

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LELLEWYN JONES, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 10-2591  
 )  
 WALT DISNEY WORLD, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal administrative hearing was conducted by video teleconference between Orlando and Tallahassee, Florida, on November 20 and 30, 2010, before Administrative Law Judge Claude B. Arrington of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jerry Girley, Esquire  
The Girley Law Firm, P.A.  
125 East Marks Street  
Orlando, Florida 32803

Brooks Girley, Esquire  
The Girley Law Firm, P.A.  
125 East Marks Street  
Orlando, Florida 32803

For Respondent: Glennys Ortega Rubin, Esquire  
Shutts and Bowen LLP  
300 South Orange Avenue  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether Respondent violated section 760.10, Florida Statutes, by discriminating against Petitioner based on his race (black) and age (over 40 years old) and retaliating against him for engaging in protected activity.<sup>1</sup>

PRELIMINARY STATEMENT

At times relevant to this proceeding, Respondent, Walt Disney World (WDW), employed Petitioner. On April 1, 2009, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) alleging that WDW had discriminated against him in his employment based on his race, age, and in retaliation for exercising protected rights. FCHR staff investigated the subject Charge of Discrimination and on May 21, 2010, the Executive Director of FCHR issued a "Determination: No Cause." Thereafter, on May 12, 2010, Petitioner filed a Petition for Relief (Petition) from an unlawful employment practice, which alleged that WDW had committed an unlawful employment practice as follows:

"Initially [WDW] paid me less for doing the same work as a similarly situated non-black person. When I complained about it I was retaliated against by my supervisor in the form of negative evaluations and micro management of my job performance. Ultimately, I was terminated from my position.

The Petition listed the following as the disputed issues of material fact:

1. Whether the Petitioner was subjected to disparate terms and conditions of employment because of his race.
2. Whether the Petitioner was subjected to disparate terms and conditions of employment because of his age.
3. Whether the Petitioner was retaliated against for participating in a lawfully protected activity.

On May 13, 2010, FCHR transmitted the Petition to DOAH to "conduct all necessary proceedings required under the law and submit recommended findings to the [FCHR]."

At the final hearing, Petitioner testified on his own behalf. Petitioner presented no other witnesses and no exhibits.

Respondent presented the testimony of Patrick Doubleday (Respondent's Manager of Compensation); Donald W. Drasheff, Jr. (Petitioner's direct supervisor); Robert Castillo (Petitioner's co-worker); Anthony Roberts (Petitioner's co-worker); and Betty Forrest (Petitioner's co-worker). Respondent offered 28 consecutively-numbered exhibits, 26 of which were admitted into evidence.

A Transcript of the proceedings, consisting of two volumes, was filed on January 6, 2011. The parties filed Proposed

Recommended Orders, which have been duly considered by the undersigned in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a male African-American who was 46 years old at the time of the formal hearing. At all times relevant to this proceeding, Petitioner was over the age of 40.

2. Petitioner graduated from Tuskegee University with a degree in mechanical engineering. He has 17 years of experience in manufacturing and 10 years of working in management.

3. On May 14, 2004, WDW hired Petitioner as a host and ride attendant at WDW's Animal Kingdom Dinoland Attraction. Petitioner was an hourly employee.

4. On November 3, 2004, WDW promoted Petitioner to a position titled "Material Control Supervisor," which is a salaried position. Petitioner's promotion included a substantial pay increase from his prior hourly position. Although there was no change in his actual duties, Petitioner's job title changed from Supervisor to Superintendent. In January 2008, his job title changed to Service Manager.

5. Material Control is one of several departments within WDW's in-house manufacturing unit, which is referred to as "Central Shops."

6. Until September 2007, Petitioner's direct supervisor was either Laura Greico or Bill Pace.<sup>2</sup>

7. In September of 2007, Donald W. Drasheff, Jr., became the manufacturing manager of Central Shops and became Petitioner's direct supervisor.

