda Y. Green, of the Division of Administrative Hearings ("Division"), conducted a duly-noticed final hearing in Tallahassee, Florida.

APPEARANCES

For Petitioner: No appearance

For Respondent: Kurt Eric Ahrendt, Esquire
Agency for Persons with Disabilities
Suite 380
4030 Esplanade Way
Tallahassee, Florida 32399-0950

STATEMENT OF THE ISSUES

The issue in this case is whether Petitioner has demonstrated by clear and convincing evidence that she should not be disqualified from employment in a position involving direct contact with children or developmentally disabled persons; and, if so, whether Respondent's intended agency action to deny her

request for an exemption from disqualification is an abuse of discretion.

PRELIMINARY STATEMENT

In a letter dated April 11, 2017, the Agency for Persons with Disabilities ("APD" or "Respondent") notified Carla Johnson-Lane ("Ms. Johnson-Lane" or "Petitioner"), that her request for an exemption from disqualification from employment in a position of trust 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 vulnerable adults served in programs regulated by APD. The basis for APD's denial of exemption, as alleged in its notice of proposed agency action, was that Petitioner had not submitted clear and convincing evidence of rehabilitation from a past disqualifying criminal offense.

On May 8, 2017, Petitioner timely requested a formal administrative hearing. On May 23, 2017, Respondent referred this matter to the Division for a final hearing.

On May 24, 2017, the undersigned issued the Initial Order. The parties filed their Joint Response to Initial Order ("Joint Response") on May 31, 2017. In the Joint Response, the parties provided dates of availability, on which the undersigned was not available. The parties then indicated that they were available for the final hearing on August 1, 2017. On June 6, 2017, the undersigned issued a Notice of Hearing scheduling the final

hearing via teleconference in Tallahassee and Gainesville, Florida, for August 1, 2017, at 9:30 a.m.

Petitioner did not file or exchange a witness list, exhibit list, or proposed exhibits, pursuant to the Order of Pre-hearing Instructions and Notice of Hearing. On July 19, 2017, Respondent filed its Notice of Filing Witness List and Proposed Exhibit List, and its proposed exhibits.

Pursuant to notice, the final hearing was convened at 9:30 a.m., on August 1, 2017. No one appeared on behalf of Petitioner. The attorney for Respondent appeared, and Respondent's witnesses, Leslie Richards and Daniella Jones, were present to testify. A court reporter was in attendance, having been retained by Respondent. After preliminary matters were completed, a 30-minute recess was granted to allow for an appearance by Petitioner. The final hearing reconvened at 10:05 a.m., without an appearance by Petitioner. Given the burden of proof as discussed herein below, the final hearing was thereafter adjourned.

Respondent offered Exhibits 1 through 5, which were admitted.

Unless otherwise indicated all statutory references are to Florida Statutes (2017).^{1/}

FINDINGS OF FACT

1. Respondent is the state agency responsible for regulating employment of persons who provide direct service to APD clients.

2. Petitioner seeks an exemption from disqualification from employment in order to work with APD clients.

3. In a letter dated April 11, 2017, Respondent issued its notice of proposed agency action which informed Petitioner that her request for exemption from disqualification was denied.

4. Petitioner filed a timely Petition for Formal Administrative Hearing involving disputed issues of material fact.

5. After filing the hearing request, Petitioner joined in the response to the Initial Order, and the final hearing was scheduled on a date provided by Petitioner. Thereafter, Petitioner failed to comply with the Order of Pre-hearing Instructions and failed to appear at the final hearing that Petitioner requested.

6. Based on Petitioner's failure to appear and offer evidence, there is no evidentiary basis on which findings can be made regarding whether Petitioner proved her rehabilitation from the disqualifying offense such that Petitioner would not present a danger to children or developmentally-disabled persons served in programs regulated by Respondent.

7. Petitioner has abandoned her hearing request.

CONCLUSIONS OF LAW

8. 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.

9. Section 435.07, Florida Statutes, 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, in pertinent part, that:

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.

* * *

(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 action is an abuse of discretion.

10. The statute must be strictly construed against the person claiming the exemption. Heburn v. Dep't of Child. & Fams., 772 So. 2d 561 (Fla. 1st DCA 2000).

11. It is well-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.

J.D. v. Dep't of Child. & Fams., 114 So. 3d 1127, 1132 (Fla. 1st DCA 2013).

12. APD has a heightened interest in ensuring that the vulnerable population it serves is not abused, neglected, or exploited. In light of that mission, the Legislature has justifiably imposed a heavy burden of proof on those seeking approval to serve those persons when they have disqualifying events in their past.

13. Petitioner failed to meet her burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, Agency for Persons with Disabilities, enter a final order denying Petitioner, Carla Johnson-Lane's, request for an exemption from disqualification.

DONE AND ENTERED this 18th day of August, 2017, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of August, 2017.

ENDNOTE

^{1/} Because a final order has not yet been issued for this case, Petitioner's application for exemption is governed by current law. See E.J. v. Dep't of Child. & Fams., 219 So. 3d 946 (Fla. 3rd DCA 2017). See also Ag. for Health Care Admin. v. Mt. Sinai Med. Ctr., 690 So. 2d 689, 691 (Fla. 1st DCA 1997).

COPIES FURNISHED:

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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.