

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM T. CROWLEY,

Petitioner,

vs.

Case No. 17-5130

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER

An administrative hearing was conducted in this case on January 25, 2018, in Tallahassee, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Willie T. Crowley, pro se
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Tampa, Florida 33647

For Respondent: Antonio Lozada, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 7
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STATEMENT OF ISSUE

The issue is whether Petitioner should be exempt from disqualification for employment in a position of trust, pursuant to section 435.07, Florida Statutes.^{1/}

PRELIMINARY STATEMENT

In June 2017, Petitioner submitted a request for exemption from disqualification to Respondent, Agency for Health Care Administration (AHCA or Respondent). AHCA conducted a telephonic hearing with Petitioner on August 2, 2017. By letter dated August 10, 2017 (Denial Letter), AHCA notified Petitioner that his request for an exemption from disqualification was denied. The Denial Letter advised Petitioner that he had 21 days from receipt of the Denial Letter to request an administrative hearing.

Petitioner, through counsel, timely requested an administrative hearing. On September 18, 2017, AHCA referred this matter to DOAH. An administrative hearing was originally scheduled for November 20, 2017, but, following the granting of Petitioner's counsel's Motion to Withdraw as Counsel and rulings on AHCA's Motion to Compel and Petitioner's Motion to Continue, this case was continued and rescheduled for January 25, 2018.

At the final hearing, AHCA proceeded first to explain its position, even though Petitioner, as applicant for an exemption from disqualification, had the burden of persuasion. AHCA presented the testimony of Samantha Heyn, the manager of AHCA's background screening unit, and offered 20 exhibits, all of which were received into evidence as Exhibits R-A through R-T. Petitioner testified on his own behalf, relied on the exhibits

offered by AHCA, and offered five records of other applicants for exemptions, which were marked and received into evidence as composite Exhibit P-1, over AHCA's objection.

The proceedings were recorded but no transcript was ordered. Proposed recommended orders were due February 5, 2018, and both parties timely filed their respective Proposed Recommended Orders, which were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. AHCA is authorized to conduct certain background screenings for employees providing specific types of services within health care facilities licensed by AHCA. See § 408.809(1)(a), Fla. Stat. (employees subject to screening); § 408.803(9), Fla. Stat. (definition of "licensee").

2. Petitioner was required to participate in Respondent's background screening process because he sought employment in a position providing direct services to residents of a health care facility licensed by AHCA under chapter 400, Florida Statutes.

3. Petitioner underwent the required background screening, which revealed:

a. On or about May 6, 1996, in Case No. 1995MM007600, Petitioner was adjudicated guilty of Battery under section 784.03(1)(a)1., Florida Statutes. At the time of this offense, Petitioner and Teresa Poole, the alleged victim, resided together or shared the same dwelling.

b. On or about May 15, 2002, in Case No. 2002CF000065, Petitioner pled no contest to Battery under section 784.03(1)(a)1., a misdemeanor. Adjudication was withheld. At the time of this offense, Petitioner was residing with or was sharing the same dwelling with Erica Goode, the alleged victim.

c. On or about July 6, 2009, in Case No. 2009MM000294, Petitioner pled no contest to Battery under section 784.03(1)(a)1. Christine Crowley, the alleged victim, and Petitioner are related by blood and have previously resided together in the same dwelling. Christine Crowley is Petitioner's biological sister.

4. Each of the above-referenced battery charges constitutes Domestic Violence under section 741.28, Florida Statutes.

5. Under sections 435.04(3) and 408.809(4)(e), Florida Statutes, the above-referenced criminal offenses disqualify Petitioner from providing services in a health care facility licensed by AHCA, unless AHCA grants Petitioner an exemption pursuant to section 435.07.

6. In addition to his disqualifying offenses, Petitioner's background screening revealed:

a. On or about September 18, 1998, in Case No. 1998CF000638, Petitioner was arrested for Aggravated Battery under section 784.045(1)(a)1. Although Petitioner was not ultimately convicted, at the time of this charged offense, Petitioner was residing with or had previously resided with the alleged victim, Christina McCullum, in the same

dwelling. A conviction of this charge would constitute Domestic Violence under section 741.28.

b. On or about September 21, 1998, in Case No. 1998CT003202, Petitioner pled no contest to Driving While License Suspended (With Knowledge) under section 322.34(2), Florida Statutes. Petitioner maintains that he did not actually have knowledge.

