

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

RONNIE L. RICKS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-3069  
 )  
 CITY OF GAINESVILLE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its designated Administrative Law Judge, P. Michael Ruff, held a final hearing in the above-styled case on October 12, 2004, in Gainesville, Florida.

APPEARANCES

For Petitioner: Ronnie L. Ricks, pro se  
3531 Southwest 30th Terrance, Unit 50-B  
Gainesville, Florida 32608

For Respondent: Daniel M. Nee, Esquire  
200 East University Avenue, No. 425  
Gainesville, Florida 32601

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether Ronnie L. Ricks, has been a victim of an unlawful employment practice allegedly perpetrated by the employer, the Respondent, City of Gainesville (City), because of its termination of him, allegedly because of his race.

PRELIMINARY STATEMENT

This cause arose on or about October 14, 2003, when the Petitioner filed a charge of discrimination against the above-named Respondent with the Florida Commission on Human Relations (Commission). In that charging document, he alleged that he had been discriminated against on the basis of his race (black). He alleged that the discrimination most recently occurred on August 6, 2003. The Commission investigated the charges and ultimately determined that the Respondent had not committed discriminatory acts and issued a "No Cause" finding on July 23, 2004.

After that determination of no cause by the Commission, the Petitioner filed a Petition for Relief seeking a formal administrative hearing. The case was ultimately assigned to P. Michael Ruff, Administrative Law Judge, and was scheduled for hearing on October 12, 2004.

The cause came on for hearing as noticed. The Petitioner testified on his own behalf during the hearing, but called no other witnesses. The Petitioner submitted one exhibit which was admitted into evidence. The Respondent presented the testimony of two witnesses, Labor Crew Leader Edward Kersey and Supervisor Charles E. "Ed" Sams. The Respondent submitted six exhibits which were admitted into evidence.

FINDINGS OF FACT

1. The Petitioner, Ronnie L. Ricks, was employed by the City of Gainesville as a Motor Equipment Operator I from June 9, 2003 to August 6, 2003.

2. The Respondent, City of Gainesville, is a municipal corporation organized under the laws of the State of Florida, and is an employer for purposes of Chapter 760, Florida Statutes.

3. Upon accepting employment with the City, the Petitioner was made aware of the written job description including the job functions and selection factors specified in the job description. He was also provided and made aware of the written City of Gainesville Policies and Procedures, including policy number 6 relating to and describing the six-month probationary period applicable to all new employees.

4. Upon being hired by the Respondent and commencing work as a Motor Equipment Operator I, on June 9, 2003, the Petitioner's continued employment was subject to the satisfactory completion of a six-month probationary period. The Respondent's written policy relating to the probationary period stated that, "The probationary period shall be regarded as an integral part of the selection process and shall be utilized for closely observing the employee's work for securing the most effective adjustment of a new or promoted employee to the

position and for rejecting any employee whose performance or conduct is not satisfactory." Further, the policy stated, "During the probationary period, the supervisor and Department Head may discharge an employee who is unable or unwilling to perform the duties of the position satisfactorily or whose habits and dependability do not merit continuance in the employ of the City."

5. At all times relevant to this action, the essential job functions of the position of Motor Equipment Operator I included a requirement that the employee, "Attends work on a continuous and regular basis." Additionally, among the "non-essential job functions" was a requirement that the employee, "Makes minor repairs and adjustments to equipment. Checks oil and tires."

6. One of the selection factors listed in the written job description for the position of Motor Equipment Operator I was, "Ability to work effectively with co-workers and the general public."

7. The Petitioner claims to have suffered discrimination when his crew leader allegedly told other employees that the Petitioner was a "policeman." He maintains this caused black co-workers to shun him or refuse to speak to him. He also contends that his supervisor allegedly made comments about his clothes and his car. Apparently, he means that his choice of clothing for work was criticized because he allegedly wore

"designer clothes" for a job which required more casual work clothes. He also feels he was discriminated against because of his supervisor's alleged comments concerning the type or model car he drove. The Petitioner maintains he was harassed by his supervisor when he refused to mow a retention pond in an area he was assigned to maintain. He claims the retention pond had a hole in it and he felt it was dangerous to mow it on the tractor. When he refused to do the job, his supervisor Ed Sams completed the job. The Petitioner also contends he was discriminated against because he had to complete a City of Gainesville Accident Analysis form after damaging a tractor by bending the metal roof of the tractor when he hit an overhanging tree limb. He maintains that white employees were not disciplined for such conduct.

8. Aside from his contention that white employees were not disciplined for damaging equipment and he was, the Petitioner did not testify that any of the alleged discriminatory or harassment acts he cited were in any way related to his race or other protected status.

