

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RONALD D. JONES,)
)
 Petitioner,)
)
 vs.) Case No. 10-8570
)
 GADSDEN COUNTY SCHOOL BOARD,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

An administrative hearing was conducted in this case on November 15, 2010, in Quincy, Florida, before James H. Peterson, III, Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Ronald D. Jones, pro se
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Quincy, Florida 32351

For Respondent: Deborah Stephens Minnis, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent Gadsden County School Board (the School Board or Respondent) discriminated against Petitioner Ronald D. Jones by terminating him on the basis of his gender in violation

of the Florida Civil Rights Act of 1992, sections 760.01-760.11 and 509.092, Florida Statutes

PRELIMINARY STATEMENT

On June 15, 2009, Petitioner filed a complaint (Discrimination Complaint) with the Florida Commission on Human Relations (the Commission) alleging that the School Board had discriminated against him in employment based upon his gender. After investigating Petitioner's allegations, on July 27, 2010, the Commission issued a Determination of No Cause finding that no reasonable cause exists to believe that an unlawful employment discrimination practice occurred. A notice of the Commission's determination (Notice), sent to Petitioner on the same date, notified Petitioner of his right to file a Petition for Relief for a formal administrative proceeding within 35 days of the Notice. On August 27, 2010, Petitioner timely filed a Petition for Relief with the Commission. The Commission forwarded the Petition for Relief to the Division of Administrative Hearings on August 30, 2010, for the assignment of an administrative law judge to conduct an administrative hearing.

At the administrative hearing held on November 15, 2010, Petitioner testified on his own behalf, and called two other witnesses: Dr. Sonja Bridges and Ida Walker. Petitioner offered two exhibits which were received into evidence as

Petitioner's Exhibit P-A, consisting of five pages, and Petitioner's Exhibit P-B. The School Board also presented the testimony of Dr. Sonja Bridges and Ida Walker and offered seven exhibits which were received into evidence as Respondent's Exhibits R-1 through R-7.

The proceedings were recorded and a Transcript was ordered. The parties were given 20 days from the filing of the Transcript within which to submit their Proposed Recommended Orders. The Transcript, consisting of two volumes, was filed on December 1, 2010, and the parties timely filed their respective Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a male, who, in the past, has held a professional teaching certificate from the Florida Department of Education. Petitioner held a professional teaching certificate from July 1, 1994, until June 30, 1999, with a certification to teach social science to students in grades five through nine. Petitioner's professional teaching certificate expired on June 30, 1999, and, as a result, Petitioner was no longer deemed eligible to teach by the Florida Department of Education. Petitioner, however, was still eligible to be employed as a substitute teacher.

2. The School Board is the governing body responsible for the administration of public schools in Gadsden County, Florida.

3. The Discrimination Complaint filed by Petitioner alleges:

I believe I was terminated because of my sex (male). I was initially hired as a substitute teacher in March 2007 and received an appointment to an instructional position on February 26, 2008. I received a letter from Superintendent Reginald James dated July 29, 2008 informing me that I would not be reappointed for the 2008-2009 school term. I was replaced by a female employee.

4. Petitioner's Discrimination Complaint is based upon the fact that he was not reappointed at George Munroe Elementary School (George Monroe) for the 2008-2009 school year.

5. Petitioner initially worked at George Monroe beginning March 2007, as a substitute teacher. For the 2007-2008 school year, Petitioner continued to work as a substitute for George Monroe until he was hired on January 14, 2008, to an instructional position, left vacant by the resignation of another teacher. In this position, Petitioner taught fourth grade from February 28, 2008, until the end of the school year.

6. At the time he was hired to the instructional position, Petitioner did not hold either a temporary certificate or a professional certificate to teach in Florida. Rather, Petitioner had applied to obtain another certificate to teach

social science for grades 5 through 9 and held an Official Statement of Status of Eligibility (Official Statement) from the Florida Department of Education dated August 1, 2007.

