

12-12-02

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

03 APR 15 PM 4:22

JAMES B. BROWN

JAP

EEOC Case No. 15DA10426

Petitioner,

FCHR Case No. 21-01775

v.

DOAH Case No. 02-2922

SFD-Closed

NORTH FLORIDA COMMUNITY COLLEGE

FCHR Order No. 03-035

Respondent.

03 APR 17 AM 9:12
FILED
ADMINISTRATIVE
HEARINGS

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Petitioner filed his original Charge of Discrimination on December 11, 2000, alleging that he had been denied four (4) promotions (hiring for full-time permanent positions) by the Respondent between September 1998 and August 2000 because of his race (black) and age (56). He later amended his complaint on April 16, 2001, to include failure to hire for five (5) named positions and also to include a charge of retaliation for failure to rehire him in his adjunct part-time position and to deny him unemployment compensation. The Commission's Executive Director issued a determination of no reasonable cause on June 4, 2002, and the Petitioner filed his Petition for Relief on July 17, 2002.

Administrative Law Judge Stephen F. Dean conducted a formal evidentiary hearing on October 1-3, 2002, in Tallahassee, Florida. A five-volume transcript of the hearing with Petitioner's exhibits 1-18 and Respondent's exhibits 1-36 was filed on October 31, 2002.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

The ALJ made extensive findings of fact (numbered 1-65) in which he summarized the evidence presented at the hearing. He first provides the dates, times and basis for the charges of discrimination based on race (black) and in retaliation for his filing his complaint. He reviews the Commission's action to date and finds that the Petition for Relief was not timely filed; however, elects to proceed with the hearing. He provides the Petitioner's background and the Respondent's location, demographics, employment, and hiring policies and procedures. See, Recommended Order ¶ 1-14.

The ALJ then proceeds to find facts surrounding each of the disputed positions for which the Petitioner applied.

The ALJ found that there have been no vacancies for a full-time mathematics instructor since 1991. See, Recommended Order ¶ 14.

The ALJ found that, in 1998, Petitioner responded to an advertisement for an instructor to teach computer science courses in the Business Department. He did not state any special experiences in computer science. The vacancy was filled by a white female who had extensive computer science education and teaching credentials. See, Recommended Order ¶ 15-17.

The ALJ found that, in 1999, Petitioner responded to an advertisement for program administrator for the North Florida Workforce Development Board. He further found that the position was never filled because the program was moved to a different administrative agency. See, Recommended Order ¶ 18.

The ALJ found that, in December 1999, Petitioner responded to an advertisement for project coordinator for the College Reach Out Program (CROP). Approximately 30 persons applied from whom five, including Petitioner, were selected for interviews with the Search Committee. The Search Committee unanimously recommended a white female with a BA in psychology, an MA in social work and extensive experience working with at-risk adolescents in preparing and activating "life plans." See, Recommended Order ¶ 19-22.

The ALJ found that, in September 2001, Petitioner responded to an advertisement for a case manager in the CROP (program) in two counties. In his application, Petitioner stated that he had been employed as the CROP coordinator by the Respondent and also in Brevard County. In fact, he held neither position. He was one of four part-time facilitators for the program from Jan-June 2000. Based on her knowledge of his work, the supervisor elected not to interview the Petitioner. Eight people applied from whom two, not including the Petitioner, were selected for interviews. The successful applicant had a BA in social psychology and experience in working with at risk students in all aspects. See, Recommended Order ¶ 23-29.

The ALJ found that, in June 2001, Petitioner responded to an advertisement for a "learning resource coordinator" and another for a "transfer advisor". The learning resource coordinator is the manager of the tutoring lab for developmental students and supervises the transfer advisor, who works with developing student's English skills and the retention advisor, who works with developing student's mathematics skills. The advertisement indicated that language proficiency in Spanish was preferred based on a growing Hispanic population on Respondent's campus and a need for staff person who could tutor in Spanish. There were 18 candidates for the "learning resource coordinator" with the Petitioner not chosen to be interviewed because of his lack of Spanish; 20 candidates for the "transfer advisor" with Petitioner not chosen to be interviewed because of his lack of English background. In both cases, Hispanic females were chosen with specific education and work experiences in the needed areas. See, Recommended Order ¶ 30-38.

