

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

CLARENCE GOOSBY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-3994  
 )  
 FLORIDA EXTRUDES INTERNATIONAL, )  
 INC., )  
 )  
 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 April 28, 2003, in Orlando, Florida.

APPEARANCES

For Petitioner: David Glasser, Esquire  
Glasser and Handel  
Suite 100, Box N  
150 South Palmetto Avenue  
Daytona Beach, Florida 32114

For Respondent: James W. Seegers, Esquire  
Valencia Percy Flakes, Esquire  
Akerman Senterfitt  
255 South Orange Avenue  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Petitioner, Clarence Goosby, suffered racial discrimination when he was terminated from employment for fighting.

PRELIMINARY STATEMENT

On June 27, 2001, Petitioner filed an Amended Charge of Discrimination with the Florida Commission on Human Relations. On September 10, 2002, the Florida Commission on Human Relations advised Petitioner of its Determination: No Cause. On October 7, 2002, Petitioner filed his Petition for Relief.

On October 15, 2002, the Division of Administrative Hearings received a Transmittal of Petition for Relief. On October 16, 2002, an Initial Order was forwarded to both parties. On October 28, 2002, a hearing was scheduled for December 2 and 3, 2002, in Orlando, Florida. On November 18, 2002, a continuance was granted on the joint motion of the parties.

On December 10, 2002, the case was rescheduled for February 3 and 4, 2003. On January 30, 2003, the case was continued as a result of Respondent's Motion for Summary Final Order. On February 28, 2003, the case was rescheduled for April 28 and 29, 2003.

The case was heard as rescheduled on April 28, 2003. At the hearing, Petitioner testified in his own behalf, presented three

witnesses, and offered five exhibits, which were received into evidence and marked Petitioner's Exhibits 1 through 5.

Respondent presented five witnesses and offered 39 exhibits, which were received into evidence and marked Respondent's Exhibits 1 through 39. On May 28, 2003, an Unopposed Motion for Enlargement of Time for filing proposed recommended orders was granted enlarging the filing time to June 30, 2003. Both parties filed Proposed Recommended Orders.

#### FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of fact are made:

1. Petitioner, Clarence Goosby, is an African-American, who was employed by Respondent from October 13, 1999, until he was terminated on February 17, 2000.

2. Respondent, Florida Extruders International, Inc., a manufacturing company located in Sanford, Florida, employs approximately 500 employees and is an "employer" as defined in Subsection 760.02(7), Florida Statutes.

3. Some of the manufacturing activities at Respondent's plant are dangerous. One of these activities, melting aluminum scrap, takes place in the Cast House, which is noted as a "restricted area." Workers in the Cast House wear fire-protective clothing.

4. On February 17, 2000, an African-American employee, Broderick Demps ("Demps"), was noticed in the Cast House where he had gone to use the restroom. A Caucasian supervisor, William Wilson ("Wilson"), questioned Demps regarding his presence in a restricted area and was advised by Demps that his supervisor had given him permission to use the restroom.

5. Demps exited the Cast House and was followed by Wilson to another building, the Warehouse, Demps' workstation. Wilson met another supervisor, Frank Witherspoon ("Witherspoon"), as he entered the Warehouse.

6. Wilson and Witherspoon located Demps' supervisor, Warren Lawrence ("Lawrence"), who advised that he had not given Demps permission to enter the Cast House.

7. At this point, Demps began yelling at Wilson; his language was obscene and racial. The other supervisors tried, without success, to control Demps.

8. Petitioner, hearing the altercation, left his work area in the same building, and recognized Demps (who he referred to as his "God-brother"), who continued yelling obscenities at Wilson. Petitioner's supervisor, Kenneth McKinney ("McKinney"), told Petitioner to return to his work area. Petitioner ignored McKinney's directive.

9. Petitioner approached Wilson and the other supervisors and began yelling obscenities and racial slurs at Wilson. While

standing in close proximity to Wilson and shouting at him, Petitioner made a quick move with his hand and arm.

