

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

NATALIA WILTSHIRE,

Petitioner,

vs.

Case No. 20-3051

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held by Zoom video teleconference from Tallahassee, Florida, on September 2, 2020, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Dwight Oneal Slater, Esquire
Cohn Slater, P.A.
3689 Coolidge Court, Unit 3
Tallahassee, Florida 32311

For Respondent: Katie Jackson, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

Whether the Agency for Health Care Administration abused its discretion when denying Petitioner's request for exemption from disqualification to work in a position of special trust.

PRELIMINARY STATEMENT

Petitioner submitted to the Agency for Health Care Administration (Agency) a request seeking an exemption from being disqualified to work in a position of special trust. By correspondence dated June 3, 2020, Petitioner was advised by the Agency that her application was denied. Petitioner filed a request for administrative hearing, and on July 7, 2020, the Agency forwarded Petitioner's request to the Division of Administrative Hearings for a final hearing.

At the final hearing, Petitioner, in addition to testifying on her own behalf, offered testimony from Dominique Norton, Matthew Saunders, and Odalis Bravo. Vanessa Risch testified on behalf of the Agency. Petitioner's Exhibits 1 through 4 were admitted into evidence. Agency Exhibits 1 through 148 were also admitted into evidence.

A single-volume Transcript of the final hearing was filed on October 5, 2020. Each party timely filed a Proposed Recommended Order, and the same were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. By correspondence dated June 3, 2020, the Agency informed Petitioner that her request for exemption from disqualification was denied after consideration of the following factors:

- a. the circumstances surrounding the criminal incident for which an exemption is sought;
- b. the time period that has elapsed since the incident;
- c. the nature of the harm caused to the victim;
- d. a history of the employee since the incident; and any other evidence or circumstances indicating that

the employee will not present a danger if continued employment is allowed; and [that Petitioner did not] provide clear and convincing evidence of rehabilitation as required by Florida Law.

2. Petitioner admits “that based upon an incident occurring on March 17, 2017, [she] was charged with two counts of battery and one count of assault.”

3. Petitioner admits that she “was sentenced to 12 months of probation starting on December 13, 2017.”

4. Petitioner admits that her “probation was terminated unsuccessfully on September 21, 2018, due to a probation violation.”

5. Petitioner admits “that a charge for an offense under section 784.03, Florida Statutes, is disqualifying for employment in facilities or as a provider licensed through the Agency for Health Care Administration.”

6. Petitioner admits “that the trespass offense occurring on April 5, 2018, occurred inside or on the premises of Brevard Health Alliance.”

7. Petitioner admits “that the trespass offense occurring on April 5, 2018, involving the Petitioner occurred at a health care facility.”

A. DISQUALIFYING OFFENSE AND SUBSEQUENT CRIMINAL HISTORY

8. On or about April 17, 2017, Petitioner was charged with two counts of battery, in violation of section 784.03, Florida Statutes, and one count of assault, in violation of section 784.011. The charges resulted from an altercation, which occurred on March 17, 2017, where Petitioner directed verbal threats towards, and made physical contact with, a woman and her minor son.

9. On or about December 4, 2017, Petitioner pled nolo contendere to the charged offenses, and on December 13, 2017, the County Court, in and for Brevard County, Florida, found Petitioner guilty of the said offenses, withheld adjudication, and placed Petitioner on supervised probation for a period of 12 months. The terms of Petitioner’s probation required, in part,

that she complete an eight-hour anger management course and “not be employed to supervise or to take care of children with disabilities.”¹

10. On or about April 5, 2018, Petitioner, while on probation, was arrested and charged with the misdemeanor offense of “trespass in a structure or conveyance,” in violation of section 810.08(1), Florida Statutes. On September 21, 2018, Petitioner entered a plea of nolo contendere, was adjudged guilty, and was convicted of the charged offense. During this same court appearance, Petitioner also entered a plea of guilty to the charge that she violated the terms of her probation which were imposed as a result of the March 2017 altercation. Because Petitioner violated the terms of her probation, the court adjudicated Petitioner guilty, convicted her of the battery and assault charges, and terminated as “unsuccessful” Petitioner’s probation.

11. On or about February 1, 2019, Petitioner filed a “Motion to Withdraw Plea after sentencing, or in the Alternative, to Resentence the Defendant” (motion to resentence), because of difficulty that she was having in securing employment. The court granted Petitioner’s motion, and on May 30, 2019, entered two Orders. The first Order found Petitioner guilty of the April 5, 2018, offense of “trespass in structure or conveyance” and withheld adjudication thereof. The second Order found Petitioner guilty of the battery and assault charges, withheld adjudication, and placed Petitioner on supervised probation “for a period of 5 days.” On June 18, 2019, the court entered an Order of Completion of Probation and noted therein that Petitioner had completed the terms of her probation, which included paying court costs and fines, and completing anger management and parenting classes.

