

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

RONALD JONES,

Petitioner,

vs.

Case No. 21-1491

FLORIDA DEPARTMENT OF EDUCATION,

Respondent.

RECOMMENDED ORDER OF DISMISSAL

This matter was presented for decision by Respondent's Motion for Summary Recommended Order, filed on June 2, 2021.

APPEARANCES

For Petitioner: Ronald David Jones, pro se
1821 McKelvy Street
Quincy, Florida 32351

For Respondent: Paula Harrigan, Esquire
Department of Education
325 West Gaines Street, Suite 1544
Tallahassee, Florida 32399-0400

STATEMENT OF THE ISSUE

The issue is whether Petitioner's Petition for Relief should be dismissed for failure to allege facts sufficient to invoke the jurisdiction of the Florida Commission on Human Relations (the "FCHR") under section 760.10, Florida Statutes.¹

¹ Citations shall be to Florida Statutes (2020) unless otherwise specified. Section 760.10 has been unchanged since 1992, save for a 2015 amendment adding pregnancy to the list of classifications protected from discriminatory employment practices. Ch. 2015-68, § 6, Laws of Fla.

PRELIMINARY STATEMENT

On January 19, 2021, Petitioner, Ronald D. Jones (“Petitioner” or “Mr. Jones”), filed with the FCHR an Employment Complaint of Discrimination against the Department of Education (“Respondent” or “the Department”). Mr. Jones alleged that he had been discriminated against pursuant to chapter 760, Title VII of the Federal Civil Rights Act based upon his age, race, and/or sex. Mr. Jones also alleged that the Department had retaliated against him for the exercise of protected rights under chapter 760.

The FCHR investigated Mr. Jones’s allegations. On April 19, 2021, the FCHR issued its notice and determination that it found no reasonable cause to believe that unlawful discrimination had occurred in this case. The notice informed Mr. Jones that he could file a Petition for Relief to obtain a hearing at the Division of Administrative Hearings (“DOAH”) within 35 days of the date the determination of no reasonable cause had been signed by the Executive Director of the FCHR.

On April 29, 2021, Mr. Jones filed a Petition for Relief with the FCHR. On May 5, 2021, the FCHR referred the case to DOAH for the assignment of an Administrative Law Judge and the conduct of a formal hearing. The final hearing was scheduled for July 15, 2021.

On June 2, 2021, the Department filed a Motion for Summary Recommended Order (“Motion”), requesting a summary disposition of the Petition for Relief filed in this case. Mr. Jones did not timely respond to the Motion. In light of the fact that Mr. Jones is a non-lawyer representing himself in this proceeding, the undersigned on June 16, 2021, issued an Order to Show Cause to afford Mr. Jones every opportunity to respond to the Motion. On June 28, 2021, Mr. Jones filed his response to the Motion. The

following Findings of Fact are based on the parties' filings in this case, including affidavits submitted by the Department in support of the Motion.

FINDINGS OF FACT

1. The Department is an employer as that term is defined in section 760.02(7).

2. The Petition for Relief alleges the following ultimate facts, which are accepted as true for purposes of ruling on the Motion:

I believe I have been discriminated against based on my race (Black), sex (male), and age (over 40). I also believe I am being retaliated against for filing a complaint with Florida Commission on Human Relations and in Federal Court. I have been working within the Gadsden County School system since January 2008 as a substitute teacher and have teaching experience. Around or on October 2020, I applied for a Social Studies position and was not offered an interview by the principal because DOE deliberately and maliciously held clearance letter to deny employment.

3. Section 760.10 titled "Unlawful employment practices," is the statute under which the FCHR exercises jurisdiction of the Petition for Relief. Section 760.10(1)(a) states that it is an unlawful employment practice for an employer to discriminate against any individual "with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status."

4. The Motion states that Petitioner is not, and never has been, an employee of the Department. Respondent's Chief of Human Resource Management, David Dawkins, conducted a system-wide search and verified that Petitioner has never been employed by the Department. Mr. Dawkins's affidavit to that effect was attached to the Motion. Mr. Jones did not contest the contents of Mr. Dawkins's affidavit.

5. The Motion also references section 760.10(5) as a possible avenue under which Mr. Jones might seek relief against the Department. Section 760.10(5) provides:

Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member or an associate of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification, or other credential, seeking to become a member or associate of such club, association, or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

6. In theory, the Department's alleged "deliberate and malicious" withholding of Mr. Jones's "clearance letter," i.e., a Temporary Certificate to teach, could constitute a violation of section 760.10(5). However, the Department pointed out that after Mr. Jones applied for a Florida Educator Certificate, the Department sent him an "Official Statement of Status of Eligibility" on October 12, 2017. A copy of the Department's letter to Mr. Jones was attached to the Motion. The letter informed Mr. Jones that he was eligible for a Temporary Certificate covering Social Science (Grades 6-12), if he completed the following requirements and documented them to the Bureau of Educator Certification ("BOE"):

- verification of employment and request for issuance of certificate on the appropriate certification form from a Florida public, state supported, or nonpublic school which has an approved Professional Education Competence Program.
- results of your fingerprint processing from the Florida Department of Law Enforcement and the FBI. Your employer will assist you in

completing the fingerprint process. If your application or fingerprint report reflects a criminal offense or suspension/revocation record, your file will be referred to Professional Practices Services for further review. Issuance of your certificate will be contingent upon the results of this review.

