

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LESTER BLOUNT,

Petitioner,

vs.

Case No. 19-5190

DEPARTMENT OF LAW ENFORCEMENT,
CRIMINAL JUSTICE STANDARDS AND
TRAINING COMMISSION,

Respondent.

RECOMMENDED ORDER

Administrative Law Judge (“ALJ”) Brittany O. Finkbeiner conducted the final hearing in this case for the Division of Administrative Hearings (“DOAH”) on February 25, 2020, by video teleconference with sites in Tallahassee and West Palm Beach, Florida.

APPEARANCES

For Petitioner: Lester Blount, pro se
6025 Wedgewood Village Circle
Lake Worth, Florida 33463

For Respondent: Christopher D. Bufano, Esquire
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner should receive credit for any or all of the four challenged questions from the State Officers Certification Examination (“SOCE” or “Exam”).

PRELIMINARY STATEMENT

Petitioner, Lester Blount, took the SOCE for the third and final time on July 25, 2019. After Respondent, Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, notified him that he failed to achieve a passing score on the Exam, Petitioner challenged the validity of some of the questions that were deemed incorrect. Following a review of Petitioner's challenges to the questions, Respondent rejected all challenges and maintained the position that Petitioner would not receive credit for the answers he chose. By the time of the final hearing, the parties had agreed to limit the scope of the challenge to four questions. Pursuant to the Protective Order entered in this case that is based on a public records exemption protecting the Exam questions and answers from disclosure, the questions and answers will not be reproduced in their entirety but will instead be identified by number and general topic description as follows:

- 1) Question One: Methamphetamine Laboratory.
- 2) Question Two: Battery by a First Responder.
- 3) Question Three: First Aid.
- 4) Question Four: Sexual Harassment.

At the final hearing, Petitioner testified on his own behalf and did not call any other witnesses. Petitioner referenced four exhibits but did not move them into evidence. Whether Petitioner intended to offer the exhibits as evidence is immaterial because they all constitute hearsay not subject to any exception. Even to the extent the exhibits may have been corroborated by other admissible evidence at hearing, they are inherently unreliable and could not have been afforded any weight. Specifically, the exhibits consisted of Petitioner's partial re-creation of the test questions at issue from memory and copies of excerpts from instructional materials that were not entirely legible.

Respondent called two witnesses: Wendy Bailey, government analyst II, Florida Department of Law Enforcement; and Corporal Mark Baker, Florida Highway Patrol. Respondent's Composite Exhibit "A" was admitted into evidence

At the conclusion of the final hearing, the parties were advised to file proposed recommended orders within ten days of the filing of the transcript. The Transcript was filed with DOAH on March 6, 2020. Respondent filed its Proposed Recommended Order ("PRO") on March 13, 2020. Petitioner did not file a PRO. Respondent's PRO was considered in the preparation of this Recommended Order.

References to the Florida Statutes are to the 2019 version, unless otherwise indicated.

FINDINGS OF FACT

1. Petitioner attended law enforcement proficiency training and was provided with 76 hours of instruction.
2. Petitioner was instructed from the 2018 versions of the law enforcement and high liability textbooks.
3. Respondent utilized experienced field training officers, curriculum development staff, and advisory teams to develop curriculum and corresponding examination questions for the SOCE. The questions are evaluated and validated through a process that includes internal and external review for content and accuracy and are field tested as non-graded questions a minimum of 100 times in actual exams for further validation and statistical data collection prior to use on graded exams.
4. When examinees sit for the SOCE, they are informed prior to beginning the Exam that the questions and answers are derived solely from the curriculum and that there is only one correct answer for each question.

5. Petitioner took and failed the Exam three times: on April 4, 2019; April 17, 2019; and July 25, 2019.

6. Petitioner obtained a raw score of 149 correct answers out of a total of 190 graded questions on his third and final attempt on July 25, 2019. A passing score for the Exam is 80 percent, which requires a minimum of 152 correct answers.

7. In order to pass the Exam, Petitioner would need credit for at least three more questions added to his score. Petitioner challenged a total of four multiple-choice questions.

8. Respondent provides each examinee who fails to achieve a passing score the opportunity to review and challenge any question for which he or she did not receive credit. Exam questions challenged by examinees are reviewed by subject-matter experts from advisory teams, and credit is awarded when warranted. The review process strictly addresses the accuracy of the examination questions as they relate to the training curriculum. If credit is awarded, thereby invalidating a challenged exam question, that question is removed from use in all future exams.

9. Each of the four exam questions at issue was challenged by Petitioner and reviewed by Respondent. Following the review process for each of the four challenged questions, no additional credit was awarded. Respondent upheld the validity and accuracy of each of the four questions and answers as originally scored in accordance with the exam key as having no other possible correct answers based on the curriculum.

10. With respect to Question One: Methamphetamine Laboratory, examinees were asked to select which of four statements about such laboratories is accurate. Petitioner chose answer A. for Question One, based on his reasoning that it stated that methamphetamine labs produce an odor similar to bleach and that the training materials mention bleach in the relevant section. Petitioner's selection of answer A. is based on a misreading of the training materials.

11. The clear language of Question One dictates a single correct answer, which is directly based on the training curriculum. The curriculum describes a range of sizes for how small or large a methamphetamine lab may be, which is reflected verbatim in answer B. The correct answer to Question One is B., consistent with Respondent's answer key.

12. With respect to Question Two: Battery by a First Responder, examinees were asked to determine what crime an officer could be charged with based on a hypothetical wherein the officer provided first aid to a person without consent. Petitioner chose answer D., stating that the question was open to interpretation because it did not state whether the officer actually touched the person in the hypothetical. Petitioner's answer was based on the assumption of elements of a negligence claim that were not presented in the question.

13. The clear language of Question Two dictates a single correct answer, which is directly based on the training curriculum. The curriculum states that first responders may be charged with battery for rendering emergency care without the patient's consent, which is accurate to the hypothetical described in Question Two and reflected in Answer A. The correct answer to Question Two is A., consistent with Respondent's answer key.

14. With respect to Question Three: First Aid, examinees were asked to select which step a first-aid provider should take first when trying to stop a specified type of bleeding. Petitioner chose answer B., which Petitioner stated was described in the curriculum as a step to be used to control bleeding. Although the step Petitioner chose was described as a step to be used to control bleeding in the curriculum, it was not listed as the first step.

15. The clear language of Question Three dictates a single correct answer, which is directly based on the training curriculum. The curriculum lists, in order, what steps a first-aid provider should take to control bleeding. The first step listed in the curriculum is reflected in answer D. The correct answer to Question Three is D., consistent with Respondent's answer key.

16. With respect to Question Four: Sexual Harassment, examinees were presented with a hypothetical exchange between two officers and then prompted to select which type of sexual harassment was demonstrated in the hypothetical. Petitioner chose answer D., based on his opinion that the question was poorly worded, leaving the answer open for interpretation. Petitioner did not cite to any portion of the training curriculum as a basis for his selection of answer D.

17. The clear language of Question Four dictates a single correct answer, which is directly based on the training curriculum. The curriculum specifically states that a conversation of the type described in Question Four's hypothetical is verbal sexual harassment, as reflected in answer A. The correct answer to Question Four is A., consistent with Respondent's answer key.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57(1), Florida Statutes.

19. Section 943.17(1)(e), Florida Statutes, requires Respondent to "[i]mplement, administer, maintain, and revise a job-related certification for each discipline" Respondent certifies.

20. Section 943.1397 provides, in pertinent part:

(1) Except as provided in subsection (4), on and after July 1, 1993, the commission shall not certify any person as an officer until the person has achieved an acceptable score on the officer certification examination for the applicable criminal justice discipline. The commission shall establish procedures by rule for the administration of the officer certification examinations and student examination reviews. Further, the commission shall establish standards for acceptable performance on each officer certification examination.

(2) For any applicant who fails to achieve an acceptable score on an officer certification examination, the commission shall, by rule, establish a procedure for retaking the examination, and the rule may include a remedial training program requirement. An applicant shall not take an officer certification examination more than three times, unless the applicant has reenrolled in, and successfully completed, the basic recruit training program.

21. As the party asserting affirmative relief, Petitioner has the burden of proof. *See Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981). The standard of proof for this case is a preponderance of the evidence. *See Fitzpatrick v. City of Miami Beach*, 328 So. 2d 578 (Fla. 3d DCA 1976). In cases that involve certification exams, as long as the examinations are conducted “fairly and uniformly in accordance with lawful authority and their own rules and regulations, their judgment as to the proper grading of such examinations will not be disturbed by the courts, unless clearly shown to be arbitrary and devoid of logic and reason.” *State ex rel. Topp v. Bd. of Elec. Exam'rs*, 101 So. 2d 583, 586 (Fla. 1st DCA 1958); *See also Espinoza v. Dep't of Bus. & Prof'l Reg., Fla. Bd. of Prof'l Eng'rs*, 739 So. 2d 1250, 1251 (Fla. 3d DCA 1999)(“[A]n applicant who seeks to establish that the initial review of his application was incorrect must show that the agency’s initial decision was arbitrary and capricious.”); *Harac v. Dep't of Prof'l Reg., Bd. of Architecture*, 484 So. 2d 1333, 1338 (Fla. 3d DCA 1986).

22. Petitioner has failed to meet his burden in this case. There is no evidence in the record demonstrating that he should receive credit for any of the four challenged exam questions. To the contrary, the evidence shows that Respondent conducted and scored the Exam fairly in accordance with the training curriculum.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Department of Law Enforcement, Criminal Justice Standards and Training Commission, enter a final order rejecting Petitioner's challenge to the failing score he received on the July 25, 2019, SOCE.

DONE AND ENTERED this 23rd day of March, 2020, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
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 23rd day of March, 2020.

COPIES FURNISHED:

Lester Blount
6025 Wedgewood Village Circle
Lake Worth, Florida 33463
(eServed)

Christopher David Bufano, Esquire
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
(eServed)

Linton B. Eason, Esquire
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
(eServed)

Jason Jones, General Counsel
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489
(eServed)

Dean Register, Program Director
Division of Criminal Justice
Professionalism Services
Florida Department of Law Enforcement
Post Office Box 1489
Tallahassee, Florida 32302-1489

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.