c. On or about February 1, 1999, in Case No. 1999CT00187, Petitioner was adjudicated guilty of Driving While License Suspended (With Knowledge) under section 322.34(2). Petitioner maintains that he did not actually have knowledge.

d. On or about February 24, 1999, in Case No. 1998CT004442, Petitioner was adjudicated guilty of Driving While License Suspended (With Knowledge) under section 322.34(2). Petitioner maintains that he did not actually have knowledge.

e. On or about January 25, 1999, in Case No. 1999CF000264, Petitioner was arrested for Burglary under section 810.02(3)(b) and Battery under section 784.03(1)(a)1. At the time of these offenses, Petitioner had previously resided with the alleged victim, Christina McCullum, in the same dwelling. If convicted, this charge would constitute Domestic Violence under section 741.28.

f. On or about April 14, 1999, in Case No. 1999MM000766, Petitioner was arrested for Assault under section 784.011. Petitioner was not ultimately convicted.

g. On or about July 14, 1999, in Case No. 1999CF2483, Petitioner was arrested for Aggravated Battery under section 784.045. Petitioner was not ultimately convicted. At the time of this alleged offense, the Petitioner had previously resided with the alleged victim, Christina McCullum, in the

same dwelling. If convicted, this charge would constitute Domestic Violence under section 741.28.

h. On or about December 12, 1999, in Case No. 1999CF000727 (later transferred to 1999MM002249), Petitioner was arrested for Battery under section 784.03(1)(a)1. and Resisting without Violence under section 843.02. At the time, Petitioner had previously resided with the victim, Christina McCullum in the same dwelling. The battery charge constitutes Domestic Violence under section 741.28. Petitioner was adjudicated guilty of the above-referenced Resisting without Violence charge and sentenced to a year of probation with a special condition of completion of a Batterer's Intervention Program.

i. On or about July 30, 2002, in Case No. 2002MM007400, Petitioner was charged for giving a worthless check under section 832.05(2), but the charges were ultimately dismissed.

j. On or about November 5, 2003, in Case No. 2003CF000692, Petitioner was charged with Aggravated Battery under section 784.045(1)(a)1. Petitioner was not ultimately convicted.

k. On or about March 18, 2004, in Case No. 2004CF000185, Petitioner was charged with Dealing in Stolen Property, under section 812.019(1). Petitioner was not ultimately convicted.

l. On or about June 3, 2009, in Case No. 2009CF000362, Petitioner was charged with Burglary under section 810.02(3)(c) and Petit Theft under section 812.014(3)(a), Florida Statutes. Petitioner was not ultimately convicted. At the time of the above-referenced charges, Petitioner was the former

spouse of, and had previously resided with, the alleged victim, Erica Goode/Crowley in the same dwelling.

m. On or about June 26, 2009, in Case No. 2009MM000678, Petitioner was arrested for Battery under section 784.03(1)(a)1. and Disorderly Conduct (Affray) under section 870.01(1). Petitioner was not ultimately convicted.

n. On or about July 9, 2009, in Case No. 2009MM000721, Petitioner was charged with violating a No Contact Order issued by the first appearance judge in the case referenced above. Petitioner was not ultimately convicted.

o. On or about August 21, 2009, in Case No. 2009MM000922, Petitioner was arrested for Battery under section 784.03(1)(a)1. Petitioner was not ultimately convicted. At the time of this arrest, Petitioner was residing in the same dwelling with the alleged victim, Michelle Vanhooose.

p. On or about January 2011, in Case No. 2010CF000620, Petitioner was adjudicated guilty of Aggravated Stalking under section 784.048(3), Florida Statutes.

7. Licensed professionals under the Department of Health may work at a facility licensed by AHCA, if granted an exemption by the Department of Health, but may only work within the scope of that professional license, unless AHCA itself grants the applicant an exemption.

8. Petitioner does not have an active license or exemption from disqualification from the Department of Health.

9. Petitioner does not dispute that he has disqualifying offenses and subsequent criminal history, but claims his application and entire file support his rehabilitation by clear and convincing evidence.

10. AHCA received Petitioner's application for exemption in accordance with sections 408.809 and 435.07, on or about June 15, 2017. AHCA conducted a telephonic hearing with Petitioner on August 2, 2017.

11. During the telephonic hearing, in addition to discussing the results of Petitioner's background screening, as evidence of his rehabilitation, Petitioner pointed out that he has been working, getting an education, and has not been arrested in six years. Petitioner also submitted several positive letters of recommendation from close friends and family.

