

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DASYAM RAJASEKHAR,

EEOC Case No. 15D201300058

Petitioner,

FCHR Case No. 2013-00048

v.

DOAH Case No. 13-1507

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

FCHR Order No. 13-070

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Dasyam Rajasekhar filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2011), alleging that Respondent Department of Environmental Protection committed an unlawful employment practice on the basis of Petitioner's National Origin (not specified in complaint) and on the basis of retaliation by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on March 25, 2013, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in St. Augustine, Florida, on June 24 and 25, 2013, before Administrative Law Judge F. Scott Boyd.

Judge Boyd issued a Recommended Order of dismissal, dated September 11, 2013.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order (September 11, 2013)," received by the Division of Administrative Hearings on or about September 26, 2013.

While the document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein. See also, Hogg v. Arena Sports Cafe, FCHR Order No. 10-049 (May 25, 2010).

Respondent subsequently filed a document entitled, "Respondent DEP's Motion to Strike and Alternative Response to Petitioner's Exceptions to Recommended Order," received by the Commission on October 7, 2013.

Petitioner's exceptions document contains exceptions to the following Recommended Order numbered paragraphs or groups of paragraphs: 6, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 19, 23, 24-26, 29, 30, 33, 34-35, 36-37, 38, 39, 40-46, 44-49, 51, 54-56, 57, 58, 59, 60-61, and 62-115.

In our view, these exceptions take issue with facts found (13, 15, 23, 33, 38), facts not found (24-26, 29), inferences drawn from the evidence presented (18, 19, 33), or simply present argument / explanation / comment (6, 7, 8, 10, 11, 14, 16, 17, 29, 30, 34-35, 36-37, 38, 39, 40-46, 44-49, 51, 54-56, 57, 58, 59, 60-61, 62-115).

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

Petitioner's exceptions are rejected.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 20th day of November, 2013.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Onelia Fajardo-Garcia; and
Commissioner Michell Long

Filed this 20th day of November, 2013,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
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F. Scott Boyd, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 20th day of November, 2013.

By: _____/s/_____
Clerk of the Commission
Florida Commission on Human Relations

STATE OF FLORIDA

DIVISION OF ADMINISTRATIVE HEARINGS

Petitioner,

DASYAM RAJASEKHAR

vs.

DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Respondent.

Case No. 13-001507

FLCHR: 2013-00048

EEOC: 15D201300058

RE: INITIAL EXCEPTIONS TO THE RESPONDENT'S RECOMMENDED ORDER (PART 1 of 3)

Judge F. Scott Boyd,

The respondent State of Florida – DEP filed a proposed recommended order on 1st of August 2003, the last day to do so. I am flinging this initial exception per Florida statutes Rule: 28-106.217. My (petitioner) proposed recommended order was filed on 7/16/2013 and served on the respondent on the same day. Respondent had sufficient time (more than 15 days) to file exception/s to my (petitioner's) proposed order but did not do so.

Below are my exceptions to the respondent's proposed order"

1. "Petitioner's Exhibits 1-65 were admitted into evidence. However, the ALJ left open the hearing record to allow submittal of additional exhibits, the filing of objections and responses to objections. As a result the Petitioner's Exhibits [x-y]² were/were not admitted into evidence post-hearing" (pages 2 and 3 last & first paragraphs). *No ruling has been made on the post hearing evidence submitted as of the data of respondent's proposed order. Has the potential to bias as well as give the appearance of improper rejection of valid evidence. Previously about 65 documents (evidence) were presented at the hearing and many more along with the petition which the FLCHR has served on the respondent.*
2. "When the Petitioner began his employment with the Department the Watershed Coordinator position was vacant and was slated to supervise the GIS Analyst position that the Petitioner held. (T. Vol. III, p. 361). Because they were in transition and the Watershed Coordinator

position had yet to be filled, and the Hiring Manager was no longer at the Reserve, Dr. Shirley and Mr. Burgess initially acted as the Petitioner's de facto supervisors. 4 (T. Vol. III, pp. 359, 361; T. Vol. V, p. 597). In December 2011, Ms. Andrea Small was hired as the Watershed Coordinator and she was responsible for supervising the Petitioner's GIS Analyst position" (pages 5 and 6). *Hiring letter of employment clearly mentioned Joseph Burgess as my supervisor (letter of hire, my petition for relief transmitted to DEP, page 57).*

