

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THADDEOUS J. PRICE,)
)
 Petitioner,)
)
 vs.) Case No. 03-2670
)
 ALACHUA COUNTY)
 SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

A hearing was held pursuant to notice, on October 20, 2003, in Gainesville, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Thaddeous J. Price, pro se
708 Prince Hall
Frankfort, Kentucky 40601

For Respondent: James A. Robinson, Esquire
Alachua County School Board
620 East University Avenue
Gainesville, Florida 32601

STATEMENT OF THE ISSUE

Whether Respondent violated the Florida Civil Rights Act of 1992, as alleged in the Charge of Discrimination filed by Petitioner on December 30, 2002.

PRELIMINARY STATEMENT

On December 30, 2002, Petitioner, Thaddeous J. Price, filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) which alleged that the Alachua County School Board violated Section 760.10, Florida Statutes, by discriminating against him on the basis of race, sex, and age.

The allegations were investigated by FCHR and on June 24, 2003, FCHR issued its Determination: No Cause and its Notice of Determination: No Cause.

A Petition for Relief was filed with FCHR on July 18, 2003. FCHR transmitted the case to the Division of Administrative Hearings (Division) on or about July 22, 2003. A Notice of Hearing was issued setting the case for formal hearing on October 20, 2003. On October 16, 2003, Petitioner filed a Motion for Continuance. Respondent objected to the motion. The motion was denied and the hearing took place on October 20, 2003, as scheduled. See Fla. Admin. Code R. 106.210.

At hearing, Petitioner testified on his own behalf. Petitioner offered Exhibits numbered 1 through 29 which were admitted into evidence. Respondent presented the testimony of Veita Jackson-Carter, Dr. Leila Pratt, and Marcia Shelton. Respondent offered into evidence Exhibits lettered A through C, J, and N through P, which were admitted into evidence.

A Transcript consisting of two volumes was filed on November 5, 2003. Post-hearing written submissions were to be filed 30 days after the filing of the Transcript. Petitioner and Respondent timely filed a post-hearing submission and a Proposed Recommended Order, respectively, which have been considered in the preparation of this Recommended Order.^{1/}

FINDINGS OF FACT

1. Veita Jackson-Carter is the assistant principal at Eastside High School (Eastside) which is located in Gainesville, Florida, and is part of the Alachua County School District (school district). In the summer of 2002, Petitioner came to Eastside to talk to Ms. Jackson-Carter about employment there. At that initial meeting, Petitioner and Ms. Jackson-Carter discussed instructional positions at Eastside.

2. While Petitioner gave a resume to Ms. Jackson-Carter, Ms. Jackson-Carter informed Petitioner that he needed to submit an employment application with the school district's personnel office. Ms. Jackson-Carter was very interested in hiring Petitioner. However, she explained to Petitioner that while the individual schools make recommendations regarding hiring, the school district actually hires applicants.

3. Petitioner submitted a completed Application for Instructional Position on June 28, 2002, to the school district.^{2/}

4. Because of her interest in hiring Petitioner, Ms. Jackson-Carter checked with someone in the school district's personnel office on the status of his application for an instructional position. She learned that there was a problem with his obtaining a teaching certificate.

5. During this same period of time, Petitioner met with Marcia Shelton. At that time, Ms. Shelton was a certification specialist with the school district's department of personnel services. She worked with applicants in assisting them in determining eligibility for certification. However, neither she, nor anyone who works for the school district, has the authority to issue teaching certificates or statements of eligibility for teaching certificates as only the Florida Department of Education has the authority to do that.

6. At the initial meeting between Petitioner and Ms. Shelton, Petitioner informed Ms. Shelton that a particular school was interested in hiring him for an instructional position. She began the process of assisting him to determine his eligibility for certification.

7. Petitioner's application contained his educational achievements. He earned a bachelor's degree from Kentucky State University with a major in criminal justice and a minor in political science, and a master's degree with a major in human

resource management and a minor in the area of public administration.