7. According to the Official Statement, in order to obtain a three-year nonrenewable Temporary Certificate covering Social Science (grades 5-9), Respondent needed to submit:

a) verification of employment and request for issuance of certificate on the appropriate form from a Florida public, state-supported, or nonpublic school with an approved Professional Education Competence Program; and b) the results of his fingerprint processing from the Florida Department of Law Enforcement and FBI.

8. In addition to the submissions required for a temporary certificate, the Official Statement advised that in order for Petitioner to receive a Professional Educator Certificate valid for five years covering Social Science (Grades 5-9), Petitioner must also submit: a) a completed CG-10 Application Form; b) a \$56 fee; c) a passing score on the Professional Education Test; d) a passing score on the social science (grades 5-9) subject area examination; e) evidence of completion of an approved competence program; and f) evidence of additional semester hours or teaching experience in specified areas.

9. At the time that Petitioner was hired to the instructional position in January 2008, because George Monroe

was experiencing a shortage of teachers, it was possible for individuals with an application pending with the Florida Department of Education to be placed in an instructional position where there was an immediate need, pending completion of all requirements. Therefore, even though Petitioner did not have either a temporary certificate or professional certificate, Petitioner was hired to the instructional position because there was an immediate need and he had a pending application. His hiring, however, was also considered an "out-of-field" placement because he did not hold either a current or a pending certificate to teach the fourth grade.

10. Near the end of the 2007-2008 school year, George Monroe began preliminary classroom and grade assignments in preparation for the 2008-2009 school year. Petitioner was preliminarily assigned to a fifth-grade position pending appointment by the Superintendent. This preliminary assignment was reflected in the agenda and supporting materials for a faculty meeting held May 28, 2008, at George Monroe to discuss the upcoming year.

11. The grade and room assignments showed Petitioner as tentatively transferring from teaching fourth grade in B3 room 6 to teaching fifth grade in room P 99-08.

12. In addition to Petitioner's tentative assignments, there were a number of other preliminary grade and tentative

room assignments reflected in the agenda and supporting materials for the May 28, 2008, faculty meeting. In addition to Petitioner being preliminarily assigned to fifth grade, Ms. Avila and Mr. Clum were tentatively transferred to fourth grade, and Ms. Sylvester was moved from fourth grade to fifth grade. The agenda and supporting materials also reflect new room assignments for those teachers.

13. Being given a preliminary grade or tentative room assignment as reflected on the agenda and supporting materials was not a guarantee of continued employment.

14. Because of budget constraints for the upcoming 2008-2009 school year, George Monroe's school district (School District) instructed its school principals to reduce staff. Staff reduction strategies from the School District included the suggestion that principals recommend to the Superintendent for termination those teachers who were not certified or were teaching out-of-field.

15. Teaching "out-of-field" occurs when a teacher, although holding a temporary or professional teaching certificate, is not certified to teach the particular subject area or grade level to which they have been assigned. In Florida, teachers are not considered highly qualified if they are teaching out of field.

16. The strategy of recommending for termination those teachers who are uncertified or teaching out-of-field was designed to meet budget constraints by first reducing teachers who were not highly qualified.

17. Ida Walker, who at the time was the principal of George Monroe, met with Petitioner at the end of the 2007-2008 school year, but prior to June 30, 2008,^{1/} to discuss the status of his teaching certificate. During that meeting, Petitioner acknowledged that he was having problems obtaining his temporary certificate, and Ms. Walker reminded him that in order to teach, he had to have the paperwork to show that he was qualified to teach.

