

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SHEILA DAVIS,)
)
 Petitioner,)
)
 vs.) Case No. 01-3466
)
 POLK COUNTY SHERIFF'S OFFICE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Notice was provided and on February 20, 2002, a formal hearing was held in this case in Lakeland, Florida. The authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. The hearing was conducted by Fred L. Buckine, Administrative Law Judge.

APPEARANCES

For Petitioner: Michael D. Malfitano, Esquire
David P. Steffen, Esquire
100 West Kennedy Boulevard, Suite 500
Post Office Box 1840
Tampa, Florida 33601-1840

David S. Bergdoll, Esquire
455 North Broadway
Bartow, Florida 33830

For Respondent: Sheila Davis, pro se
2458 Chestnut Woods Drive
Lakeland, Florida 33815

STATEMENT OF THE ISSUE

The issue is whether Respondent, Polk County Sheriff's Office, violated the Florida Civil Rights Act of 1992, as amended, Section 760.10, Florida Statutes (1993), as alleged in the Petition for Relief filed by Petitioner, Shelia Davis. Specifically, Petitioner alleged that Respondent retaliated against her by using "insubordination" as a cover-up for her termination for reporting a fellow officer beating a handcuffed inmate and discriminated against her because of her marital status.

PRELIMINARY STATEMENT

On October 7, 1998, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) charging Respondent with discrimination based on her marital status. By letter dated July 20, 2001, FCHR informed Petitioner of its determination of no cause, and advised Petitioner of the right to request a de novo administrative hearing by filing a petition for relief within 35 days of July 20, 2001. Petitioner timely filed a Petition for Relief that was transmitted to the Division of Administrative Hearings on August 31, 2001.

On September 13, 2001, a Notice of Hearing scheduling the final hearing for November 14 and 15, 2001, in Lakeland, Florida, was entered. On September 24, 2001, Respondent filed

an Answer, and on September 27, 2001, a Notice of Ex-Parte Communication was issued to Petitioner.

On October 25, 2001, Respondent's Witness List was filed, and on November 1, 2001, Respondent's Motion to Dismiss was filed. On November 2, 2001, Petitioner's letter requesting denial of Respondent's Motion to Dismiss was filed. On November 5, 2001, Respondent's Amended Motion to Dismiss was filed. On November 9, 2001, a telephone conference was held on Respondent's Amended Motion to Dismiss. On November 9, 2001, an Order Granting Continuance and Placing Case in Abeyance with instructions to advise of status no later than November 30, 2001, was entered. On November 26, 2001, an Order denying Respondent's Amended Motion to Dismiss was entered.

On December 10 and 17, 2001, respectively, Petitioner and Respondent filed responses to the order of abeyance with suggested final hearing dates. On December 18, 2001, a Notice of Hearing scheduling the final hearing for February 20 and 21, 2002, and an Order of Pre-Hearing Instructions were issued.

At the final hearing, Petitioner appeared pro se. Petitioner testified in her own behalf and presented the testimony of four witnesses: Lisa Sheffield, Nina Gaitor, Philip Petote, and Gloria Willis, all employees of Respondent. Petitioner's 12 exhibits (P-1 through P-12) were received in evidence. Respondent presented the testimony of five witnesses:

Willie Hall, Susan Newton, Gloria Blackwelder, Tommy Lee Cockroft, and Robbie Coulter, all employees of Respondent. Respondent's 11 exhibits (R-1 through R-11) were received in evidence.

At the final hearing, the parties requested 20 days after the filing of the transcript of this proceeding to file proposed recommended orders. The motion was granted.

On March 8, 2002, a Transcript of this proceeding was filed. Petitioner and Respondent filed their Proposed Recommended Orders on March 11 and 28, 2002, respectively. The proposals were considered in this Recommended Order.

