

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PETER D. TYLER,)
)
 Petitioner,)
)
 vs.) Case No. 09-2547
)
 WALT DISNEY WORLD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 29, 2010, in Orlando, Florida, before Susan B. Harrell, an Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Peter D. Tyler, pro se
Post Office Box 22315
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For Respondent: Marilyn G. Moran, Esquire
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STATEMENT OF THE ISSUES

The issues in this case are whether Respondent unlawfully discriminated against Petitioner on the basis of a disability in violation of the Florida Civil Rights Act of 1992 (FCRA), when Respondent failed to hire Petitioner, and whether Respondent

retaliated against Petitioner in violation of the FCRA, when Respondent issued Petitioner a trespass warning and later notified law enforcement of Petitioner's presence on Respondent's property, resulting in Petitioner's arrest for Trespass After Warning.

PRELIMINARY STATEMENT

On October 27, 2008, Petitioner, Peter D. Tyler (Mr. Tyler), filed an Employment Charge of Discrimination dated October 15, 2008, with the Florida Commission on Human Relations (Commission), alleging that Respondent, Walt Disney World (Disney), discriminated against him based on a disability and retaliated against him for complaining about discriminatory practices. On April 9, 2009, the Commission issued a Notice of Determination: No Cause, stating that the Commission had determined that there was no reasonable cause to believe that an unlawful employment practice had occurred.

On May 11, 2009, Mr. Tyler filed a Petition for Relief (Petition) with the Commission. The Petition was forwarded to the Division of Administrative Hearings for assignment to an Administrative Law Judge. The case was originally assigned to Administrative Law Judge Jeff B. Clark, but was later transferred to Administrative Law Judge Susan B. Harrell.

The final hearing was originally scheduled for July 14, 2009. After five continuances, the case was heard on October 29, 2010.

At the final hearing, Tara Roth-Mollinedo and Jesus Lopez, sign language interpreters, interpreted the proceedings for Mr. Tyler and for hearing-impaired witnesses.

Mr. Tyler testified in his own behalf and called Arden Bird and Miriam P. Saunders as his witnesses. Petitioner's Exhibits 1 through 6 were admitted in evidence. Disney called the following witnesses: Bekki Musee, Robin A. King, Patricia Bryant, and Carolyn Truluck. Respondent's Exhibits 1 through 6 were admitted in evidence.

The one-volume Transcript of the final hearing was filed on February 10, 2011. The parties agreed at the final hearing to file their proposed recommended orders within ten days of the filing of the Transcript. On February 15, 2011, a Joint Motion for Two-Week Extension to Submit Proposed Orders was filed. The motion was granted, and the time for submitting proposed recommended orders was extended to March 7, 2011. Disney filed its Proposed Recommended Order on March 8, 2011. On March 7, 2011, Mr. Tyler filed a Motion Recommended Order to be Extension. An Order was entered, extending the time to file proposed recommended orders to March 11, 2011. On March 11, 2011, Mr. Tyler filed a Motion Requesting Continue to Extension

Recommended Order. The motion was granted, and Mr. Tyler filed his Proposed Recommended Order on March 16, 2011. Mr. Tyler attached numerous documents to his Proposed Recommended Order, many of which were not admitted in evidence at the final hearing. Those documents which were not admitted in evidence are stricken and have not been considered. The parties' Proposed Recommended Orders have been given careful consideration in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Tyler is hearing impaired.
2. Prior to moving to Florida in October 2005, Mr. Tyler had worked for Disneyland in California for over two years. On October 14, 2005, Mr. Tyler submitted an application for employment with Disney in Orlando.
3. Mr. Tyler met with an employee of Disney with a sign language interpreter present. Mr. Tyler was advised that he had been "red flagged" as a result of his previous employment with Disneyland. Being red flagged meant that Mr. Tyler was considered to be a restricted rehire. Because he had left the employ of Disneyland a few weeks before he applied for employment at Disney, there was a question of his employment stability. He was told that he needed to provide an employment history of at least six months after he left Disneyland's employ.

