

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHARITY RITTMAN,)
)
 Petitioner,)
)
 vs.) Case No. 00-4168
)
 THE QUINCY STATE BANK,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Stephen F. Dean, held a formal hearing in the above-styled case on December 4, 2000, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Charity Rittman, pro se
39 Rittman Lane
Route 4, Box 1015
Quincy, Florida 32351

For Respondent: Michael P. Bist, Esquire
Gardner, Shelfer, Duggar & Bist
1300 Thomaswood Drive
Tallahassee, Florida 32312-2914

STATEMENT OF THE ISSUE

Whether Petitioner was discriminated against because of her age and her race.

PRELIMINARY STATEMENT

Petitioner filed a complaint with the Florida Commission on Human Relations on May 22, 1998. The Commission conducted an investigation determined there was no cause, and gave Petitioner notice of its determination and her right to a hearing.

Petitioner asked for a final hearing and the case was forwarded to the Division of Administrative Hearings. The case was noticed for hearing on December 4, 2000, by a notice dated October 18, 2000. The case was heard as noticed.

Petitioner testified in her own behalf and introduced Petitioner's Exhibits 1, 2, and 3. The witnesses for Respondent were Linda Ongley, Vice President and Director of Human Resources of Respondent; and Sharonda Rogers, a former employee of Respondent. Respondent introduced Respondent's Exhibits 1-6. Petitioner and Respondent both filed post-hearing pleadings which were read and considered.

FINDINGS OF FACT

1. On or about May 22, 1998, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations. The essence of this Charge was the allegation that Respondent discriminated against Petitioner because of her age (48) and race (black). Petitioner claimed that younger whites were employed in a position for which she had applied. (The Charge of Discrimination was FCHR No. 98-1932.)

2. Respondent filed its response to the allegations on July 22, 1998, and denied the allegations. Respondent filed a Statement of the Company's Position, Affidavits and supporting documents.

3. The Florida Commission on Human Relations conducted an investigation, including a request for additional documentation to Respondent, and on September 5, 2000, issued a Notice of Determination: No Cause. The Commission found that there was "no reasonable cause to believe that an unlawful employment practice has occurred."

4. In response to the Commission's notice, Petitioner filed a Petition for Relief on September 26, 2000. She claimed "the people hired during the time I applied had no banking experience. They were all young and white." Respondent filed its Answer on October 13, 2000, and denied the allegations asserting that as of August 1, 1997, Respondent employed two (2) individuals in the proof department: One (1) minority and one (1) employee over the age of forty (40). Further, Respondent stated it had twenty-one (21) employees in the teller department of which nine (9) were minorities and ten (10) were employees over the age of forty (40).

5. Petitioner is an African-American female who was approximately forty-eight (48) years old at the time that she applied for a position with Respondent.

6. In her application for employment, Petitioner indicated that she had not been employed since August of 1985 and had no computer training. There were seventeen (17) applicants for the positions. All the applicants, except Petitioner and one other applicant, indicated they had computer training. All of the applicants had recent employment experience.

7. The advertisements for the position indicated that they were for a part-time teller position and a part-time proof operator position. The proof operator enters up to thirteen thousand (13,000) transactions a day. The teller position requires sales skills, and the bank was moving into a Windows 95 computer system. Applicants with prior computer training and experience were considered over those without this experience by the Director of Human Resources, Linda Ongley.

8. Linda Ongley has been the Director of Human Resources for Respondent for the past seventeen (17) years. She is the person who was responsible for reviewing the applications, interviewing, and hiring. She made the decision not to offer employment to Petitioner. She did not believe Petitioner had the necessary computer skills and sales skills for the teller job, and did not appear to be prepared for the high stress and pace expected of the proof operator position. Based upon her interview of Petitioner, Ms. Ongley did not believe Petitioner

had a strong work ethic. Petitioner had no references; and had not worked in the twelve (12) preceding years.

9. While the job postings did specifically state that they were part-time, the teller position did not list "computer skills" as a requirement of the job. Ms. Ongley testified regarding this. Ms. Ongley had run the standard advertisement that she had run in the past because she only had recently received information regarding the conversion to the computer system. The teller advertisement did not state that "excellent communication and interpersonal skills" were required of applicants.

10. The applications indicate that essentially all of the applicants were substantially younger than Petitioner.

11. Of those persons hired by Respondent for these positions, the individuals hired for the teller position included one (1) African American; one (1) white; and one (1) West Indian. All three (3) of these individuals had computer training. The individual hired for the proof operator position did not have computer training (this position did not utilize a computer, but the person hired had excellent references, including a reference from a large customer of the bank). The Superintendent of Schools of Gadsden County came into the bank and personally recommended hiring her.

12. The records of Respondent and the testimony of Ms. Ongley indicate that at the time Petitioner made application for employment, one (1) employee in the proof department was a minority and one (1) was over the age of forty (40). Further, of the twenty-one (21) tellers, there were nine (9) minorities and ten (10) employees over the age of forty (40). All of these employees had been hired by Ms. Ongley.

13. Ms. Ongley's decision on filling all positions was based on neither age nor race.

14. Sharonda Rogers also testified. Ms. Rogers was a former employee of Respondent, who was hired as a part-time teller pursuant to this application process. Ms. Rogers is an African American. Ms. Rogers testified that she had not experienced any racial discrimination, nor observed any age discrimination during her thirteen (13) months of employment with Respondent. She left her position with Respondent to take another job elsewhere.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this hearing pursuant to Section 120.57(1), Florida Statutes.

16. Petitioner has the burden of proof in this case to show that she was discriminated against on the basis of age and race. To establish a prima facie case of unlawful

discrimination, Petitioner must show that (1) she is a member of a protected class; (2) who was qualified for a new position; (3) who suffered an adverse employment action; and (4) under circumstances giving rise to an inference of discrimination. See McDonnell Douglas v. Green, 411 U.S. 792 93 S.Ct. 1817 (1973); St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993). In the case at bar, it is clear that Petitioner was a member of a protected class (African-American) and that she suffered an adverse employment action. She was qualified for Respondent's teller position as it existed at the time of application, and she was qualified for the proof operator position.

17. Respondent articulated several legitimate non-discriminatory reasons for its action. McDonnell, supra and St. Mary's, supra. In other words, after a prima facie case is established, if the employer produces evidence of a legitimate non-discriminatory reason for its actions, the prior presumption of discrimination is rebutted and eliminated. See McDonnell, supra.

18. The legitimate interest of the employer in having competent employees who are already trained in areas in which the business is moving and who have references from important customers of the business, establishes the primary reason for the hiring of the applicants in this case. Jones v. Besmer

Carraway Medical Center, 137 F.3rd 1306, rehearing 151 F.3rd 1321, rehearing 162 F.3rd 1179 (11th Cir. 1998).

19. Respondent has established a legitimate business reason for the hiring of the four individuals. Ms. Ongley's decision was reasonable in light of her interview with Petitioner, Petitioner's lack of references, and Petitioner's lack of work experience in the preceding 12 years.

20. These all are legitimate reasons why Respondent did not hire Petitioner from among the chosen applicants. Petitioner presented no evidence to show that Respondent's actions were pretextual.

RECOMMENDATION

Based upon the foregoing findings of fact and conclusions of law, it is

RECOMMENDED that the Florida Commission on Human Relations enter its final order dismissing the case.

DONE AND ENTERED this 22nd day of January, 2001, in
Tallahassee, Leon County, Florida.

STEPHEN F. DEAN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of January, 2001.

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.