

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DIANNA DECKER,)
)
 Petitioner,)
)
 vs.) Case No. 08-2528
)
 THE GADSDEN COUNTY SCHOOL BOARD)
 and REGINALD JAMES,)
 SUPERINTENDENT OF GADSDEN)
 COUNTY SCHOOLS,)
)
 Respondents.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, this cause was heard by Linda M. Rigot, the assigned Administrative Law Judge of the Division of Administrative Hearings, on February 24, 2009, in Tallahassee, Florida.

APPEARANCES

For Petitioner: Bruce Alexander Minnick, Esquire
The Minnick Law Firm
Post Office Box 15588
Tallahassee, Florida 32317

For Respondent: Matthew Carson, Esquire
Linda G. Bond, Esquire
Rumberger, Kirk & Caldwell, P.A.
215 South Monroe Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue presented is whether Respondents are guilty of committing a discriminatory practice against Petitioner, in

violation of the Florida Civil Rights Act of 1992, by denying her a promotion and/or by constructively discharging her from her employment.

PRELIMINARY STATEMENT

On December 14, 2007, Petitioner filed with the Florida Commission on Human Relations an Employment Complaint of Discrimination, alleging that Respondents had discriminated against her based upon her race by denying her a promotion and/or by constructively discharging her. After the Commission determined that there was no reasonable cause to believe that an unlawful employment practice had occurred, Petitioner filed a petition requesting an administrative hearing, and this matter was transferred to the Division of Administrative Hearings to conduct the evidentiary proceeding.

Petitioner testified on her own behalf. Respondents presented the testimony of Sonja D. Bridges and Reginald C. James. Additionally, Petitioner's Exhibits numbered 1-3, 4A, 5A, 6-9, 14, and 15 and Respondents' Exhibits numbered 1-6 and 8-11 were admitted in evidence.

The two-volume Transcript of the final hearing was filed on March 12, 2009. Respondents' Proposed Recommended Order was filed on April 24, 2009, and Petitioner's Proposed Recommended Order was filed on April 27, 2009. Those documents have been considered in the entry of this Recommended Order.

FINDINGS OF FACT

1. Petitioner Dianna Decker, a white female, began her employment with Respondent Gadsden County School Board on July 14, 1998. Her first job position was as the Training Coordinator/Specialist. In July 2002, Petitioner absorbed the additional duties of Staff Development Coordinator.

2. Respondent Reginald James, a black male, was elected Superintendent of Gadsden County Schools in November 2004 and has continuously served in that capacity due to his re-election in 2008.

3. In July 2005, Superintendent James promoted Petitioner to Director of Staff Development and Personnel. Petitioner applied for this promotion on July 7, 2005, after James told her he would like her to take the job. This promotion included a \$13,000 annual increase in her salary. On July 13, James directed the School Board's finance department to begin paying Petitioner at the increased pay rate retroactive to July 1. On July 26, the School Board officially appointed Petitioner to the position to which James had promoted her, with the retroactive effective date of July 1.

4. For purposes of employment with the various school boards in Florida, the superintendent "recommends" that a person be hired for a particular position, and the school board approves or disapproves the recommendation.

5. Respondent James also gave Petitioner an additional \$1,500 increase in salary during the 2005-06 school year.

6. Petitioner and James enjoyed a good working relationship. As Director of Staff Development and Personnel, Petitioner had at least daily contact with James.

7. Throughout her employment with the School Board, Petitioner applied for a variety of employment positions outside of the Gadsden County School System. Some of the positions she applied for were education-related, and some were not. Some of the positions she applied for were in Florida, and some were outside of Florida. By her own testimony, Petitioner kept her eyes open for opportunities for growth and upward movement.

8. Dr. James Brown was the Deputy Superintendent of the Gadsden County School System from prior to the beginning of Petitioner's employment until his retirement in July 2007.