8. Ms. Shelton asked for and received copies of Petitioner's academic transcripts. Ms. Shelton's review of the transcripts revealed that Petitioner had a cumulative undergraduate grade point average (GPA) of 2.322. She informed Petitioner that the minimum GPA required for issuance of an initial teaching certificate was 2.5 and that he would not be eligible for certification because the GPA for the courses needed for certification were not high enough. While Petitioner had the course work to meet specialization requirements for political science, the grades were not what was required.

9. In an effort to help Petitioner, Ms. Shelton contacted Jean Morgan with the Bureau of Educator Certification of the Florida Department of Education (Department), to inquire as to whether public administration courses Petitioner had taken could be counted toward those required for certification in political science or social science. Petitioner's own exhibits establish that Ms. Shelton made numerous attempts to assist Petitioner by making repeated inquiries in August 2002 to Ms. Morgan and Ms. Morgan's supervisor, Kathy Hebda, in an effort to find a way for Petitioner to meet the Department's requirements. Ms. Shelton's efforts included faxing course descriptions to the

Department for evaluation in an effort to satisfy the Department's certification requirements.

10. Ms. Shelton's efforts, however, on Petitioner's behalf were unsuccessful. That is, she learned from both Ms. Morgan and Ms. Hebda that the Department would not accept the public administration courses to bring up Petitioner's GPA in political science.

11. On August 5, 2002, Petitioner again went to Eastside to meet with Ms. Jackson-Carter. She informed him of some career service positions at Eastside for which he could apply. Petitioner completed and filed a Career Service Application Form dated August 13, 2002, with Respondent.

12. There is an inconsistency in Petitioner's answers to a question regarding criminal background on each application for employment with Respondent. Each application contains a question regarding whether the applicant had ever been found guilty of, regardless of adjudication, or entered a plea of nolo contendere to offenses listed in three categories. On the Application for Instructional Position, Petitioner checked "no" for all three categories: felony, first degree misdemeanor, and second degree misdemeanor involving a minor child or involving violence. He then answered "yes" to the question, "Have you ever been judicially determined to have committed abuse or neglect against a child." The application instructs the

applicant that if any question was answered yes, to explain and attach all pertinent documents. Despite having answered yes to one question, Petitioner wrote "N/A" in the blank provided.

13. However, on the Career Service Application Form, he answered "yes" to the category generally entitled "misdemeanor." The application instructs the applicant that if the answer to any of the criminal background questions was "yes," that the applicant must list charge(s) and disposition. In the blank provided to list charge(s) and disposition, Petitioner put "N/A" in the blank provided, despite having answered "yes" to the category entitled "misdemeanor." The application also instructs the applicant to attach all pertinent documents.

14. On or about August 16, 2002, Petitioner again went to Eastside to meet with Ms. Jackson-Carter. He inquired of Ms. Jackson-Carter when he was to report to work. Ms. Jackson-Carter inquired of Petitioner if the school district had offered him a position as she was not aware of any position having been offered to him.

15. The last correspondence in the record from Ms. Shelton to the Department is dated August 29, 2002, in which she notes that the Bureau Chief of the Department's Bureau of Educator Certification was personally reviewing Petitioner's documents. She also noted that "he still has not applied to DOE." In

Ms. Shelton's and Dr. Pratt's experience, it is unusual for the bureau chief to become personally involved in such a review.

16. Ms. Shelton received a call from Ms. Hebda and the bureau chief during which Ms. Shelton learned that the bureau chief personally was going to accept the course work to enable Petitioner to meet specialization requirements for a temporary certificate in political science.

17. Ms. Shelton did not have the authority to make that determination that was ultimately made by the bureau chief of the Bureau of Educator Certification.

18. On August 23, 2002, the school district sent a letter to Petitioner informing him that his application for substitute teaching had been approved for the 2002-2003 school year. The letter informed him about a mandatory new employee orientation. It also specified that state law requires that all new employees be fingerprinted. The letter was signed by Josephine Brown, Coordinator, Personnel Services.

