STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JULIETTE C. RIPPY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 03-1232
	)	
DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Notice was provided, and a formal hearing was held on July 15, 2003, in Tallahassee, Florida, with Petitioner participating by telephone from Gainesville, Florida, and conducted by Harry L. Hooper, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Juliette C. Rippy, pro se
1622 Northeast 19th Place
Gainesville, Florida 32609

For Respondent: Mark J. Henderson, Esquire
Department of Corrections
2601 Blairstone Road
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Respondent committed an unlawful employment practice in the case of Petitioner.

PRELIMINARY STATEMENT

In March 2002, Petitioner Juliette Rippy (Ms. Rippy), a woman of the African-American race, filed an amended Charge of Discrimination with the Florida Commission on Human Relations (Commission) alleging that the Florida Department of Corrections (Department) had committed an unlawful employment practice. Specifically she stated that she had been discharged for alleged excess and unauthorized absences. She said this was an unfair employment practice because a person of the white race who was similarly situated, and who was arrested on a charge of driving under the influence during the same time period, was not terminated.

On March 27, 2003, Ms. Rippy filed a document with the Department stating that she wished to withdraw her Charge of Discrimination. Simultaneously she filed a Petition for Relief and requested that her case be heard by the Division of Administrative Hearings (Division).

The Commission filed the case with the Division on April 3, 2003. The case was set for hearing on May 21, 2003, in Gainesville, Florida. Pursuant to a Motion to Re-set or Continue Hearing by the Department, the hearing was re-scheduled for July 7, 2003, in Gainesville, Florida, and all of the parties appeared. However, the Commission failed to ensure that a court reporter was present. While meeting in Gainesville, it

was agreed by the parties that the hearing would be re-scheduled for July 15, 2003, in Tallahassee, Florida. Ms. Rippy agreed to appear by telephone.

The case was heard as re-scheduled. Petitioner presented sworn testimony in her own behalf. The Department offered and had admitted four exhibits and called one witness, Doug Watson, the Assistant Warden at Florida State Prison, Starke, Florida.

A transcript was not prepared. Both Petitioner and Respondent timely filed their Proposed Recommended Orders on July 24, 2003, and July 25, 2003, respectively. Their Proposed Recommended Orders were considered in the preparation of this Recommended Order.

Citations are to Florida Statutes (2001) unless otherwise noted.

FINDINGS OF FACT

1. Ms. Rippy commenced her employment with the Department on June 30, 2000, as a correctional officer, at the Florida State Prison Work Camp at Starke, Florida. She was terminated on June 19, 2001.

2. The Department of Corrections is a state agency that is charged with providing incarceration that supports the intentions of criminal law, among other things.

3. The Florida Commission on Human Relations administers the Florida Civil Rights Act of 1992.

4. When Ms. Rippy was hired as a correctional officer on June 30, 2000, she, and the Department, believed she was subject to a one-year probationary period. During that time, the parties believed she could be terminated without cause.

5. Subsequent to her employment she had unscheduled but excused absences on as many as 15 occasions.

6. On June 12, 2001, Ms. Rippy requested that her supervisor, Lt. J. L. Oliver, approve leave for her to commence Sunday, June 17, 2001. Lt. Oliver did not approve this request because to approve the request would cause the staffing level at the facility to recede below permitted limits.

7. On Saturday June 16, 2001, at 6:00 p.m., Ms. Rippy called Sergeant K. Gilbert, Third Shift Control Room Sergeant, and told him that she was taking medication prescribed by a doctor that she had seen that day and that she would be sleeping and that as a result, she would be unable to report to work on her shift which began at midnight, June 17, 2001. She also volunteered that she would bring in a doctor's note excusing her absence.

8. On Monday, June 18, 2001, Lt. Oliver asked her if she had a doctor's note explaining her absence on June 17, 2001. She replied that she had not been ill as reported to Sergeant Gilbert, but had in fact attended a party. She told him that she had not seen a doctor, was not on medication, and had

attended a "bachelorette party" on June 17, 2001. In other words, she admitted that she had lied about the reason for her absence. She admitted this, under oath, at the hearing.

9. Lt. Oliver informed her that it was his intention to charge her with unauthorized absence without pay, and possibly to take other disciplinary measures.

10. Subsequently, persons higher in the chain-of-command decided to terminate Ms. Rippy. This decision was made because she had excess absences and because she had lied to persons in authority. This occurred 11 days before everyone believed she would have attained the status of permanent career service.

11. On June 21, 2001, Correctional Officer Corey M. McMurry (Officer McMurry), a white male, was arrested in Starke, Florida, for driving under the influence of alcohol. As a result, on July 11, 2001, he was adjudicated guilty and sentenced to twelve months supervised probation, and suffered other court-ordered sanctions.

12. Officer McMurry, at the time of his arrest, was a probationary employee. He was served a written reprimand because of his conviction of driving under the influence on December 19, 2001. Ms. Rippy testified, without foundation, that Officer McMurry's probation terminated on November 15, 2001, and that the Department did not learn of his arrest until December 2001. Ms. Rippy's testimony provides a plausible

explanation for why more than five months expired from the time of his conviction until the issuance of the written reprimand.