3. "DEP Directive 435 explicitly states: "Employees without permanent status in the CSS [career service system] may be dismissed at will." *All new employees, including the Petitioner, receive this Directive. (T. Vol. III, pp. 372-373; Resp. Ex. 11 at p. 0032 - Petitioner's Acknowledgement of Receipt of DEP Employee Handbook and DEP Directive 435)" page 8. DEP 436, § & 6plus 3 i, Retaliation, Any adverse job action, threat, intimidation or coercion that is likely to deter a reasonable person from making a complaint, The employment termination is an Adverse Impact action serving as the preliminary indicator of possible discriminatory problems (DEP Affrmative Action Plan, July 1201 I to June 30,20120), Neither yourself nor any supervisory staff (as defined) have taken the required action (above mentioned DEP policies) with regards to the adverse employment action or the Florida DOE's communication, Please let me know otherwise (providing the date/s, method and copy/transcript of the action taken if any), I will pay the charges (page 20 petition for relief). State of Florida Department of Environmental Protection Administrative Directive DEP 436 DISCRIMINATION AND HARASSMENT (pages 26 to 21 Petition for relief).*
4. "there were no other probationary employees that had received an official reprimand and continued to exhibit unsatisfactory behaviors after that" (page 11). *There was no unsatisfactory behavior exhibited by me at all. After the official oral reprimand my rebuttal was filed (pages 34 and 37 petition for relief also evidence submitted at hearing), which proved that Standard(s) of Conduct Violated: DEP 435-7(a), Conduct Unbecoming a Public Employee was not violated (testimony of Andrea small).*
5. "The Petitioner seemed to lack very basic computer skills and staff complained to Dr. Shirley about the Petitioner's repeated requests for help with tasks that were both within his job description and that were supposed to be part of his skill set. (T. Vol. III, pp. 385, 391; T. Vol. V, p. 615; Resp. Ex. 2). Other Section staff would end up doing the Petitioner's work for him because of his repeated requests for help with simple tasks. (T. Vol. III, p. 385; T. Vol. V, p. 615; Resp. Exs. 2, 3)" page 11. *Other staff did not cooperate with me about their work and part of my job duties is to coordinate with other staff members to achieve objectives (position description & duties, the Petition for Relief, work plan, SMART objectives & progress reports, e-mails). Evidence of sufficient basic computer skills was presented prior to hiring as electronic documents, publications while employed by DEP mangrove mapping, exhibits, MS Excel tables, graphs, MS power points). This is untruthful (a lie as I consider) based on preponderance of evidence. In addition, evidence was submitted about other staff (including previous staff) miserably failing in the deliverables.*

6. For example the Petitioner asked Dr. Shirley, the Director, to run a Kappa statistics model on a project, a task that was supposed to be part of the Petitioner's skill set according to his application materials. (T. Vol. III, pp. 385-386; Resp. Exs. 2, 3). When Dr. Shirley questioned the Petitioner as to why he couldn't do it himself, the Petitioner responded that it needed to be done by someone with a Ph.D. A Ph.D. is not necessary to run Kappa statistics and Dr. Shirley directed the Petitioner to undertake the task himself. (T. Vol. III, pp. 385-386). Dr. Shirley later learned that the Petitioner then asked Matt Kimball, the Research Coordinator, to do it for him. (T. Vol. III, p. 386). The Research Coordinator gave the Petitioner the statistics book and also told the Petitioner to do it himself. (T. Vol. III, p. 386). The Petitioner finally did do it himself. Dr. Shirley testified, however, that this was just one of several examples where the Petitioner was capable of certain skills, yet tried to enlist others to do his job for him. (T. Vol. III, pp. 386, 391; Resp. Exs. 2, 3) – Pages 11 & 12. *This simply is not true. The Affidavit by Micahel Shirley mentions that skills I have published a research paper which included kappa statistics calculation. Evidence (Exhibit I1: Research paper publication major objective of work plan. Authored by me primarily with minor assistance from other staff. Estuarine habitats, tides, Kappa Co-efficient, mapping, use of high-end Microsoft products)word, power point, excel & other tools). Preponderance of evidence clearly shows that I solely performed the job and the deliverable. I expected Mikael Shirley and Matt Kimball to know about the local applicability of Kappa Statistics and neither cooperated with me but instead of aklowedging that they do not know the subject simply shirked their responsibility. Ni doubt many spatial analysis projects have failed and Michael Shirley bears responsibility for the myriad failures of his staff. Also both showed no teamwork and were irresponsible so were some others except joseph burgess. Also, DEP's Affirmative Action was violated.*
7. "This pattern of avoiding tasks that were his job responsibilities was also evident in the Petitioner's attempts to have others do basic computer tasks for him, such as Microsoft Excel. Dr. Shirley testified that he did not know whether the Petitioner was not capable of doing these basic computer programs or whether the Petitioner just preferred to have others do his work for him. Either way, it was problematic for the Section and a poor reflection on the Petitioner's job performance. (T. Vol. III, p. 386)" Page 12. *Scott Eastman was attempting to perform some of the geo-spatial analysis that Matt Love (GIS) tried to conduct. As such he was approached for information. He was not cooperative (lack of team work task avoidance violation of DEP's affirmative action), neither did he assist me in taking me to the field. No doubt the projects were such a failure and those that were not failure were in a wasteful and inefficient state of incompleton. Poor performance by manager Michael Shirley – failing in his responsibilities. Preponderance of evidence clearly proves that my achievements are far higher ("great Job raj", "Raj is the reserve's primary GIS, qualifications far exceed any of the reserve, and other commendations). I was able to accomplish all my DEP's SMART objectives assigned to me through contacting other professionals and cooperation from Joseph Burgess (Joseph Burgess testimony that I have never fallen short on any deliverables (aka SMART objectives) in anyway or at any time. Also Joseph Burgess testimony that I needed no assistance with any software-preponderance of evidence submitted.*