19. Being a substitute teacher requires direct contact with students. The position of substitute teacher is not a permanent position with the school district. It is a conditional offer pending cleared fingerprint processing.

20. Dr. Leila Pratt was Director of Personnel Services for the Alachua County School Board in August 2002. She was

Ms. Shelton's and Ms. Brown's supervisor. She has since retired.

21. On August 27, 2002, Dr. Pratt attended the criminal history review committee meeting during which Mr. Price was discussed. Of particular concern to Dr. Pratt were certain entries on Mr. Price's criminal history record received from the Florida Department of Law Enforcement and the Federal Bureau of Investigation which Ms. Pratt believed reflected violent behavior. She was concerned that these offenses would make Petitioner ineligible for employment because of statutory and school district policy requirements. She was also concerned about the inconsistencies between the answers provided on the two applications.

22. A Criminal Records form was completed regarding Petitioner as a result of the committee meeting which included the following notations: "criminal possession of handgun (87); possession of handgun (93); DUI & suspended license (2000); violation of KY charges (01). Falsification of application."

23. The recommendation of the committee was termination.

24. The school board issued a Separation of Service form to Petitioner dated and signed by Petitioner and Dr. Pratt August 28, 2002. The form identifies the reason for separation as "background check."

25. Petitioner requested and was given the opportunity to explain his criminal history. On August 29, 2002, he went to Dr. Pratt's office to discuss his criminal background and to provide Dr. Pratt with pertinent documentation. However, the information which Petitioner provided to Dr. Pratt did not satisfy her concerns.

26. On August 29, 2002, Dr. Pratt wrote a letter to Petitioner which stated as follows:

Dear Mr. Price:

In response to the three charges: criminal possession of a weapon, menacing and assault filed in August 1987, your documentation does not indicate your charges were dropped to a misdemeanor. It indicates that you pled guilty and was sentenced to thirty (30) days confinement. [sic]

In response to your charge filed on April 6, 1989 for trespassing on property after a warning, you provided no official documentation from the court records.

In response to the charge filed on November 12, 1993 for possession of a handgun by a convicted felon, your documentation does not officially state that your charges were dismissed or that the charges were dropped. We are unable to determine what is meant by the statement, "lack of probable cause" on the paperwork you submitted.

In response to the charge filed on April 20, 2000 for DUI and suspended license, your documentation stated the case was dismissed, but there was probable cause for the arrest

and your case was remanded back to another court for the disposition. You submitted no documentation as to the final disposition.

A restraining protection order was issued from 2000 to 2003 for domestic battery. No official court documentation regarding this charge has been provided.

In addition to the information you submitted being incomplete, one of the documents you presented was not an official court document, which is what we requested, official court records.

To provide further consideration to your request for employment, official court documents will need to be provided for all of the charges that have been filed. Until this information is received and reviewed, you are not eligible to work for the School Board of Alachua County.

27. According to Ms. Price, official court documents are required of everyone under these circumstances. Even if the court documents had been official, Dr. Pratt's concerns would have remained because of the violent nature of some of the offenses in the documents and the statutory and school district policy requirements.

28. Petitioner did not submit further documentation to Respondent clarifying his criminal history.

29. Petitioner completed an Application for Florida Educator Certificate which was mailed to the Department on August 30, 2002.

30. The Department issued an Official Statement of Status of Eligibility to Petitioner dated May 28, 2003, which explained to Petitioner what was required of him to get a temporary certificate and a professional certificate covering political science for grades 6 through 12. The Official Statement of Status of Eligibility also informs Petitioner that issuance of a certificate will be contingent upon a review of any criminal offense as a result of fingerprint processing.

31. Dr. Pratt characterized Ms. Shelton's efforts on Petitioner's behalf as going "beyond the call of duty." She believes that her entire staff acted appropriately in dealing with Petitioner.

32. Petitioner is an African-American male. At the time of the adverse employment action giving rise to this proceeding, Petitioner was 42 years old.

