

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LORENZO BRADSHAW,

Petitioner,

vs.

Case No. 20-2667

CITY OF TAMPA PARKS AND RECREATION,

Respondent.

_____ /

RECOMMENDED ORDER OF DISMISSAL

On August 19, 2020, pursuant to notice, Lynne A. Quimby-Pennock, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), conducted the final hearing from Tallahassee, Florida, via Zoom Conference with video teleconference available in the DOAH office in Tampa, Florida.

APPEARANCES

For Petitioner: Lorenzo Bradshaw, pro se
505 Gay Road
Seffner, Florida 33584

For Respondent: Thomas Martin Gonzalez, Esquire
Gray Robinson, P.A
401 East Jackson Street, Suite 2700
Tampa, Florida 33602

STATEMENT OF THE ISSUES

Whether Respondent, City of Tampa Parks and Recreation (City or Respondent), has committed an unlawful employment practice in violation of

section 760.10, Florida Statutes (2019)¹; and, if so, what remedy should be imposed.

PRELIMINARY STATEMENT

On or about May 1, 2019, Petitioner, Lorenzo Bradshaw (Mr. Bradshaw), filed an Employment Complaint of Discrimination (Complaint) with the Florida Commission on Human Relations (Commission) alleging discrimination based on his race, color, or in retaliation for engaging in some protected activity. Specifically, Mr. Bradshaw alleged the following acts were discriminatory:

Claimant, an African American Male, began his employment with Respondent on 05/31/2001 and held the position of Automotive Equipment Operator I. Claimant was subjected to disparate treatment, different terms and conditions of employment and was held to a different standard because of his Race, Color and was retaliated against for opposing the unlawful discrimination he was subjected to. Claimant has been employed with Respondent for 17 years and has made several attempts to advance his career with Respondent. Claimant has been denied these advancements due to his race, color and appearance (dreadlocks). In 07/2018 he attempted to apply for an opening with Respondent, that position was Service Supervisor II. Claimant met the qualifications set forth by Respondent and believes he is fully qualified for the position. However, he was not selected for the positions nor has he been selected for any of 15 positions that were available and was only ever interviewed for two of the positions he applied for. Claimants has filed 3 internal grievances in regard to not being considered or promoted with Respondent, and every single one was “investigated” and returned as denied. Claimant has been retaliated against by three individuals Julio Barrera (Team Supervisor), Mike Fernandez

¹ All references to the Florida Statutes are to the 2019 versions unless otherwise noted.

(Site Coordinator), and Marlon Hall (Site Supervisor). Julio harassed Claimant and wore a shirt that said, "I own you." Claimant has filed a grievance against Julio. Mike almost ran over Claimant prior to almost running him over Mike was giving Claimant a menacing stare. Claimant has also filed a grievance against Mike who has retaliated and bullied him, creating a hostile work environment. Lastly, Marlon rode pass Claimant bobbing his head with both his middle fingers in the air directed at claimant. There were two other witnesses who saw this. All three are known to be a part of a "clique" of supervisors who participate in harassing, antagonizing and have created a hostile work environment. No remedial action has been taken by Respondent, despite the many grievances filed by Claimant in fact their behavior has gotten progressively worse, especially after Claimant submitted his grievances to Respondent. The events outlined above have caused Claimant a great deal of emotional and physical stress. Every day he is anxious prior 'to going to work as well as after. This has caused him to have trouble sleeping and has negatively impacted his personal relationships with his former fiancé' and children. Both of his children live with him, but he has had to end his relationship with their mother. To combat this, Claimant has made an appointment with a Specialist to help him deal with these issues that he is experiencing at work. Physically, he has been diagnosed with medical condition caused by the City of Tampa. He is taking medications that he has not had to previously deal with. Claimant has taken the steps that he felt were necessary to try and resolve the issues with the City of Tampa and has gotten nowhere. Overall, this has negatively impacted Claimant's entire life.

The Commission conducted an investigation of Mr. Bradshaw's allegations. On May 13, 2020, the Commission issued a written determination that there was no reasonable cause to believe an unlawful employment practice occurred. The Commission's determination provided in

relevant part:

The Florida Commission on Human Relations (Commission) has completed its investigation of this matter. The Office of General Counsel has completed its review of the investigation and finds that it is unlikely that unlawful discrimination occurred in this matter.

On the basis of the report from the Commission's Office of Employment Investigations and recommendation from the Commission's Office of General Counsel, pursuant to the authority delegated to me as Executive Director of the Florida Commission on Human Relations, I have determined that no reasonable cause exists to believe that an unlawful practice occurred.

