

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

D. PAUL SONDEL,)
)
 Petitioner,)
)
 vs.) Case No. 01-4887
)
 DEPARTMENT OF CORRECTIONS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Don W. Davis, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in this case on February 26, 2002, in Tallahassee, Florida. The following appearances were entered.

APPEARANCES

For Petitioner: Paul Sondel, pro se
2135 Victory Garden Lane
Tallahassee, Florida 32301

For Respondent: Gary L. Grant, Esquire
Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner was subjected to discrimination in the work environment by the Department of Corrections (Respondent) due to Petitioner's age in violation of Section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination against Respondent with the Florida Commission on Human Relations (FCHR) on February 1, 2001, alleging discrimination in regard to Petitioner's application on the basis of his age.

On or about November 8, 2001, the FCHR issued its Determination: No Cause.

On or about December 17, 2001, Petitioner filed a Petition for Relief with the FCHR. Subsequently, on or about December 21, 2001, the case was forwarded to the Division of Administrative Hearings (DOAH) for formal proceedings.

During the hearing, Petitioner testified on his own behalf and also presented one exhibit. Respondent presented the testimony of one witness and four exhibits. No transcript of the proceeding was provided.

Both Petitioner and Respondent filed Proposed Recommended Orders, both of which have been reviewed and considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Paul Sondel, was born on August 13, 1928. He was 72 years old at the time that he applied for Respondent's Position No. 01891/Education Supervisor I. His application was timely received by Respondent personnel.

2. The minimum qualifications for the education supervisor were, inter alia, two years' teaching experience and possession, or eligibility for a current professional State of Florida Educator's certificate in adult or vocational administration.

3. Mary Bass, a personnel technician for Respondent, reviewed all applications for the education supervisor position to make an initial determination as to whether applicants met the required minimum qualifications. She was not required to telephone applicants concerning the minimum qualifications and relied solely upon the information contained on the employment applications to make the initial determination of eligible applications. She completed her review of all applications in the same manner. Further, her inspection was done without regard to the ages of the applicants as set forth in the applications.

4. In reviewing Petitioner's application, Bass could not determine whether Petitioner, in fact, had two years of teaching experience; nor could she determine that he currently possessed or was eligible for a professional State of Florida educator's certificate in adult or vocational administration. Since his application did not contain information indicating that either of these two minimum qualifications had been met, Bass determined that Petitioner did not meet minimum qualifications for the job and did not merit further consideration. Had Bass

made a determination that Petitioner's application did meet minimum qualifications, such a determination would have merely permitted inclusion of his application with other eligible applicant applications and would not have necessarily led to an interview or obtainment of the position by him.

5. Based on Bass' initial screening of his application, Petitioner was notified by Respondent personnel via letter dated January 24, 2001, that he had not been selected for the position of Education Supervisor 1.

6. As established by the evidence adduced at final hearing, the individual eventually hired by Respondent for the position at issue in these proceedings had six years of teaching experience and current possession of a State of Florida teaching certificate. The age of this individual is not in evidence.

7. Mary Bass' determination that Petitioner's application did not meet minimum qualifications for the position of Education Supervisor 1, was based solely on a good-faith review of Petitioner's application. Bass had no agenda that included dispensing with Petitioner's application on the basis of his age.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings.

9. Chapter 760, Florida Statutes, the "Florida Civil Rights Act of 1992," provides security from discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.

10. The adverse effectuation of an employee's compensation, conditions, and privileges of employment on the basis of age is an unlawful employment practice.

11. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action. If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pretextual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

12. The Supreme Court of the United States has recognized that direct evidence of discrimination is extremely rare. As a consequence, the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), articulated a method by which complainants, such as Petitioner in this case, might establish a rebuttable presumption of discrimination. That method requires that Petitioner show (a) that he is a member of a protected class; (b) that he has been subjected to adverse employment action; (c) that he was treated differently than employees not a

member of the protected class; and (d) that there is evidence of a causal connection between Petitioner's protected status and his disparate treatment.

13. Petitioner has failed to offer credible evidence that rejection of his employment application was based on his age. As a consequence, it is concluded that Petitioner has not shown that Respondent's rejection of his employment application was a pretext to the exercise of employment discrimination on the basis of age.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED:

That a final order be entered dismissing the Petition for Relief.

DONE AND ENTERED this 13th day of March, 2002, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of March, 2002.

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.