4-8-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT 02 ... 19 AM 9:11

JOSEPH FARRIS,

Petitioner,

v.

ADVANCED ELASTOMER SYSTEMS, L.P.,

Respondent.
_____/

EEOC Case No. 15D980867

FCHR Case No. 98-3268

DOAH Case No. 00-3106 PMR-CWS

FCHR Order No. 02-090

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

On October 18, 1998, Petitioner filed a complaint with the Florida Commission on Human Relations (FCHR) alleging that he had been terminated from his employment on November 11, 1997, because of his race. On June 16, 2000, the FCHR issued a No Cause Determination based upon its investigation. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held in Pensacola, Florida, on December 12-13, 2001, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of Dismissal dated April 8, 2002.

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

A transcript of the proceeding before the Administrative Law Judge was filed with the Commission.

Judge Ruff found that the Petitioner was a black male who applied for a position with the Respondent and "inflated his educational experience and work credentials." He was subsequently interviewed, hired as a process technician and commenced work on November 14, 1994. He was one of four black new employees in a class of sixteen. Respondent has extensive training (4 to 6 months duration) for his position and, when it was observed that Petitioner was having difficulty, the Respondent's trainer and experienced employees gave him special assistance at the direction of management.

By Fall 1996, Mr. Brown had grown increasingly concerned that the Petitioner was not only falling behind his co-workers but also did not understand the process. In November 1996, he gave the Petitioner a written assignment ("draw the process") to assess whether he knew the process. Petitioner failed that assignment. In late November 1996, Petitioner went to Personnel and requested a "join-up" session where, in a facilitated framework, supervisors and employees may "iron out problems." At no time

during this session, nor prior, did Petitioner raise the issue of racism or discrimination. Both facilitators, including the Personnel Officer, were black.

On March 18, 1997, the Petitioner received a "below expected" evaluation for the year 1996. Subsequently, the Petitioner e-mailed the Personnel Officer (P.O.) that he disagreed with the evaluation. After meeting with the Plant Manager and Mr. Brown, the supervisor, it was determined that the P.O. should facilitate the development of an improvement plan. This was done during April, 1997.

During July, 1997, an independent Quality Assurance Agency conducted a "pre-audit" (walk-through) of the Pensacola facility. The independent evaluator randomly inspected the premises and questioned employees. The Petitioner was on duty at the time and was questioned by the evaluator. The plant manager and supervisors present during the inspection all testified that the Petitioner had difficulty answering the evaluator's questions. Petitioner's supervisor, Mr. Brown, subsequently requested that he again "draw the process," something he had successfully done in May as part of his performance improvement plan, and he again could not. The Petitioner then complained to the Personnel Officer that his supervisor was harassing him by asking him to do so. The P.O. informed him that what he was being asked was part of the improvement plan to which he had agreed. The P.O. nevertheless apprised the Plant Manager and his supervisor of his concern.

They determined that an objective assessment of Petitioner's knowledge of his job should be undertaken by someone other than his current supervisors. In September, 1997, the Engineering Superintendent, who had a good rapport with the Petitioner, met with him for three or four hours and was surprised at his lack of knowledge and the level of difficulty he was having. Several of his co-workers also testified that the Petitioner was struggling, did not understand the process and had difficulty troubleshooting and retaining information.

In late October 1997, the Petitioner met with the P.O. after being warned about absenteeism. He, for the first time, raised the issue of race. The P.O. discussed this matter with her previous supervisor, Mr. Parker, one of the black facilitators at the January 1997 "join-up" and the Plant Manager. It was determined that the Petitioner's allegation of racial discrimination was not founded and that the real issue was work performance

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. In this case, the ALJ found that the Petitioner failed to establish a prima facie case. He showed that he was a member of a racial minority and was subjected to an adverse employment action (termination). However, he failed to show that he was treated differently from similarly situated employees of other races. Moreover, the ALJ also found him to be not qualified for his job and that he was untruthful on his employment application by exaggerating his educational background.

The ALJ, however, assumed arguendo that if the Petitioner had established a prima facie case and found that the Respondent had established legitimate, non-discriminatory reasons for terminating his employment. The ALJ also found that there

"was no persuasive evidence...to show that there was any intentioned or invidious discrimination on the part of the Respondent.

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, "Petitioner's Exceptions to Recommended Order."

In Exception 1 referring to Similarly Situated Non-minority Comparators, the Petitioner specifically refers to two employees. He provides no evidence to demonstrate that the ALJ's finding was not supported by substantial competent evidence in the record. He merely points out two examples where one employee was given a written reprimand and, ultimately, probation for attendance problems and another was hired at the same time, in the same training class and was found by one of the Petitioner's witnesses to be "at the same level as Farris, if not less." Other than this anecdotal, semi-qualified opinion there was no further evidence as to the comparator person's qualifications or lack thereof.

In Exception 2 referring to Petitioner's Qualifications as a Process Technician, the Petitioner referred to his testimony that there were no concerns about his performance and the testimony of another witness for him who assisted during the training stages in 1994 and early 1995. There was also a reference to a racial slur that by the Petitioner's admission was not brought to management's attention. The Petitioner further points out several areas of the initial performance review (for the 1995 year) was similar between him and a co-employee (Exhibits 16 and 42) and alleges that there "is no apparent reason for the difference in ratings. However, the section entitled Areas of Continuous Improvement indicated that Petitioner needed to "significantly expand his knowledge and understanding of the DVA process,...." Again, there is no evidence that the ALJ's finding was not supported by substantial competent evidence.

The Petitioner's Exceptions, based on his own statement, "simply wanted to highlight some of the facts regarding the two areas the ALJ found [Petitioner] lacking in his evidence." They provide no basis for the legally necessary findings required for the Commission to **determine that the [ALJ's] finding is not supported by competent substantial evidence in the record.** See §§ 120.57 (1)(l), Florida Statutes (2001). As the courts have often stated, "The agency **may not reject** the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency **is not authorized** to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." [emphasis supplied] Howard Johnson Company v. Kilpatrick, 501 So2d 59, at 60 (Fla. 1st DCA 1987) quoting from Heifetz v Department of Business Regulation, 475 So2d 1277, at 1281 (Fla. 1st DCA 1985).

Based on the foregoing, the Petitioner's exceptions are not accepted.

Dismissal

The Request 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 18th day of November 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Gayle Cannon,
Panel Chairperson
Commissioner Aletta Shutts and
Commissioner Billy Whitefox Stall

Filed this 18th day of November, 2002
in Tallahassee, Florida.

Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

NOTICE TO COMPLAINANT/PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request the EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131

Copies furnished to:

Joseph Farris
c/o Ronnie L. Williams, Esquire
814 Saint Francis Street
Mobile, Alabama 36602

Jonathan D. Fishbane, Esquire
Goodlette, Coleman & Johnson, P.A.
4001 Tamiami Trail North, Suite 300
Naples, FL 34103

Administrative Law Judge P. Michael Ruff

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed by U.S. Mail this 18th day of NOVEMBER, 2002

Violet Crawford
Clerk of the Commission