12. After the telephonic hearing, AHCA denied Petitioner's request for an exemption and sent Petitioner the Denial Letter, signed by AHCA's manager for the Background Screening Unit, Samantha Heyn, on behalf of AHCA.

13. Although Ms. Heyn did not attend AHCA's telephonic hearing with Petitioner, she previously spoke to Petitioner in a phone call about his exemption request.

14. In making the decision to deny Petitioner's application, Ms. Heyn and pertinent AHCA staff with the

background screening unit considered Petitioner's entire case file, including all submissions received from Petitioner and his explanations during the teleconferences.

15. AHCA also considered the time elapsed since the offenses, the nature and harm to the victims, the circumstances surrounding the offenses, Petitioner's history since the offenses, and all other supporting documentation provided by Petitioner before deciding to deny Petitioner's request for exemption from disqualification.

16. Petitioner testified that he has ambitions to work as a licensed health care professional.

17. During the administrative hearing, Petitioner testified that he is in his current predicament because of vindictive people falsely accusing him of crimes, and AHCA personnel who have labeled him a criminal. Similarly, during his earlier teleconference with AHCA, Petitioner stated that he was in his current situation due to racism, labeling, vindictive people out to destroy him, and other factors out of his control.

18. Petitioner's statements at the initial teleconference with AHCA were conflicting as to whether the courses he took for batterer's intervention and anger management were court-ordered, conditions of a plea deal with prosecutors, or fully voluntary outside of the criminal justice system. Petitioner was arrested for violent and domestic crimes after taking each course.

19. While Petitioner has stated that he takes full responsibility for his actions, his other statements at the teleconference and at the administrative hearing reflect a lack of candor and an unwillingness to accept responsibility for his past criminal episodes.

20. While the letters of recommendation from close family and friends, successful educational pursuits, and a clean record for the last six years demonstrate progress toward rehabilitation, this fairly recent success does not annul Petitioner's extensive criminal history, lack of candor, and unwillingness to accept responsibility.

21. The records of successful exemption applicants offered by Petitioner were not helpful to Petitioner's case. The criminal backgrounds were not the same as Petitioner's and the evidence was insufficient to permit a useful comparison between the facts and circumstances of those applicants with those of Petitioner.

22. In view of all of the evidence, it is found that Petitioner failed to meet his burden to prove by clear and convincing evidence of rehabilitation when he presented his case to AHCA, and the evidence presented at the final hearing failed to demonstrate that AHCA abused its discretion in denying Petitioner's request for exemption.

CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties and the subject matter of this proceeding under sections 120.569 and 120.57, Florida Statutes.

24. Section 435.04 provides:

(1)(a) All employees in positions designated by law as positions of trust or responsibility shall be required to undergo security background investigations as a condition of employment and continued employment. For the purposes of this subsection, security background investigations shall include, but not be limited to, fingerprinting for all purposes and checks in this subsection, statewide criminal and juvenile records checks through the Florida Department of Law Enforcement, and federal criminal 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.

§ 435.04 (1) and (3), Fla. Stat.

25. Section 408.809(4)(e) states:

(4) In addition to the offenses listed in s. 435.04, all persons required to undergo background screening pursuant to this part or authorizing statutes must not have an arrest

awaiting final disposition for, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record not have been sealed or expunged for any of the following offenses or any similar offense of another jurisdiction:

* * *

(e) Section 741.28, relating to domestic violence.

26. Section 741.28(2) and (3) states:

(2) "Domestic violence" means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

(3) "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

27. Petitioner's 1995, 2002, and 2009 battery charges constitute domestic violence as defined in section 741.28 and are disqualifying offenses.

28. Section 435.07 allows for exemptions from disqualifying offenses to be granted, providing in pertinent part:

Unless otherwise provided by law, the provisions of this section 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 nonmonetary condition imposed by the court 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.

(b) 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.

(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.

29. Additionally, Florida Administrative Code Rule 59A-35.090 provides that:

(c) The individual shall bear the burden of setting forth clear and convincing evidence of rehabilitation which includes any information indicating the individual presents no danger to the safety or well being of others. The individual must present such evidence as arrest reports, court dispositions, parole/probation information, and reference letters from employers, and/or personal references. Other documents that may be included are records of successful participation in a rehabilitation program, further education or training, community or church involvement, special awards or recognition or testimony by self or others.