On May 3, 2002, the undersigned issued an order, sua sponte, requiring Respondent to submit a copy of Petitioner's Fitness for Duty evaluation (identified as Court Exhibit "A")¹ performed by Dr. C. McDonald, on or about January 16, 1998, with a copy provided to Petitioner, pursuant to Rule 28-106.211, Florida Administrative Code. The parties were given June 3, 4, or 5, 2002, as possible dates for continuation of this cause to hear testimony regarding the evaluation report, if either party elected to do so. On May 28, 2002, a Notice of Hearing scheduling the hearing on the evaluation report for June 7, 2002, was entered.

On June 4, 2002, Respondent filed a Motion to Continue the June 7, 2002, hearing. A letter from Petitioner requesting a

continuance of the June 7, 2002, hearing was filed on June 5, 2002.

On August 2 and 9, 2002, Respondent filed a Motion for Dismissal of the Petition for Relief, and Petitioner filed a letter requesting Respondent's motion be denied, respectively. The motion for continuance was denied, and the undersigned considered the evaluation report in preparation of this Recommended Order without testimony from the parties.

FINDINGS OF FACT

Based upon observation of the witnesses and their demeanor while testifying, the documentary materials received in evidence, and the entire record compiled herein, the following evidentiary, relevant, material and ultimate facts are determined.

1. Respondent, Polk County Sheriff's Office (Sheriff), at all times material to this cause, was an "employer" as that term is defined under Florida Civil Rights Act of 1992, as amended, Section 760.02(7), Florida Statutes.

2. Petitioner, Shelia Davis (Ms. Davis), at all times material to this cause, was an "aggrieved person" as that term is defined under Florida Civil Rights Act of 1992, as amended, Section 760.02(10), Florida Statutes.

3. Ms. Davis alleges in her Petition that on May 29, 1998, the Sheriff terminated her in retaliation for her preparing an

incident report on January 3, 1998. Ms. Davis also alleged that her termination was also because of her marital status, in violation of the Florida Civil Rights Act (Act), Chapter 760.10 Florida Statutes.

4. In 1994, Ms. Davis was hired by the Sheriff as a Book-In Clerk and remained employed by the Sheriff until her termination on May 29, 1998.

5. While employed by the Sheriff, Ms. Davis married Curtis C. Young (Young) in 1997, in Pasco County. Ms. Davis and Young subsequently divorced at some point in time before April 1998.

6. In December 1997, the Sheriff initiated an administrative investigation into allegations that Ms. Davis was passing confidential information about inmates to her then husband, Young. The administrative investigation continued through April 1998.

7. On January 3, 1998, while on duty Ms. Davis observed and reported to Sergeant Petote an incident of Officer Sanders allegedly beating a handcuffed inmate. Sergeant Marshall, Ms. Davis' supervisor at that time, was made aware of the reported incident, and he made jokes of the use of the slang term "Jacked Up" used by Ms. Davis in her report to Sergeant Petote.

8. The following day, January 4, 1998, Ms Davis was working in the Booking Area information desk. During her tour of duty, Ms. Davis got into an argument with a civilian. After a discussion between Ms. Davis and Sergeant Marshall, he relieved Ms. Davis of duty in the Booking Area and reassigned her to duty in the control tower. From the testimony of the conversation between the two, tension became evident. As a result, Sergeant Marshall reported Ms. Davis as being "insubordinate," relieved Ms. Davis from duty, and sent her home for the remainder of the night shift.

9. The above incident was reported to Lieutenant Tom Cockroft who instructed Sergeant Marshall to suspend Ms. Davis for the remainder of the January 4, 1998, tour of duty. Upon informing Ms. Davis of her suspension, another argument ensued between Ms. Davis and Sergeant Marshall.

10. On January 5, 1998, based on the report by Sergeant Marshall and the concurrence of Lieutenant Cockroft, Ms. Davis was charged with violating the Sheriff's General Orders G.O. 26.1.E.,8.,a (Respect Toward Supervisors); G.O. 26.8.,b.,2. (Abusiveness); and G.O. 26.1. E.,8.,d. (Compliance and Execution of Lawful Orders).

