STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TIMOTHY BROOKS,

Petitioner,

vs. Case No. 16-3766

PIPER AIRCRAFT, INC.,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice this case was heard on September 12, 2016, before J. D. Parrish, Administrative Law Judge, Division of Administrative Hearings (DOAH), in Sebastian, Florida.

APPEARANCES

For Petitioner: Adrienne E. Trent, Esquire
Adrienne E. Trent, P. A.
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Rockledge, Florida 32955

For Respondent: Patrick M. Muldowney, Esquire
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STATEMENT OF THE ISSUES

Whether Piper Aircraft, Inc. (Respondent), terminated Timothy Brooks (Petitioner) from his employment in retaliation for his complaints about the company's treatment of Peggy Sue

Pitts, a female employee who claimed sexual harassment. And, if so, whether Petitioner's behavior was protected by law.

PRELIMINARY STATEMENT

The Florida Commission on Human Relations (FCHR) forwarded this case to DOAH in order to conduct an administrative hearing based upon Petitioner's claim of discrimination. Petitioner alleged that Respondent retaliated against him on the basis of complaints raised in the work place that were protected by law. Petitioner maintains he had performed well in his position with the company and that the company wanted to dismiss him for statements he made challenging the company's manner of doing business. After its investigation of the allegations, FCHR rendered a determination of no cause. Petitioner timely challenged that decision and the matter was referred to DOAH.

At the hearing, Petitioner testified on his own behalf and presented the testimony of Peggy Sue Pitts, Phillip J. Stowell, Timothy Smith, James Barnett, and James Funk. Exhibits 1, 3 through 7, 9, 11, 13 through 15, 17, 18, 20, and 22 through 25 were admitted into evidence on Petitioner's behalf. Respondent relied upon the testimony of Petitioner's witnesses and called Kathy Flynn during its case. Exhibits 6, 8 through 10, and 14 were admitted for Respondent. The Transcript of the proceeding was filed on October 19, 2016. The parties timely filed proposed

orders that have been fully considered in the preparation of this Order.

FINDINGS OF FACT

1. Petitioner is a male former employee of Respondent. His tenure with the company spanned several years. The quality of Petitioner's work (that is, his production quality and volume) was deemed acceptable and was not the basis for discipline. Respondent laid Petitioner off in 2010 due to economic hardships of the company but rehired him in May of 2011. Thereafter, Petitioner worked continuously for Respondent until his termination in January of 2015.

2. Respondent is a manufacturing company that employs 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year applicable to this case. Consequently, Respondent is an "employer" as defined by section 760.02, Florida Statutes (2015), during the time frame applicable to this case.

3. Petitioner and another of Respondent's employees, Peggy Sue Pitts, were close friends. As such, Petitioner became increasingly concerned regarding the treatment Ms. Pitts received in the work place. Petitioner believed Ms. Pitts was the victim of inappropriate conduct and that Respondent failed to take appropriate measures to protect Ms. Pitts from harassment and inequitable treatment.

4. Additionally, over the course of his employment with Respondent, Petitioner became concerned that employees were not treated equally in terms of compensation for the work being performed. His informal assessment led to the opinion that Ms. Pitts and others were paid less for doing the same work that others were paid more for completing. On more than one occasion Petitioner voiced his thoughts regarding the workplace inequities to management.

5. Eventually, Petitioner's conduct in attempting to intercede on behalf of Ms. Pitts and others led to a verbal warning documented by a Performance/Behavior Improvement Notice that notified Petitioner he was inappropriately involving himself in the personal issues of his co-workers to the detriment of the workplace. Essentially, Respondent wanted Petitioner to mind his own business. The warning noted above was issued on March 10, 2014.

6. At the time of the warning noted above, Petitioner was directed to contact Respondent's Human Resources Office if he felt that the company needed to be made aware of a concern. Respondent did not want Petitioner raising issues with co-workers to stir up matters that should be addressed elsewhere. Petitioner refused to sign the warning notice.

7. Petitioner continued to discuss the perceived inequities with co-workers. On July 10, 2014, Respondent issued a written

warning, Performance/Behavior Improvement Notice, which cited similar matters as before. Petitioner was warned that it was his "last chance" to stop meddling in the business matters of others. Further, Petitioner was transferred to another department within the company.

8. In response to the second reprimand, Petitioner met with James Funk, Respondent's chief operating officer, and expressed his concern that he had been unfairly treated. Mr. Funk advised Petitioner to take his issue to the company's Peer Review Committee. The Peer Review Committee had the authority to review employee disciplinary actions up to and including termination. Moreover, if the committee determined that Petitioner had been unfairly treated, its finding and recommendation to the Respondent would be accepted.

9. In this case, however, the Peer Review Committee did not find the reprimand to be inappropriate. The "last chance" warning became the final disciplinary ruling on the matter.

10. Over the course of the next four or five months Ms. Pitts, who was by now Petitioner's girlfriend or fiancé, continued to be frustrated by her perception of the treatment she received in the workplace. On the morning of January 8, 2015, Ms. Pitts decided to resign from her employment with Respondent. Ms. Pitts asked Petitioner to turn in her employee badge and stamp for her.

11. On the afternoon of January 8, 2015, Petitioner went to the executive offices to talk to Mr. Funk regarding Ms. Pitts' resignation. Kathy Flynn, Mr. Funk's executive assistant, assisted Petitioner and gave him Mr. Funk's email address. During the course of his exchange with Ms. Flynn, Petitioner expressed his displeasure with Jimmy Barnett and Tim Smith, whom he blamed for the perceived treatment Ms. Pitts had endured. In discussing the matter, Petitioner expressed his anger and desire to "beat the shit out of someone." Petitioner called Mr. Barnett and Mr. Smith "pieces of shit." Ms. Flynn memorialized the comments later that afternoon.