The ALJ found that, in March 2000, Petitioner responded to an advertisement for an instructor of business and economics. Between 20-30 applicants with 5, including the Petitioner, chosen by the Search Committee for interviews. Following the interviews, the Committee found that Petitioner had "great math credentials," but his business and economics credentials "were considerably less" than some of the other candidates. The Committee concluded that two others were better qualified than Petitioner for the position; one of whom had a master in business administration and the other a doctorate in economics with bachelor's degree in business administration with an emphasis on finance. The one with the doctorate, who was also an assistant professor of economics and finance at Thomas University, was offered the position. See, Recommended Order ¶ 39-40.

A review of the transcript and exhibits clearly indicate competent and substantial evidence supporting these findings. Since an Administrative Law Judge's finding of whether discrimination occurred is a finding of fact, the Commission may overturn such a finding **only if, after reviewing the complete record of the case, the Commission determines that the finding is not supported by competent substantial evidence in the record** or that the proceeding leading to the determination did not comply with the essential requirements of law. See Florida Department of Community Affairs v. Bryant, 586 So2d 1205, at 1210 (Fla. 1st DCA 1991). See also, Department of Health and Rehabilitative Services v. Yhap, 680 So2d 559 (Fla. 1st DCA 1996); Southpointe Pharmacy v. Department of Health and Rehabilitative Services, 596 So2d 106 (Fla. 1st DCA 1992); Clay County Sheriff's Office v. Loos, 570 So2d 394 (Fla. 1st DCA 1990); National Industries, Inc. v. Commission on Human Relations, 527 So2d 894 (Fla. 5th DCA 1988); Howard Johnson Co. v. Kilpatrick 501 So2d 59 (Fla. 1st DCA 1987); Holmes v. Turlington, 480 So2d 150 (Fla. 1st DCA 1985); Brevard County Sheriff's Department v. Florida Commission on Human Relations, 429 So2d 1235 (Fla. 5th DCA 1983); and School Board of Leon County v. Hargis, 400 So2d 103 (Fla. 1st DCA 1981).

As modified herein, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order," in which he itemizes his exceptions to 13 paragraphs in the Recommended Order and states that the over-riding factor that the ALJ did not mention is the fact that there are no African Americans in the transfer program at North Florida Community College and that the college has never hired an African American in that program. Respondent filed a document entitled, "Responsive Brief," in which it rebuts the Petitioner's exceptions with appropriate references to the record. Petitioner subsequently filed "its exceptions in response to Respondent's Responsive Brief to the Recommended Order in this case."

Generally, Petitioner's exceptions substitutes Petitioner's opinion regarding the record, adds information not in the record, and requests the Commission to ignore the competent, substantial evidence in the record that supports the ALJ's findings and conclusions. Although the ALJ does not address the Petitioner's stated concern that there are no African Americans in the Transfer Program, he does establish competent, substantial evidence to support his conclusions that Petitioner failed to meet his burden of proof that a discriminatory act or acts occurred.

Since an Administrative Law Judge's finding of whether discrimination occurred is a finding of fact, the Commission may overturn such a finding **only if, after reviewing the complete record of the case, the Commission determines that the finding is not supported by competent substantial evidence in the record** or that the proceeding leading to the determination did not comply with the essential requirements of law. See Florida Department of Community Affairs v. Bryant, 586 So2d 1205, at 1210 (Fla. 1st DCA 1991). See also, Department of Health and Rehabilitative Services v. Yhap, 680 So2d 559 (Fla. 1st DCA 1996); Southpointe Pharmacy v. Department of Health and Rehabilitative Services, 596 So2d 106 (Fla. 1st DCA 1992); Clay County Sheriff's Office v. Loos, 570 So2d 394 (Fla. 1st DCA 1990);

The ALJ found further that, in late winter 2002, Petitioner applied for a vacancy caused by the retirement of the chemistry and physics instructor. Petitioner denominated his application as for a “mathematics/physics/science instructor” and identified himself as a “professor of mathematics.” Petitioner was considered for the position but was not selected as the one selected had extensive educational and teaching credentials in chemistry, environmental science and general science. See, Recommended Order ¶ 41-43.

