

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

FABIAN L. DIXON, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 02-4812  
 )  
 DEPARTMENT OF CHILDREN )  
 AND FAMILY SERVICES, )  
 )  
 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 June 30, 2003, in Chattahoochee, Florida.

APPEARANCES

For Petitioner: Fabian L. Dixon, pro se  
4364 Century Road  
Greenwood, Florida 32443

For Respondent: Kathi Lee Kilpatrick, Esquire  
Florida State Hospital  
Department of Children  
and Family Services  
Post Office Box 1000  
Chattahoochee, Florida 32324-1000

STATEMENT OF THE ISSUE

Whether Petitioner was discriminated against based on his race in violation of Chapter 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On May 20, 2002, Petitioner filed a charge of discrimination claiming that he was discharged because of his race. On November 5, 2002, the Florida Commission on Human Relations issued a "Notice of Determination: No Cause" in this case. The Notice held that there was no reasonable cause to believe that an unlawful employment practice had occurred in Petitioner's case. Petitioner disagreed with the Commission's determination and requested a formal administrative hearing on December 10, 2002, and Petitioner's request for hearing was forwarded to the Division of Administrative Hearings on December 16, 2002.

At the hearing, Petitioner testified in his own behalf and presented one witness, but did not present any exhibits. Respondent offered one testimonial witness and introduced two exhibits into evidence.

The parties submitted Proposed Recommended Orders which have been read and considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Fabian L. Dixon, is an African-American male.

2. At all times relevant to this Petition, Petitioner was employed by the Florida Department of Children and Families as a Unit Treatment and Rehabilitation Specialist-Forensic Corrections at Florida State Hospital, Chattahoochee, Florida.

3. Petitioner was aware of Florida State Hospital's strict policies regarding Falsification of Records or Statements; Willful Violation of Rules, Regulations or Policies and Conduct Unbecoming a Public Employee. Petitioner was also aware that violations of such policies could result in dismissal of the employee. Violations of these policies had resulted in dismissal of both non-minority and minority employees in the past.

4. On June 22, 2001, at 8:32 a.m. and 8:33 a.m., Unit 21 received two faxed copies of Inter Agency Leave Transfer forms from Petitioner, each donating twenty-four hours of sick leave for a total of forty-eight hours and both purportedly signed by Norman Torres. Mr. Torres subsequently discovered that over twenty-four hours had been deducted from his sick leave balance, and discovered that forty-seven hours had been used by Fabian L. Dixon. Mr. Torres then informed his timekeeper that he only donated twenty-four hours of sick leave to Petitioner. In reviewing the sick leave donation forms it appeared the date was changed on one of the forms, then the two forms were faxed to

Unit 21. Written statements from Mr. Torres indicated that he only donated twenty-four hours of sick leave to Petitioner.

5. Because of the serious nature of the violation, and given Petitioner's past history of discipline, Respondent terminated Petitioner on September 21, 2001. The employment decision was not based on Petitioner's race and was consistent with Respondent's disciplinary policy.

6. On October 1, 2001, AFSCME elected to file a grievance on behalf of Petitioner under the provisions of the Master Contract between the State and the American Federation of State, County and Municipal Employees. The grievance was initially reviewed by the Department of Children and Family Services and it was determined that there was cause for Petitioner's dismissal. The grievance was then appealed to Step 3 of the grievance procedure, which provided for review of agency action by the Department of Management Services. The issue determined at Step 3 was whether the Department had just cause to discipline Petitioner. Review of the Department's actions revealed that the Department had just cause to discipline Petitioner and that the penalty imposed was within the range for each charged violation. The grievance and relief requested was denied. On December 4, 2001, a "Request for Arbitration" was filed by AFSCME on behalf of Petitioner and a hearing was scheduled for June 2, 2003. On May 20, 2003, AFSCME filed a

Notice of Withdrawal of Arbitration. In response to the notice, the hearing was cancelled and an Order Closing the File of the Department of Management Services was issued on May 20, 2003.

7. At hearing, Petitioner admitted that he altered the Inter Agency Leave Transfer Form, but contended that the hospital did not terminate other white employees for similar offenses. However, Petitioner failed to present any independent testimony to corroborate this claim and made absolutely no showing that there was any relationship between his race and his termination.

#### CONCLUSIONS OF LAW

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

9. Under the provisions of Section 760.10, Florida Statutes, it is an unlawful employment practice for an employer:

(1) (a) [T]o discharge or to fail to 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.

10. Florida Commission on Human Relations and the Florida courts have determined that federal discrimination law should be used as guidance when construing provisions of Section 760.10.

See Brand v. Florida Power Corp, 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

11. The Supreme Court of the United States established in McDonnell-Douglass 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 and which are persuasive in cases such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

12. Pursuant to this analysis, Petitioner has the burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. If a prima facie case is established, Respondent must articulate some legitimate, non-discriminatory reason for the action taken against Petitioner. Once this non-discriminatory reason is offered by Respondent, the burden then shifts back to Petitioner to demonstrate that the offered reason is merely a pretext for discrimination. As the Supreme Court stated in Hicks, before finding discrimination, "[t]he fact finder must believe the plaintiff's explanation of intentional discrimination." 509 U.S. at 519.

13. In Hicks, the Court stressed that even if the fact-finder does not believe the proffered reason given by the employer, the burden remains with Petitioner to demonstrate a discriminatory motive for the adverse employment action. Id.

14. Here, Petitioner has alleged race discrimination based on disparate treatment. In order to establish a prima facie case of disparate treatment based upon race, Petitioner must establish: (1) That he is a member of a protected class; (2) That he was qualified for his position; (3) That he suffered an adverse employment action; and (4) That he was treated less favorably than similarly situated employees who were not members of his protected class. Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997).

15. Section 760.10, Florida Statutes, provides that race is a protected class. There is no dispute as to Petitioner's being African-American or being qualified for the position he held, or that his discharge was an adverse employment action.

16. In this case, Respondent showed a legitimate reason for discharging Petitioner. Petitioner failed to show disparate treatment based upon race. There was absolutely no evidence of a nexus between Respondent's discharge and Petitioner's race. Petitioner failed to establish that he was treated less favorably than similarly situated employees who were not members of his protected class and Petitioner did not establish a

prima facie case, Petitioner's charge of discrimination should be dismissed.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and arguments of the parties, it is, therefore,

RECOMMENDED:

That a Final Order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief in its entirety.

DONE AND ENTERED this 23rd day of July, 2003, 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 23rd 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.