18. Ms. Walker, together with School District staff, recommended to School Board Superintendent Reginald James (Superintendent) that he not reappoint six teachers at George Monroe, including Petitioner, who had not provided evidence of a valid teaching certificate or who otherwise did not meet the requirements for certification set forth in their individual statements of eligibility received from the Department of Education. Consistent with that recommendation, in a letter dated July 10, 2008, the Superintendent informed Petitioner that Petitioner would not be re-appointed for an instructional position for the 2008-2009 school year.^{2/}

19. Unknown to Ms. Walker or the Superintendent, on July 7, 2008, prior to the date of the July 10, 2008, letter from the Superintendent, the Florida Department of Education (Department) issued Petitioner a temporary certificate certifying Petitioner to teach social science for grades five through nine. There is no evidence, however, that Ms. Walker, the School District, the School Board, or the Superintendent received notice that the temporary certificate had been issued. The Department, as a matter of course, does not provide such notification. Rather, it is the responsibility of the applicant, in this case, Petitioner, to provide such notification.

20. In a letter to the School Board dated July 29, 2008, the Superintendent listed the names of various teachers and other personnel employed by the School Board that he recommended for termination. Petitioner's name, as well as the names of five other teachers at George Monroe that had been earlier identified by Ms. Walker and District staff for non-reappointment, was included on the Superintendent's list of recommended terminations. The other five teachers from George Monroe on the Superintendent's termination list were all female.

21. At the School Board meeting held July 29, 2008, the School Board approved the Superintendent's recommended terminations. Of the six teachers from George Monroe who were

not initially reappointed, two, not including Petitioner, were subsequently rehired by the School Board after they provided proof of proper certification, reapplied to a particular school, and were accepted by a receiving principal.

22. Prior to the final hearing in this matter, Petitioner never provided a copy of his temporary certificate that was issued by the Department on July 7, 2008, to anyone in an effort to be reappointed to teach at George Monroe. In fact, November 15, 2010, the date of the final hearing in this case, was the first time that either Ms. Walker or the School Board was made aware of the fact that Petitioner had been issued a temporary certificate on July 7, 2008.^{3/}

23. Even if Petitioner had provided George Monroe or the School Board with a copy of his temporary certificate, he still would not have been reappointed to George Monroe for the 2008-2009 school year. That is, because Petitioner's certification is in social science, not elementary education, and his continued teaching at George Monroe would have been considered out-of-field.

24. In addition, the evidence does not support Petitioner's allegation that he was replaced by a female employee. Although Petitioner was teaching fourth grade at the end of the 2007-2008 school year and was preliminarily assigned to the fifth grade, Petitioner was not guaranteed a position

teaching fourth or fifth grade at George Monroe for the next school year. The evidence shows that there were two teachers, one male and one female, moved from the third grade to teach fourth grade, and one new female teacher from another school hired to teach fifth grade at George Monroe. All three teachers had valid professional teaching certificates in elementary education and were qualified to teach in the grades they were assigned at George Monroe. In contrast, Petitioner failed to demonstrate that he was qualified to teach elementary school at George Monroe for the 2008-2009 school year prior to his termination.

25. There was otherwise no evidence submitted by Petitioner indicating that his termination was based on anything other than his failure to submit proof of his qualifications.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2009),^{4/} and Florida Administrative Code Rule 60Y-4.016(1).

27. The State of Florida, under the legislative scheme contained in sections 760.01-760.11 and 509.092, Florida Statutes, known as the Florida Civil Rights Act of 1992 (the Act), incorporates and adopts the legal principles and

precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e, et seq.

28. The Florida law prohibiting unlawful employment practices is found in section 760.10. This section prohibits discrimination "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."
§ 760.10(1)(a), Fla. Stat.

29. Florida courts have held that decisions construing Title VII of the Civil Rights Act of 1964, as amended, should be used as guidance when construing provisions of the Act. See e.g., Florida Dep't of Cmty. Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

30. Generally, for discrimination in employment claims, the federal courts have utilized a three-part "burden of proof" pattern developed in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). Under that pattern:

First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to

prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

McDonnell Douglas, 411 U.S. at 802, 804, 93 S. Ct. at 1824, 1825).