8. Mr. Drasheff, a Caucasian male, was 37 years of age at the time of the formal hearing.

9. In addition to Petitioner, Mr. Drasheff had direct supervision over Robert Castillo (Hispanic male under 40 years of age), Anthony Roberts (black male over 40 years of age), and Betty Forrest (black female over 40 years of age). For ease of reference, these employees will be referred to as Mr. Drasheff's direct reports. All of Mr. Drasheff's direct reports were salaried superintendents or supervisors (later titled service managers).

10. When the title of the direct reports was changed to service manager, Petitioner's pay grade was changed from a 27 to a 30. The pay grades overlap, and Petitioner received no additional compensation when his pay grade was changed. The reclassification for Petitioner and the other direct reports was in title only. No one received any additional compensation.

11. Mr. Drasheff informed his direct reports that he expected each of them to be present at the time their subordinates clocked-in around 6:30 a.m. and clocked-out in the afternoon; absent emergency circumstance, each was to obtain advance approval of vacation and personal appointments; each had

to arrange coverage from another Drasheff direct report when absent; and each had to inform him if he or she was going to be late. Mr. Drasheff informed his direct reports that he expected them to be available 24 hours per day, 7 days per week.

12. Mr. Drasheff regularly met with all his direct reports, including Petitioner, on a one-on-one basis to discuss his expectations as a manager, the status of pending projects, and to follow up on any outstanding issues. Mr. Drasheff provided his direct reports performance critiques when he thought it necessary. Mr. Drasheff kept notes of those meetings to document his discussions with his direct reports.

13. There was insufficient evidence to establish that Mr. Drasheff treated Petitioner any differently than he treated his other direct reports.

14. Between September 2007 and September 2008, Petitioner's job performance was inconsistent, and he failed to meet reasonable expectations. Petitioner repeatedly complained about his work assignments and his level of pay. Mr. Drasheff repeatedly met with Petitioner and counseled him as to his performance and to areas of performance that required improvement.

15. On March 11, 2008, Robert Castillo was hired as a service manager over the paint shop, which is a department within the Central Shop. Petitioner applied for the position

for which Mr. Castillo was hired because the pay grade was higher than Petitioner's pay grade. While Mr. Castillo had little or no training as a painter, he had management skills WDW wanted. Mr. Castillo was an external hire, i.e., he was not promoted from within WDW. As an external hire, Mr. Castillo could and did command a higher salary than an employee such as Petitioner, who had been promoted from within the company. At the time he was hired, Mr. Castillo was paid \$60,000.00 per year while Petitioner was earning \$57,000.00. Neither the decision to hire Mr. Castillo nor the disparity in pay was based on Petitioner's race or age.<sup>3</sup>

16. On September 5, 2008, Mr. Drasheff again discussed with Petitioner some of the issues they had been discussing throughout the year. Those issues included Petitioner's failure to follow up on job assignments, failure to communicate non-emergency absences, failure to obtain coverage in the event of absence, failure to get to work on time, and lack of dependability. Mr. Drasheff advised Petitioner that he would evaluate Petitioner's job performance in the category of "falling behind," which is an unsatisfactory rating, and that he would place Petitioner on a 60-day performance plan (PDO), once the PDO had been constructed with the assistance of WDW's human relations department (HR).

17. On September 7, 2008, Petitioner lodged a complaint against Mr. Drasheff by a telephone call to WDW's hotline, which is the company's complaint line. Petitioner asserted that Mr. Drasheff was harassing him, that he was being discriminated against, and that his pay was inequitable.

18. For the evaluation period October 1, 2007 to September 30, 2008, Petitioner received an annual performance rating of "falling behind."

19. On November 6, 2008, Petitioner began the PDO that had been developed by Mr. Drasheff and HR. The PDO outlined the performance concerns that Mr. Drasheff had been discussing with Petitioner throughout the previous year.

20. When he issued the PDO, Mr. Drasheff advised Petitioner that there would be weekly review sessions during which he and Petitioner would discuss Petitioner's performance and any concerns Mr. Drasheff had with that performance. These weekly sessions replaced the less formal one-on-one sessions Mr. Drasheff had utilized during the previous year. The PDO included a 30-day review and a 60-day review with a representative from HR present to monitor Petitioner's progress.

