

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIE MAE CURRY, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-3050  
 )  
 THE MEDICINE SHOPPE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On November 5, 2004, a final administrative hearing in this case was held in St. Petersburg, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Willie Mae Curry, pro se  
2702 4th Street, South  
St. Petersburg, Florida 33705-3641

For Respondent: Donna J. Buchholz, Esquire  
D. J. Buchholz, P.A.  
4320 El Prado Boulevard, 15  
Tampa, Florida 33629

STATEMENT OF THE ISSUE

The issue in the case is whether the termination of Petitioner's employment by Respondent constituted discrimination against Petitioner on the basis of gender.

PRELIMINARY STATEMENT

This matter was originally scheduled for hearing on May 21, 2002. The scheduled hearing was cancelled based on the bankruptcy of Respondent, and the case was closed pending resolution of the bankruptcy proceeding.

On July 29, 2004, the City of St. Petersburg, Community Affairs Department, Human Relations Division, filed a Motion to Reinstate Jurisdiction with the Division of Administrative Hearings and Schedule Hearing. Based upon the motion, the case file was reopened and the dispute was scheduled for hearing according to dates suggested by the parties.

At the hearing, Willie Mae Curry (Petitioner) testified on her own behalf and had Exhibits numbered 1 through 5 admitted into evidence. The Medicine Shoppe (Respondent) presented the testimony of former owner Sam Obinwa, and had Exhibits identified as A through C admitted into evidence.

No transcript of the hearing was filed. Respondent filed a proposed recommended order.

FINDINGS OF FACT

1. Petitioner is a female, a member of a protected group under applicable law, and was at all times material to this case, employed by Respondent until the termination of employment that is the subject of this dispute.

2. Respondent is an employer as the term is defined by relevant sections of the St. Petersburg Municipal Code and the applicable Pinellas County Ordinance. During the period of time relevant to this dispute, Sam Obinwa owned Respondent.

3. During the period of Mr. Obinwa's ownership, Respondent was a business engaged in providing health care supplies, including pharmaceuticals to customers.

4. Beginning in July 1996, Petitioner was employed as a courier by Respondent. Petitioner was primarily assigned to make deliveries of supplies to Respondent's customers. Respondent also employed a second courier, a male, during this period.

5. At some point during Petitioner's employment, Mr. Obinwa hired an office manager, Kim Henderson. Ms. Henderson became Petitioner's supervisor. Ms. Henderson was responsible for the operation of the office, including receiving customer complaints and resolving employee disputes.

6. Mr. Obinwa testified that he received information related to the office operations from Ms. Henderson and relied upon it in making the decision to terminate Petitioner's employment.

7. According to Mr. Obinwa's testimony, he received complaints regarding Petitioner's job performance and behavior from both customers and Ms. Henderson. Mr. Obinwa testified

that he discussed the complaints with Petitioner during her employment.

8. On December 14, 2003, Mr. Obinwa met with Petitioner and explained that her employment was being terminated. As grounds for the termination, Mr. Obinwa, in a termination letter provided to Petitioner, cited complaints about her behavior from both customers and work associates. The complaints included lack of cooperation, abusiveness, failure to follow instructions or to adhere to the delivery schedule, and missed or late medication deliveries.

9. Petitioner asserts that she was terminated on account of gender. There is no credible evidence, direct or indirect, that Respondent's termination of Petitioner's employment was on account of gender.

10. At the time of Petitioner's termination, Respondent employed eight to nine persons, including six to seven females.

11. The employee most similarly situated to Petitioner (the male courier) was not terminated; however, there is no evidence that there were complaints regarding his behavior from either customers or work associates.

12. At the hearing, Petitioner asserted that the male courier generally received the same treatment as did she. The evidence establishes that Petitioner received an additional benefit that was not provided to the male courier. Petitioner

was permitted to use a company delivery vehicle for occasional personal transportation. There is no evidence that the male courier was permitted to take the company vehicle for personal use.

13. Petitioner testified that another male employee identified as Herman Jones was hostile towards her and towards other women working for Respondent. Petitioner claimed that Mr. Jones was somehow responsible for her termination.

14. Mr. Jones was a pharmacy technician. Mr. Jones was responsible for inputting prescription information into the computer system and for preparing the medications according to the prescriptions. Prior to being delivered to the customers by the couriers, the medications were checked by a pharmacist.

