

5-31-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT 02 MAY 19 11 09:12

HART SPILLER,

EEOC Case No. 15D990389

Petitioner,

FCHR Case No. 99-T1160

v.

DOAH Case No. 02-0065

ALACHUA COUNTY SCHOOL BOARD,

FCHR Order No. 02-092

Respondent.

EJD-CWS

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

On April 27, 1999, Petitioner filed a complaint with the Florida Commission on Human Relations (FCHR) alleging that he had failed to be hired, and had been removed from the substitute teachers' list during the Fall 1998, because of his national origin (German) and in retaliation for his complaint to the Superintendent for Alachua County Schools. On November 26, 2001, 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 Gainesville, Florida, on March 13-14, 2002, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis 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

No transcript of the proceeding before the Administrative Law Judge was filed with the Commission.

Judge Davis provides a lengthy set of "findings of fact," which basically outlines Petitioner and Respondent School District's interaction over the several years that the Petitioner sought a teaching position. Among other issues presented at the formal evidentiary hearing was an incident that caused the Respondent to remove the Petitioner's name from its list of substitute teachers. In addition, the ALJ provides findings on the various interviews the Petitioner had for various teaching positions.

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

Conclusions of Law

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to

Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination.” See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank, d/b/a Great Western. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 201), citations from the quoted statement omitted.

In the instant case, the Administrative Law Judge concluded that although Petitioner did establish that he was a member of a protected class and was not hired by Respondent he failed to rebut the Respondent’s articulated legitimate, non-discriminatory reasons for not hiring him. The ALJ further stated that: “In no instance was Petitioner more highly qualified by years of teaching in Alachua county than the respective applicants hired for full-time teaching positions. In most instances, white applicants were hired by white principals, so Petitioner cannot claim racial discrimination, and no anti-German prejudices were demonstrated.”

The ALJ further concludes that, “Accordingly, Petitioner has not established, by a preponderance of the evidence, that Respondent discriminated against him because of his race, national origin, or in retaliation.”

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.” As indicated above, the Commission’s file does not contain a transcript of the proceeding before the Administrative Law Judge.

The filing of such a transcript is a requirement to the filing of exceptions to a Recommended Order. See, Fla. Administrative Code Rule 60.y-4.025(3), and Fla. Administrative Code Rule 60.y-4.027(1). In the absence of the filing of such a transcript the Commission has ordered the exceptions stricken. See Ebeh vs. Consumer Credit Counseling Service of the Tampa Bay Area, Inc., 20 F.A.L.R. 3132, at 3134 (FCHR 1998).

The Administrative Law Judge further stated that, “Subsequent to the disputed-fact hearing, Petitioner has filed numerous letters and motions, upon which orders have been entered as reflected in the case file.” The ALJ clearly restricted herself to the record built at the formal evidentiary hearing and the exhibits properly introduced, along with the proposed orders timely-filed by both parties.

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

Dismissal

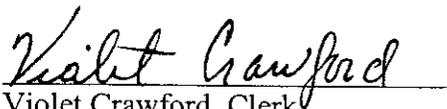
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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
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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

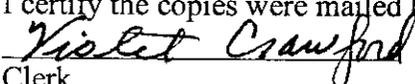
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Administrative Law Judge P. Michael Ruff
Jim Tait, Legal Advisor for Commission Panel

I certify the copies were mailed by U.S. Mail this 18th day of November, 2002

Clerk