

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA AGRICULTURAL AND)
MECHANICAL UNIVERSITY,)
)
Petitioner,)
)
vs.) Case No. 06-0720
)
GREGORY V. BLACK,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the above-referenced matter was heard before the Division of Administrative Hearings by its duly-designated Administrative Law Judge, Diane Cleavinger on May 2 and 3, 2006, in Tallahassee, Florida.

APPEARANCES

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For Respondent: H. Richard Bisbee, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent's termination for alleged misconduct should be upheld based on the reasons stated in the termination letter dated July 25, 2005.

PRELIMINARY STATEMENT

Respondent, Gregory V. Black, was an assistant football coach for Petitioner's, Florida A&M University (FAMU), football program. After an investigation into alleged violations of National Collegiate Athletic Association (NCAA) rules, the University determined the entire coaching staff, including Respondent, was responsible for the alleged violations. By letter dated July 25, 2005, Petitioner was terminated. Respondent disputed the basis for his termination and filed a Petition for Formal Hearing.

At the final hearing, the Petitioner presented the testimony of three witnesses and offered into evidence Petitioner's Exhibits one through six. Respondent testified in his own behalf and offered into evidence Respondent's Exhibits one and two.

After the hearing, Petitioner filed a Proposed Recommended Order on June 19, 2006. Likewise, Respondent filed a Proposed Recommended Order on June 19, 2006.

FINDINGS OF FACT

1. Respondent, Gregory V. Black was employed as an assistant football coach at FAMU from July 1, 1998 to July 25, 2005. Head Football Coach William (Billie) Joe was Mr. Black's supervisor. During his employment, Coach Black received excellent to superior evaluation ratings.

2. Coach Black was employed under an annual contract with FAMU. Until his termination, Coach Black was paid his regular salary and received the normal and customary retirement benefits and perks for his position.

3. The last fully executed contract with the University ran from January 1, 2004, to December 31, 2004. However, a printout generated from the University's personnel department indicates a beginning date of August 8, 2004, and an ending date of August 7, 2005. Additionally, there was a partially executed contract signed by the University's interim president, Castell Bryant. The term of the partially executed contract ran from January 1, 2005 to June 30, 2005.

4. The contract incorporated NCAA regulation 11.2 regarding contractual agreements between coaches and an NCAA member institution. The incorporated provisions state, in relevant part:

11.2.1 Stipulation That NCAA Enforcement Provisions Apply.

Contractual agreements . . . shall include the stipulation that a coach who is found in violation of NCAA regulations shall be subject to disciplinary or corrective action as set forth in the provisions of the NCAA enforcement procedures.

11.2.1.1 Termination of Employment.

Contractual agreements . . . shall include the stipulation that the coach may be suspended for a period of time, without pay, or that the coach's employment may be terminated if the coach is found to be involved in deliberate and serious violations of the NCAA regulations.

5. FAMU is a member of the NCAA. Member institutions of the NCAA are obligated to apply and enforce NCAA regulations and are responsible for operating their intercollegiate athletics program in compliance with the regulations of the NCAA. As part of that responsibility, FAMU has adopted the NCAA By-Laws as part of its rules and regulations governing the University.

6. Member institutions also are responsible for governing staff members involved with athletics. Penalties for violations of NCAA regulations generally apply to member institutions and their programs. Occasionally penalties can apply to individual staff members who are directly involved in violations of NCAA regulations.

7. In cases where an individual is the subject of an NCAA investigation, the NCAA issues a Notice of Allegations. In this case no Notice of Allegations was issued to Coach Black or any other member of the football coaching staff.

8. In fact, the NCAA did not conclude or find that Coach Black committed any NCAA rule violation and the NCAA report only mentions his name in reference to being interviewed. There is no mention of Coach Black in reference to being involved in or knowing about any of the NCAA violations referenced in the report. Indeed Coach Black has never been the subject of an NCAA rule violation.

9. Coach Black was primarily responsible for coaching and developing the offensive line. He ran practices and monitored the progress of his players. Coach Black did not generally monitor his player's academics, unless the athletic office advised him of a problem. Likewise, Coach Black was not generally responsible for ensuring various student eligibility forms were completed and on file with the University. Nor was he generally responsible for recruitment activities. He was required to have general knowledge of NCAA regulations and responsible for reporting any violations of those regulations that he had knowledge of to the proper authorities at the University. The evidence showed that Coach Black did have such knowledge of the NCAA regulations and that he understood the reporting requirements of those regulations.

10. It was Coach Black's practice to be present when the offensive line was practicing. Generally, if he was on the field, the offensive line was out there with him.