12. Next, Petitioner went to Mr. Barnett's office and turned in Ms. Pitts' badge and stamp and told Mr. Barnett that Ms. Pitts was quitting. Petitioner told Mr. Barnett that he was so angry he could throw him (Mr. Barnett) out the window. In response, Mr. Barnett called Mr. Smith and asked for a meeting with Petitioner.

13. Mr. Barnett and Petitioner joined Mr. Smith in Smith's office. When offered a seat, Petitioner declined and stated he was too upset. Mr. Barnett asked Petitioner to confirm his previous comments and he did. Petitioner confirmed that he was upset to the point of throwing Mr. Barnett out the window.

14. Given Petitioner's agitated state and verbal threats, Mr. Barnett and Mr. Smith wrote notes to Mr. Funk recommending

that Respondent issue a suspension and written warning to Petitioner.

15. Instead, Mr. Funk determined that Petitioner's conduct violated his "last chance" warning. Taken in totality, Petitioner's comments to Ms. Flynn and his comments to Mr. Barnett and to Mr. Smith evidenced to Mr. Funk that Petitioner should be removed from the workplace.

16. To that end, Mr. Funk authorized a Notice of Employment Termination on January 12, 2015, and Respondent officially ended Petitioner's employment with the company on that date. Petitioner refused to sign the notice.

17. Petitioner timely filed a charge of discrimination with the FCHR regarding his termination and asserted he had been terminated in retaliation for his complaints regarding the company's sex discrimination against another employee (Ms. Pitts).

18. On May 20, 2016, FCHR issued its determination of no reasonable cause. After Petitioner timely filed a petition challenging that decision, the matter was forwarded to the Division of Administrative Hearings for a disputed-fact hearing.

CONCLUSIONS OF LAW

19. DOAH has jurisdiction over the subject matter and the parties of his proceeding. See §§ 760.11, 120.569, and 120.57, Fla. Stat. (2015).

20. Section 760.10 provides, in pertinent part:

> (1) It is unlawful employment practice for an employer:
>
> (a) To discharge or to fail or refuse to hire any individual, or otherwise to 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.

21. Petitioner maintains he was terminated in retaliation for his comments and complaints to the company regarding the company's acts of discrimination against another employee. Petitioner asserts his comments were protected by law and because he brought the company's alleged acts of discrimination to the forefront he was being punished unfairly.

22. In accordance with section 760.11, Petitioner timely filed his claim with the FCHR.

23. Petitioner has the burden of proving by a preponderance of the evidence that Respondent committed an unlawful employment

practice against him. See St. Louis v. Fla. Int'l Univ., 60 So. 3d 455 (Fla. 3d DCA 2011); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

24. Petitioner may establish his case by direct, statistical, or circumstantial evidence. See Valenzuela v. GlobeGround N. Am, LLC, 18 So. 3d 17 (Fla. 3d DCA 2009).

25. In this case Petitioner presented no direct evidence of discrimination against him. There is nothing in the record to suggest Respondent maintained any bias for or against Petitioner because of protected conduct. Petitioner's assertions of bias were based upon his perception of the company's treatment of another who may be within a protected class (female). Petitioner was advised to take any concern to the company's human relations department. Instead, Petitioner continued to inject himself into a situation that did not concern him. He advocated on behalf of another who may or may not have sought his help. He did not have the authority to do so. Respondent warned him to stop injecting himself into the work business of others. Respondent issued a stern, formal warning that Petitioner ignored. Finally, Petitioner used vulgar and inappropriate language with unacceptable threats of physical violence to evidence his displeasure with the company. Respondent terminated Petitioner because of such behavior, not because it sought to punish him in retaliation for bringing discrimination complaints to the

company's attention. Respondent gave Petitioner a clear directive of how to express his concerns (to human resources) and asked him to stop interfering with business. When Petitioner presented himself to Mr. Barnett's office, he was unprofessional, rude, vulgar, and inappropriate. Vulgar language toward co-workers is not protected language. Threats of violence due to frustration and anger are not protected.

26. To establish discrimination, a claimant must demonstrate he is a member of a protected class, that he was qualified for his position, that he was subjected to an adverse employment action, and that his employer treated similarly situated employees outside of his protected class more favorably than he was treated. See Burke-Fowler v. Orange Cnty., 447 F.3d 1319 (11th Cir. 2006). Similarly, to claim retaliation a claimant must show that the employer's employment action was in retaliation for the employee's assertion of his rights.

27. Companies are entitled to reach employment decisions "for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." Nix v. WLCY Radio/Rahall Commc'ns, 738 F.2d 1181, 1187 (11th Cir. 1984). In this case Respondent made a legitimate employment decision unrelated to discrimination against Petitioner and not in retaliation for protected behavior.

28. Assuming arguendo, that Petitioner's complaints to Respondent were protected, there is no causal connection between those comments and the termination. Petitioner thought he should be paid more, Ms. Pitts should be paid more, others should be paid equally, and Ms. Pitts was being sexually harassed. What caused his termination was his failure to comply with a reasonable directive, his use of profane language, his threat of violence, and his failure to stop interfering with the business after being asked to do so.

RECOMMENDATION

Based upon 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 claim of discrimination.

DONE AND ENTERED this 6th day of January, 2017, in Tallahassee, Leon County, Florida.

J. D. PARRISH
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 6th day of January, 2017.

COPIES FURNISHED:

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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.