21. In January 2009, while still on the PDO, Petitioner caused damage to a company vehicle that Mr. Drasheff attributed to Petitioner's lack of attention. Mr. Drasheff, with the



assistance of HR, issued Petitioner a counseling memorandum in connection with the accident.

22. At the conclusion of the PDO, Mr. Drasheff concluded that Petitioner's performance while on the PDO had been inconsistent and that he should be placed on an "At Risk Plan," which was a 30-day plan to provide Petitioner a final opportunity to improve his performance. A representative of HR assisted in developing and monitoring the At Risk Plan. The development of the PDO and the subsequent development of the At Risk Plan were consistent with established WDW policies.

23. Petitioner disputed that his performance had not satisfied the PDO and asserted that he should not have been placed on the At Risk Plan.

24. Mr. Drasheff, in consultation with HR, determined that Petitioner's performance remained inconsistent during the At Risk Plan period. Petitioner had periods during which he performed well, but he was unable to sustain satisfactory performance. Petitioner continued to lack dependability, failed to adequately communicate with Mr. Drasheff, and did not follow through with projects as expected. There was no evidence that Petitioner's race or age was a factor in Mr. Drasheff's evaluation of Petitioner's performance.

25. Towards the end of the At Risk Plan, Petitioner was told during a meeting with Mr. Drasheff and a representative

from HR that he was not meeting expectations and that he was in danger of losing his job.

26. Mr. Drasheff therefore recommended to his immediate supervisor and to the HR director that Petitioner's employment be terminated. While that recommendation was pending, Petitioner went on family medical leave for one or two weeks.

27. After Mr. Drasheff had submitted his recommendation of termination to his immediate supervisor and to HR, Petitioner filed with FCHR the Charge of Discrimination dated April 1, 2009.<sup>4</sup>

28. Petitioner's employment with WDW was terminated when he returned from family medical leave.

29. Mr. Drasheff followed WDW policies and procedures in supervising Petitioner.

30. There was insufficient evidence to establish that Mr. Drasheff or any other WDW employee discriminated against Petitioner based on Petitioner's race or age. There was no evidence that Mr. Drasheff or any other WDW employee retaliated against Petitioner based on any complaint made by Petitioner regarding pay inequity or discriminatory treatment.

#### CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this

proceeding pursuant to sections 120.569, 120.57(1), and 760.11, Florida Statutes.

32. The Florida Civil Rights Act of 1992 (FCRA) is codified in sections 760.01 through 760.11, Florida Statutes.

33. Pursuant to section 760.10(1)(a), it is unlawful for an employer to terminate the employment of any individual based on that individual's race or age.

34. The FCRA was patterned after Title VII of the Civil Rights Act of 1964, 42 U.S.C section 2000 et seq. Federal case law interpreting Title VII is applicable to cases arising under the FCRA. See Valenzuela v. GlobeGround North America, LLC, 18 So. 3d 17, 21 (Fla. 3d DCA 2009) and Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

35. Petitioner bears the burden of proving by a preponderance of the evidence that Respondent discriminated against him based on his race or age. See Valenzuela, 18 So. 3d at 22.

36. Discriminatory intent may be established through direct, circumstantial, or statistical evidence. See United States Postal Serv. Bd. of Governors v. Aikens, 460 U.S. 711, 714 (1983), and Valenzuela, 18 So. 3d at 21.

37. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to inference or presumption. See Wilson v. B/E Aero., Inc., 376

F.3d 1079, 1086 (11th Cir. 2004) ("Direct evidence is 'evidence, that, if believed, proves [the] existence of [a] fact without inference or presumption.'").

38. Petitioner offered no direct evidence that WDW, acting through Mr. Drasheff or any other WDW employee, discriminated against him based on his race or age.

39. Petitioner offered no statistical evidence that WDW, acting through acting through Mr. Drasheff or any other WDW employee, discriminated against him based on his race or age.