33. Ms. Jackson-Carter and Dr. Pratt are African-American females. Ms. Shelton is a white female.

34. Beyond Petitioner's allegation of discrimination, Petitioner presented no evidence that his race, sex, or age played any role in any action taken by Respondent regarding Petitioner's eligibility for teacher certification or its decision to terminate his probationary employment as a substitute teacher. The Department's ultimate acceptance of coursework and issuance of a Statement of Status of Eligibility

some eight months after the adverse employment action taken by Respondent does not establish that Respondent engaged in discriminatory conduct.

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. §§ 120.569 and 120.57, Fla. Stat. (2002).

36. Section 760.10(1), Florida Statutes, states that it is an unlawful employment practice for an employer to discharge or otherwise discriminate against an individual on the basis of race, sex, or age.

37. Section 1012.32, Florida Statutes, reads in pertinent part:

(1) To be eligible for appointment in any position in any district school system, a person shall be of good moral character; shall have attained the age of 18 years, if he or she is to be employed in an instructional capacity; and shall, when required by law, hold a certificate or license issued under rule of the State Board of Education or the Department of Children and Family Services. . . .

(2)(a) Instructional and noninstructional personnel who are hired to fill positions requiring direct contact with students in any district school system or university lab school shall, upon employment, file a complete set of fingerprints taken by an authorized law enforcement officer or an employee of the school or district who is trained to take fingerprints. These fingerprints shall be submitted to the

Department of Law Enforcement for state processing and to the Florida Bureau of Investigation for federal processing. The new employees shall be on probationary status pending fingerprint processing and determination of compliance with standards of good moral character. Employees found through fingerprint processing to have been convicted of a crime involving moral turpitude shall not be employed in any position requiring direct contact with students. . . .

38. Alachua County School Board Policy 6.031 reads in pertinent part as follows:

6.031* APPOINTMENT OR EMPLOYMENT
REQUIREMENT

Any person desiring employment shall file a completed application on the form provided by the Superintendent.

(1) Qualifications.

(a) Must be of good moral character.

(b) Must have attained the age of 18 years.

(2) Certificate requirements. Each applicant for an instructional or a certificated administrative position shall hold a certificate or shall have a receipt from the Florida Department of Education acknowledging that an application has been filed and that issuance of the certificate is pending.

(a) To be considered for a position, applicant shall be duly qualified for that position in accordance with State law, regulations of the Florida Department of Education and the approved job description. If it appears that the applicant is eligible for proper certification, appointment may be made subject to the conditions set forth in

the annual contract of employment as approved by the School Board.

(b) Any person not holding a valid Florida certificate at the time of employment shall be required, upon initial employment, to make application to the Florida Department of Education for such a certificate, through the Personnel Service Office of the District. When such certificate is received, it must be filed with the Office of the Superintendent. If the Department of Education declines to issue a certificate, the person's employment shall be terminated immediately. Failure to file such certification except for good cause as determined by the Superintendent, shall result in the termination of employment.

* * *

(4) Fingerprinting. All positions of employment with the Board are deemed to require direct contact with students. All employees are required to undergo fingerprinting and background screening as a condition of employment and continued employment, in accordance with Chapters 231 and 435, Florida Statutes.

* * *

(7) The District shall ensure that all aspects of the recruitment and selection process are job-related and are consistent with business necessity so as to ensure equal employment opportunity. Neither the District nor its agents shall engage in any discrimination with respect to employment in violation of any state or federal law.

39. In order to make out a prima facie case of race discrimination under Section 760.10(1)(a), Florida Statutes, Petitioner must show that he was a member of a protected class,

that he was qualified for the job he was seeking, and that a person outside the protected class with equal or lesser qualifications was hired. See McDonnell Douglass Corp. v. Green, 411 U.S. 792 (1973); and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). Under this well established model of proof, a Petitioner bears the initial burden of establishing a prima facie case of discrimination.^{3/}

40. Similarly, in order to make out a prima facie case of gender or age discrimination, Petitioner must show that he was a member of a protected class; that he was qualified for the job for which he applied; and that another person outside the protected class, or of a different age, with equal or lesser qualifications was hired. Carter v. Three Springs Residential Treatment, 132 F. 3d 635 (11th Cir. 1998), citing McDonnell Douglass Corp. v. Green, supra.