11. At some point FAMU became aware that their were allegations of NCAA violations at FAMU and that an NCAA investigation might occur. In light of those allegations, FAMU completed a Self-Report concerning violations of NCAA regulations. The Self-Report identified multiple alleged violations, of which the University's football program allegedly constituted the bulk of the violations. No one who was involved with the Self-Report testified at the hearing. There was no competent evidence introduced at the hearing corroborating the allegations of the report. Uncorroborated hearsay statements made in the report about alleged violations cannot be used to prove that Coach Black violated NCAA regulations or knew about such alleged violations and failed to report those violations.

12. In addition to the Self-Report, the NCAA conducted an investigation and issued a report concerning such alleged violations.

13. The NCAA investigated numerous violations of NCAA regulations, including exceeding the daily practice time limitation, exceeding the weekly practice time limitation and not observing the day-off requirement regarding its football program. No NCAA official or investigator testified at the hearing. No corroborating evidence was offered at the hearing. As with the Self-Report, uncorroborated hearsay statements made in the report about alleged violations cannot be used to prove

that Coach Black violated NCAA regulations or knew about such alleged violations and failed to report those violations.

14. As a result of the NCAA conducting an investigation, the University retained a consultant, Mr. Nelson Townsend, to assist in interpreting exactly what the NCAA findings meant to the University. Mr. Townsend generally recommended the University make staff changes in the football program. There was no evidence that Mr. Townsend considered The University's personnel rules in making his recommendation.

15. On July 25, 2006, FAMU issued a letter of termination to Coach Black terminating his employment "contract" with FAMU. The termination was based on alleged NCAA violations regarding daily and weekly hours of practice, not permitting a day off to the players and failure to report such violations. The letter treated Coach Black as if he had a contract with FAMU and provided him rights under FAMU's personnel rules regarding just cause and a right to a hearing. The letter, also, clearly had the effect of stigmatizing Coach Black in his profession as an assistant football coach. The allegations and termination were on the news. Indeed, Coach Black had difficulty finding suitable employment equivalent to what he possessed at FAMU after his termination.

16. However, FAMU, in this proceeding, has admitted that Coach Black did not commit any NCAA violations. Indeed, there

was no competent evidence that Coach Black was aware of or should have been aware of any alleged violations. Given this lack of evidence FAMU has failed to establish just cause for terminating Coach Black, and he is entitled to be reinstated for the remaining term of his contract, if any.

17. The University's interim president decided to withhold the employment contracts of all of the assistant football coaches.

18. The evidence showed that there were many times that Coach Black's employment contracts were executed after the start date of the contract period. However, the employment contract clearly states:

. . . Neither this employment contract nor any action or commitment taken pursuant to it, is final or binding upon the parties until, and unless, the signature of the University President or President's designee, . . . and the signature of the employee have been affixed and the employment contract has been returned to the appropriate authority

19. Irrespective of the language and terms of the contract, FAMU treated this matter as one arising under employment that can only be terminated for just cause. For purposes of this action, FAMU is estopped from claiming that Coach Black was an at-will employee. Additionally, the issue of whether Coach Black had an employment contract with FAMU need not be addressed since Coach Black was not terminated based on

the expiration or absence of his contract. It is the reasons regarding NCAA violations stated in the termination letter that are at issue here. As noted, there was an absence of proof to support those allegations. Therefore, Coach Black is entitled to reinstatement and to have his name cleared of the stigma that termination for those allegations have caused.

CONCLUSIONS OF LAW

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

21. Regardless of the contractual status of Coach Black, he is nevertheless entitled at a minimum to a "name clearing hearing" since this matter which had the effect of stigmatizing him in his profession involves a public employer, FAMU. See Buxton v. Plant City, 871 F.2d 1037 (11th Cir. 1989) and cases cited therein.

22. In this case, FAMU did not present competent, substantial evidence of any NCAA violations allegedly committed by Mr. Black or that Mr. Black was aware of any such alleged violations that he failed to report. The testimony FAMU presented consisted of individuals who had no direct, first-hand personal knowledge: (1) of any such alleged violations; or (2) whether Coach Black himself was aware of any such alleged violations and failed to report such. In light of FAMU's

failure to produce witnesses with first-hand knowledge of what is contended against Coach Black in its letter of termination and its admission that Coach Black did not commit any violations of NCAA rules, Coach Black is entitled to reinstatement and to having his name cleared of those allegations.

RECOMMENDATION

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

RECOMMENDED that a Final Order be entered by FAMU reinstating Respondent and clearing his name from the allegations made in the termination letter.

DONE AND ENTERED this 24th of July, 2006, in Tallahassee, Leon County, Florida.



DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of July, 2006.

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.