40. Where a complainant attempts to prove intentional discrimination using circumstantial evidence, the shifting burden framework established by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) and Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981) is applied. Those decisions, and the long line of cases that followed, established the following framework to establish a prima facie case of discrimination based on race or age: (1) proof that the claimant is a member of a protected class; (2) proof that the claimant was qualified for his position; (3) proof that the claimant suffered an adverse employment action; and (4) proof that similarly situated employees outside the employee's protected class were treated more favorably. See Valenzuela, 18 So. 3d at 21.

41. Petitioner established prongs 1, 2, and 3 of the analysis.

42. Petitioner did not establish prong 4 of the analysis. There was no evidence WDW treated any employee outside of Petitioner's protected class more favorably than Petitioner. Consequently, his assertion that WDW discriminated against him based on his race or age should be rejected. See Jones v. Bessemer Caraway Med. Ctr., 137 F.3d 1306, 1311 (11th Cir. 1998).

43. To establish a claim of retaliation, Petitioner had to prove (1) that he engaged in a protected activity, (2) that he was subjected to an adverse employment action, and (3) the two events were causally related. See McCann v. Tillman, 526 F.3d 1370 (11th Cir. 2008) and Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453, 1457 (11th Cir. 1998).

44. Petitioner engaged in a protected activity when he complained to the WDW hotline that Mr. Drasheff was harassing him, when he complained that he was subjected to discrimination and pay inequity, and when he filed the Charge of Discrimination with FCHR. Although Mr. Drasheff was Petitioner's direct supervisor and recommended to the HR department that Petitioner's employment be terminated, there was insufficient evidence that Petitioner's protected activity and Mr. Drasheff's recommendation were causally related. Consequently, it is

concluded that Petitioner failed to establish a prima facie case of retaliation.

45. Because Petitioner failed to establish a prima facie case for his contentions, it is unnecessary to determine whether WDW articulated a legitimate, nondiscriminatory reason for terminating his employment. Had such a determination been necessary, the undersigned would have concluded that WDW did articulate a legitimate, nondiscriminatory reason for terminating Petitioner's employment. In light of the reason articulated by WDW, Petitioner must produce competent evidence to show either his race, age or retaliation for protected activity actually motivated the discharge, or (2) that WDW's nondiscriminatory explanation is a false pretext. See Reeves v. Sanderson Plumbing Prods. Inc., 120 S. Ct. 2097 (2006).

Petitioner has produced no credible evidence that WDW's action was actually motivated by his race, age, or retaliation, and he produced no evidence that Respondent's articulated reason for its action was a false pretext for discrimination.

46. Petitioner has not met his burden of proof in this proceeding.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED: That the Florida Commission on Human

Relations enter a final order that dismisses Petitioner's claims of discrimination.

DONE AND ENTERED this 1st day of March, 2011, in Tallahassee, Leon County, Florida.



---

CLAUDE B. ARRINGTON  
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 1st day of March, 2011.

ENDNOTES

<sup>1</sup> Unless otherwise noted, each reference to a statute is to Florida Statutes (2010), and each reference to a rule is to the rule as published in Florida Administrative Code as of the date of this Recommended Order.

<sup>2</sup> On cross-examination counsel for WDW elicited testimony from Petitioner that he had made a prior complaint of discrimination in May 2006 pertaining to a supervisor named Laura Grieco. On reflection, the undersigned concludes that the line of questioning should not have been permitted. In reaching the findings and conclusions set forth in this Recommended Order, the undersigned has given that line of questioning no consideration.

<sup>3</sup> Mr. Drasheff had no input into the salary or pay grade for any of his service managers, including Petitioner and Mr. Castillo. Mr. Castillo negotiated his salary through a recruiter.

<sup>4</sup> While processing his Charge of Discrimination, a clerk at the FCHR suggested to Petitioner that he include an allegation of discrimination based on Petitioner's age. Petitioner offered no evidence that his age was a factor in any of the actions against which he complains.

COPIES FURNISHED:

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Jerry Girley, Esquire  
The Girley Law Firm  
125 East Marks Street  
Orlando, Florida 32803

Glennys Ortega Rubin, Esquire  
Shutts & Bowen, LLP  
300 South Orange Avenue, Suite 1000  
Orlando, Florida 32802

Larry Kranert, General Counsel  
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.