15. There is no credible evidence that Mr. Jones had any supervisory duties related to Petitioner. There was testimony suggesting that there were personality conflicts between Petitioner and Mr. Jones. There is no evidence that Mr. Jones was involved in Mr. Obinwa's decision to terminate Petitioner's employment, other than the general consideration Mr. Obinwa gave to the complaints from Petitioner's co-workers related to her behavior in the office.

16. At the hearing, Petitioner presented supportive letters from five customers who were apparently pleased with Petitioner's performance. Petitioner made between 100-200

deliveries each week to Respondent's customers. Mr. Obinwa testified that some of the customers to whom Petitioner made deliveries were happy and that others were not.

17. No evidence related to damages to Petitioner was presented during the hearing.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to Chapter 70 of the Pinellas Code, Chapter 15 of the City of St. Petersburg Code, and Subsection 120.65(7), Florida Statutes (2004).

19. Section 70-53(a)(1) of the Pinellas Code provides that it is a discriminatory employment practice for any employer to:

a. Fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation or the terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, age, marital status, or disability. . . .

20. Section 70-51 of the Pinellas Code defines "employer" as "a person who employs five or more employees for each working day in each of 13 or more calendar weeks in the current or preceding calendar year . . . ." In the proposed recommended order, Respondent concedes that it qualifies as an employer under this definition.

21. The prohibitions against employment discrimination in Section 70-53 of the Pinellas Code are virtually identical to the prohibitions in state and federal law; accordingly Code Section 70-53 should be construed in a manner consistent with those laws. Conway v. Vacation Break, Case No. 01-3384 (DOAH Nov. 16, 2001) (interpreting Chapter 70 of the Pinellas Code in accordance with the similar state and federal laws).

22. Under Title VII, an employment discrimination claim can be established by either direct or circumstantial evidence. In this case, there is no direct evidence of discrimination and Petitioner's complaint must be reviewed according to the analysis established in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), as refined in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). The ultimate burden of persuading the trier of fact that Respondent intentionally discriminated against Petitioner remains at all times with Petitioner. Burdine at 253.

23. Petitioner has the initial burden of establishing a prima facie case of unlawful discrimination. In order to meet the initial burden, Petitioner must establish that (1) she is a member of a protected class; (2) she was subjected to adverse employment action; (3) Respondent treated similarly situated

employees more favorably; and (4) she was qualified to do the job.

24. If Petitioner succeeds in establishing a prima facie case, Respondent must then articulate some legitimate, nondiscriminatory reason for the employment decision. Once Respondent articulates a reason for the action taken, the evidentiary burden shifts back to Petitioner who must prove that the reason offered by Respondent is not the true reason, but is merely a pretext for discrimination.

25. In this case, the evidence establishes a prima facie case of discrimination. Petitioner is a member of a protected class, she was fired, the male courier was not fired, and Petitioner was apparently qualified to do her job.

26. The burden therefore shifts to Respondent to articulate a legitimate, non-discriminatory reason for the termination of Petitioner's employment. Respondent need not persuade the trier of fact that it was actually motivated by the reasons, but must merely set forth, through the introduction of admissible evidence, the reason for those actions. Burdine, at 254-255.

27. Here, Respondent offered credible evidence that the termination of Petitioner's employment was based on her job performance and on her behavior towards customers and co-workers. Therefore, Respondent has satisfied its requirement of



articulating legitimate, non-discriminatory reasons for the decision.

28. The burden then shifts back to Petitioner to establish that the reasons offered by Respondent are not the true reasons, but are a pretext for intentional discrimination. In this case, the evidence fails to establish that the reasons offered by Respondent were mere pretext. There is no evidence that Respondent's termination of Petitioner was based on gender-related considerations. The evidence establishes that the termination of Petitioner's employment was based on her job performance and on her behavior towards customers and co-workers. The male courier's employment was not terminated because there were apparently no complaints from customers and co-workers related to his job performance or his behavior towards his co-workers.

#### RECOMMENDATION

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

RECOMMENDED that Petitioner's complaint be DISMISSED.

DONE AND ENTERED this 1st day of December, 2004, in  
Tallahassee, Leon County, Florida.

*William F. Quattlebaum*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of December, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 30 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with Human Relations Officer in accordance with Section 15-45(f)(5) and (g) of the St. Petersburg Code.