

BEFORE THE
DEPARTMENT OF REHABILITATION
STATE OF CALIFORNIA

In the Matter of the Appeal of:

ANTHONY COOPER,

Appellant.

OAH Case No. 2013090989

PROPOSED DECISION

This matter regularly came before Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, in Los Angeles, California, on December 16, 2013.

Elizabeth K. Colegrove, Staff Counsel, represented the Business Enterprise Program (BEP), Department of Rehabilitation (Department).

Anthony Cooper (Appellant) represented himself.

At issue in this matter is whether Appellant was properly disqualified from competing to obtain the vending business at the Stanley Mosk Courthouse (Courthouse). Appellant objects to his disqualification. While he concedes that he was late for the meeting of the Selection Committee for Vending Facilities (Committee), he argues that he was not late to a specific interview and that his application should have been considered. The Department maintains that the governing regulations require disqualification of any applicant who is late to the selection meeting appointment.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. The Department administers the BEP, a program implemented pursuant to Welfare and Institutions Code section 19625 et seq. to provide business opportunities for blind individuals to operate vending facilities in California.

2. Appellant is a vendor who participates in the BEP. In May 2013, he filed an application in response to the announcement of a business opportunity at the Courthouse.

3. On June 24, 2013, Zachary Mundy (Mundy), Location Development Officer for BEP, sent a "Notification of Selection Committee for Vending Facilities" to Appellant, informing him: "Your application has been accepted for you to appear before the Selection Committee for Vending Facilities for an interview" on July 12, 2013 at 9:00 a.m. (Exh. 3, at p. 3.) The document also stated: "If an applicant does not appear at the date and time specified in the DR461 – Notification of Selection Committee for Vending Facilities Meeting (Rev. 07/07) and fails to give written notification of withdrawal no later than five (5) calendar days before the scheduled interview, he or she shall be disqualified from participating in the selection process and applying for a vending facility for 183 calendar days from the date he or she failed to appear. (Title 9, California Code of Regulations, sections 7214.1(h) and 7214.4(a).)" (Exh. 3, at pp. 3-4.)

4. As both Appellant and Mundy testified, BEP's practice is to establish the order of interviews once all participants are present. All interviewees receive the same appointment time, and names are then placed in a container and randomly drawn for the actual interview times. Mundy testified that such procedure was established to ensure fairness and equal treatment of all applicants.

5. All applicants except Appellant were present for the interviews at the appointed time of 9:00 a.m. Mundy expected Appellant to be present, and delayed the start of the selection process until 9:20 a.m. Appellant was still not present and names were drawn and the order of the interviews was established without him.

6. Appellant misread the notice and believed that the appointment with the Committee was at 9:30 a.m., not 9:00 a.m. He arrived at the meeting at 9:23 a.m. Competing for the vending opportunity at the Courthouse was very important to Appellant, a goal of more than a decade, so he did not intend to arrive late.

7. When Appellant arrived, Mundy was with the Committee, which was conducting the first interview. After the conclusion of the interview, Mundy conferred with his supervisor and both agreed that the regulations required Appellant's disqualification. Mundy then met with Appellant and informed him that he was disqualified.

LEGAL CONCLUSIONS

1. CCR, title 9, section 7214.1, subdivision (d), provides: "Grounds for immediate disqualification of an applicant include any one of the following: [¶] . . . [¶] (5) Failure to appear at the designated time and date for the interview. . . ."

2. In addition, CCR, title 9, section 7214.1, provides: "(a) Each qualified applicant is required to appear for a selection interview on the date and at the time and location specified on the DR 461, Notification of Selection Committee for Vending Facilities Meeting (Rev.

09/09), incorporated by reference herein. Any applicant who does not appear for the selection interview on the date and at the time and location in the notice, and who has not submitted a written notice of withdrawal in accordance with these regulations, shall be disqualified from: [¶] (1) Participation in the selection interview process; and [¶] (2) Applying for a vending facility for 183 calendar days from the date he or she last failed to appear. . . .”

3. As set forth in Legal Conclusion number 1, an applicant may be immediately disqualified for failing to appear at the designated time and date for the selection interview. Appellant had received notice of the date, time, and place of the interview. He does not dispute, and the evidence clearly establishes, that he was 23 minutes late to the Committee interview. Mundy, on behalf of the BEP, was therefore authorized to immediately disqualify Appellant and the disqualification does not constitute an abuse of discretion.

4. Appellant argues that he was not actually late to an interview, and that he was late only to the draw for selection of the order of interviews. Had his name been chosen first and had he not been present, he argued, then he would have been properly disqualified. This argument elevates form over substance and is not persuasive. As he conceded, Appellant was aware of the BEP practice of commencing the interview process with the choosing of the order in which applicants would be interviewed. This practice is an integral part of the process and is intended to ensure fairness and equal treatment of all applicants. The selection of the specific order of the interviews is the commencement of the interview and he was not present for it.

5. Appellant also argues that blind people often misread text and that he should not be punished for his disability. However, he presented no expert testimony to establish that any misinterpretation of the time of the interview was the result of his disability.

6. Accordingly, by reason of factual finding numbers 3 through 7 and legal conclusion numbers 1 through 5, Appellant was properly disqualified from competing to obtain the vending business at the Courthouse.

ORDER

Anthony Cooper’s appeal from disqualification from competing to obtain the vending business at the Courthouse is denied.

DATED: 12/23/13


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings