

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ERIC C. QUIROZ,)
)
 Petitioner,)
)
 vs.) Case No. 04-1184
)
 HEALTH CENTRAL HOSPITAL,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was convened in this case on July 27, 2004, before Carolyn S. Holifield, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, by video teleconference between Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Mark Van Valkenburgh, Esquire
Allen, Norton and Blue, P.A.
1477 West Fairbanks Avenue, Suite 100
Winter Park, Florida 32789

STATEMENT OF THE ISSUE

The issue is whether Respondent discriminated against Petitioner on the basis of his national origin in violation of Section 760.10, Florida Statutes (2003).

PRELIMINARY STATEMENT

On September 18, 2003, Petitioner, Eric Quiroz, filed a Charge of Discrimination with the Florida Commission on Human Relations ("FCHR") alleging that Health Central Hospital discriminated against him on the basis of national origin. Specifically, Mr. Quiroz alleged that he was the only Hispanic supervisor in the Environmental Service Department, that he had been harassed and unfairly disciplined, and that his job had been threatened. The FCHR issued a Determination: No Cause dated March 25, 2004, which determined that there was no reasonable cause to believe that an unemployment practice had occurred.

On April 5, 2004, Mr. Quiroz filed with the FCHR a Petition for Relief in which he stated he was unlawfully terminated from his job based on his race and that the firing was retaliation for his filing the previous complaint. The FCHR referred the Petition for Relief to the Division of Administrative Hearings for assignment of an Administrative Law Judge. A Notice of Hearing was issued on April 22, 2004, scheduling the final hearing for June 30, 2004, in Orlando, Florida. Respondent filed a Motion to Continue ("Motion") the final hearing on May 21, 2004. Petitioner did not file a response to the Motion, and on June 11, 2004, the undersigned issued an Order Granting Continuance and Re-Scheduling Hearing by Video Teleconference.

Pursuant to the Order, the final hearing was scheduled for July 27, 2004, by video teleconference at designated sites in Orlando and Tallahassee, Florida. The Order was mailed to both parties at their addresses of record. Mr. Quiroz' address of record is the address provided to the Division of Administrative Hearings and listed on all documents in the record that bear his signature.

Mr. Quiroz did not appear at the hearing and no evidence or testimony was presented on his behalf.

FINDINGS OF FACT

1. No findings are made in this case. Petitioner did not appear and did not submit evidence to support findings of fact.

CONCLUSIONS OF LAW

2. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2003).

3. The parties received adequate notice of the administrative hearing.

4. Subsection 760.10(1), Florida Statutes (2003), makes it an unlawful employment practice for an employer to discharge or to fail or refuse to hire any individual with respect to compensation, terms, conditions, or privileges of employment because of a person's race, color, religion, sex, national origin, age, handicap, or marital status.

5. In employment discrimination cases such as this, the petitioner, the employee, has the burden of establishing by a preponderance of evidence a prima facie case of unlawful discrimination. If a prima facie case is established, the burden shifts to the respondent, the employer, to rebut the preliminary showing by producing evidence that the adverse action was taken for legitimate, non-discriminatory reasons. If the respondent rebuts the prima facie case, the burden shifts back to the petitioner to show by a preponderance of evidence that the respondent's offered reasons for its employment decision were pretextual. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

6. Petitioner has the initial burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. Here, where Petitioner failed to establish a prima facie case of discrimination, the inquiry ends. See Ratliff v. State, 666 So. 2d 1008, 1012-13 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (1996), citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987).

RECOMMENDED ORDER

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 finding that Respondent did not unlawfully

discriminate against Petitioner and dismissing the Petition for Relief.

DONE AND ENTERED this 9th day of August, 2004, in Tallahassee, Leon County, Florida.

Carolyn S. Holifield

CAROLYN S. HOLIFIELD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of August, 2004.

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.