

STATE OF FLORIDA  
AGENCY FOR PERSONS WITH DISABILITIES

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Case NO. 09-1745  
RENDITION No. APD-09-7408-FO

Petitioner,

v.

AGENCY FOR PERSONS WITH DISABILITIES

Respondent.

\_\_\_\_\_ /

**FINAL ORDER**

THIS CAUSE is before the Agency for Persons with Disabilities for entry of a Final Order concerning petitioner's request for an exemption from disqualification from holding a position of special trust as provided in chapter 435, Florida Statutes. Petitioner seeks an exemption from disqualification so that ██████ can work in a position having direct contact with developmentally disabled people served in programs regulated by the Agency for Persons with Disabilities. The Recommended Order concludes that petitioner demonstrated rehabilitation from the disqualifying offense of domestic battery such that ██████ should be granted an exemption. The Recommended Order is attached to this Final Order. Exceptions to the Recommended Order were filed by the Respondent and are considered below.

**FINDINGS OF FACT**

The Findings of Fact contained in the Recommended Order are approved and adopted.

**CONCLUSIONS OF LAW**

As the ALJ states in paragraph 16 of his Recommended Order, the Petitioner bears the burden of proof in this proceeding. As provided in Fla. Stat. 435.07(3) (2009),

(i)n 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 an exemption have the burden of setting forth sufficient 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 continued employment is allowed.

..

Respondent argues in its exceptions that the Agency should overturn the ALJ's conclusions in paragraphs 21, 23, and 24 that the Petitioner has met ■■■ burden of demonstrating that ■■■ should not be disqualified. As Respondent notes and the ALJ found as a matter of fact, Petitioner was arrested for and later entered a plea of guilty to the offense of domestic battery, an offense which disqualifies him from employment as a direct service provider. See Fla. Stats. 393.0655 and 435.04(4)(b) (2009). (R.O.-1,2). At the time Petitioner was involved in this incident and entered ■■■ plea of guilty (2004), ■■■ was employed by a direct service provider for APD, a position that was subject to the background screening intended to disclose disqualifying offenses. As the ALJ notes in paragraph 3 of his Recommended Order, Petitioner "continued to work . . . and did not notify them of the disqualifying offense." It was not until after ■■■

was terminated from this employment (for getting into a physical altercation with a fellow worker) and was applying for another job that required background screening that his arrest and plea of guilty came to light. (R.O.-3,4,6) See Fla. Stat. 435.04(5) that requires all persons in a position of trust to inform their employer immediately if convicted of any of the disqualifying offenses.

In addition to the single disqualifying offense, in 2008 Petitioner was terminated from his employment at [REDACTED], Inc., after [REDACTED] was involved in a physical altercation with a co-worker. In the course of the altercation, the co-worker suffered a broken nose. (R.O.-4) Furthermore, during a fact-finding hearing held by the Agency to obtain information relating to Petitioner's rehabilitation, [REDACTED] admitted to having been charged with disorderly conduct after getting into yet another altercation with [REDACTED] girlfriend. (R.O.-7)

The ALJ felt that Petitioner should be granted an exemption because [REDACTED] ". . . has generally had an excellent record working in the area of rehabilitation and training of disabled persons. [REDACTED] past employer or supervisor indicated in her testimony that [REDACTED] was an excellent employee in this type of endeavor. Although she had to terminate [REDACTED], it was because of a policy violation concerning the physical altercation between employees." (R.O.-21)

As for the altercation with [REDACTED] and the associated arrest, the ALJ discounted the significance of this because "(t)here is no indication that [REDACTED] struck [REDACTED]. Moreover . . . an arrest without a conviction does not indicate any lack of rehabilitation. . ." (R.O.-22)

The legislature has prohibited persons who have certain enumerated offenses in their background from serving in positions of trust or responsibility



If Petitioner is truly contrite and remorseful, if ■■■ has a passion for working with disabled persons, and wishes it to be his life work, we hope that this set back will not discourage ■■■ from doing so. ■■■ seems to be transforming ■■■ into a better person as the ALJ found. If ■■■ can demonstrate that ■■■ has gotten ■■■ temper under control by not becoming involved in any further physical altercations, the Agency would be willing to reconsider its decision after the passage of an appropriate amount of time.

For the foregoing reasons, the Conclusions of Law contained in paragraphs 21, 22, 23 and 24 of the Recommended Order are rejected.

Accordingly, upon review of the complete record in this case, including the recommended order, submissions and arguments of the parties, and being otherwise fully advised in the premises, petitioner's request for an exemption from disqualification from holding a position of special trust in hereby DENIED.

**DONE AND ORDERED** in Tallahassee, Leon County, Florida, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Mac McCoy, Deputy Director, Operations  
Agency for Persons with Disabilities

## NOTICE OF RIGHT TO APPEAL

A party who is adversely affected by this final order is entitled to judicial review. To initiate judicial review, the party seeking it must file one copy of a "Notice of Appeal" with the Agency Clerk. The party seeking judicial review must also file another copy of the "Notice of Appeal," accompanied by the filing fee required by law, with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. Review proceedings shall be conducted in accordance with Florida Rules of Appellate Procedure. The Notices must be filed within thirty (30) days of the rendition of this final order.<sup>1</sup>

Copies furnished to:

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Claudia Llado, Clerk  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Final Order was provided to the above-named individuals at the listed addresses, by U.S. Mail, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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Percy W. Mallison, Jr., Agency Clerk  
Agency for Persons with Disabilities  
4030 Esplanade Way, Suite 380  
Tallahassee, Florida 32399-0700

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<sup>1</sup> The date of the "rendition" of this Final Order is the date that is stamped on its first page. The Notices of Appeal must be received on or before the thirtieth day after that date.