9. Petitioner, Superintendent James, Dr. Sonja Bridges, and other personnel attended weekly management-team meetings at which they discussed, among other things, the attempts being made to find a replacement for Dr. Brown.

10. Prior to Dr. Brown's retirement date, the Deputy Superintendent position that Dr. Brown was vacating was advertised. Although Superintendent James interviewed several candidates for the position, he was unable to find an acceptable candidate to hire. During the months of searching for a deputy

superintendent to replace Brown, Dr. Sonja Bridges told James that she would take the job if he could not find anyone else.

11. In a letter dated July 10, 2007, Petitioner wrote to the Jefferson County Schools in Louisville, Kentucky, asking to be considered for the position of Director of District Personnel/Human Resources which was being advertised.

12. The morning of July 11, 2007, Superintendent James asked Petitioner to post a job opening for an Assistant Superintendent for Academic Services position. Later that same day James announced that he had chosen Dr. Sonja Bridges to fill that position. Petitioner told James that Bridges was not qualified to fill the position as it was described in the job posting. James told Petitioner that they would modify the position so that Bridges would be qualified and instructed Petitioner to take down the job description that she had posted.

13. Petitioner also did not meet the qualifications for Assistant Superintendent for Academic Services as the position was posted, and she did not apply for that position during the short time between its posting and its removal.

14. At its July 24, 2007, meeting, in accordance with its standard practice, Respondent Gadsden County School Board proposed a rule change that would modify the job description for an Assistant Superintendent for Academic Services position. This proposed modification was required to be advertised to the

public for 30 days to receive comments and could not be finalized until at a Board meeting following the conclusion of that notice period.

15. On August 6, 2007, Petitioner re-posted the Assistant Superintendent for Academic Services position. The proper procedure would have been to wait until after the School Board had approved the rule change at a subsequent meeting, and then post the position. Neither James nor anyone else requested or authorized Petitioner to re-post the position prior to the position being approved by the School Board, and Petitioner re-posted it against established School Board procedure.

16. Also on August 6 Petitioner completed her application for the position and handed it to Regina Gore, a secretary who reported to Petitioner. Petitioner gave Gore no instructions as to what to do with Petitioner's employment application.

17. Petitioner's job responsibilities included compiling and submitting job applications and presenting them to Superintendent James for his consideration. However, Petitioner did not tell anyone other than Gore that she had completed an application for the Assistant Superintendent for Academic Services position, and she never compiled and submitted to James for his consideration her application and the other application that was received in response to her unauthorized August 6 job posting.

18. At its August 2007 meeting, Respondent Gadsden County School Board adopted the rule change for the modified job description after receiving no comments from the public during the 30-day comment period. Respondent Gadsden County School Board then officially appointed Dr. Bridges to the position of Assistant Superintendent for Academic Services to which Superintendent James had promoted her, with a retroactive effective date of July 2, 2007.

19. Dr. Bridges meets the qualifications for the modified Assistant Superintendent for Academic Services position, as does Petitioner.

20. In her new position, Dr. Bridges became Petitioner's immediate supervisor. Prior to Bridges' promotion, she and Petitioner had a professional and friendly working relationship; however, after her promotion, Petitioner became uncomfortable working under Dr. Bridges and had difficulty taking directives from her new supervisor.

21. During the time that Respondent James has been the Superintendent of Gadsden County School System, he has recommended, and Respondent Gadsden County School Board has approved, two Assistant Superintendents: Dr. Bridges and Ms. Bonnie Wood. There have been no other Assistant Superintendents under Superintendent James. Dr. Bridges is a black woman, and Ms. Wood is a white woman. Ms. Wood is the

Assistant Superintendent for Business and Finance and, like Dr. Bridges, reports directly to Superintendent James. There were three applicants for Ms. Wood's position: Ms. Wood and two black males, and Superintendent James hired her. There have not been any Deputy Superintendents since Dr. Brown retired.

