

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHADDAINAH LALANNE,

Petitioner,

vs.

Case No. 20-3423

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge June C. McKinney of the Division of Administrative Hearings for final hearing on September 22, 2020, by video teleconferencing via Zoom.

APPEARANCES

For Petitioner: Shaddainah Sherly Lalanne, pro se
Apartment 206
6609 Woods Island Circle
Port St. Lucie, Florida 34952

For Respondent: Katie Jackson, Esquire
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 7
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

The issue is whether Respondent abused its discretion in denying Petitioner's request for an exemption from disqualification for employment in a position of trust.

PRELIMINARY STATEMENT

By letter dated April 7, 2020, Respondent Agency for Health Care Administration (“Respondent” or “AHCA”) notified Petitioner Shaddainah Lalanne (“Petitioner” or “Lalanne”) that her request for an exemption from disqualification for employment is denied. Petitioner timely protested the denial and requested an administrative hearing.

On July 30, 2020, AHCA transmitted Petitioner’s request to the Division of Administrative Hearings (“DOAH”), and the undersigned was assigned to hear the case.

On September 10, 2020, the undersigned granted AHCA’s Motion for Leave to Amend Agency’s Denial Letter. AHCA amended the disqualifying offense to resisting an officer by a letter dated September 8, 2020.¹

On September 22, 2020, the final hearing was heard as scheduled.

At the hearing, Petitioner testified on her own behalf. Petitioner’s Exhibits 1 through 5 were received into evidence. Respondent presented the testimony of one witness: Vanessa Risch. Respondent’s Exhibits 1 and 2 were received into evidence.

The undersigned took official recognition of sections 148 and 69 of the California Penal Code and section 843.01, Florida Statutes.

The proceeding of the hearing was recorded by a court reporter and transcribed. A one-volume Transcript of the hearing was filed at DOAH on October 15, 2020. The parties each filed a timely proposed recommended

¹ Resp. Ex. 2.

order, which has been considered by the undersigned in the preparation of the Recommended Order.

References to the Florida Statutes are to the 2018 version, unless otherwise indicated.

FINDINGS OF FACT

1. AHCA is the state agency charged with protecting vulnerable persons, such as Medicaid recipients and the Medicaid program, and, in that capacity, it maintains discretion to approve or deny requests for exemption from disqualification.

2. Petitioner is seeking to work as a certified nursing assistant. Petitioner's employment goals require her to have a Level 2 criminal background screening to ensure she does not have any disqualifying offenses to prohibit her from working with AHCA-regulated facilities.

3. Petitioner's background screening of February 5, 2020, identified the following five criminal offenses: elder abuse/neglect; trespass (refuse to leave property, peace officer's request); and three counts of obstructing/resisting executive officer with minor injury.

4. By letter dated February 5, 2020, AHCA notified Petitioner that she was disqualified from employment due to the disqualifying offense of "04/22/2017 Sheriff's Office San Diego, Obstruct/Resist Exec Off." The letter also informed Petitioner that she may be eligible to apply for an exemption from disqualification and how to apply.

5. On or around February 7, 2020, Petitioner submitted a request for exemption from disqualification and supporting documentation to AHCA.

6. By letter dated February 18, 2020, AHCA denied Petitioner's request for exemption.

7. On April 6, 2020, Petitioner submitted a second Application for Exemption ("exemption package") to AHCA.

8. Petitioner's exemption package contained documentation including employment history, education/training, a criminal history report, arrest reports, investigation reports, a California Department of Public Health investigation report, and a 12-month suspension of nurse assistant certification.

9. By letter dated April 7, 2020, AHCA denied Petitioner's request for exemption, stating Petitioner is not eligible for the exemption based on the following grounds:

- A **disqualifying felony** offense(s) and you have not been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony 3 years prior to the date you applied for the exemption.

- **Our records indicate you met the above criteria for the following: ELDER/DEP ADULT CRUELTY, Case number CN3772399**

10. Petitioner contested the denial and requested a formal administrative hearing.

11. AHCA acknowledged the disqualifying offense error in the denial letter of April 7, 2020, and corrected its denial letter. The corrected denial letter dated September 8, 2020, deemed Petitioner not eligible for an exemption based on the following grounds:

- A **disqualifying felony** offense(s) and you have not been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony 3 years prior to the date you applied for the exemption.

- Our records indicate you met the above criteria for the following:

Corrected Disqualifying Offense:

- **04/22/2017 SHERIFF'S OFFICE SAN DIEGO, RESISTING AN OFFICER (California Penal Code section 148,) Case Number CN372399.**

Hearing

12. At hearing, Petitioner testified about the incident that occurred on April 22, 2017, while working at Fallbrook Skilled Nursing ("Fallbrook") in California. Petitioner explained that three police officers came to her job at Fallbrook while she was working her shift and asked to speak to her outside the facility about allegations of resident abuse.

13. Petitioner testified she refused to leave the facility upon multiple instructions from the police to leave. Petitioner admitted that after an officer told her several times he was going to arrest her, she told the police "you don't have a right to arrest me." Petitioner detailed how she did not allow the police to put handcuffs on her because she believed the reports about her were lies.

14. Ultimately, the incident escalated--Petitioner testified that when she did not allow the police to handcuff her, the three police officers put her on the ground, one put his knee on her back, and she was handcuffed. Petitioner weighed approximately 125 pounds when arrested. After the police got Petitioner outside, the three police officers picked her up, put her in the police car, and took her to jail.