11. Ms. Davis, at some time prior to January 1998, began to participate in the Polk County Crime Stoppers, a program designed to permit civilians to report known and suspected

criminals and criminal activities. It was the policy of Crime Stoppers to give monetary rewards to those persons whose information and tips resulted in or assisted in the arrest of persons committing or who had committed criminal acts.

12. Ms. Davis became aware that her ex-husband, Young, may have been incarcerated in the Pinellas County Jail under an alias. Sometime during the month of April 1998, Ms. Davis contacted the Pinellas County Sheriff's Office and related that she may have information regarding an inmate jailed under an alias, i.e. her ex-husband, Young.

13. Upon becoming aware that Ms. Davis was an employee of the Sheriff, Lieutenant Jacobs of the Pinellas County Sheriff's Office advised Ms. Davis to work through the Sheriff and not directly with the Pinellas County Sheriff's Office in the future.

14. The Pinellas County Sheriff's Office informed the Sheriff of Ms. Davis' contact, and Lieutenant Blackwelder, of the Sheriff's Administrative Investigation Department, engaged in a joint effort to confirm the identification of the Pinellas County Jail inmate, believed to be Young. Lieutenant Blackwelder ordered Ms. Davis to cease calling the Pinellas County Sheriff's Office regarding Young. At this meeting an argument ensued.

15. Subsequent to the above meeting with Lieutenant Blackwelder and the order to discontinue interference with the investigation by the Pinellas County Sheriff's Office, Ms. Davis telephoned the Pinellas County Sheriff's Office regarding Young for the intended purpose of collecting a Crime Stoppers reward. Ms. Davis acknowledged making contact via her cell phone on her off-duty hours with the Pinellas County Sheriff's Office after being ordered by Lieutenant Blackwelder to cease all contact. This course of conduct resulted in an allegation that Ms. Davis violated G.O. 26.1.E.,8.,d. (Compliance and Execution of Lawful Orders) and G.O. 26.1.E.,8.,a. (Respect Toward Supervisors). On or about April 22, 1998, Lieutenant Cockroft suspended Ms. Davis with pay for the violations hereinabove.

16. In May 1998, a pre-disciplinary hearing regarding the above-cited charges was held, and all charges were sustained resulting in termination of Ms. Davis' employment with the Sheriff on May 29, 1998.

17. Ms. Davis filed a discrimination complaint with FCHR in October 1998, and in 1999, FCHR informed Ms. Davis that her complaint was unsubstantiated.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Section 120.57(1), Florida Statutes.

19. Section 760.10(1)(a), Florida Statutes, provides that it is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

20. FCHR and the Florida courts have determined that federal discrimination law should be used as a guidance when construing provisions of Section 760.10, Florida Statutes. Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

21. The United States Supreme Court established in McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII, which is persuasive in cases such as that at bar, as reiterated and refined in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

22. This analysis illustrates that a petitioner has the burden of establishing, by a preponderance of evidence, a prima facie case of discrimination. If that prima facie case is established, the defending respondent must articulate a legitimate, non-discriminatory reason for the action taken

against the petitioner. The burden then shifts back to the petitioner to go forward with evidence to demonstrate that the offered reason is merely a pretext for unlawful discrimination. The Supreme Court stated in Hicks, before finding discrimination in that case, that:

[T]he fact finder must believe the plaintiff's explanation of intentional discrimination.

509 U.S. at 519.

23. In the Hicks case, the Court stressed that even if the fact finder does not believe the proffered reason given by the employer, the burden remains with the petitioner to demonstrate a discriminatory motive for the adverse employment action taken even if the court or the fact finder does not believe the employer's explanation for the reason.