22. On September 28, 2007, Petitioner was offered the position of Director of Human Resources, Certified Division, with Jefferson County Schools in Louisville, Kentucky. By letter that same day to Superintendent James, not to her supervisor Dr. Bridges, Petitioner voluntarily resigned from her position with Respondent Gadsden County School Board, effective November 15, 2007.

23. After her departure, Petitioner's position was filled on an interim basis by a white male.

24. At the time she voluntarily resigned from her employment with Respondent Gadsden County School Board, Petitioner earned \$66,363 annually. Petitioner's salary at her job in Kentucky with the Jefferson County Schools as of the date of the final hearing in this cause was \$119,000 annually.

25. Superintendent James never saw Petitioner's application for the position filled by Dr. Bridges until Respondents' counsel showed him a copy in February 2009 in preparation for the final hearing in this cause. Furthermore, James never heard of Petitioner having any interest in that

position until after Dr. Bridges' appointment was made official by Respondent Gadsden County School Board. Even then, he did not hear of Petitioner's interest in the position from her; rather, he learned of her disappointment in not having been given the job from comments made to him by others.

26. On December 10, 2007, Petitioner filed a Complaint of Discrimination with the Florida Commission on Human Relations alleging that she had been discriminated against by Respondent James and Respondent Gadsden County School Board.

CONCLUSIONS OF LAW

27. The Division of Administrative Hearings has jurisdiction over the subject matter hereof and the parties hereto. §§ 120.569 and 120.57(1), Fla. Stat.

28. Section 760.10(1)(a), Florida Statutes, provides that it is an unlawful employment practice for an employer to discharge or fail or refuse to hire or otherwise to discriminate against any individual with respect to terms, conditions, or privileges of employment because of that individual's race. Although the Petitioner has attacked various decisions of Respondents, which she alleges are improper hiring practices, the only issue over which the Florida Commission on Human Relations has jurisdiction is her assertion that Respondents failed to promote her based solely on her race and that Respondents constructively discharged her from her employment.

29. It is well settled that federal discrimination law should be used as guidance when construing provisions of Section 760.10, Florida Statutes. Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

30. Petitioner's claim that she was not promoted because of her race may be characterized as a disparate treatment case and, thus, subject to the burden of proof as explained by the Supreme Court in McDonnell Douglas v. Green, 411 U.S. 792 (1973); Texas Dept. of Community Affairs v. Burdine, 450 U.S. 246 (1981); and subsequent cases.

31. Pursuant to this analysis, Petitioner has the burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. If she does so, Respondents must articulate some legitimate, non-discriminatory reason for the action taken against Petitioner. Once a non-discriminatory reason is offered by Respondents, the burden then shifts back to Petitioner to demonstrate that the offered reason is merely a pretext for discrimination.

32. As applied to a claim alleging discrimination resulting from an employer's decision not to promote, the prima facie case an employee is required to establish is: (1) that she belongs to a protected class; (2) that she was qualified for and applied for the promotion; (3) that she was considered for and denied the promotion; and (4) that another person of similar

qualifications who was not a member of Petitioner's protected class was promoted at the time the Petitioner's request for promotion was denied.

33. Respondents do not dispute that Petitioner's race (white) makes her a member of a protected class. Further, Respondents do not dispute that Petitioner was qualified for the promotion after the modifications to the position of Assistant Superintendent for Academic Services. Lastly, Respondents do not dispute that another employee of similar qualifications who was not a member of Petitioner's protected class was promoted.

34. Petitioner did not, however, establish that she applied for the promotion at issue during the time period that Respondent James was considering applicants for the position. Further, Petitioner did not establish that Respondent James even knew of her interest in the position. While Petitioner did establish that she completed an application and gave it to a secretary, she did not establish that this secretary had any authority or direction to advise James of Petitioner's application.

