

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JUANITA O. JONES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-0958  
 )  
 SEMINOLE COUNTY PUBLIC SCHOOLS, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal administrative hearing in this case on June 4 and July 11, 2002, in Sanford, Florida.

APPEARANCES

For Petitioner: Alberto E. Lugo-Janer, Esquire  
3501 West Vine Street, Suite 281  
Kissimmee, Florida 34741-4673

For Respondent: Ned N. Julian, Jr., Esquire  
Seminole County School Board  
400 East Lake Mary Boulevard  
Sanford, Florida 32773-7127

STATEMENT OF THE ISSUES

Whether or not Respondent, Seminole County Public Schools, discriminated against Petitioner, Juanita O. Jones, in employment by reason of race, in violation of Subsection 760.10(1), Florida Statutes.

PRELIMINARY STATEMENT

On July 13, 2000, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations against Respondent. On February 19, 2002, the Florida Commission on Human Relations directed a letter to Petitioner's attorney advising that after an investigation there was a determination "that there is no reasonable cause to believe that an unlawful employment practice has occurred." With the letter, Petitioner was provided a petition for relief, which could be completed, and Petitioner was advised that an administrative hearing must be requested within thirty-five days.

Petitioner filed a Petition for Relief with the Florida Commission on Human Relations. On March 4, 2002, the Florida Commission on Human Relations transmitted the Petition for Relief to the Division of Administrative Hearings. On March 8, 2002, an Initial Order was sent to the parties.

In response to the parties' Joint Compliance With Initial Order, the case was scheduled for final hearing in Sanford, Florida, on May 8, 2002. On Respondent's motion, the case was rescheduled for June 4, 2002.

The final hearing commenced as scheduled on June 4, 2002; at 6:10 p.m. the proceedings were adjourned and continued until July 11, 2002, to allow the presentation of additional evidence. At the final hearing, Petitioner presented four witnesses:

herself, Elizabeth Jean Smith, Regina Klaers, and John Davis. Petitioner offered thirteen Exhibits, numbered Petitioner's 1 through 13, which were received into evidence. Respondent presented one witness, Shirley Muse, and offered two Exhibits, numbered Respondent's 1 and 2, which were received into evidence.

A Transcript of the proceedings was filed with the Division of Administrative Hearings on August 14, 2002. The parties requested and received an enlargement of time in which to file proposed recommended orders. Respondent timely filed a Proposed Recommended Order.

#### FINDINGS OF FACT

Based on the testimony and demeanor of the witnesses, and documentary evidence, the following findings of fact are made:

1. Petitioner is a black female, who has been employed by Respondent since 1991.
2. She has served Respondent as an Executive Secretary, Elementary Education; Executive Secretary to the Administrative Assistant to the Superintendent; and a Technical Assistant, Media Center, Sanford Middle School.
3. Prior to her employment by Respondent, Petitioner was employed as a word processing systems operator by the Florida Department of Corrections.

4. In late 1999 or early 2000, Petitioner applied for the advertised position of Specialist, Applications Software. Respondent had advertised three separate Specialist, Applications Software, position vacancies during a two-month period.

5. Although interviewed for the vacancies for the first two positions, Petitioner was not selected for the first two advertised vacancies. Petitioner does not contend that her non-selection for the first two positions was a result of unlawful discrimination.

6. Applicants for the three Specialist, Applications Software, positions were interviewed by a two-person panel: Regina Klaers and John Davis. Ms. Klaers is Supervisor, Student Support; Mr. Davis is Manager, Student Support and Information Services. These individuals supervised the Specialist, Applications Software, position and were intimately familiar with the job requirements.

7. Thirteen individuals applied for the third Specialist, Applications Software, position. Of the thirteen, ten met the minimum qualifications. Three applicants were interviewed. Applicants who had been previously interviewed, Petitioner among them, were not interviewed an additional time as the interviewers felt they had sufficient knowledge from the

previous interviews. Petitioner had been interviewed twice previously.

8. The interviews focused on three areas: (1) school-based experience with student data; (2) customer service experience; and (3) "people skills." These were critical areas for the position. The interviews were particularly important in assessing an applicant's "people skills."

9. It was the opinion of the interviewers that one applicant's qualifications in these critical areas exceeded the other applicants', including Petitioner's. Based on the interviews, Elizabeth Jean Smith, a white female, was selected for the position.

10. Ms. Smith had significantly greater school-based "data-entry" experience with the student data systems, WANG and SASI, than did Petitioner. Immediately prior to being selected for the position in question, Ms. Smith's position was Clerk/Receptionist-Customer Service. Both interviewers agreed that Ms. Smith demonstrated better "people skills."

11. Credible evidence supported the selection of Ms. Smith based on her extensive school-based experience with student data systems and her customer service experience. While "people skills" are less empirically quantifiable than the other critical areas of the interviewers' focus, nothing revealed during the final hearing led the undersigned to believe that

Petitioner had better "people skills" than did the individual selected for the position.

12. Respondent selected Elizabeth Jean Smith for the Specialist, Applications Software, position because she was more qualified for the position than other applicants, including Petitioner.

#### CONCLUSIONS OF LAW

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

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

(1)(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.

15. Florida courts have determined that federal discrimination law should be used as a guidance when construing provisions of Section 760.10, Florida Statutes. Harper v. Blockbuster Entertainment Corp., 139 F.3d 1385 (11th Cir. 1998); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

16. 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 the instant case, as reiterated and refined in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

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

18. 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 still remains with the petitioner to demonstrate a discriminatory motive for the adverse employment action taken.

19. In order to establish a prima facie case, Petitioner must establish that she is a member of a protected class or group; that she is qualified for the position in question; that despite her qualifications she was not selected for the position (she was subjected to an adverse employment decision); that someone was selected who had similar qualifications who was not in the protected group; that she was treated less favorably than similarly situated persons outside her protected group; and that there is some causal connection between her membership in the protected group and the adverse employment decision that was made. McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973); Canino v. U.S. E.E.O.C., 707 F.2d 468, (11th Cir. 1983).

20. There is no dispute in this case concerning whether Petitioner is a member of a protected class or group, that she met the minimum qualifications for the position (or she would not have been interviewed), that an adverse employment decision was made, and that someone was selected for the position who was not a member of the protected group.

21. Petitioner failed to demonstrate that she was as qualified or more qualified for the Specialist, Applications Software, position than the applicant selected. In addition, Petitioner failed to establish any causal connection between her failure to be selected for the position and her race. No credible evidence was presented that her failure to be selected



for the position was because of her race other than her simply making conclusory statements to that effect. Coutu v. Martin County Board of County Commissioners, 47 F.3d 1068, 1073 (11th Cir. 1995); Young v. General Foods Corp., 840 F.2d 825, 830 (11th Cir. 1988).

22. While Petitioner failed to establish a prima facie case, Respondent offered legitimate, non-discriminatory explanations for its failure to select Petitioner for the position she sought. It hired someone it considered more qualified than Petitioner. This hiring decision is amply supported by credible evidence.

#### RECOMMENDATION

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

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief filed in this case.

DONE AND ENTERED this 30th day of September, 2002, in  
Tallahassee, Leon County, Florida.

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JEFF B. CLARK  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of September, 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.