* * *

(e) In deciding whether to grant or deny an exemption request, [AHCA] shall consider factors such as the facts and circumstances surrounding the disqualifying offense(s), the nature of the harm to the victim, whether the individual is on probation or parole, whether restitution has been made, other offenses on the criminal history record and the length of time since the last offense, the history of the person since the disqualifying offense(s), work experience, personal references, performance evaluations, probation or parole violations, education,

other evidence of rehabilitation, and the honesty and candor of the disqualified individual.

(f) Any exemption granted by [AHCA] is limited to the information provided at the time of application and the disqualifying offense or offenses committed prior to the date of the request for exemption.

30. While the three-year period described in section 435.07(1)(a)1. had elapsed by the time Petitioner applied for an exemption, the statute does not require that the exemption be granted merely because three years have passed since Petitioner completed his probation in 2016, from his conviction in 2011.

31. In addition, Petitioner's criminal history subsequent to his disqualifying offenses, even if not disqualifying offenses or resulting in convictions, are relevant and are properly considered in deciding whether Petitioner has been rehabilitated. See § 435.07(3)(b), Fla. Stat.; Fla. Admin. Code R. 59A-35.090(4)(e).

32. In his request before AHCA, Petitioner had the burden to show by clear and convincing evidence that he should not be disqualified from employment because he has been rehabilitated. Id.; see also Sledge v. Dep't of Child. & Fam., 861 So. 2d 1189, 1193 (Fla. 5th DCA 2003) (applicant has burden of rehabilitation).

33. The Florida Supreme Court has stated:

Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witness must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Henson, 913 So. 2d 579, 590 (Fla. 2005) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)).

34. A claim for exemption must be strictly construed against the person claiming the exemption. Heburn v. Dep't of Child. & Fam., 772 So. 2d 561, 563 (Fla. 1st DCA 2000) (citing State v. Nourse, 340 So. 2d 966, 969 (Fla. 3d DCA 1976)).

35. Considering Petitioner's lengthy criminal history spanning from 1995 through 2011, the domestic and violent nature of repeated offenses, and Petitioner's unwillingness to take responsibility for his actions, notwithstanding recent success in education and avoiding brushes with the law, Petitioner did not create a "firm belief or conviction, without hesitancy" that he is rehabilitated.

36. "[E]ven if rehabilitation is shown, the applicant is only *eligible* for an exemption, not *entitled* to one." J.D. v. Dep't of Child. & Fam., 114 So. 3d 1127, 1131 (Fla. 1st DCA 2013). Respondent has the discretion to deny an exemption

notwithstanding a showing of rehabilitation, as long as it articulates its rationale for the denial. Id.

37. The “‘abuse of discretion’ standard is highly deferential.” E.R. Squibb & Sons v. Farnes, 697 So. 2d 825, 826 (Fla. 1997). An agency head abuses his or her discretion within the meaning of section 435.07 when the “intended action” under review “is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable [person] would take the view adopted by the [agency head]. If reasonable [persons] could differ as to the propriety of the [intended] action . . . , then it cannot be said that the [agency head] abused [his or her] discretion.” Canakaris v. Canakaris, 382 So. 2d 1197, 1203 (Fla. 1980).

38. Furthermore, “the court shall not substitute its judgment for that of the agency on an issue of discretion.” § 120.68, Fla. Stat. (2014); Thomas v. Dep’t of Juv. Just., 730 So. 2d 809 (Fla. 3d DCA 1999); Int’l. Union of Police Assns. v. State Dep’t of Mgmt. Servs., 855 So. 2d 76, 82 (Fla. 1st DCA 2003).

39. The First District Court of Appeal has clarified that the determination of rehabilitation is factual in nature, but the determination of whether the withholding of an exemption is an abuse of discretion is legal in nature. J.D., 114 So. 3d at 1133.

40. Under the facts and law in this case, the clear and convincing evidence does not support a finding that Petitioner has been rehabilitated, and it is concluded that AHCA did not abuse its discretion in denying Petitioner's request for exemption.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is recommended that Respondent enter a final order denying Petitioner's request for an exemption from disqualification for employment.

DONE AND ENTERED this 16th day of March, 2018, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of March, 2018.

ENDNOTE

^{1/} All references to Florida Statutes are to the current version unless otherwise indicated. Petitioner's application is governed by the law in effect at the time the final order is issued. See Ag. for Health Care Admin. v. Mt. Sinai Med. Ctr., 690 So. 2d 689, 691 (Fla. 1st DCA 1997) (agency must apply law in effect at the time it makes its final decision).

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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.