35. Rather than letting Respondent know she was interested in the position, the evidence in this proceeding implies that Petitioner deliberately prevented Respondents from finding out that she was interested in the promotion: (1) without authorization, she posted a job opening for the modified

position before it had been approved by Respondent School Board; (2) she filled out an application and gave it to someone with no authority to process it; (3) she told no one, including Respondent James with whom she had at least daily contact, that she had done these things; and (4) she failed to complete her job duties of compiling her application and the other application received by her as a result of her unauthorized job posting and presenting them to Respondent James for his consideration. The strong implication is that Petitioner used her knowledge and experience as a personnel professional not to obtain the promotion at issue but rather to be in a position to file her complaint of discrimination against Respondents.

36. Accordingly, Petitioner has failed to establish a prima facie case because she failed to prove either by direct or circumstantial evidence that she actually applied for the promotion at issue or was ever considered for the promotion. She further failed to establish that either Respondent had any knowledge, or could have had any knowledge, that she was interested in the position until well after the promotion had been given to someone else. She also failed to establish that Respondents' failure to promote her was due to her race.

37. Even assuming, arguendo, that Petitioner had met her burden to establish a prima facie case, which she has not, Respondents have proven a legitimate, non-discriminatory reason

for appointing Dr. Bridges to the position rather than Petitioner. Respondent James chose Dr. Bridges because he needed someone to fill the position, she had expressed an interest in the position to him, and he believed that she could successfully perform the duties of the position. Accordingly, Respondents had a legitimate, non-discriminatory reason for promoting Dr. Bridges instead of Petitioner.

38. To establish that a reason is a pretext for discrimination, the stated reason must be false and the Petitioner must establish that discrimination was the real reason. Brooks v. County Comm'n of Jefferson County, 446 F.3d 1160 (11th Cir. 2006). Petitioner did not establish that Respondent James appointed Dr. Bridges for reasons other than she was qualified and expressed an interest in the position. Therefore, Petitioner has failed to establish that the Respondents' reason for appointing Dr. Bridges was a pretext for discrimination.

39. Further, Petitioner did not offer any direct or circumstantial evidence that Respondents promoted Dr. Bridges instead of Petitioner because of Petitioner's race. In fact, Petitioner did not show that her race was even a consideration.

40. Respondents have had the opportunity to hire two Assistant Superintendents since Respondent James was elected Superintendent in 2004. Respondents have hired Ms. Wood (white)

as Assistant Superintendent for Business and Finance and Dr. Bridges (black) as Assistant Superintendent for Academic Services.

41. Additionally, Respondents had previously promoted Petitioner and had given her a substantial salary increase. Where, as here, the same individual who previously promoted Petitioner is the one who subsequently failed to promote her again, a "same actor" inference that the decision was not motivated by discriminatory animus is permissible. Williams v. Vitro Services Corp., 144 F.3d 1438 (11th Cir. 1998).

42. Petitioner also claims that she was constructively discharged from her employment by Respondents. This claim fails because Petitioner presented no evidence to support such a claim. The evidence only shows that Petitioner did not like the fact that Dr. Bridges became her supervisor and became distant in her dealings with Dr. Bridges. Further, the evidence is clear that Petitioner was actively looking for a different job for substantially the entire time she was employed by Respondents and successfully obtained such employment at a substantially-higher salary as a result of an application she submitted to that employer prior to the decision being made by Respondents of which she complains in this case.

RECOMMENDATION

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

RECOMMENDED that a final order be entered finding that Petitioner has failed to prove that Respondents committed an act of discrimination against her and dismissing Petitioner's petition for relief filed in this cause.

DONE AND ENTERED this 6th day of May, 2009, in Tallahassee, Leon County, Florida.

Linda M. Rigot

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

Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of May, 2009.

COPIES FURNISHED:

Bruce Alexander Minnick, Esquire
The Minnick Law Firm
Post Office Box 15588
Tallahassee, Florida 32317

Matthew Carson, Esquire
Linda G. Bond, Esquire
Rumberger, Kirk & Caldwell, P.A.
215 South Monroe Street
Tallahassee, Florida 32301

Larry Kranert, 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

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.