

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

██████████ )  
 )  
Petitioner, )  
 )  
vs. ) Case No. ██████████  
 )  
AGENCY FOR PERSONS WITH )  
DISABILITIES, )  
 )  
Respondent. )  
\_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a hearing was held on May 4, 2009, before the Honorable Judge Diane Cleavinger, Administrative Law Judge, Division of Administrative Hearings, in Quincy, Florida.

APPEARANCES

For Petitioner: ██████████ pro se  
(Address of record)

For Respondent: Jonathan Grabb, Esquire  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-1050

Brian McGrail, Esquire  
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STATEMENT OF THE ISSUE

Whether Petitioner's request for an exemption from disqualification from employment should be granted.

PRELIMINARY STATEMENT

Petitioner, [REDACTED] (Petitioner), requested an exemption from disqualification from employment from Respondent, the Agency for Persons with Disabilities (Respondent or Agency). By letter dated September 22, 2008, Respondent denied the exemption request of [REDACTED]. On September 30, 2008, E.C. requested a formal administrative hearing on the Agency's denial and the matter was forwarded to the Division of Administrative Hearings.

At the hearing, [REDACTED]. testified on her own behalf and presented the testimony of [REDACTED] brother, [REDACTED]. The Respondent presented the testimony of Lynne C. Daw, Area 2 Administrator, and Shereka Korokous, Government Consultant. The Respondent also introduced Exhibits one through five into evidence.

After the hearing, Petitioner filed a letter as a Proposed Recommended Order on May 22, 2009. Respondent filed a Proposed Recommended Order on May 28, 2009.

FINDINGS OF FACT

1. Petitioner has [REDACTED] sons, [REDACTED] daughters and [REDACTED] grandchildren. Even though [REDACTED] family was poor, [REDACTED] successfully cared for and raised all of [REDACTED] children who are now contributing members of society with families of their own. Currently, Petitioner helps with raising and caring for [REDACTED] grandchildren. Additionally, as a young [REDACTED], Petitioner was responsible for raising and caring for [REDACTED] brothers and sisters.

As with [REDACTED] children, [REDACTED] brothers and sisters have successful lives, with one younger brother becoming a pastor at his church. Indeed, Petitioner has been a caretaker all of [REDACTED] life. [REDACTED] does not drive a car, but attends church on occasion. The evidence did demonstrate that [REDACTED] sometimes drinks around 16 beers on a Friday night. However, there was no showing that [REDACTED] consumption of beer on Fridays currently poses a problem for [REDACTED] or, otherwise, indicates [REDACTED] has a bad moral character. In fact, other than the 20-year-old incident described below, Petitioner has lived a quiet life.

2. In the past, Petitioner worked at [REDACTED] in Quincy, Florida from 2000 through 2002. [REDACTED] was laid off in 2002. Between 2002 and 2008, Petitioner lived at home and was supported by [REDACTED] children. Because of [REDACTED] desire to support herself, Petitioner sought employment and was hired by [REDACTED]. [REDACTED] worked at the home approximately 2 months while [REDACTED] background screen was being processed. While at the group home, Petitioner worked well with the residents of the group home.

3. Almost 20 years ago, in 1989, Petitioner was drinking. [REDACTED] got into a heated argument with [REDACTED] over a venereal disease [REDACTED] had given her. At some point, [REDACTED] picked up a pair of scissors and stabbed [REDACTED] in the shoulder. [REDACTED] left [REDACTED]

apartment and went to the police to file charges against Petitioner.

4. Since that time, Petitioner has not seen [REDACTED] [REDACTED]. More importantly, [REDACTED] has not had any other violent incidents in [REDACTED] life and has had no further criminal problems.

5. On [REDACTED], Petitioner pled nolo contendere to the offense of battery. There was no evidence that demonstrated Petitioner and [REDACTED] lived together as a family 20 years ago. As a consequence, Petitioner's offense does not constitute domestic violence as defined in Section 741.30, Florida Statutes, and [REDACTED] is entitled to an exemption from disqualification from employment. Moreover, even if [REDACTED] offense did constitute domestic violence, Petitioner is still entitled to an exemption from disqualification from employment. The offense that the Agency uses to disqualify Respondent occurred 20 years ago. Since that time, Petitioner raised all of [REDACTED] brothers and sisters, as well as [REDACTED] children and grandchildren. [REDACTED] has cared for people all of her life. Clearly, one 20-year-old incident does not disqualify [REDACTED] from employment and does not outweigh the fact that [REDACTED] has successfully raised many other people. Given these facts, Petitioner is entitled to an exemption from disqualification from employment.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the subject matter of and the parties to this proceeding. § 120.57(1), Fla. Stat. (2008).

7. The Agency is charged with enforcing and administering the provision of Section 393.0655, Florida Statutes (2008).

8. Section 393.0655, Florida Statutes, states, in relevant part:

(1) MINIMUM STANDARDS-The agency shall require level 2 employment screening pursuant to chapter 435 for direct service providers who are unrelated to their clients. . . . Background screening shall include employment history checks as provided in s. 435.03(1) and local criminal records checks through local law enforcement agencies.

\* \* \*

(2) EXEMPTION FROM DISQUALIFICATION-The agency may grant exemptions from disqualifications from working with children and adults with developmental disabilities as provided in s. 435.07.

9. Section 435.04, Florida Statutes, states in relevant part:

(1) 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 purposes of this subsection, security background investigations shall include, but not be limited to . . . . statewide criminal and

juvenile records through the Florida Department of Law Enforcement . . . and may include local criminal records checks through local law enforcement agencies.

(4) Standards must also ensure that the person:

\* \* \*

(b) Has not committed an act that constitutes domestic violence as defined in s. 741.30.

10. Section 435.07, Florida Statutes, states in relevant part:

Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification.

(1) The appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

\* \* \*

(e) Commissions for acts of domestic violations as defined in s. 741.30.

(3) In order for a licensing department 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 exemption have the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the criminal incident for which the 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 continued employment is allowed . . . .

Section 741.28, Florida Statutes, states in relevant part:

As used in ss. 741.28-741.31:

\* \* \*

(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 currently residing together as a family member or who have resided 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. (Emphasis supplied)

11. "Clear and convincing evidence" is defined as an: "intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy." M.E. v. Florida Dep't of Children and Families, 1 So. 3d 268, 269 (Fla.

1st DCA 2009), citing In re Adoption of Baby E.A.W., 658 So. 2d 961, 967 (Fla. 1995).

12. Petitioner has the burden to establish by clear and convincing evidence that [REDACTED] is entitled to an exemption under Ch. 435, Fla. Stat. In this case, the crime of battery to which Petitioner pled occurred at least 20 years ago, well past any statute of limitations period for that type of crime. There was no evidence that the crime constituted domestic violence as defined in the Florida Statutes. Additionally, Petitioner has no further criminal activity in [REDACTED] life and has successfully raised [REDACTED] siblings, [REDACTED] children and [REDACTED] grandchildren. [REDACTED] years as a caregiver demonstrate that [REDACTED] has redeemed [REDACTED]. Therefore, Petitioner is entitled to an exemption from disqualification from employment.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is, therefore,

RECOMMENDED that the Agency for Persons with Disabilities enter a Final Order granting Petitioner an exemption from employment disqualification.

DONE AND ENTERED this 7th day of July, 2009, in  
Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this [REDACTED].

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.