8. “Another skill expected of the Petitioner concerned working with pollution loading coefficients, and determining how water flowed and affected the condition of estuarine water quality. Dr. Shirley testified that he was pleased that the Petitioner’s application materials represented that he had this expertise and experience. However, when Dr. Shirley, asked the Petitioner to perform these responsibilities, the Petitioner’s response was that he was not qualified to do that level of work and that a hydrologist was needed. (T. Vol. III, pp. 386-387, 393; Resp. Ex. 2, 3)” – page 12. *This is a deviation from original reason that broadly that I falsely claimed pollution loading & other expertise (Micahel Shirley’s affidavit). That I did not have TMDL, pollutant loading, spatial analysis, hydrologic experience are false and pretext. He provides no evidence. My resume (Exhibit E1 and Exhibit E2 – An internal report to a former employer that utilized advanced spatial analysis, tidal information, and estuarine hydrology dynamics and E3 – Spatial Analyst certification) were submitted along with my application. Exhibits (F1 – 2011 Coastal and Estuarine research Federation: presentation (poster) by me & co-author Dr. Virnstein, abstract, F2 – 2010 – SEERS (South East Estuarine Research Society) presentation by me. Abstract. Spatial analysis, mapping, TMDL, F3 – 2010 – American Water Resources Association. Presentation. Abstract, F4 – Developing Numeric Nutrient Criteria for Estuaries of Northeast and Central Florida. Co-author (GIS & spatial analysis), F5 – Internal publication of former employer. Techniques used to analyze changes in pollutant loading and seagrass in the Indian River lagoon, Florida. Co-author) are ample evidence of my previous experience in all the areas the Manager Shirley misleads the investigator to believe his proffered reasons. Preponderance of evidence submitted by me.*

9. “Another example of the disconnect between the Petitioner’s application materials and his job performance concerned his apparent inability to read a tide chart. (T. Vol. III, pp. 388, 393; Resp. Ex. 2). The Petitioner asked both Dr. Shirley and Mr. Burgess, separately, how to determine low tide and how to read a tide chart. Both Dr. Shirley and Mr. 12 Burgess had to show him the NOAA tide chart and explain to him how to use it. (T. Vol. III, p. 389). The Petitioner was supposed to have expertise in this area based on his application materials. (T. Vol. III, p. 389; Resp. Ex. 2)” Pages 12 – 13. *Original reason given in the affidavit by Micahel Shirley are very different. Indicates that I falsified my application. That I did not have TMDL, pollutant loading, spatial analysis, hydrologic experience are false and pretext.*

He provides no evidence. My resume (Exhibit E1 and Exhibit E2 – An internal report to a former employer that utilized advanced spatial analysis, tidal information, and estuarine hydrology dynamics and E3 – Spatial Analyst certification) were submitted along with my application. Exhibits (F1 – 2011 Coastal and Estuarine research Federation: presentation (poster) by me & co-author Dr. Virnstein, abstract, F2 – 2010 – SEERS (South East Estuarine Research Society) presentation by me. Abstract. Spatial analysis, mapping, TMDL, F3 – 2010 – American Water Resources Association. Presentation. Abstract, F4 – Developing Numeric Nutrient Criteria for Estuaries of Northeast and Central Florida. Co-author (GIS & spatial analysis), F5 – Internal publication of former employer. Techniques used to analyze changes in pollutant loading and seagrass in the Indian River lagoon, Florida. Co-author) are ample evidence of my previous experience in all the areas the Manager Shirley misleads the investigator to believe his proffered reasons (My petition of relief). Preponderance of evidence.