24. In order to establish a prima facie case, Petitioner must establish that she is a member of a protected group; that she is qualified for the position in question; that she was actually subjected to an adverse employment decision; that she was treated less favorably than similarly situated persons outside her protected class; and that there is some causal connection between her membership in the protected group and the adverse employment decision that was made. See Canino v. U.S., E.E.O.C., 707 F.2d 468 (11th Cir. 1983); and Smith v. Georgia,. 684 F.2d 729 (11th Cir. 1982).

25. Here, Petitioner alleges the following adverse and discriminatory employment actions:

(1) I was constantly harassed and slandered face to face and/or in incident reports by supervisors and other employees. When I wrote an incident report and/or filed a grievance (internally) I was terminated on May 29, 1998.

(2) Retaliated against me by using "insubordination" as a cover-up to terminate me, because I reported an officer beating an inmate while inmate was handcuffed.

(3) I believe I was discriminated against because of Retaliation and Marital status for the following reasons: (a) I observed a correctional officer abuse an inmate that was handcuffed. Inmate was physically beaten and bruised. I was told to submit an incident report. The next night a Book-in Sergeant wrote me up, accusing me of being insubordinate for not working the control tower and this is untrue; (b) When an anonymous caller [using] an alias called the Sheriff office and gave a false statement that I was giving away inmates' social security [numbers] and date of births to my ex-husband and he was creating false bank accounts with the information.

(4) I was charged with association with criminals all because of the false allegation that was brought up. Charges were sustained and should have been exonerated with the rest of the other charges. Although my husband at the time is now my ex-husband, has a criminal record, the sheriff's office knew that I was married to him a whole year almost before the false accusation was brought up, but because of the false accusation, I was charged with association with criminals and charge sustained.

(5) I was in the process of receiving an award or reward from Crime Stoppers for capturing my ex-husband, when I notified internal affairs of what I was doing, the inspector for internal affairs would not advise her Lieutenant that I was giving her leads of information and that I was involved with Crime Stoppers. The inspector retaliated against me by misleading her lieutenant to believe I was interfering with an investigation of internal affairs, when internal affairs did not know anything about the leads that I was giving them. Also, the inspector led her lieutenant to believe that I was on company time when she knew that I was home. I was suspended with pay, then terminated. Grievances were filed on internal affairs before I was terminated.

26. In the case at bar, there is no evidence that Respondent terminated Petitioner because of and or related to her marital status (during her marriage to a convicted felon and/or after her divorce from Young), but was specifically due to her insubordination toward her immediate supervisors and other superior officers. See National Indus., Inc. v. Commission on Human Relations, 527 So. 2d 894 (Fla. 5th DCA 1988).

27. Assuming arguendo that Petitioner's above-stated allegations were, in fact, true, she has also failed to demonstrate that "adverse employment actions were the direct consequence" of her termination.

28. The record in this case clearly demonstrates that Petitioner was repeatedly argumentative and thus insubordinate to her supervisors and superiors.

29. Petitioner, Shelia Davis, has failed to establish, by a preponderance of the evidence, a prima facie case of discrimination by Respondent, Polk County Sheriff's Office.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations issue a final order DISMISSING Petitioner's discrimination complaint herein filed.

DONE AND ENTERED this 16th day of September, 2002, in Tallahassee, Leon County, Florida.

FRED L. BUCKINE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of September, 2002.

ENDNOTE

1/ Respondent, during its criminal investigation of Petitioner, required her to take a "Fitness for Duty" evaluation. This psychological evaluation was referred to in the evidence and testimony but not provided. The order required Respondent to provide a copy of the evaluation, and the parties were given an opportunity to provide testimony regarding this report, if desired.

COPIES FURNISHED:

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Sheila Davis
2458 Chestnut Woods Drive
Lakeland, Florida 33815

Michael D. Malfitano, Esquire
David P. Steffen, Esquire
100 West Kennedy Boulevard, Suite 500
Post Office Box 1840
Tampa, Florida 33601-1840

David S. Bergdoll, Esquire
455 North Broadway
Bartow, Florida 33830

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

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.