

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIKE JONES,)
)
 Petitioner,)
)
 vs.) Case No. 06-1434
)
 SUWANNEE COUNTY SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) held a formal hearing in this cause in Live Oak, Florida, on June 7, 2006. The following appearances were entered:

For Petitioner: Mike Jones, pro se
Post Office Box 372
Live Oak, Florida 32064

For Respondent: Andrew J. Decker, IV, Esquire
Andrew J. Decker, III, Esquire
Post Office Box 1288
Live Oak, Florida 32064

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner was subjected to an unlawful employment practice by Respondent due to Petitioner's race, age, or sex in violation of Section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination against Respondent with the Florida Commission on Human Relations (FCHR) on September 12, 2005, alleging his constructive employment termination by Respondent on the basis of a hostile work environment as the result of Petitioner's race.

On or about March 14, 2006, the FCHR issued its determination: No Cause.

On or about April 17, 2006, Petitioner filed a Petition for Relief with the FCHR. Subsequently, on or about April 19, 2006, the case was forwarded to DOAH for formal proceedings.

During the final hearing, Petitioner testified in his own behalf, presented testimony of two witnesses and one composite exhibit. Respondent presented testimony of two witnesses and one composite exhibit.

No transcript of the final hearing was provided. Both parties were offered the opportunity to file proposed findings of facts and proposed conclusions of law. Both parties availed themselves of that opportunity. The Proposed Recommended Order of each party has been reviewed and considered in the preparation of this Recommended Order.

References to Florida Statutes are to the 2006 Edition unless otherwise noted.

FINDINGS OF FACT

1. Respondent employed Petitioner, an African-American male, as a paraprofessional, non-instructional employee at all times relevant to these proceedings. Respondent School Board is the body politic responsible for the administration of public schools within the Suwannee County School District.

2. Petitioner was a member of the non-instructional chapter of the United Teachers of Suwannee County, Florida, and was subject to the terms and conditions of the collective bargaining agreement between that organization and Respondent. Additionally, Petitioner's employment was subject to the terms and conditions set forth in the Continuing Contract of Employment Non-Instructional Education Support Employees of the Public Schools executed between Petitioner and Respondent.

3. Petitioner worked at the Suwannee Primary School in Live Oak, Florida. Petitioner's work schedule required him to work Monday through Friday of each work week. Petitioner's duty day started at 7:30 a.m. and ended at 2:40 p.m. Marilyn K. Jones, the principal of the Primary School, was Petitioner's immediate supervisor. Although their surnames are the same, Principal Jones and Petitioner are not related.

4. Petitioner approached Jones on February 14, 2005, and spoke with her regarding his recent employment with a state prison. Petitioner informed Jones that he had been hired as a

corrections officer and that he was required to attend orientation and training sessions. Petitioner informed Jones that the initial orientation and training sessions were held during times he was required to work at the Primary School. Petitioner asked for a couple days off from his work at the Primary School to attend these initial sessions. Petitioner was hopeful that once the training and orientation sessions were completed, his work hours with the state prison would be from 4:00 p.m. to 11:00 p.m. and would not interfere with his employment with Respondent.

5. Jones informed the Petitioner that he could use personal leave time that he had accumulated to attend the orientation and training sessions. Jones requested that Petitioner keep her posted regarding the days he would be absent and directed him to complete and submit the forms required to take leave prior to the actual absences so that arrangements could be made for substitute personnel to assume Petitioner's duties.

6. Petitioner did not, however, submit the proper leave forms and the training period at the prison was longer than the originally expected. Additionally, after discussions with the payroll Department, Jones learned that the Petitioner did not have enough accumulated leave time to allow for his previous absences. Jones and the Petitioner had a telephone conversation

on March 5, 2005. Jones informed Petitioner that he had been absent more times than their initial understanding, that he had failed to submit the leave forms in advance of the days he would be absent, and that he did not have leave time available.

7. Petitioner apologized for the additional time that he had been absent and again noted that he thought that after the first few days of training, his work at hours at the prison would be from 4:00 p.m. to 11:00 p.m. Jones told Petitioner that his continued absences would be unauthorized and that she did not want him to be fired for taking unauthorized leave. Jones informed the Petitioner that if he wished to resign, he could submit his resignation to her.

8. On March 7, 2005, Petitioner met with Jones and her assistant principal Betty Ann Sumner, along with Sheryl Daniels, the president of the Teacher's Union, to discuss Petitioner's absences. Petitioner expressed his desire to work three days a week at the Suwannee Primary School and the other two days at his job with the prison. Jones reiterated her previous statements to Petitioner that she was concerned for him and did not want the School Board to terminate his employment based on his absenteeism. Jones informed Petitioner that he had taken days off from work without providing any advance notice and advised that in the event of future absences, Petitioner must submit the appropriate forms in advance. When Petitioner raised

the subject of a leave of absence until the fall semester so that he could schedule his employment with the prison and Respondent to avoid time conflicts, he was referred to Respondent's district office.

