

STATE OF FLORIDA
FISH AND WILDLIFE CONSERVATION COMMISSION

FILED
2018 AUG -8 PM 1:39
DIVISION OF
ADMINISTRATIVE HEARINGS

SHERRIE WENTWORTH,

Petitioner,

vs.

**FWC Case No. 18-0017
DOAH Case No. 18-1114**

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION**

Respondent.

FINAL ORDER

This matter came before the Florida Fish and Wildlife Conservation Commission (Commission or FWC) on a Petition for a formal administrative hearing (Petition) filed by Sherrie Wentworth (Petitioner). The Petition challenged the Commission's Notice of Denial, dated January 31, 2018, denying her application for renewal of a Wildlife Rehabilitation Permit and her application for renewal of a License to Possess Class III Wildlife for Exhibition or Public Sale, Application ID 63441. Petitioner challenged the Commission's Notice of Denial by seeking a formal administrative proceeding, pursuant to Section 120.57(1), Florida Statutes. The matter was referred to the Division of Administrative Hearings and an Administrative Law Judge (ALJ) was assigned. A formal administrative hearing was conducted on May 1, 2018. The Administrative Law Judge issued her Recommended Order (RO) on June 13, 2018, and the matter was returned to the Commission for entry of a final order. No exceptions to the RO were filed with the Commission.

STANDARD OF REVIEW OF DOAH RECOMMENDED ORDER

Section 120.57(1)(l), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency

first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence.” § 120.57(1)(l), Florida Statutes (2015); *Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009). The term “competent substantial evidence” does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, “competent substantial evidence” refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. See e.g., *Scholastic Book Fairs, Inc. v. Unemployment Appeals Commission*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See e.g., *Rogers v. Dept. of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Dunham v. Highlands County Sch. Bd.*, 652 So.2d 894 (Fla. 2d DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the “fact-finder” in these administrative proceedings. See e.g., *Tedder v. Fla. Parole Commission*, 842 So.2d 1022, 1025 (Fla. 1st DCA 2003); *Heifetz v. Dept. of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Also, the ALJ’s decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. See, e.g., *Peach River/Manasota Regional Water Supply Authority v. JMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State Dept. of HRS*, 462 So.2d 83, 85 (Fla. 1st DCA 1985). Therefore, if the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing its Final Order. See e.g., *North Port, Fla. v. Consolidated Minerals*, 645 So.2d 485, 487 (Fla. 2d DCA 1994).

Section 120.57(1)(l), Florida Statutes, authorizes an agency to reject or modify an ALJ’s conclusions of law and interpretations of administrative rules “over which it has substantive

jurisdiction.” See *Barfield v. Dept. of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *L. B. Bryan & Co. v. Sch. Bd. Of Broward County*, 746 So.2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. V. Sheridan*, 784 So. 2d 1140 (Fla. 2d DCA 2001). If an ALJ improperly labels a conclusion of law as a finding of fact, the label should be disregarded and the item treated as though it were actually a conclusion of law. See, e.g., *Battaglia Properties v. Fla. Land and Water Adjudicatory Commission*, 629 So.2d 161, 168 (Fla. 5th DCA 1994). Neither should the agency label what is essentially an ultimate factual determination as a “conclusion of law,” however, in order to modify or overturn what it may view as an unfavorable finding of fact. See, e.g., *Stokes v. State Bd. of Prof. Engineers*, 952 So.2d 1224 (Fla. 1st DCA 2007).

An agency’s review of the legal conclusions in a recommended order is restricted to those that concern matters within the agency’s field of expertise. See, e.g., *Charlotte County v. MC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *G.E.L., Corp. v. Dept. of Environmental Protection*, 875 So.2d 1257, 1263 (Fla. 5th DCA 2004). As indicated above, Agency Review Standards – Conclusions of Law, an agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. See, e.g., *Public Employees Relations Commission*, 467 So.2d at 989; *Fla. Public Employee Council*, 79, 646 So.2d at 816.

Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless “clearly erroneous.” See, e.g., *Falk*, 614 So.2d at 1089; *Dept. of Environmental Protection*, 477 So.2d at 534. Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable interpretations. It is enough if such agency interpretations are “permissible” ones. See. E.g., *Suddath Van Lines, Inc.*, 668 So.2d at 212.

Agencies do not have jurisdiction, however, to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with “factual issues

susceptible to ordinary methods of proof that are not infused with [agency] policy considerations,” are not matters over which the agency has “substantive jurisdiction.” See, *Martuccio v. Dept. of Professional Regulation*, 622 So.2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dept. of Business Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Fla. Siting Board*, 693 So.2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ’s sound “prerogative...as the finder of fact” and may not be reversed on agency review. See, *Martuccio*, 622 So.2d 607, 609.

CONCLUSIONS OF LAW

Upon review of the record, the Commission makes the following legal conclusions:

1. As Assistant Executive Director of the Commission, the undersigned has jurisdiction over this subject matter and authority to issue this final order pursuant to Rules 68-1.008 and 28-106.201 through 106.217, Fla. Admin. Code, and the Commission's Delegation of Authority dated February 14, 2013; in accordance with Section 120.57 (1), Florida Statutes; and the Delegation of Authority to the Assistant Executive Director and Chief of Staff, dated December 15, 2017.
2. An agency may adopt the RO as the final order of the agency, pursuant to Section 120.57(1)(I), Florida Statutes.

ORDER

WHEREFORE, having considered the applicable law and standards of review in light of the findings of fact and conclusions of law set forth in the Recommended Order, and being otherwise fully advised,

IT IS THEREFORE ORDERED:

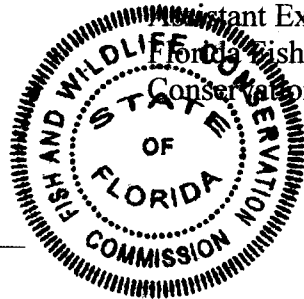
- A. The ALJ’s RO (Exhibit A) is adopted and incorporated by reference herein and the findings of fact and conclusions of law set forth in the RO are hereby adopted.

B. The Commission's denial of Petitioner's applications for renewal of a Wildlife Rehabilitation Permit and her application for renewal of a License to Possess Class III Wildlife for Exhibition or Public Sale, Application ID 63441, is hereby upheld.

DONE AND ORDERED in Tallahassee, Florida this 18th day of July, 2018.

Thomas H. Eason

Thomas H. Eason, Ph.D.
Assistant Executive Director
Florida Fish and Wildlife
Conservation Commission



Filed with the Agency Clerk
This 18th day of July, 2018.

ATTEST: *Jill Canfield*
Jill Canfield, Deputy Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Final Order has been furnished by email to: **Christopher H. Block Esq., Petitioner's Counsel**, at attyblock@blocklawfirmpllc.com and service@blocklawfirmpllc.com; **Brandy Elliot, Assistant General Counsel**, at brandy.elliott@myfwc.com; and to the Clerk, Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060 on this 18th day of July, 2018.

Jill Canfield

Jill Canfield, Deputy Clerk
Fla. Fish and Wildlife Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32308
(850) 487-1764

NOTICE OF APPELLATE RIGHTS

The foregoing constitutes final agency action in this matter. Any party adversely affected has the right to seek judicial review of this Final Order pursuant to § 120.68, Florida Statutes, and Rules 9.030(b)(1)(C) and 9.110, Florida Rules of Appellate Procedure. To initiate an appeal, a Notice of Appeal must be filed with the Florida Fish & Wildlife Conservation Commission, Legal Office, and the appropriate District Court of Appeal within thirty (30) days from the date this Final Order is filed with the Agency Clerk. The Notice filed with the District Court of Appeal must be accompanied by the appropriate fee required by law.