9. There was no substantial evidence offered at hearing to support the Petitioner's claim that his crew leader Ed Kersey, ever referred to the Petitioner as a "policeman" or other similar term. The Petitioner made that accusation in his testimony based on uncorroborated hearsay, the relator of which

was not present as a witness. His crew leader, Ed Sams, testified that he did not make such a statement and further testified that his father was a career law enforcement officer and he had a great deal of respect for such a position and would not have used "policeman" or a similar term in a derogatory way.

10. The Petitioner claimed that his supervisor, Ed Sams, made derogatory comments about his clothes and car. The Petitioner claims that those comments were inappropriate but did not indicate that they were discriminatory on the basis of race or in any other way. Supervisor Sams testified that he has no recollection of making comments about the Petitioner's clothes and did not recall him dressing inappropriately during his brief employment with the City. He was never reprimanded or otherwise disciplined concerning the clothes he wore. Supervisor Sams did acknowledge making comments about the Petitioner's vehicle in that he testified he had merely asked the Petitioner's opinion concerning the various qualities of that vehicle because he was considering purchasing a similar one for himself.

11. Concerning the Petitioner's testimony about being "harassed" by being ordered to mow a retention pond he considered to be an unsafe site, Supervisor Sams testified regarding that incident. He showed it to be an example of the Petitioner's unwillingness to work effectively with co-workers and his poor attitude toward supervision. On that occasion,

Mr. Sams witnessed the Petitioner sitting near an unmowed retention pond and inquired why he was not working. The Petitioner responded that he was going to "let Ed do it." "Ed" was crew leader Ed Kersey, one of the Petitioner's supervisors. Supervisor Sams testified that he was somewhat taken aback by the Petitioner's attitude toward both the assigned work and to his direct supervisor. Ultimately, Mr. Sams performed the required mowing operation and clearly demonstrated that it could easily be safely done. The Petitioner indicated he felt harassed by this incident or this direction to mow the retention pond, but he gave no testimony whatever to indicate that it was racially discriminatory toward him.

12. The Petitioner maintains that he felt harassed when drove his tractor into a tree limb causing damage to the tractor's aluminum canopy. He was required to complete a "City of Gainesville Accident Analysis form," but in spite of his testimony that he was disciplined, there is no evidence to show he was disciplined for the incident. Despite the clear language on the accident analysis report completed as a result of the accident, the Petitioner apparently failed to understand that he was not being disciplined or "written up" for the accident. He was not treated differently from the white employees he maintained were not disciplined for damage to equipment. The Petitioner was merely required to complete the accident analysis

report in order to maintain a record of incidents involving City equipment. Under the section entitled "corrective action," the report merely indicated, "reinstruct employee." There was no discipline imposed. Mr. Sams testified that he did not issue a warning, reprimand, re-assignment, or job change as a result of the tractor damage incident. Mr. Sams testified that the Petitioner's obstinance regarding the completion of the accident report form was a further example of difficulties encountered in supervising the Petitioner.

13. Ed Kersey is a Labor Crew Leader II who reports to Mr. Sams and who directly supervised Ricks. In addition to the incident where Ricks refused a directive to mow the retention pond, Mr. Kersey also encountered the Petitioner's obstinance and failure to follow supervision, on occasions when the Petitioner was angry or upset and would mow over litter or trash on the ground rather than pick it up, or have it picked up, before running the mowing machine over it. He also had a tendency to show up late for equipment maintenance work. He was verbally counseled for this, although never "written up," but kept doing it even after being counseled about it.

14. During less than nine weeks in which the Petitioner was employed in the relevant position, he was absent from work for four days. He left early on one occasion without permission and was late at least twice without excuse. When he left early,



he left two and one quarter hours early from work without permission. The four days missed from work were without leave or permission. He arrived late for job assignments on the two occasions. His poor attendance in a nine-week period is more egregious because the Petitioner was only working a four-day work week.

15. The Petitioner frequently missed the designated maintenance times set aside for the motor vehicle equipment operators to work together to maintain their equipment. This is a part of their job description. Crew leader Ed Kersey established that this time was specifically designated in recognition that workers could maintain their equipment if they cooperated with each other. When the Petitioner frequently failed to attend the group maintenance sessions, he would complain about the difficulty of performing maintenance tasks alone.

16. In summary, the evidence fails to establish that the Petitioner was discriminated against due to his race or any other protected status. The preponderant evidence showed that the Petitioner's employment was terminated during his probationary period, because his habits and dependability did not merit continued employment. Specifically, the preponderant evidence establishes that the Petitioner's poor attendance record, sub-standard equipment maintenance, and unresponsive and

confrontational attitude towards his supervision were all legitimate, nondiscriminatory reasons justifying the termination of the Petitioner's employment, especially considering that he was in his probationary period.