31. Therefore, in order to prevail in his claim against Respondent, Petitioner must first establish a prima facie case by a preponderance^{5/} of the evidence. McDonnell Douglas, 411 U.S. at 802; § 120.57(1)(j), Fla. Stat.

32. To establish a prima facie case, Petitioner must prove that (1) he is a member of a protected class (e.g., male); (2) he was subject to an adverse employment action; (3) his employer treated similarly-situated employees, who are not members of the protected class, more favorably; and (4) he was qualified for the job or benefit at issue. See McDonnell Douglas, supra.

33. Although the first two elements were met because (1) Petitioner is a male and therefore, a member of a protected class, and (2) the evidence showed that Petitioner was subject to an adverse employment action, Petitioner failed to show by a preponderance of the evidence the other elements required to present a prima facie case.

34. Specifically, the evidence failed to show that Petitioner was terminated from employment because he was a male. Further, considering evidence that Petitioner did not initially

hold a valid teaching certificate and once he acquired one, never shared that fact with the School Board prior to its decision to terminate Petitioner, Petitioner also failed to show that he was qualified for the job at the time the decision to terminate him was made.

35. In addition, other than his own speculative belief, Petitioner submitted no evidence to support his contention that he was discriminated against because of his sex. Mere speculation or self-serving belief on the part of a complainant concerning motives of a Respondent is insufficient, standing alone, to establish a prima facie case of intentional discrimination. See Lizardo v. Denny's, Inc., 270 F.3d 94, 104 (2d Cir. 2001) ("Plaintiff's have done little more than cite to their mistreatment and ask the court to conclude that it must have been related to their race. This is not sufficient.").

36. In sum, Petitioner failed to present a prima facie case. "Failure to establish a prima facie case of race discrimination ends the inquiry." Ratliff v. State, 666 So. 2d, 1008, 1013 n.6 (Fla. 1st DCA 1996) (citations omitted).

37. While perhaps appropriate to apply in some contexts, in this case, as Petitioner has failed to make out a even a prima facie case, the shifting of burden pattern has not been further applied or elaborated in this Recommended Order.

38. Petitioner failed to prove his Discrimination Complaint and it is otherwise concluded, based upon the evidence, that the School Board did not violate the Florida Civil Rights Act of 1992, sections 760.01-760.11 and 509.092, and is not liable to Petitioner, Ronald D. Jones, for discrimination in employment.

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 dismissing Petitioner's Discrimination Complaint and Petition for Relief consistent with the terms of this Recommended Order.

DONE AND ENTERED this 19th day of January, 2011, in Tallahassee, Leon County, Florida.



JAMES H. PETERSON, III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of January, 2011.

ENDNOTES

^{1/} On June 30, 2008, Ms. Walker was transferred from George Monroe to another school. As a result, she was not involved in the ultimate assignment of teachers at George Monroe for the 2008-2009 school year.

^{2/} The letter, which usually would have been sent out after the School Board approved the non-reappointments, was sent out prior to the School Board meeting, which was postponed until July 29, 2008, because of delayed FCAT test results.

^{3/} The only person Petitioner showed his temporary certificate to was the principal of Shanks Middle School, when Petitioner sought employment there after his termination from George Monroe. Any events involving Shanks Middle School are beyond the scope of the Discrimination Complaint and evidence of such events was not considered in this proceeding. Cf. Chambers v. American Trans Air, Inc., 17 F.3d 998, 1003 (7th Cir. 1994) ("[T]o prevent circumvention of the [Commission on Human Relation's] investigatory and conciliatory role, only those claims that are fairly encompassed within a [timely-filed complaint] can be the subject of [an administrative hearing conducted pursuant to sections 120.569 and 120.57, Florida Statutes].")

^{4/} Unless otherwise indicated, all references to the Florida Statutes are to the 2008 version. All references to Florida Administrative Code or federal statutes and rules are to their current, effective versions.

^{5/} A preponderance of the evidence is "the greater weight of the evidence," or evidence that "more likely than not" tends to prove her case. See Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000).

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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.