

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

NORRIS L. FAILS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-1902  
 )  
 CITY OF CLERMONT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A formal hearing was held pursuant to notice in the above-styled case by Stephen F. Dean, assigned Administrative Law Judge of the Division of Administrative Hearings, on July 16, 2002, in Tavares, Florida.

APPEARANCES

For Petitioner: Norris L. Fails, pro se  
810 Orange Brooke Court  
Clermont, Florida 34711

For Respondent: Robert D. Guthrie, Jr., Esquire  
City of Clermont  
Post Office Box 3026  
Orlando, Florida 32802

STATEMENT OF THE ISSUE

Whether Respondent's dismissal of Petitioner was an unlawful employment practice.

PRELIMINARY STATEMENT

This case arose when the Petitioner filed a claim of employment discrimination with the Florida Commission on Human Relations. The Petitioner was notified after more than 180 days of his right to withdraw his Petition and file a Petition for Relief to proceed with an administrative hearing as provided for under Section 760.11(4)(b) and (8), Florida Statutes. Thereafter, the case file and original complaint were forwarded by the Commission to the Division of Administrative Hearings by letter dated May 7, 2002.

Upon receipt of the file, an Initial Order was issued requesting information upon which to set the case for hearing. When no response was received from the parties, the matter was set for hearing on June 28, 2002, in Tallahassee, Florida. Thereafter, a Motion for Continuance was received from Respondent's counsel asking that the matter be rescheduled because of a conflict and asking for a change in venue. The Motion was granted and the case reset for July 16, 2002, in Tavares, Florida. The case was heard as re-noticed.

At hearing, the Petitioner testified in his own behalf and introduced no exhibits. The Respondent presented the testimony of its Chief of Police, Randall A. Story, and introduced Respondent's Exhibits numbered 1 through 10 into evidence, with Exhibits numbered 1, 2, and 3 to be filed late.

The Respondent filed proposed findings that were read and considered.

FINDINGS OF FACT

1. The Petitioner, Norris L. Fails, is an African American and was employed by the City as a police officer for seven and one-half years.

2. The Respondent, City of Clermont (City), is a Florida municipal corporation and operates a police department which employed Fails as a police officer. Fails was terminated by the City in December 2000.

3. Fails asserts that the City terminated him because of his race. The City disputes this allegation.

4. The City asserts that Fails was terminated for violation of City Personnel Policies and Standards Governing Police Officers for violating the rule prohibiting police officers from associating with "undesirables, including convicted felons."

5. The Respondent presented evidence that the Petitioner had been counseled regarding associating with convicted felon, Latisha Rhodes, on three separate occasions, twice in July 2000, and once in November 2000. Petitioner acknowledged the association and his discipline.

6. The Respondent presented evidence that the Petitioner was in a car stopped by Officer Mathis of Groveland Police Department in December of 2000. The driver of the car in which Petitioner was riding, Christopher Taylor, was the subject of a "be on the lookout for" notice. Christopher Taylor was stopped because of his erratic driving and arrested that evening for driving under the influence. He subsequently plead guilty to the offense. The Petitioner identified Taylor to the arresting officer, who recognized the Petitioner as a Clermont police officer, when Taylor was not forthcoming with appropriate identification. The car Taylor was driving belonged to Latisha Rhodes.

7. Petitioner testified regarding his employment and discharge. Petitioner did not deny that he was in the car with Taylor. He denied knowledge of the "be on the lookout for" notice. He asserted that he had been treated differently than a white officer who had done similar things.

8. The City offered the testimony of Police Chief Randall A. Story. Shift command sergeants regularly remind patrol officers and investigators to check the bulletin board for persons wanted by city and other police agencies. The notice on Christopher Taylor was posted from mid-October 2000, until after the date of Fails termination. The notice on Taylor contained a picture of Taylor and was attached to a bright

orange business card of State Wildlife Officer Bouchard who had requested officers be on the look out for Taylor.

9. It is not credible that the Petitioner would not have been aware of this notice. The Petitioner should have exercised exceptional discretion when he became aware Taylor was driving Rhodes' car, having been warned about associating with Rhodes.

10. The Respondent documented that the only white officer accused of associating with undesirables was Brian Connolly, and he had been terminated. See Respondent's Exhibit 4.

11. The Petitioner presented testimony that other white officers were not terminated for their misconduct.

12. The Petitioner alleged that Officer Robbins, a white male, had associated with a convicted felon, Jerry Jones. However, the Chief of Police denied knowing about this alleged association and no evidence was presented that the Department was aware of their association.

13. The Petitioner alleged that Officer Saunders, a white female, had abused her position as a police officer in an incident in Sanford, Florida. This incident was investigated and it was determined that Saunders' husband, a former Leesburg policemen, had caused the problem. The Respondent had no basis to discipline Officer Saunders.

14. The Petitioner alleged that Officer Jerry Osteen, a white male, had improperly touched a woman while on duty. The Respondent had investigated the allegations and suspended Officer Osteen.

15. The Petitioner alleged that Respondent had wrongfully terminated Geraldine Young, an African American female. The Respondent terminated Young for uttering two forged instruments.

16. The Respondent had good cause for terminating the Petitioner. The Petitioner did not show credible evidence that Petitioner's grounds for discharge were other than for the reasons stated.

#### CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the subject matter and parties in this case.

18. The Petitioner alleges that his discharge was inconsistent from the discipline imposed upon white police officers and that his discharge was racially motivated. Section 760.10, Florida Statutes, prohibits discrimination on the basis of race in employment practices.

19. The Petitioner has the burden of proof in this case to show that he was discriminated against on the basis of race. To establish a prima facie case of unlawful discrimination, the Petitioner must show that (1) he is a member of a protected class and (2) suffered an adverse employment action. 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 the Petitioner was  
a member of a protected class (African American) and that he  
suffered an adverse employment action.

20. The Respondent presented evidence that showed that the  
Petitioner had been reprimanded for associating with an  
undesirable person, Latiesha Rhodes. After multiple reprimands,  
the Petitioner was in Latiesha Rhodes' car while it was being  
driven by Christopher Taylor, who was the subject of a "be on  
the lookout for" notice posted for two months in the  
Petitioner's squad room. Further, Taylor was arrested for  
driving under the influence by an officer from another  
jurisdiction, to whom he identified Taylor. Therefore, the  
Petitioner knew who Taylor was and knew, or should have known,  
he was being sought by law enforcement. Further, as a law  
enforcement officer, the Petitioner knew, or should have known,  
that Taylor was impaired and prevented him from driving. The  
Respondent had good cause for discharging the Petitioner.

21. The Respondent articulated a legitimate, non-  
discriminatory reason 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.

22. The burden was upon the Petitioner to show that his discharge was for reasons other than those actually asserted by the Respondent. Another case involving a white officer who the department knew was associating with undesirable persons resulted in the discharge of the officer. In a third case of improper associations, the Petitioner failed to show that the department was aware of the matter.

23. Regarding other types of discipline by the department, evidence was presented by the department that it had investigated and determined that there was no basis for discipline or had imposed discipline. In the one other case of discipline of an African American officer, the department had good cause for its actions. In sum, the Petitioner did not carry his burden to show that the department's actions were racially based or pretextual.

#### RECOMMENDATION

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

RECOMMENDED:

That the Petitioner's Petition be denied.

DONE AND ENTERED this 11th day of October, 2002, in  
Tallahassee, Leon County, Florida.

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STEPHEN F. DEAN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of October, 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.