7. The Motion states that Mr. Jones submitted only the results of his fingerprint processing to BOE. Therefore, BOE was legally precluded from issuing a Temporary Certificate to Petitioner. Attached to the Motion was the affidavit of Daniel Moore, Chief of BOE, attesting to the fact that a request for issuance from a Florida public, state supported, or nonpublic school which has an approved Professional Education Competence Program is required in order for BOE to issue a Temporary Certificate. Mr. Moore's affidavit is confirmed by Florida Administrative Code Rule 6A-4.004(1)(a)2., requiring verification of full-time employment by a Florida school district before a Temporary Certificate may be issued.

8. Mr. Jones did not contest the contents of Mr. Moore's affidavit.

9. Based on the foregoing, the Motion requests entry of a summary recommended order of dismissal because Mr. Jones's pleadings and admissions of fact, including those in his response to the Motion, are facially and conclusively insufficient to prove that he was ever an employee of the Department, or that the Department's failure to issue a teaching certificate to Mr. Jones was based on anything more than the ministerial operation of the Department's own rule.

10. Mr. Jones's response to the Motion does not address, and therefore appears to concede, the Department's statement that he is not and has never been an employee of the Department. Mr. Jones did not allege that he has ever been an employee of, or an applicant for employment by, the Department.

11. Mr. Jones's response does not address the fact that the Department's rule forbids it to issue a Temporary Certificate without verification of full-time employment. Rather, Mr. Jones pursues an argument alleging that the denial was somehow based on his criminal record and that denial on that basis is discriminatory because of the disproportionate percentage of African American and Latino citizens who have criminal records in comparison to Caucasians.

12. Mr. Jones claims that the Department's stated reason for denying him a Temporary Certificate was pretextual and that the actual reason was racial discrimination premised on his criminal record.

13. In a related case, Mr. Jones has alleged that the Gadsden County School Board declined to hire him because of his criminal record, and that this declination was a pretext for discrimination based on race, age, and/or sex. The merits of Mr. Jones's case against the local school board and its subsidiary institutions are not at issue here.

14. The question in this case is whether the Department had anything to do with Mr. Jones's failure to gain employment by the Gadsden County School Board. The undisputed facts establish that the Department's role in this process was purely ministerial. Had Mr. Jones secured employment, the school that hired him would have requested the issuance of a Temporary Certificate by the Department. By operation of rule 6A-4.004(1)(a)2., the Department would have issued the Temporary Certificate. The Department had no role in the decisions of the local school officials to hire or not hire Mr. Jones.

15. It is found that Mr. Jones has not alleged facts sufficient to state a case against the Department under section 760.10, and that he would not be able to prove at hearing that he was ever an employee of the Department, or that the failure to issue a Temporary Certificate to Mr. Jones was anything more than the Department's following the requirements of its own rule.

CONCLUSIONS OF LAW

16. DOAH has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat.

17. The Florida Civil Rights Act of 1992 (the “Florida Civil Rights Act” or the “FCRA”), chapter 760, prohibits discrimination in the workplace.

18. Section 760.10 states the following, in relevant part:

(1) It is an 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.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

19. The Department is an “employer” as defined in section 760.02(7), which provides the following:

(7) “Employer” means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such a person.

20. It is undisputed that Petitioner has never been an employee of the Department or an applicant for employment with the Department. Petitioner's only avenue of relief against the Department under the facts alleged in the Petition for Relief is pursuant to section 760.10(5), set forth in full at Finding of Fact 5 above.

21. Petitioner has alleged that the Department withheld the issuance of a Temporary Certificate for discriminatory purposes, in violation of section 760.10(5). However, the undisputed facts establish that the Department declined to issue a Temporary Certificate to Petitioner in obedience to the requirements of rule 6A-4.004, which provides, in relevant part:

(1) Temporary certificate.

(a) The three-year nonrenewable temporary certificate may be issued to an applicant who does not qualify for the professional certificate but meets the following requirements:

* * *

2. Obtains full-time employment in a position for which a Florida educators' certificate is required in a Florida public, state supported, or a nonpublic school which has a Department of Education approved system for documenting the demonstration of required professional education competence. Verification of employment shall be submitted by a Florida district superintendent or designee or the chief administrative officer....

22. Petitioner did not allege that the Department played any direct role in the decisions of local school authorities in Gadsden County regarding Petitioner's employment. Petitioner speculated as to the Department's motives in failing to issue a Temporary Certificate, but never addressed the fact that the quoted rule prohibited the Department from issuing said certificate unless, and until, Petitioner obtained full-time employment.

23. The Petition for Relief did not articulate a theory or allege facts that could establish that the Department took any retaliatory action against Petitioner.

24. It is concluded that Petitioner has failed to state a claim under section 760.10, and that the FCHR should dismiss the Petition for Relief.

RECOMMENDATION

Based upon 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 the Department of Education did not commit any unlawful employment practices and dismissing the Petition for Relief filed in this case.

DONE AND ENTERED this 13th day of July, 2021, in Tallahassee, Leon County, Florida.



LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of July, 2021.

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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.