4. On April 25, 2006, Mr. Tyler submitted a second application for employment with Disney. On the application, Mr. Tyler stated that he currently held two jobs. He had been working at Macy's since November 2005 and at a 7-11 store beginning in March 2006. However, Disney personnel concluded that his current employment did not demonstrate employment stability.

5. Mr. Tyler was given an interview by Disney with a certified sign language interpreter present and was advised that his rehire status was still restricted. Mr. Tyler was given a rehire petition to complete so that his rehire status could be reviewed by Disney. The rehire petition requested Mr. Tyler to state the reasons for his termination from the company and the reasons why Mr. Tyler thought he should be rehired. Additionally, Mr. Tyler was required to provide employment verifications from his employers to demonstrate job stability. Mr. Tyler did not provide a completed rehire petition to Disney.

6. Mr. Tyler claims that he did provide the necessary paperwork to Disney at Christmastime to an unknown older man, who was at the Disney casting office^{1/} and who advised Mr. Tyler that the employees were on Christmas break. Mr. Tyler further testified that he later overheard the older man at a 7-11 store tell another person that he had thrown Mr. Tyler's application in the trash. Mr. Tyler's testimony is not credible. First,

the next time that Mr. Tyler applied for a job with Disney was in November 2006, prior to Christmastime. Obviously, he did not supply the information needed for a rehire petition between the second and third applications. Additionally, it defies credulity that Mr. Tyler would overhear the older man at a 7-11 store tell someone that he had thrown the paperwork away. The likelihood that Mr. Tyler would see the older man again is slim, and there would be no reason for the older man to be confessing that he had thrown Mr. Tyler's paperwork away.

7. Mr. Tyler tried to see Kelly Frank (Ms. Frank), the senior vice president of Disney's human resources office, after he was told that he was not eligible for rehire. Ms. Frank had been employed at Disneyland prior to transferring to Disney. While she was at Disneyland, she and Mr. Tyler had met concerning some disciplinary issues that Mr. Tyler had while working at Disneyland. Mr. Tyler felt that Ms. Frank had been helpful with his situation at Disneyland and thought that she could run interference for him concerning his applications for rehire at Disney.

8. Mr. Tyler would show up unannounced at Ms. Franks' office and ask to meet with her. Mr. Tyler's method of dealing with such situations was to bypass the chain of command and go to someone higher in management. Ms. Frank was aware of Mr. Tyler's attempts to see her. Ms. Frank never spoke to

Mr. Tyler about his applications for employment at Disney; instead her assistant asked Robin King (Ms. King), from Disney's human resources department, to talk with him.

9. Ms. King and Bekki Musee (Ms. Musee), who was a team leader for Disney's casting operations support, set up a meeting with Mr. Tyler with a sign language interpreter present. They tried to explain to him that he had to follow the procedures and submit a rehire petition to have his rehire status reviewed and that he would need six months of stable employment to be considered for a rehire. Additionally, they told him that he should take his complaints to the casting office, where the employment decisions were made and not to try to see Ms. Frank. They further told Mr. Tyler that he should make an appointment when he needed to speak to someone rather than show up unannounced. Disney needed advance notice so that a sign language interpreter could be present to assist Mr. Tyler.

10. On November 11, 2006, Mr. Tyler filled out a third application for employment with Disney. He stated on the application that he had been employed by Macy's from November 2005 to May 2006. He stated that he became employed by Gaylor Entertanment [sic] Suite Hotel in November 2006. No mention was made of his employment at the 7-11 store.

11. When Ms. Musee became aware that Mr. Tyler had submitted a third application, she assigned a senior recruiter,

Clayton Kirkland (Mr. Kirkland), to interview Mr. Tyler.

Ms. Musee wanted to have someone who had not interviewed Mr. Tyler before to perform the interview to give Mr. Tyler a fair opportunity.

12. Mr. Kirkland interviewed Mr. Tyler, and a sign language interpreter was present during the interview. Mr. Tyler told Mr. Kirkland that he had been terminated from Disneyland because of attendance. At the beginning of the interview, Mr. Tyler acted professionally. Mr. Kirkland asked Mr. Tyler about Mr. Tyler's employment at the 7-11 store, which had been listed on a previous application. Mr. Tyler denied ever having worked at a 7-11 store and claimed that Ms. Musee had put that on his previous application. When questioned about his employment history at the 7-11 store, Mr. Tyler's demeanor changed, and he became angry and appeared to be frustrated.