Michelle Wilson
Executive Director

Mr. Bradshaw timely filed a Petition for Relief (Petition) with the Commission citing a "Discriminatory Employment Practice." In response to specific questions within the Petition, Mr. Bradshaw attached a one-page typed response as follows²:

(4. WHEN AND HOW DID PETITIONER RECEIVE NOTICE OF THE COMMISSION'S DETERMINATION:)

#4. I received the notice of the Commission's Decision on Saturday May 16, 2020.

(5. THE FOLLOWING IS A CONCISE STATEMENT OF THE ULTIMATE FACTS ALLEGED, INCLUDING THE SPECIFIC FACTS PETITIONER CONTENDS WARRANT REVERSAL OR MODIFICATION OF THE COMMISSION'S DETERMINATION:)

² For ease of reference, the specific questions are within each parenthetical before the response.

#5. The documents provided outlines [sic] my claims that I have been subjected to discrimination due to my race and physical appearance. The City of Tampa has repeatedly denied me the opportunity to advance my career by denying me positions that I am qualified for due to the fact that I am a Black and the fact that members of the hiring committee do not like how my hairstyle[sic]. Those who were hired in these positions instead of me did not meet the qualifications as outlined by the job description and qualifications created and provided by The City of Tampa. Additionally, I have experienced harassment by fellow employees and members of management in response to my numerous complaints to The City of Tampa Human Resources Department. Further, I have experienced retaliation and bullying by members of management which has led to a hostile work environment that The City of Tampa has failed to rectify. I am seeking a reversal and/or modification of the of the [sic] Commission's Determinations due to the incomplete or rushed determination by the newly appointed investigator. After receiving notice that the investigation was nearing or passed the one hundred and eighty day (180) investigation period, I [r]eceived a letter and notification that I was receiving a new investigator due to the untimely death of the previous investigator. Due to these unfortunate events, I submitted the Election of Rights Form giving permission to continue the investigation, in hopes to give the new investigator enough time to investigate my claim. This was on January 10, 2020. It is very concerning that my case was closed after about three (3) months, none of my witnesses, whose contact numbers I was asked to provide twice, were ever contacted or interviewed. I only spoke to my new investigator once. I am requesting a full investigation or a reversal of decision made.

(6. RESPONDENT HAS VIOLATED THE FOLLOWING FLORIDA STATUTE (Check One):

□ **Florida Civil Rights Act of 1992, as Amended, or**

□ **Florida Fair Housing Act, as Amended**

THE FOLLOWING IS AN EXPLANATION OF HOW THE ALLEGED FACTS RELATE TO THE SPECIFIC FLORIDA STATUTE:)

#6. Title VII of the Civil Rights Act of 1964 The City of Tampa has violated my employee rights according to as it relates to disparate treatment by my employer. For the reasons outlined in my original complaint filed on May 1, 2019; my EEOC Response Letter, and the above condensed statement.

Florida Civil Rights Act of 1992 Section 760.07 Remedies for Unlawful Discrimination and Florida in which The City of Tampa and their hiring representatives discriminated against me during their hiring practices during my numerous attempts to interview for positions that I am well qualified for in exchange for those who were not as qualified.

Civil Rights Act of 1992 Section 760.10 (a) in which I was refused advancement or movement into open positions within The City of Tampa based on my race and physical appearance.

(7. PETITIONER SEEKS THE FOLLOWING RELIEF:)

#7. I am seeking either a proper and thorough re-investigation of my claims or an administrative hearing per my rights outlined in the Civil Rights Act.

On June 11, 2020, the Commission referred the petition to DOAH, and the undersigned was assigned to conduct the requested hearing. DOAH issued an Initial Order to the parties on June 11, 2020, seeking specific information in order to set the appropriate hearing date, time, and manner.

On June 22, 2020, after the parties failed to timely respond to the Initial Order, the undersigned issued the Notice of Hearing by Video Teleconference (Notice) and Order of Pre-Hearing Instructions (Order), scheduling the hearing for July 14, 2020. As a result of the on-going Covid-19 health pandemic, a Procedural Order was issued on June 25, 2020. The Notice and Order were served on all parties at their address of record on file with DOAH.

On June 30, 2020, Respondent's Motion for Continuance of Hearing and to Change the Site of the hearing was filed. Following a telephonic conference, the July 14, 2020, hearing was canceled, and shortly thereafter the hearing was rescheduled to August 19, 2020, at 9:00 a.m., via video teleconference from the DOAH offices in Tallahassee and Tampa, Florida, and Zoom Conference technology.