The ALJ therefore specifically found credible, substantial evidence for each of the positions for which petitioner applied that the Respondent has established a legitimate, non-discriminatory reason for Respondent’s decision to hire someone other than the Petitioner. See, Recommended Order ¶ 44.

The ALJ further reviewed the complaint of retaliation through failing to hire Petitioner for teaching part-time and denying his claim for unemployment compensation. After reviewing all the evidence (See, Recommended Order ¶ 45-63), the Judge found that Respondent’s decisions were not based on race, nor were they based on any retaliatory motive. See, Recommended Order ¶ 64 and 65.

We adopt the Administrative Law Judge’s findings of fact.

Conclusions of Law

The Administrative Law Judge found that the Petitioner filed his Petition for Relief untimely; however, proceeded to consider the case on the merits. See, ¶ 67-69, Recommended Order.

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, “The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination.” See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank d/b/a Great Western. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted

With respect to the Petitioner’s allegations regarding discrimination in hiring, the Administrative Law Judge concluded that the Petitioner established a prima facie case of discrimination by the Respondent; however, in each instance of failing to hire, he found the Respondent presented evidence showing a legitimate non-discriminatory reason. See, ¶ 77, Recommended Order.

With respect to the Petitioner’s allegations regarding retaliation in denying him employment as an adjunct in the Spring Semester of 2001 or any other time, the better evidence shows that there was no adverse employment action and the Petitioner failed to establish a prima facie case of discrimination by the Respondent. See, ¶ 79-82, Recommended Order.

The ALJ further found that the Petitioner presented no evidence to show that any of the Respondent’s articulated reasons for the actions were pretexts for unlawful discrimination. Petitioner had failed in his burden of proof with regard to this last issue. See, ¶ 83, Recommended Order

National Industries, Inc. v. Commission on Human Relations, 527 So2d 894 (Fla. 5th DCA 1988); Howard Johnson Co. v. Kilpatrick, 501 So2d 59 (Fla. 1st DCA 1987); Holmes v. Turlington, 480 So2d 150 (Fla. 1st DCA 1985); Brevard County Sheriff's Department v. Florida Commission on Human Relations, 429 So2d 1235 (Fla. 5th DCA 1983); and School Board of Leon County v. Hargis, 400 So2d 103 (Fla. 1st DCA 1981).

Based on the foregoing, the Petitioner's exceptions are not accepted.

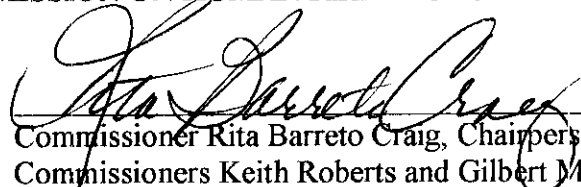
Dismissal

The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.


The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure, Rule 9.110.

DONE AND ORDERED this 16th day of April, 2003.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS


Commissioner Rita Barreto Craig, Chairperson and
Commissioners Keith Roberts and Gilbert M. Singer

Filed this 16th day of April, 2003
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

NOTICE TO COMPLAINANT/PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request the EEOC review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131

Copies furnished to:

James B. Brown
Post Office Box 584
Madison, FL 32340

Bruce A. Leinback, Esquire
BIRD AND LEINBACK, P.A.
Post Office Box 15556
Tallahassee, FL 32317

Stephen F. Dean, Administrative Law Judge (DOAH)
Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 16th day of April, 2003.

BY: *Wesley Crawford*
Clerk of the Commission