13. Mr. Kirkland told Mr. Tyler that he was not qualified for the job and would not be hired. This decision was based on gaps in Mr. Tyler's employment history, the restricted rehire placed by Disneyland, the lack of job stability, his failure to provide documentation for his rehire status when asked to do so, and his aggressive behavior. Mr. Tyler became angry and upset, stood up, leaned over Mr. Kirkland's desk, and slammed his hand down on the desk. At that point, Mr. Tyler was not relying on

the sign language interpreter, but was verbally talking to Mr. Kirkland.

14. Mr. Tyler became upset and left the interview. As he was leaving, he saw Ms. Musee. He walked hastily toward her, yelling and screaming at her and saying that she had put some notations in his file. He got in front of her face and started pointing his finger at her. She felt uncomfortable and threatened by his actions. Mr. Tyler did not have his hearing aids on at the time; therefore, he could not tell if his voice was loud when he spoke to Ms. Musee. However, whether he was wearing his hearing aids does not excuse his getting in front of Ms. Musee's face and pointing his finger at her.

15. On December 27, 2006, Mr. Tyler showed up at the casting office unannounced and requested a sign language interpreter so that he could talk with Ms. Musee. Mr. Tyler's testimony that the only reason that he went to the casting office was to set up an appointment with Ms. Musee in the future is not credible. The greater weight of the evidence is that he showed up expecting to talk to Ms. Musee when he arrived at the casting office, just as he had done when wanted to speak to Ms. Frank.

16. Ms. Musee was notified that Mr. Tyler had come to the casting office unannounced. Ms. Musee agreed to talk with Mr. Tyler in her office, but alerted security because, after her

last interaction with Mr. Tyler, she did not feel comfortable meeting with him alone. Two security personnel stayed just outside of Ms. Musee's office while she was talking to Mr. Tyler.

17. There was no sign language interpreter present during the meeting because Mr. Tyler's visit was unannounced, and there was insufficient time to get an interpreter. Mr. Tyler verbally questioned Ms. Musee about his attempts at employment, and Ms. Musee again explained to Mr. Tyler the reason that he was not rehired was because of his restricted-hire status. Mr. Tyler was verbally responding to Ms. Musee's statements, which indicated to Ms. Musee that he was understanding what she was telling him.

18. Several times Ms. Musee tried to end the conversation, but Mr. Tyler did not leave. Finally, Disney security stationed outside Ms. Musee's door intervened and asked Mr. Tyler to leave.

19. Patricia Bryant (Ms. Bryant), who at the time was the area manager of security operations for the downtown Disney area, arrived on the scene, and she asked Mr. Tyler to leave. She asked Mr. Tyler if he understood what she was telling him, and he indicated that he did. Mr. Tyler failed to leave.

20. Deputies from the Orange County Sheriff's Office showed up. Mr. Tyler was issued a trespass warning by

Ms. Bryant and a deputy sheriff. The trespass warning is dated December 27, 2006. Mr. Tyler verbally acknowledged to Ms. Bryant that he understood the trespass warning, which advised him that he was not to go on Disney property. The trespass warning is in writing and states: "You are hereby warned that you are not authorized, licensed or invited to be in these premises and may be arrested if you refuse to leave or return at any time in the future." There was nothing on the trespass warning showing an expiration date. Once the trespass warning is issued, it stays in place until it is lifted.

21. In October 2007, Mr. Tyler and his roommate, Arden Bird (Mr. Bird), who is deaf, went to a kennel club located on Disney property. There was some dispute concerning the charges for the dogs that Mr. Tyler and Mr. Bird had boarded at the kennel. Mr. Tyler went to assist Mr. Bird with the communications. Mr. Tyler was aware that the kennel was located on Disney property. He and Mr. Bird discussed whether Mr. Tyler should go to the kennel club because of the trespass warning, and they concluded that it would not be in violation of the trespass warning.^{2/}

