

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

THOMAS ROBINSON,)
)
 Petitioner,)
)
 vs.) Case No. 07-2848
)
 ALLIANCE LAUNDRY SYSTEMS,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on September 20, 2007, in Marianna, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Thomas Robinson, pro se
5156 Brywood Lane
Campbellton, Florida 32426

For Respondent: P. Michelle Bedoya, Esquire
Holland & Knight, LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent discriminated against Petitioner based on his race.

PRELIMINARY STATEMENT

On February 7, 2006, Petitioner, Thomas Robinson (Mr. Robinson) filed an employment discrimination complaint with the Florida Commission on Human Relations (Commission), alleging that Respondent, Alliance Laundry Systems (Alliance), committed an unlawful employment practice by denying him a promotion based on his race. On May 21, 2007, the Commission entered a Notice of Determination: No Cause, determining that there was no cause to believe that an unlawful employment practice had occurred. On June 22, 2007, Mr. Robinson filed a Petition for Relief with the Commission, requesting an administrative hearing.

The case was transmitted to the Division of Administrative Hearings for assignment of an Administrative Law Judge to conduct the proceedings. The case was originally assigned to Administrative Law Judge Diane Cleavinger, but was reassigned to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

At the final hearing, Mr. Robinson testified in his own behalf and called Edward Mount as his witness. Petitioner's Exhibits 1 and 2 were admitted in evidence. Petitioner's Exhibit 3 was identified but not admitted in evidence. Alliance called Rick Pyle as its witness. Respondent's Composite Exhibits 1, 2, and 3 were admitted in evidence.

The one-volume Transcript was filed on October 17, 2007. The parties agreed to file their proposed recommended orders within ten days of the filing of the Transcript. Alliance filed its Proposed Recommended Order on October 25, 2007. As of the date of this Recommended Order, Mr. Robinson has not filed a post-hearing submittal.

FINDINGS OF FACT

1. Mr. Robinson, an African-American, was employed by Alliance at its Marianna, Florida, office from 1987 to 2006, when the facility closed. Mr. Robinson worked his way up from the assembly line, making \$4.00 per hour, to steel yard coordinator, making \$14.87 per hour.

2. Mr. Robinson applied for the position of fabrication supervisor in 2004 and 2005. Both times, other people were chosen for the position.

3. In 2004, Mr. Robinson was a finalist for the fabrication supervisor position. Steven Ramsey, a white male, was chosen for the supervisor position. Mr. Ramsey was hired from outside the company. Mr. Ramsey had considerably more experience as a supervisor than Mr. Robinson.

4. In October 2005, the position for fabrication supervisor became vacant again. Mr. Robinson again applied for the position. The applicant pool was narrowed to two candidates, Mr. Robinson and John Warren (Mr. Warren), a white

male. Both Mr. Robinson and Mr. Warren were interviewed by a committee consisting of the plant manager, the general manager, and hiring manager. Both candidates were current employees of Alliance.

5. Alliance was looking for a supervisor with strong interpersonal skills. Both Mr. Robinson and Mr. Warren were valued employees of Alliance. In comparing their past evaluations at Alliance, Mr. Warren's performance evaluations were stronger than Mr. Robinson's.

6. Mr. Robinson received two evaluations in 2004. On March 1, 2004, he received a score of 40 out of a possible 50. It was noted that Mr. Robinson needed to improve his relationships with other supervisors and lead workers. On May 12, 2004, he received a score of 40 on his annual evaluation. Again, it was noted that Mr. Robinson needed to improve his relationships with other supervisors and lead workers.

7. Mr. Robinson received a score of 41 on his annual evaluation dated June 1, 2005. It was noted in his evaluation that he had improved in the area of interpersonal relationships over the past year.

8. Mr. Warren received a score of 48 on his annual evaluation dated May 17, 2004. In the area of interpersonal relationships, his supervisor wrote:

"Best in Fabrication." Leans forward to meet every challenge, keeps supervisors, peers and customers briefed at every step. Mr. Warren not only knows his customers, he has mastered the ability to identify customer needs before the customer realizes the need—and regularly exceeds customer expectations. Mr. Warren teaches customer service by example—what I call a "smooth operator."

9. On his 2005 annual evaluation, Mr. Warren received a perfect score of 50. It was noted in his evaluation that Mr. Warren was a "solid role model."

10. The evaluations of Mr. Warren and Mr. Robinson played an important role in determining who would be hired as fabrication supervisor. Based on the evaluations, Mr. Warren was the stronger candidate.

11. Edward Mount (Mr. Mount) testified on behalf of Mr. Robinson. Mr. Mount is an African-American, who was employed with Alliance until November 2005. Mr. Mount left Alliance because the Alliance plant in Marianna was closing and would be relocated to Wisconsin. When Mr. Mount left Alliance, he was making \$45,000 a year as a floor supervisor on the second shift. Mr. Mount felt that he had been treated fairly by Alliance and that Alliance had not discriminated against him based on his race during his employment with Alliance. During his tenure with Alliance, he was promoted more than five times and was given bonuses and raises.

12. Mr. Robinson felt that Rick Frayniak (Mr. Frayniak), who was fabrication manager, was discriminating against him because of his race. However, Mr. Mount described Mr. Frayniak as a "hard but fair" supervisor, who had a hands-on approach to management. Mr. Mount never heard Mr. Frayniak make any racial remarks and did not feel that Mr. Frayniak had discriminated against him based on his race.

CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2007).

14. Mr. Robinson contends that Alliance failed to promote him because of his race. Subsection 760.10(1)(a), Florida Statutes (2005),¹ provides:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail to refuse to hire any individual, or otherwise 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.

15. The Florida Civil Rights Act of 1992, Section 760.01, Florida Statutes, et seq., is modeled after Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, et seq.; therefore, case law interpreting Title VII is also relevant to

cases brought under the Florida Civil Rights Act. Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

16. In a discrimination case, the petitioner has the initial burden of establishing a prima facie case of discrimination. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). If the petitioner proves a prima facie case of discrimination, the burden shifts to the employer to proffer a legitimate, non-discriminatory reason for the action it took. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981). The employer's burden is always one of production, not persuasion, as it always remains the petitioner's burden to persuade the fact finder that the proffered reason is a pretext and that the employer intentionally discriminated against the petitioner. Id. at 252-256.

17. In order to establish a prima facie case of discrimination, Mr. Robinson must establish the following: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he is qualified for the job at issue; and (4) similarly situated employees outside the protected class were treated more favorably. Kelliher v. Veneman, 313 F.3d 1270, 1275 (11th Cir. 2002).

18. Mr. Robinson did establish a prima facie case of race discrimination. As an African-American, he is a member of a protected class. He was denied a promotion. He was qualified for the position for which he applied, and a white candidate was hired for the position.

19. Alliance credibly established that the white candidate was more qualified for the position than Mr. Robinson. The decision to hire Mr. Warren rather than Mr. Robinson was based on the employees' evaluations and not on race.

20. Mr. Robinson has failed to establish that Alliance did not promote him to a supervisory position because of his race; therefore, he has failed to establish that Alliance committed an unlawful employment practice.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing Mr. Robinson's Petition for Relief.

DONE AND ENTERED this 14th day of November, 2007, in
Tallahassee, Leon County, Florida.

Susan B. Harrell

SUSAN B. HARRELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of November, 2007.

ENDNOTE

^{1/} Unless otherwise indicated, all references to the Florida
Statutes are to the 2005 edition.

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.