17. The Petitioner offered no persuasive evidence that, as a member of a protected class, he was treated differently or worse in any employment decision or category as compared to similarly situated employees outside his protected class. Additionally, based upon the above-found instances of deficient performance and deficient attitude toward supervision, the Petitioner did not offer persuasive evidence that he was qualified for the position in question from which he was terminated.

#### CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2004)

19. Section 760.10(1)(a), Florida Statutes (2004), provides that it is an unlawful employment practice for an employer ". . . to discharge or to fail or refuse to hire an 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."

20. The Petitioner has the burden of establishing that the Respondent's actions were motivated by a discriminating purpose, through direct or circumstantial evidence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 207 (1981). St. Mary's Honor Center v. Hicks, 504 U.S. 502, 113 S. Ct. 2742, 2747, 125 L. Ed. 407, 416 (1993).

21. Pursuant to the McDonnell-Douglas standard of proof (McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973)) the Petitioner has the burden of establishing a prima facie case of racial discrimination. If a prima facie case is demonstrated, then the Respondent must articulate a legitimate, non-discriminatory reason for its actions. If such a reason is established, then the Petitioner must show that the proffered reason is pre-textual. The ultimate burden of persuasion remains with the Petitioner. Texas Department of Community Affairs v. Burdine, supra; St. Mary's Honor Center v. Hicks, supra.

22. In order to establish a prima facie case, the Petitioner must prove, by preponderant evidence, that: (1) He belongs to a protected class, (2) He was subjected to an adverse employment action; (3) The Respondent treated similarly-situated employees, outside the protected class, more favorably, and (4)

he was qualified to do the job. Jones v. Bessemer Carroway Medical Center, 137 F.3rd 1306, 1310 (11th Cir. 1998).

23. The Petitioner maintains that he felt "uncomfortable" and "harassed" while he was in his brief employment with the Respondent concerning the incidents referenced in the above Findings of Fact but he did not indicate any circumstances in his testimony, the sole testimony for his position, which would tend to these feelings of harassment as being based on his race or any other protected characteristic. He presented no evidence at hearing that his termination was due to any unlawful discrimination. While he maintained that he was disciplined for the damage to the tractor roof, as compared to a white employee, in fact the preponderant, persuasive evidence shows he was not disciplined at all and neither was the white employee for the incident he was involved in. Further, 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. He did not establish that any disparate treatment was meted out to him as compared to similarly situated employees who were of different race or not members of his protected class. Thus, while the Petitioner established that he is a member of a protected class because of his race (black), he did not establish his qualifications for

the position from which he was terminated nor did he establish that he was subjected to disparate treatment, and thus has not established a prima facie case of discrimination based upon his race.

24. In any event, the Respondent offered ample evidence of legitimate, nondiscriminatory reasons concerning why the Petitioner was discharged from his probationary position. The Petitioner demonstrated a repeated failure to perform essential and nonessential functions of his position, of which he had notice of through his job description, and policy directives from his supervisors. Additional reasons for discharge were his attendance problems and failure to perform directive tasks on a timely basis or at all. The Petitioner offered no evidence to establish that these reasons for his discharge were pre-textual and were actually couched in discriminatory motives.

25. In summary, there is no reasonable basis to conclude that the Petitioner was discriminated against because of his race or for any other protected characteristic.

26. The Respondent seeks attorney's fees based upon the position that the Petitioner's claim is frivolous, unreasonable and without foundation in law or fact; citing Christianburg Garment Co. v. E.E.O.E., 434 U.S. 412, 421-422 (1978) and Section 760.116, Florida Statutes (2004). Although the Petitioner had ample opportunity in the investigatory stage of

this matter through the "no cause" determination to ascertain that he had insufficient facts and evidence to support his claim and persisted in its prosecution anyway, the fact remains that he had a right, created by Section 760.11, Florida Statutes, to proceed before the Division of Administrative Hearings, even in the face of an adverse cause determination. Because of this, and because he has not had the benefit of counsel, the attorney's fee claim is denied.

RECOMMENDATION

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

RECOMMENDED that a final order be entered dismissing the Petition in its entirety.

DONE AND ENTERED this 22nd day of December, 2004, in Tallahassee, Leon County, Florida.



---

P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 22nd day of December, 2004.

COPIES FURNISHED:

Cecil Howard, General Counsel  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Ronnie L. Ricks  
3531 Southwest 30th Terrance, Unit 50-B  
Gainesville, Florida 32608

Daniel M. Nee, Esquire  
200 East University Avenue, No. 425  
Gainesville, Florida 32601

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.