10. “Dr. Shirley also testified about an incident where the Petitioner was expected to provide work product to support Dr. Shirley as he met with persons and professionals outside the Reserve. At a meeting with the environmental manager of Flagler County, the Petitioner produced for Dr. Shirley a map that did not correctly depict the direction of water flow within certain canals. (T. Vol. III, p. 387; T. Vol. IV, pp. 502-504). After the meeting, Dr. Shirley discussed the erroneous map with the Petitioner, who simply deleted certain arrows from the map so that the map no longer reflected any direction of water flow. Dr. Shirley testified that he had to again explain to the Petitioner that the map needed to demonstrate the direction that the water flowed through the watershed. (T. Vol. III, pp. 385, 393). This was one of several examples of the types of inconsistencies between the Petitioner’s application materials and his demonstrated work product. (T. Vol. III, pp. 388, 393-394; Resp. Ex. 2)” – page 13. *No copy of the map or data products were submitted. No arrows were deleted but a spatial model was refined (scale). At the hearing Michael Shirley attempted yet another inaccurate reason for my termination. This was in addition to several false and/or untruthful and/or misleading and/or lies - reasons given for my termination in the sworn affidavit. The need for DEP to get to work are as follows: Michael Shirley attempted to demonstrate through some gestures that I produced a map with a flow line/s that was wrong pointed his two index fingers at each other joining them. Also mentioned was that this map was for some land acquisition. I have objected to all as inaccurate/untruthful/irrelevant. This is inappropriate because the flow*

lines (ways) were generated from available data including United States Geological Survey (USGS) Digital Elevation Models (DEM). All/most data confirm to Federal Geographic Data Commission (FGDC) National Map Accuracy Standards at differing scales. The accuracy of these products are not 100% but range around 80%-90%. As such there were some flow lines that may not be representative. I have worked diligently on these issues by contacting other agencies (state and local). There were hundreds in not thousands of ArcGIS segments. Had Michael Shirley brought this to my notice at that time I would have given him this explanation and worked with contacts (PSM and/or professional hydrologists) within and outside the department to alleviate the issue diligently. This allegation is simply dishonest and yet another attempt at misleading. However the most important issue is that, I attended the 2013 American Society for Photogrammetry and Remote Sensing (ASPRS) annual conference at Baltimore, MD. Some professionals for University of Maryland presented a topic on Mangroves in Florida. During the discussion, they were not aware of my accomplishments at GTMNERR, obviously their contact did not provide the information. I do not understand why after my dismissal Michael Shirley did not contact any Professional Surveyor and Mapper (PSM) or professional hydrologists within the Department or outside to fix the problem. It is essential that a PSM and/hydrologist attempt to fix these expected (FGDC NMAP complaint data) anomalies if they could be fixed. This is yet another example of poor work performed at GTMNERR by staff. Michael Shirley as the manager is responsible for this work and seemed to have done nothing for a year. This does not pass a reasonable person's standard nor a rational person's standard. IN GIS soft ware one can not simply delete the arrows to reflect that the water flows nowhere. This is simply false, absurd and shows that Michael Shirley was not willing to learn to have basic understanding and is a poor performance on his part.

11. "The hearing testimony also demonstrated that the Petitioner was often uncooperative and unwilling to provide the support that staff needed. (T. Vol. III, p. 390; T. Vol. V, pp. 610-612, Resp. Exs. 2, 3). The Petitioner was responsible for producing maps for Reserve staff to support their activities. For example, when the staff member in charge of the prescribed fire program requested the Petitioner to produce a prescribed fire map (or "burn map"); the Petitioner's response was to tell the staff member that his request was "low-end GIS work" and that the staff member should do it himself. (T. Vol. III, pp. 390; T. Vol. V, pp. 610-611; Resp. Ex. 2). In fact, the staff member was not familiar with GIS software and it was not that person's responsibility to produce such maps. (T. Vol. III, p. 390)" Pages 13 – 14. *Several*

documents (evidence) were presented that proved my commendable performance, especially one that Michael Shirley thanks me for archiving the burn Maps on to the Server. Alex Veillon the person in question wanted to learn basic GIS for his work and to have basic understanding.

Continued in Part 2 (total of 3)

Respectfully,

DSR

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