On August 10, 2020, Respondent's Motion to Dismiss Petition or Compel Deposition and for Sanctions (motion) was filed. A telephonic motion hearing was held on August 13, 2020. On August 14, 2020, an Order denying the motion to dismiss and granting the motion to compel was issued. On August 19, 2020, that part of the motion regarding sanctions was denied.

The start of the final hearing was delayed for approximately 15 to 20 minutes while DOAH staff contacted Mr. Bradshaw, and confirmed the Zoom Conference technology connection information. Mr. Bradshaw joined the hearing and it was completed on August 19, 2020.

At the final hearing, the hearing procedures were explained to the parties. As Mr. Bradshaw was appearing by himself, he was offered the opportunity to provide an opening statement and to testify. Mr. Bradshaw declined to provide an opening statement. After Mr. Bradshaw was administered the oath to testify on his own behalf, but despite four separate colloquies between

the undersigned and Mr. Bradshaw to provide his testimony, he declined to do so. Further, Mr. Bradshaw did not offer any exhibits. Respondent's counsel provided a brief opening statement. Respondent's Exhibit 1, Mr. Bradshaw's deposition, taken on August 17, 2020, was admitted in evidence over objection.³

The parties were advised that the proposed recommended orders (PROs) were to be filed ten days after the transcript was filed. The one-volume Transcript was filed with DOAH on August 24, 2020. To date, neither party has filed a PRO.

FINDINGS OF FACT

1. The final hearing was officially convened at 9:18 a.m. on August 19, 2020.

2. Mr. Bradshaw declined to provide any evidence to support his discrimination allegations as set forth in either the Petition or original Complaint.⁴

3. After Mr. Bradshaw's fourth refusal to provide his testimony, the undersigned asked the following: "I am understanding that you are not going to proceed at this time. I should say at this hearing; is that correct, sir?" Mr. Bradshaw responded: "Yes. At this hearing. Yes, you're correct."

4. Respondent's counsel and a City of Tampa Parks and Recreation representative appeared via Zoom Conference technology at the final hearing.

³ When the undersigned asked Mr. Bradshaw if he had any objections to the deposition being admitted into evidence, his response was: "that basically it's nothing going on. There's no opening statement, there or closing, and so the deposition shouldn't have anything to do with this hearing." The objection is illogical as the deposition was taken for "the purposes of discovery, for use at trial, or for such other purposes as are permitted under the Florida Rules of Civil Procedure."

⁴ After the undersigned administered the oath, Mr. Bradshaw was asked four different times to provide his testimony. *See tr. at:* pg. 16, lines 17 through 19; pg. 18, lines 17 through 19; pg. 19, lines 16 through 20; and pg. 21, line 25 through pg. 22, line 5.

At the start of the hearing, several persons were in the Zoom Conference waiting room.

5. After the undersigned determined that Petitioner was not going to provide any testimony or evidence, the eight persons remaining in the Zoom Conference waiting room were admitted into the proceeding. Each person was identified as a witness for Respondent. The undersigned confirmed with each witness that their testimony would not be needed as the hearing had been completed.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569, 120.57(1), and 760.11(6) and (7), Fla. Stat. *See* Fla. Admin. Code R. 60Y-4.016; and *McElrath v. Burley*, 707 So. 2d 836, 841 (Fla. 1st DCA 1998)(finding the statute (chapter 760) on its face satisfies the right to due process by providing for an administrative hearing followed by judicial appellate review).

7. Petitioner has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. *See Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009); and § 120.57(1)(j), Fla. Stat. “Preponderance of the evidence” is the “greater weight” of the evidence, or evidence that “more likely than not” tends to prove the fact at issue. This means that if the undersigned found the parties presented equally competent substantial evidence, Petitioner would not have proved his claims by the “greater weight” of the evidence, and would not prevail in this proceeding. *See Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

8. Mr. Bradshaw declined to provide any evidence to support his discrimination allegation; thus he failed to meet his burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order finding that Petitioner, Lorenzo Bradshaw, did not prove that the City of Tampa Parks and Recreation committed any unlawful employment practices, and dismissing the Petition for Relief filed in this case in its entirety.

DONE AND ENTERED this 9th day of September, 2020, in Tallahassee, Leon County, Florida.



LYNNE A. QUIMBY-PENNOCK
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of September, 2020.

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.