13. Ms. Rippy believes that the circumstances surrounding her offense were substantially similar to those of Officer McMurry. However, the chronic absenteeism of an employee, including unexcused absences, is more likely to disturb the good management of a correctional facility than an employee being convicted of driving under the influence on one occasion.

14. Assistant Warden Doug Watson believes that correctional officers should be trustworthy. He believes that the credibility is critical and that lying is an extremely serious offense, when committed by a correctional officer.

15. Ms. Rippy was paid $13.30 per hour and received substantial fringe benefits when she worked for the Department. Following her termination she was unemployed until January 2002, when she began working for a Wendy's restaurant for $5.75 per hour. In April 2002, she obtained employment with a private security company named Securitas. She started at $6.40 and received an increase to $7.00 per hour at a subsequent unknown date, and she continues to be employed with the company.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this

proceeding pursuant to Section 120.57(1) and Section 760.11(4)(b)(6) and (8).

17. The Florida Civil Rights Act of 1992, as amended, found at Sections 760.01-760.11 and Section 509.092, was patterned after Title VII of the Civil Rights Acts of 1964 and 1991, Title 42 U.S. Code, Section 2000, et seq., as well as the Age Discrimination in Employment Act of 1967 (ADEA), Title 29 U.S. Code, Section 623. Federal case law interpreting Title VII and the ADEA is applicable to cases arising under the Florida Act. *See Florida Department of Community Affairs v. Brant*, 586 So. 2d 1205 (Fla. 1st DCA 1991).

18. Section 760.10 provides in part as follows:

> (1) It is an unlawful employment practice for an employer:
>
> (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.
>
> * * *

19. It is apparent, therefore, that Section 760.10, provides that it is an unlawful employment practice to discharge someone on account of his or her sex or race.

20. In a case of alleged discrimination, the employee must first establish that an unlawful employment practice has

occurred by proving by a preponderance of the evidence a prima facie case of discrimination. A plaintiff establishes a prima facie case of discrimination under Title VII by showing: (1) she belongs to a minority; (2) she was subjected to an adverse job action; (3) her employer treated similarly situated employees outside her classification more favorably; and (4) she was qualified to do the job. Demonstrating a prima facie case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination. *Holifield v. Reno*, 115 F.3d 1555 (11th Cir. 1997).

21. Ms. Rippy demonstrated that she was a member of a protected class because she was a black woman. A termination of employment is an adverse job action. She was clearly qualified to accomplish the tasks assigned to her as a correctional officer. However, she failed to prove similarly situated employees outside her classification were treated more favorably.

22. Correctional Officer McMurry's situation was different from Ms. Rippy's. Ms. Rippy's absences caused scheduling difficulties because proper staffing in a correctional institution is very important. Undoubtedly her previous absences, most of which were excused, were nevertheless, cause for concern by her supervisor. Because Ms. Rippy was a probationary employee, her propensity for unscheduled absences

undoubtedly precipitated an awareness that if she became a career service employee she might be a problem which would require substantial effort to remedy. This undoubtedly influenced the decision to prevent her from attaining career service status. Because she had an unscheduled, unexcused absence and lied about it, discharge could be considered the appropriate response.

23. Officer McMurry's conviction of driving under the influence did not cause staffing problems. His failure to inform his superiors of his arrest and conviction in a timely manner indicates that he, like Ms. Rippy, might have an issue with trustworthiness, if he had a duty to report his arrest and conviction. However, there was no evidence presented that indicated that he was required to report his arrest. Because he was not reprimanded for failing to report the incident and reprimanded only for the substantive offense, it is concluded that failure to report was not an offense. Also, by the time Officer McMurry's supervisors learned of his misdeed, he was a career service employee and, therefore, his supervisors did not have the option of easily terminating him.

24. Ms. Rippy presented no evidence whatsoever of sex or race bias on the part of the Department or its employees.

25. The facts adduced by Ms. Rippy did not in the least prove a prima facie case. However, assuming arguendo that a

prima facie case was proven, the evidence failed to prove discrimination occurred.

26. If the employee succeeds in proving a prima facie case, the burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for the discharge of the employee. Should the employer meet this burden, the employee must then prove by a preponderance of evidence that the legitimate reasons offered were a pretext for the employment action and that, therefore, the real reason was grounded in discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

27. The Department in this case demonstrated that the attributes of reliability with regard to attendance, and trustworthiness, were of prime importance to it. Ms. Rippy, by failing to report for work when scheduled for work, and lying about her reasons for failing to attend, demonstrated that she was not possessed of those attributes. These are legitimate reasons for discharging her.

28. No evidence whatsoever was produced that would tend to show that the Department's actions were a pretext for discriminatory acts.

RECOMMENDATION

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

Recommended that a final order be entered which dismisses Ms. Rippy's Charge of Discrimination and Petition for Relief.

DONE AND ENTERED this 25th day of August, 2003, in Tallahassee, Leon County, Florida.

HARRY L. HOOPER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of August, 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.