22. Staff at the kennel club called Disney security to come to the kennel club because Mr. Tyler previously had been given a trespass warning. Carolyn Truluck (Ms. Truluck), who, at that time, was an investigator for Disney security, came to

the kennel club. She requested a copy of the trespass warning from security. When she confirmed that a trespass warning had been issued, she called the Orange County Sheriff's Office and requested a deputy to come to the scene. A deputy arrived and placed Mr. Tyler under arrest for trespassing. Ms. Truluck was unaware of any claims of discrimination by Mr. Tyler, and she was not directed by anyone in the human resources department of Disney to call for a deputy. Her actions were based on the prior issuance of a trespass warning and Mr. Tyler's appearance on Disney property despite the trespass warning.

23. On October 15, 2008, Mr. Tyler filed an Employment Charge of Discrimination with the Commission, alleging Disney discriminated against him based on his disability in the following ways:

On or about October 27, 2007, I was retaliated against by being issued a Trespass Warrant. On or about September 20, 2007, I was denied employment.

* * *

1. The position of Houseman was an open and available position which I was qualified for and I applied. I was denied employment and the position.

2. I complained to Ms. Bekki Musee, Team Leader, Casting Operation Support[,] about my disability and the need for an interpreter, she refused to provide this assistance.

3. In October 2007, I was subsequently issued a Trespass Warrant by the company.

4. I believe that my Disability and the fact that I complained of what I believed to be discriminatory treatment led to the retaliatory actions taken against me.

CONCLUSIONS OF LAW

24. 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. (2010).

25. Mr. Tyler has alleged that Disney has discriminated against him based on his disability by failing to hire him and retaliated against him for complaining about the alleged discrimination by having him arrested for trespassing.

26. Section 760.10, Florida Statutes (2007),^{3/} 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.

* * *

(7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that

person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

27. Section 760.07 provides that "any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee."

28. The Florida Civil Rights Act of 1992, section 760.01, 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. Fla. Dep't of Comty. Aff. v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

29. The Florida Civil Rights Act of 1992, section 760.01, et seq., is construed in accordance with the Americans with Disabilities Act (ADA), 42 U.S.C. section 12101, 11 et seq., when the charge of discrimination is based on a disability. Razner v. Wellington Reg'l Med. Ctr., Inc., 837 So. 2d 437, 440 (Fla. 4th DCA 2002); McCaw Cellular Communications of Fla., Inc. v. Kwaitek, 763 So. 2d 1063 (Fla. 4th DCA 1999); Greene v. Seminole Electric Co-op, Inc., 701 So. 2d 646 (Fla. 5th DCA 1997).

30. Mr. Tyler was denied employment when he applied for a job with Disney in October 2005, April 2006, and November 2006. He did not file his claim of discrimination until October 15, 2007, which is more than 365 days after he was denied employment. Although Mr. Tyler's original charge of discrimination alleged that he was denied employment on September 20, 2007, no evidence was presented to establish that he applied for or was denied employment on that date. Additionally, it is unlikely that the date is correct because, at that time, the trespass warning was in effect.

31. The trespass warning was issued on December 27, 2006, which is more than 365 days prior to the time Mr. Tyler filed his charge of discrimination with the Commission. Because the dates for the applications and failures to hire and the date of the issuance of the trespass warning occurred more than 365 days from the date of the filing of the discrimination complaint, those claims are barred. Clarke v. Winn-Dixie Stores, Inc., 2007 U.S. District LEXIS 75980 at *7, 8 (S.D. Fla. Oct. 12, 2007); Woodham v. Blue Cross & Shield of Fla., Inc., 829 So. 2d 891, 894 (Fla. 2002).