10. Wilson, believing that Petitioner was attempting to strike him, responded by striking Petitioner. Demps then struck Wilson in the head, knocking him to the floor.

11. Both Petitioner and Demps jumped onto Wilson, striking and kicking him. Witherspoon, McKinney, and Lawrence physically pulled Petitioner and Demps off Wilson. Petitioner and Demps continued yelling obscenities and racial slurs at Wilson as they were being removed from the Warehouse.

12. Petitioner officiously injected himself into a volatile situation involving Demps and his supervisors. By his confrontational conduct, Petitioner precipitated a physical altercation among himself, Wilson, and Demps.

13. Witherspoon contacted Dana Lehman ("Lehman"), operations manager and highest-level executive at Respondent's plant, by radio and advised him of the altercation.

14. Lehman immediately went to the Warehouse, where a crowd of employees had gathered in addition to the individuals mentioned hereinabove.

15. Lehman inquired of several employees regarding the altercation but no one reported having seen it. Lehman attempted to speak to Petitioner and Demps about the incident. Petitioner

and Demps were confrontational; Lehman obtained no relevant information from them.

16. Lehman questioned McKinney, Lawrence, and Witherspoon and received their reports regarding the incident, which are detailed hereinabove. Wilson confirmed the descriptions and observations of the three supervisors/witnesses.

17. McKinney, Petitioner's supervisor, recommended to Lehman that Petitioner be terminated for unauthorized leaving of his work area and instigating a fight with a supervisor.

18. Respondent had in the past terminated several employees of different ethnicities for fighting.

19. Respondent's employees' handbook (Policies and Procedures Handbook) reads, in pertinent part, as follows:

Conduct Meriting Immediate Discharge

Certain actions are such serious breaches of responsibilities to the company that no prior warnings or probation notices are required and may result in immediate discharge. For example:

\* \* \*

Fighting or hitting another employee, or similar disorderly conduct, during work hours or on company premises.

Willful disobedience (insubordination)

20. Petitioner was aware of Respondent's prohibition against fighting and insubordination.

21. Lehman discharged Petitioner on the day of the incident for fighting and insubordination.

CONCLUSIONS OF LAW

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

23. 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.

24. Florida courts have determined that federal discrimination law should be used as 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).

25. 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).

26. 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 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.

27. 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.

28. To establish a prima facie case of discrimination, Petitioner must show that: he is a member of a protected class; he suffered an adverse employment action; he received disparate treatment from other similarly situated individuals in a non-protected class; and that there is sufficient evidence of bias

to infer a causal connection between his race and the disparate treatment. 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); Andrade v. Morse Operations, Inc., 946 F.Supp. 979 (M.D. Fla. 1996).

29. Petitioner has demonstrated that he is member of a protected class and suffered an adverse employment action; he has failed to demonstrate that he was the victim of dissimilar treatment from an individual in a non-protected class or that there was any relationship between his race and his discharge. Petitioner failed to demonstrate that Wilson, the Caucasian supervisor, who was involved in the physical altercation, was a similarly situated employee. Wilson was a supervisor and, more importantly, he was doing his job when Petitioner unnecessarily involved himself in a volatile situation causing a fight. The evidence revealed that Wilson's conduct was appropriate given Petitioner's aggressive onslaught. Silvera v. Orange County School Board, 244 F.3d 1253, 1259 (11th Cir. 2001).

30. Petitioner's officious conduct raised the level of a verbal confrontation to a physical altercation. His conduct clearly violated reasonable, published employee regulations. No credible evidence was presented that his discharge from employment was because of his race. Petitioner's conclusory allegations that his discharge was racially motivated is not

sufficient to raise a inference of discrimination where an employer has offered evidence of legitimate, non-discriminatory reasons for his discharge. 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).

31. While Petitioner failed to establish a prima facie case, Respondent offered legitimate, non-discriminatory reasons for Petitioner's discharge.

RECOMMENDATION

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

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

DONE AND ENTERED this 9th day of July, 2003, in Tallahassee, Leon County, Florida.



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JEFF B. CLARK  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 9th day of July, 2003.

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.