41. Petitioner has met the first prong of his burden of proving a prima facie case of discrimination. He is an African-American male, in his 40's. However, the evidence does not show that he was qualified for the job he was seeking. Further, no evidence was presented that persons outside the protected class, or of a different age, who were also qualified were offered the position by Respondent.

42. Even if Petitioner had satisfied all prongs of the prima facie case, when the charging party, i.e., Petitioner, is

able to make out a prima facie case, the burden to go forward shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. See Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991) (court discusses shifting burdens of proof in discrimination cases). The employer has the burden of production, not persuasion, and need only persuade the finder of fact that the decision was non-discriminatory. Department of Corrections v. Chandler, supra; Alexander v. Fulton County, GA, 207 F.3d 1303 (11th Cir. 2000).

43. Respondent has met its burden of production. Respondent has adequately articulated a legitimate, non-discriminatory explanation for not hiring Petitioner. Respondent established that its decision to withdraw its offer of substitute teaching was based on statutory requirements and school district policy. As such, Respondent has asserted a legitimate non-discriminatory reason for its adverse employment decision regarding Petitioner. The employment actions of Respondent were based upon legitimate means that did not penalize Petitioner based upon his race, age, or sex.

44. Once the employer articulates a legitimate non-discriminatory explanation for its actions, the burden shifts back to the charging party to show that the explanation given by the employer was a pretext for intentional discrimination.

"The employee must satisfy this burden by showing directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." Department of Corrections v. Chandler, 582 So. 2d 1183 at 1186; Alexander v. Fulton County, GA, supra. While this last shifting of burden does not come into play here because Petitioner has not established a prima facie case, Petitioner presented no evidence establishing that Respondent's actions were pretextual other than Petitioner's assertions that he believed that the actions taken by Respondent were based upon discriminatory reasons.

45. Petitioner argues that Respondent did not follow its own policy in its hiring practices and that he was denied due process. The evidence does not support his argument; however, even if the school district did not follow hiring policy to the letter, that is beyond the scope of this proceeding which is limited to whether Respondent discriminated against Petitioner: "The employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." Department of Corrections v. Chandler, supra at 1187, quoting Nix v. WLCY Radio/Rahall Communications, 738 F. 2d 1181, 1187 (11th Cir. 1984).

46. There was no evidence presented that Petitioner's race, sex, or age played any part in Respondent's decision.

RECOMMENDATION

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

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing Petitioner's Charge of Discrimination.

DONE AND ENTERED this 19th day of December, 2003, in Tallahassee, Leon County, Florida.



BARBARA J. STAROS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of December, 2003.

ENDNOTES

^{1/} However, Petitioner submitted an attachment to his post-hearing submission which is in the nature of a late-filed exhibit. As such, the attachment is not part of the record and has not been considered. See § 120.57(1)(j), Fla. Stat.

^{2/} Petitioner asserts that he submitted an Application for Instructional Position in April of 2002. Petitioner's Exhibit 2 is an incomplete application reflecting a date of April 24, 2002. However, unlike Petitioner's Exhibit 4, which is a completed application dated June 28, 2002, Petitioner's Exhibit 2 is unsigned contains several blank portions (the portions relating to education and professional training, teaching experience, and references are blank). Further, Petitioner's Exhibit 4 contains a stamp on the front that reads "application complete" and contains notations in the space of the application entitled "Office Record Only." Accordingly, Petitioner's Exhibit 4 reflects the date Petitioner applied for an instructional position with Respondent.

^{3/} FCHR and Florida courts have determined that federal discrimination law should be used as guidance when construing provisions of Section 760.10, Florida Statutes. See Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

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.