

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Petitioner has been discriminated against by being denied adequate training and being dismissed from her employment for reasons of her race (African-American).

PRELIMINARY STATEMENT

This cause arose upon the filing of a Charge of Discrimination and Petition for Relief by the Petitioner, Synthia Dianne Mallard. In her charge of discrimination and Petition she essentially alleges that she was discharged from her employment, and before that occurred, was denied adequate training because of her race, which is African-American. The Respondent, Florida Gulf Coast University (Gulf Coast), filed an Answer to the Petition denying the allegations and, in the Statement of Position attached and incorporated in their response, alleged in detail the various aspects of her training and the identity of the employees and managers who assisted with her training, both African-American and non-minority.

The cause came on for hearing as noticed. At the hearing, the Petitioner testified on her own behalf and offered Petitioner's composite Exhibit A into evidence. The Respondent called to testify Dr. Robert Raze, Dr. Kathleen Shea Abrams, and submitted Respondent's Exhibits A through F into evidence. Upon the conclusion of the proceeding, the parties were accorded the

opportunity to file proposed recommended orders. The Respondent elected to file a Proposed Recommended Order which has been considered in the rendition of this Recommended Order. The Petitioner did not file a proposed Recommended Order.

FINDINGS OF FACT

1. The Florida Gulf Coast University (Gulf Coast) operated in Tallahassee, Florida at times pertinent hereto, for the purpose of improving teaching and learning in the area of environmental education in the public schools as well as community colleges and universities. Dr. Kathleen Shea Abrams served as the Director of the Office of Environmental Education (OEE) from October 1990 until the office closed in July of 2000. She was responsible for making OEE employment decisions in conformance with Gulf Coast's hiring approval procedures.

2. Dr. Abrams, as Director, was responsible for organizing a hiring committee and interviewing candidates for the vacant office assistant position. With approval from Gulf Coast and the hiring committee Dr. Abrams selected Synthia Dianne Mallard, the Petitioner, for the position on August 14, 1996. Pursuant to the position description for the office assistant position, Ms. Mallard would be required to prepare routine correspondence, reports, requisitions, invoices, travel documents, etcetera, as well as answer the telephone and provide information for routine questions and make referrals as appropriate. She was required

to screen calls and perform other assigned duties and was required to possess the knowledge, skills and ability to produce grammatically correct, oral and written work products.

3. Following her employment, Ms. Mallard was provided with information regarding OEE telephone procedures. The written procedural guidelines expressly set forth the information to be obtained when taking a message.

4. Dr. Abrams requested Tara Johnson, an African-American student clerical assistant who was working for the OEE, to provide training to Ms. Mallard. Training was based upon the office procedural manual which outlined requirements for completing university forms, described the mail pick-up and delivery process, discussed operation of the office telephone systems and other relevant matters. Dr. Abrams also met with Ms. Mallard several times a week for five to ten minutes or more to communicate work requests and provide brief written instructions and information to her. During these meetings Dr. Abrams recommended several times that Ms. Mallard review portions of the procedural manual and refer to it as she carried out her work.

5. At the time that Ms. Mallard joined the OEE, a set of computer-generated address labels were available to be affixed to envelopes for daily courier pick-up and delivery to Gulf Coast. As the supply ran low, Dr. Abrams requested that

Ms. Mallard print new ones. Since Ms. Mallard explained that she did not know how to print labels, Dr. Abrams allowed her to write labels by hand. The handwritten labels printed by Ms. Mallard, however, did not follow the same format as the computer-printed ones and improperly included the office's return address. As a result an envelope was returned to the office by courier who misread the return address as the primary address. Dr. Abrams instructed Ms. Mallard to omit the return address thereafter and wrote a sample label for Ms. Mallard to follow. Despite these efforts, Dr. Abrams was forced to speak to Ms. Mallard on several additional occasions about this subject as she continued to improperly address the mail.

6. In preparing correspondence, Dr. Abrams would write out letters long-hand and deliver these to Ms. Mallard for typing. Through this process, Dr. Abrams discovered that Ms. Mallard was unfamiliar with the proper format for business letters or memoranda. After returning several drafts of letters because of errors in spacing, margins, and capitalization, Dr. Abrams advised Ms. Mallard to refer to examples of business letters from existing files and use them as models. Ms. Mallard required additional instruction on how to use the office typewriter.

7. Dr. Abrams stated to Ms. Mallard at one point that she appeared to have over-estimated her clerical skills and computer

training. She asked Ms. Mallard to establish a weekly goal of mastering one new skill a week. In order to achieve this goal, Ms. Mallard received computer instructions from Tara Johnson and other staff members including Dr. Robert Raze. Ms. Mallard cautioned Dr. Abrams, however, that the expectation "to master" the skills might be too high.

8. As part of her duties, Ms. Mallard was asked to inventory and organize an office supply cabinet consisting of four shelves of supplies. Although Dr. Abrams estimated that the task should take a maximum of three to four hours to complete, Ms. Mallard did not finish the job until several weeks later.

9. After several weeks, Dr. Abrams arrived at the conclusion that Ms. Mallard lacked important secretarial skills and would be unable to consistently produce a quality work product. Determining that Ms. Mallard would be unable to elevate her skills to an acceptable level, Dr. Abrams requested Ms. Mallard's termination as an employee by correspondence dated December 2, 1996.

10. In addition to the performance deficiencies that Dr. Abrams observed personally, she also received complaints concerning the Petitioner's performance from other employees.

11. Dr. Raze was hired by Dr. Abrams in 1991, and served as a "Coordinator," a senior professional position at the OEE.

Dr. Raze experienced difficulty in receiving complete and accurate telephone messages from the Petitioner. Dr. Raze advised Dr. Abrams that Ms. Mallard had failed to obtain basic information such as the complete correct name of the individual calling, the entity which the individual represented, the purpose of the call and the return phone number on certain messages.