12. On or about April 9, 2019, while her “motion to resentence” was pending before the court in Brevard County, Petitioner was arrested in

¹ Petitioner was supervising a child with a disability when she battered and assaulted the individuals on March 17, 2017.

Osceola County and cited once again for trespassing.² Petitioner entered a plea of nolo contendere, and by Order entered on or about July 2, 2019, the court adjudicated Petitioner guilty and placed her on supervised probation for six months. The terms of Petitioner’s probation required, in part, that she perform 40 hours of community service and complete an eight-hour anger management course. On or about December 8, 2019, Petitioner’s probation was extended, and on March 18, 2020, after Petitioner successfully completed all terms of her probation, the court entered an “Order Terminating [Petitioner’s] Probation.”

B. EVIDENCE OF SUGGESTION OF REHABILITATION

13. Petitioner, in support of her suggestion of rehabilitation, offered multiple letters of reference. A common theme is present throughout the letters, to wit: that Petitioner is compassionate; dedicated; smart; has a great work ethic; and is a pleasure to work with. These are, without question, admirable qualities.

14. As previously noted, Petitioner, as part of the adjudicatory process associated with the disqualifying and subsequent offenses, completed 16 hours of anger management sessions, and a four-hour parenting class. On or about June 16, 2017, Petitioner completed a 40-hour training course in behavioral analysis principles, which, according to the certificate, satisfies the training requirement “for the [Registered Behavior Technician] credential.” Petitioner offered no evidence of voluntary civic or community service.

² Petitioner became upset with staff at a medical clinic when she perceived that she had been disrespected. Petitioner refused to leave the medical clinic after being instructed to do so.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569, 120.57(1), and 435.07, Fla. Stat. (2020).³

16. Section 435.07, Florida Statutes, provides, in part, as follows:

Exemptions from disqualification.— 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;
2. Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
3. Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
4. Findings of delinquency. For offenses that would be felonies if committed by an adult and the record

³ All subsequent references to Florida Statutes will be to the 2020 version, unless otherwise indicated.

has not been sealed or expunged, the exemption may not be granted until 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 offense.

* * *

(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.

17. Section 435.04 provides, in 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:

* * *

(j) Section 784.011, relating to assault, if the victim of the offense was a minor.

(k) Section 784.03, relating to battery, if the victim of the offense was a minor.

There is no dispute that Petitioner's violation of sections 784.011 and 784.03 disqualify her from working in a position of special trust.

18. Petitioner bears the burden of proving by clear and convincing evidence that she should not be disqualified from employment, and is, therefore, entitled to the exemption sought. § 435.07(3)(a), Fla. Stat.

19. In considering Respondent's intended action of denying Petitioner's exemption request, the undersigned must consider whether the agency head abused his or her discretion when passing on Petitioner's request. 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).

20. “An exemption from a statute, enacted to protect the public welfare, is strictly construed against the person claiming the exemption.” *Heburn v. Dep’t of Child. & Fams.*, 772 So. 2d 561, 563 (Fla. 1st DCA 2000).

21. The essence of “rehabilitation” within the meaning of section 435.07(3)(a) is that an applicant thereunder would “not present a danger if employment or continued employment is allowed.”

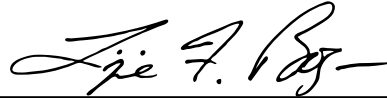
22. The Agency’s intent to deny Petitioner’s exemption request is not unreasonable. The evidence demonstrates that since committing the disqualifying offenses, Petitioner, on a near annual basis, continued to engage in criminal activity through April 2019. It is significant that Petitioner’s last contact with the criminal justice system occurred approximately one year prior to the submission of her Application for Exemption from Disqualification. While Petitioner is commended for possessing a strong work ethic, and being a smart and compassionate person, these positive attributes are insufficient to demonstrate rehabilitation when considered against the totality of the evidence.

23. On the instant record, it cannot be said that “no reasonable person would take the view adopted by the Agency” in denying Petitioner’s request for exemption from disqualification. Succinctly stated, Petitioner failed to establish that the reasons offered by the Agency in denying her request for exemption are arbitrary, fanciful, or unreasonable. Accordingly, Petitioner failed to meet her burden of proving by clear and convincing evidence that the Agency’s decision to deny her exemption request was an abuse of discretion.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent, the Agency for Health Care Administration, enter a final order denying Petitioner's request for exemption.

DONE AND ENTERED this 9th day of November, 2020, in Tallahassee, Leon County, Florida.



LINZIE F. BOGAN
Administrative Law Judge
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Filed with the Clerk of the
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this 9th day of November, 2020.

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.