32. Assuming arguendo that Mr. Tyler had timely filed a discrimination claim for failure to hire him, Mr. Tyler has failed to establish that Disney failed to hire him based on his disability. To be eligible for relief based on a claim of

handicap discrimination, a petitioner must satisfy the same evidentiary burdens demanded by similar statutes addressing claims of employment discrimination. See Earl v. Mervyns, Inc., 207 F.3d 1361, 1365 (11th Cir. 2000); Hilburn v. Murata Elecs. N. Am., Inc., 181 F.3d 1220, 1226 (11th Cir. 1999). The burden-shifting analysis of Title VII employment discrimination claims is applicable to claims based on handicap discrimination. Earl, 207 F.3d at 1365. The petitioner has the burden to establish a prima facie case of discrimination. Once a prima facie case of discrimination is established, the burden shifts to the employer to articulate a nondiscriminatory reason for the adverse employment action. If the employer articulates a nondiscriminatory reason for its action, the burden shifts back to the petitioner to establish that the reasons articulated by the employer were pretextual. The petitioner bears the ultimate burden of establishing that the employer discriminated against him. Cleveland v. Home Shopping Network, Inc., 369 F.3d 1189, 1193 (11th Cir. 2004).

33. In order for Mr. Tyler to establish a prima facie case of handicap discrimination, he must "show: (1) he is disabled; (2) he is a qualified individual; (3) he was subjected to unlawful discrimination because of his disability." Id.

34. Mr. Tyler has established that he has a disability; he is hearing impaired. Mr. Tyler did not establish that he was

qualified for the position for which he applied, other than he needed to demonstrate stable employment. No evidence was presented to show what qualifications were necessary for the positions for which he applied. Mr. Tyler did not establish that the failure to hire him was due to his hearing impairment.

35. Disney has demonstrated that Mr. Tyler was not hired because of his restricted hire status, his dismissal at Disneyland for attendance problems, his failure to demonstrate stable employment, and his aggressive behavior. His hearing impairment played no part in Disney's decisions not to hire him.

36. To establish a prima facie case of retaliation, Mr. Tyler must prove: (1) that he was engaged in a protected activity; (2) that an adverse action by Disney against him occurred; and (3) that there was a causal connection between his participation in the protected activity and the adverse action. Tipton v. Canadian Imperial Bank, 872 F.2d 1491 (11th Cir. 1989); Blizzard v. Appliance Direct, Inc., 16 So. 3d 922, 926 (Fla. 5th DCA 2009).

37. Mr. Tyler claims that he was issued the trespass warning and that he was arrested because he had complained to Ms. Musee and requested an interpreter. The facts do not support Mr. Tyler's claim. He was given a trespass warning because he would not leave Ms. Musee's office.

38. The trespass warning clearly stated that Mr. Tyler was to stay away from Disney properties. He was given a copy of the trespass warning. He understood what the trespass warning meant, because he stayed away from Disney properties for over ten months and had discussed the issue with Mr. Bird. When he went on Disney property in October 2007, he was clearly trespassing, and he was arrested for trespassing. The arrest was because he was trespassing and not because he had made any complaint to Disney or Disney employees related to his disability.

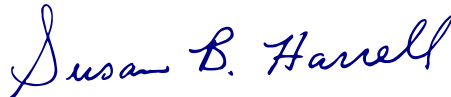
39. Mr. Tyler stated in his Proposed Recommended Order that his claim "is not about his disability issue." He states that the case is about the denial of an interpreter. Mr. Tyler was provided a sign language interpreter for all three interviews and when he had a scheduled appointment with Ms. Musee and Ms. King. On these occasions, Disney had prior notice that Mr. Tyler would need a sign language interpreter and provided the interpreter. However, Mr. Tyler made numerous unannounced visits to Disney to discuss his hiring status and expected Disney to immediately provide him with an interpreter without prior notice. On these occasions, it is clear that Mr. Tyler was aware of what was being communicated to him; he just would not take "no" for an answer.

40. Mr. Tyler has failed to establish that Disney failed to hire him based on his disability, that Disney retaliated against him, and that Disney unreasonably refused to provide a sign language interpreter for him.

RECOMMENDATION

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

DONE AND ENTERED this 20th day of April, 2011, in Tallahassee, Leon County, Florida.



SUSAN B. HARRELL
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of April, 2011.

ENDNOTES

^{1/} Disney refers to its employment office as the casting office.

^{2/} Mr. Tyler and Mr. Bird claimed that they were told by the deputy who signed the trespass warning that the trespass warning was valid for one year. However, when Mr. Tyler went to the kennel club, the trespass warning had been issued for less than a year.

^{3/} Unless otherwise indicated, all references to the Florida Statutes are to the 2007 version.

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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.