15. Petitioner was charged with: elder abuse/neglect; trespass (refuse to leave property, peace officer's request); and three counts of obstructing/resisting an officer, all stemming from the same April 22, 2017, incident.

16. The elder abuse and trespass charges against Lalanne were dismissed.

17. On January 30, 2018, Petitioner proceeded to a bench trial before a judge on the resisting an officer charge. At trial, Petitioner was found guilty

and convicted of “count 1 PC 148 (a)(1), resisting an officer” in case number CN372399.

18. That same day, the judge sentenced Petitioner to three years’ probation² and community service for the resisting an officer conviction.

19. Subsequently, the County of San Diego, California, probation department provided Petitioner a certificate of completion for completing her three days of public work service on or about September 13, 2018.

20. Petitioner testified that she made a mistake when she did not listen to the officers and it was a lesson for her. She also testified that she believed there was no harm to the police and her offense is a misdemeanor not a felony.

21. Vanessa Risch (“Risch”), AHCA’s operations and management consultant manager in the Background Screening Unit, testified that because Petitioner’s offense occurred in California, AHCA had to evaluate the nature of the offense, what occurred during the incident, and the final outcome of the case to determine the correlating criminal offense in Florida.

22. Risch testified that she contacted the California Clerk of Courts to validate the outcome of Petitioner’s case and probationary status. Risch testified that, through her investigation, she confirmed that Petitioner’s probation started on January 30, 2018, and terminates on January 30, 2021.

23. Risch also detailed how AHCA converted Petitioner’s California resisting an officer charge to a Florida resisting arrest with violence felony offense, after determining the officers in California had to force Petitioner’s body to the ground after Petitioner did not comply with the officers’ repeated instructions. AHCA concluded that Petitioner’s actions of opposing the three

² The compelling evidence at hearing supports Petitioner’s probationary sentence. The undersigned finds that Petitioner failed to testify honestly and forthright regarding her three-year probationary period. First, Petitioner denied knowledge of any probationary period even though probation was listed on the sentencing documents Petitioner presented as Exhibit 1. Also, Petitioner’s Exhibit 3 is from the probation department. Additionally, Petitioner testified that her lawyer told her she had probation, which confirms Petitioner’s knowledge of her probationary period.

officers is equivalent to the criminal offense of resisting arrest with violence in Florida. Risch testified that resisting an officer with violence is a disqualifying felony offense.

24. Risch testified further that AHCA ultimately concluded that Petitioner was not eligible to apply for an exemption. Risch explained that Petitioner's current probationary status prohibited her from being eligible to apply for an exemption because eligibility starts three years after Petitioner's probationary period for the disqualifying felony offense is terminated.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the subject matter and the parties to this action in accordance with sections 120.569 and 120.57, Florida Statutes (2020).

26. In this matter, it is undisputed that, on January 30, 2018, Petitioner was convicted in California of section 148(a)(1) of the California Penal Code, resisting an officer, which provides, in pertinent part:

Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment.

27. The Florida Legislature provided AHCA the authority to determine if an out-of-state offense is a "similar law of another jurisdiction" and convert the out-of-state offense to Florida law under section 435.04(2), Florida Statutes.

28. The undersigned is not persuaded by Petitioner's argument that her offense is equivalent to a Florida misdemeanor. Instead, the un rebutted evidence supports AHCA's conversion of Petitioner's California resisting an officer offense to a Florida resisting arrest with violence offense.

29. Section 843.01 defines resisting arrest with violence and provides:

Whoever knowingly and willfully resists, obstructs, or opposes any officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission; parole and probation supervisor; county probation officer; personnel or representative of the Department of Law Enforcement; or other person legally authorized to execute process in the execution of legal process or in the lawful execution of any legal duty, by offering or doing violence to the person of such officer or legally authorized person, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

30. Petitioner's own testimony and admission demonstrates that Petitioner repeatedly willfully opposed and obstructed three officers at the facility from performing their duties. Additionally, the uncontradicted evidence shows Petitioner's actions caused three officers to have to put Petitioner on the ground even though she only weighed approximately 125 pounds because she would not allow the officers to handcuff her on April 22, 2017, which clearly falls within the parameters of section 843.01.

31. By converting Petitioner's California offense to a section 843.01 Florida offense, Petitioner's conviction is deemed a disqualifying felony offense pursuant to section 435.04(2)(mm). Because Petitioner is deemed guilty of the Florida felony, resisting arrest with violence, she is disqualified from employment unless granted an exemption by AHCA.

32. Section 435.07 provides a process by which, under certain circumstances, a person may seek an exemption from disqualification and provides, in pertinent part:

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[.]

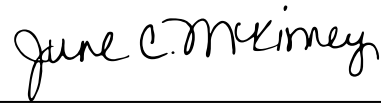
33. In this matter, Petitioner fails to meet the statutory requirements to seek an exemption. The evidence in the record shows Petitioner has not been released from probation supervision for her resisting an officer offense. Petitioner's release date for probation termination is January 30, 2021. Therefore, Petitioner does not meet the criteria to apply for an exemption at this time because she is still under lawful supervision pursuant to section 435.07(1)(a)1. Accordingly, Petitioner's request cannot be approved because she is ineligible to apply for an exemption from disqualification. Hence, Respondent's intended denial action does not constitute an abuse of its discretion.

34. Before concluding, the undersigned notes that, despite an unfavorable outcome in this proceeding, Petitioner is not precluded from seeking an exemption from disqualification at some future time when she meets the requirements of section 435.07.

RECOMMENDATION

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

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



JUNE C. MCKINNEY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of December, 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.