9. Subsequently, Petitioner requested a 10 week leave of absence with the Superintendent of the Suwannee County School District, J. Walter Boatright, to continue to pursue training as a corrections officer. Under School Board policy, an absence in excess of five days has to be approved by the School Board. Boatright declined to bring Petitioner's request for leave to the Suwannee County School Board based on his view that the Board's policies did not allow an employee an extended leave of absence to receive training for an unrelated second job, that the end of the school year was approaching, and that the School District needed the presence of all of its employees. As established by Boatright's testimony, Respondent often has difficulty finding substitute personnel when its employees are absent for wholly legitimate reasons.

10. Boatright informed Petitioner that he would not recommend that the School Board approve Petitioner's request and would not bring Petitioner's request to the School Board for its consideration. Additionally, Boatright recommended that the School Board deny Petitioner's request for leave for the days that he had already been absent. Petitioner never personally

appeared before the School Board to submit his request for personal leave.

11. After Boatright's decision was communicated to him, Petitioner was again absent without leave on several occasions. Petitioner met with Boatright on March 24, 2005. At that meeting, Boatright warned Petitioner that he faced disciplinary action, including termination from employment if he continued to be absent from his non-instructional position without leave. In response to Boatright's warnings, Petitioner said, "Anybody can do what I do" and suggested that Boatright simply obtain a substitute teacher to fill his position. Following Petitioner's remarks, Boatright informed Petitioner that his role with the Suwannee County School District as a paraprofessional, non-instructional employee was important.

12. Sheryl Daniels, the president of the United Teachers of Suwannee County was also present at the meeting on March 24, 2005, with Boatright and Petitioner. Daniels asked Boatright to reconsider Petitioner's request for leave because Petitioner had been a good employee in the past and this should merit some additional consideration. Boatright, however, denied Petitioner's request for leave.

13. Later, Petitioner received a letter dated April 20, 2005, from Boatright, confirming and reiterating the warning delivered to Petitioner during the March 24, 2005. In this

letter, Boatright, advised Petitioner "that any further absence without leave on your part after the receipt of this letter will result in my recommendation to the Suwannee County School Board for your termination." Subsequent to Petitioner's receipt of the April 20, 2005, letter from Superintendent Boatright, Petitioner was again absent without leave in late April and in May of 2005.

14. On April 28, 2005, Petitioner received his annual employment evaluation. The evaluation was performed by Jones, his principal. An employee's overall evaluation rating is determined by adding the employees' scores in seven different categories. Although Petitioner received an overall rating of "Effective," Petitioner's rating with respect to his professional responsibilities was "Needs Improvement." Jones' evaluation noted that although Petitioner did a good job in the computer lab, his frequent absences were a concern and that student behavior had deteriorated in Petitioner's classes when he was absent.

15. On April 28, 2005, Boatright filed a petition with the School Board to terminate Petitioner's employment. A hearing was scheduled for May 15, 2005. The School Board rescheduled the May 15, 2005, hearing, however, when Petitioner requested additional time to prepare for the hearing.

16. Thereafter, Petitioner was served with an Amended Petition for Termination of Employment filed by Boatright. The Superintendent's Petition for Termination of Employment charged Petitioner with violating Suwannee County School Board Policy Section 6.22, which states, "[a]ny employee of the District who is willfully absent from duty without leave shall forfeit compensation for the time of the absence and the employee contract shall be subject to cancellation by the School Board."

17. By letter dated May 31, 2005, Petitioner submitted a letter of resignation to Respondent. In that letter, Petitioner wrote that he was submitting his resignation due to the denial of his request for an unpaid leave of absence and the need to avoid further damage to his reputation. Petitioner also stated in the letter that he thought he had been the subject of discrimination and was left with no alternative but to resign his position.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of these proceedings. §§ 120.56(9) and 120.57(1), Fla. Stat.

19. Chapter 760, Florida Statutes, the "Florida Civil Rights Act of 1992," provides security from discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.

20. The adverse effectuation of an employee's compensation, conditions and privileges of employment on the basis of race is an unlawful employment practice.

21. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action. If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pre-textual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

22. Also, provisions of Chapter 760, Florida Statutes, are analogous to those of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e, et seq. See Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). Petitioner must show that: (a) he belongs to a racial minority; (b) he was subjected to an adverse employment action; (c) he was qualified for his position; and (d) Respondent treated similarly situated employees outside the protected class more favorably. Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997). Petitioner has not met his initial burden of proof and cannot show that Respondent's termination was a pretext for intentional discrimination because he did not show that Respondent treated "similarly situated" employees outside his protected class more

favorably. See Abel v. Dubberly, 210 F.2d 1334, 1339 (11th Cir. 2000) where the court stated, "absent some other similarly situated but differently disciplined worker, there can be no disparate treatment."

23. Petitioner offered no evidence of other similarly situated but differently disciplined workers. Respondent's policy is applied in a consistent manner to all employees without regard to the employee's race.

24. The testimony and other evidence produced by Petitioner are not sufficient to establish that racial discrimination by Respondent toward Petitioner occurred. Petitioner failed to show that Respondent's basis for his termination was pre-textual in any way.

RECOMMENDATION

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

RECOMMENDED:

That a Final Order be entered dismissing the Petition for Relief.

DONE AND ENTERED this 5th day of July, 2006, in
Tallahassee, Leon County, Florida.

Don W. Davis

DON W. DAVIS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th 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.