12. Shannon Guillemette, another employee, reported an incident where she missed an important return telephone call because of Ms. Mallard's failure to answer incoming office telephone calls in accordance with her job description. Ms. Guillemette advised that similar incidents occurred in the past as well. These complaints were received by Dr. Abrams in the ordinary course of business as the Director of the office.

13. The Petitioner prepared correspondence dated December 11, 1996, to Steven Belcher, Director of Human Resources at Gulf Coast in response to the letter from Dr. Abrams requesting her termination. The Petitioner's, correspondence in response to the termination letter itself contained numerous errors in grammar, spelling and punctuation, which were consistent with the deficiencies earlier identified by Dr. Abrams in the Petitioner's job performance. In December of 1996, the Petitioner was terminated from her employment position. The Respondent, through its witnesses and exhibits,

has established that legitimate business reasons existed for that termination. The proven reason for Ms. Mallard's termination from employment was "poor job performance."

14. When Ms. Mallard was terminated from the OEE, the office employed a total of nine individuals. Five of those individuals were African-American and four were non-minority. The Petitioner, Ms. Mallard, is an African-American and so is Dr. Raze. Dr. Abrams is a non-minority and is responsible for the decision to both offer employment and to hire Ms. Mallard as well as the decision to terminate her.

15. Dr. Raze observed no instances of racial discrimination in the operation of the OEE from the time he was first hired in September 1991 through the closing of the office in July of 2000. The Petitioner failed to introduce any testimony or evidence corroborating her charge of racial discrimination.

CONCLUSIONS OF LAW

16. In order for a Petitioner, situated as Ms. Mallard, to establish a prima facie case of racial discrimination, such a Petitioner must demonstrate that she belongs to a protected class; that she performed her duties at the requisite level reasonably expected by her employer up to the time of her discharge or that, if she did not, employees outside of the protected group performed their duties in a similar fashion but

were not terminated. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); Jones v. Gerwins, 874 F.2d 1534 (11th Cir. 1989); Delgado v. Lockheed-Georgia, Co., 815 Fed.2d 641 (11th Cir. 1987); Alexander v. Fulton County, GA, 207 F.3rd 1303 (11th Cir. 2000).

17. It is only if the charging party i.e., the Petitioner, is able to make out a prima facie case that the burden to go forward with evidence shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. This is not the same as proving that there was a good reason or good cause for the action. The employer need not persuade the finder of fact that the employee's performance justified termination, but only that the decision was non-discriminatory. Halswell v. Kimberly Clark, 683 F.2d 285 (8th Cir. 1982); Alexander v. Fulton County, GA, 207 F.3rd 1303 (11th Cir. 2000); Turns v. AmSouth Bank N.A., 36 F.3d 1057, 1061 (11th Cir. 1994). The employer may terminate an employee for a good reason, a bad reason or for no reason at all. Nix v. WLCY Radio Rahall Communications, 738 F.2d 1811, 1817 (11th Cir. 1984); Pasco County School Board v. Perc, 353 So. 2d 108 (1st DCA 1997); DeMarco v. Publix, 360 So. 2d 134 (3rd DCA 1978).

18. Once an employer articulates a legitimate non-discriminatory explanation for a termination, the charging party may prevail only by demonstrating that that explanation was not

in fact a legitimate explanation, but was in reality a mere pretext for what amounted to unlawful discrimination. See St Mary's honor Center v. Hicks, 113 S. Ct. 2742 (1993); Isenbergh v. Knight Ridder Newspaper Sales, Inc., 97 F.3d 436 (11th Cir. 1996).

19. When the same person both hires and fires an employee within a relatively short period of time, an inference arises that no discrimination has occurred. This inference is based upon recognition of the fact that an employer who is willing to hire an individual within a protected class is unlikely to fire that same person simply because of her membership in the protected class. Burhmaster v. Overnight Transp. Co., 61 F.3d 461 (6th Cir. 1995); Proud v. Stone, 945 F.2d 796 (4th Cir. 1991); Lowe v. J.B. Hunt Transport, Inc., 963 F.2d 173 (8th Cir. 1992).

20. The Petitioner has failed to establish a prima facie case of race discrimination in that she has failed to prove that she performed her duties at the requisite level, reasonably expected by her employer up to the time of her discharge or that, if she did not, employees outside of the protected group who performed their duties similarly were not terminated.

21. The Respondent has nevertheless adequately articulated a legitimate, non-discriminatory explanation for terminating Ms. Mallard's employment. Ms. Mallard in turn, failed to

produce any evidence indicating that the Respondent's legitimate, non-discriminatory explanation for the termination, lack of proper job performance, was a pretextual explanation. Moreover, the Respondent is entitled to the "same actor" inference, referenced above, in rebuttal of the charging party's, Mr. Mallard's, claim of race discrimination. Accordingly, in consideration of the Petitioner's failure to establish a prima facie of race discrimination, the Respondent's articulation of legitimate, non-discriminatory reasons for the Petitioner's termination, as well as the Petitioner's failure to demonstrate them to be pretextual, the claim of race discrimination must fail.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record and the candor and demeanor of the witnesses, it is, therefore,

RECOMMENDED:

That a final order be entered by the Florida Commission on Human Relations determining that the Petition for Relief filed by Synthia Dianne Mallard be denied and that this cause be dismissed.

DONE AND ENTERED this 2nd day of February, 2001, in
Tallahassee, Leon County, Florida.

P. MICHAEL RUFF
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of February, 2001.

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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.