

12-22-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
05 FEB 23 AM 9:55
DIVISION OF ADMINISTRATIVE HEARINGS

RONNIE L. RICKS,

AT

EEOC Case No. 15DA400081

Petitioner,

FCHR Case No. 2004-20144

v.

DOAH Case No. 04-3069

PMR

CITY OF GAINESVILLE,

FCHR Order No. 05-018

CWS

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Ronnie L. Ricks filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2003), alleging that Respondent City of Gainesville committed unlawful employment practices on the basis of Petitioner's race (Black) by subjecting Petitioner to different terms and conditions of employment than white employees and by terminating Petitioner.

The allegations set forth in the complaint were investigated, and, on July 23, 2004, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on October 12, 2004, in Gainesville, Florida, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal, dated December 22, 2004.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We note that in analyzing whether Petitioner established a prima facie case of discrimination, the Administrative Law Judge concluded, "...based on the totality of the persuasive evidence offered, the Petitioner was not established to have been actually qualified for his employment during this probationary period, given the deficiencies established by the Respondent's evidence." Recommended Order, ¶ 23.

A Commission panel has noted, "For the purposes of establishing a prima facie case of discrimination, the Commission has accepted a showing that Petitioner is minimally qualified for the position." Potasek v. The Florida State University, 18 F.A.L.R. 1952, at 1953 (FCHR 1995). Another Commission panel has indicated, "Petitioners being only minimally qualified...does not mean they failed to establish a prima facie case. Only a total lack of qualification would prevent the establishment of a prima facie case." Little, et al. v. Monsanto Company, 15 F.A.L.R. 621, at 622 (FCHR 1992). In a "termination" case similar to the instant case, a Commission panel concluded that for the purpose of establishing a prima facie case of discrimination Petitioner demonstrated that "she was at least minimally qualified for the position in question by virtue of having been hired for the position." Kesselman v. Department of Transportation, 20 F.A.L.R. 166, at 169 (FCHR 1996); accord, Brown v. Volusia County School Board, FCHR Order No. 04-160 (December 23, 2004).

We further note that, while based on the foregoing we would conclude that Petitioner in the instant case was "qualified" for the position in question for purposes of establishing a prima facie case, the conclusion of whether Petitioner was qualified for the position in question in the instant case is not dispositive of the case since the Administrative Law Judge further concluded that even if a prima facie case of discrimination had been established Respondent presented "...ample evidence of legitimate, nondiscriminatory reasons concerning why the Petitioner was discharged from his probationary position" and that "...Petitioner offered no evidence to establish that these reasons for his discharge were pre-textual and were actually couched in discriminatory motives." Recommended Order, ¶ 24.

With these comments, we adopt the Administrative Law Judge's conclusions of law, including the conclusions of law denying Respondent's request for attorney's fees.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal


The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 22nd day of February, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Roosevelt Paige; and
Commissioner Dominique B. Saliba, M.D.

Filed this 22nd day of February, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

Ronnie L. Ricks
3531 Southwest 30th Terrace, Unit 50-B
Gainesville, FL 32608

City of Gainesville
c/o Daniel M. Nee, Esq.
200 East University Avenue, No. 425
Gainesville, FL 32601

P. Michael Ruff, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 22nd day of February, 2005.

By: *Vivian Crawford*
Clerk of the Commission
Florida Commission on Human Relations