

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
13 OSP 17728

WILLIE JOYCE PARTIN,
Petitioner,

v.

DEPARTMENT OF TRANSPORTATION,
DIVISION OF MOTOR VEHICLES,
TRAFFIC RECORDS, CRASH REPORT
UNIT,
Respondent.

FINAL DECISION

THIS MATTER came on for hearing before the Honorable Donald W. Overby, Administrative Law Judge Presiding, on 10 September 2014 in Raleigh, North Carolina. After considering the allegations in the Petition, the testimony of the witnesses, and the documentary evidence and exhibits admitted, the undersigned makes the following DECISION:

APPEARANCES

For the Petitioner:

Willie Joyce Partin, pro se
Post Office Box 14365
Raleigh, North Carolina 27620

For the Respondent:

Kathryne E. (Beth) Hathcock, Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

ISSUES

1. Was Petitioner denied a promotion on account of her race, sex, age or handicapping condition?
2. Was Petitioner “unfairly treated in the workplace?”

EXHIBITS

Respondent's Exhibits 1, 15-21 and 23.

WITNESSES

Petitioner served as her only witness.

Respondent called as witnesses DMV Traffic Records Manager Pam Guptill, DMV Data Manager Kim Pierce, and DOT Classification, Compensation and Policy Manager Amanda Olive.

FINDINGS OF FACT

1. This matter is properly before the Office of Administrative Hearings ("OAH") which has both personal and subject matter jurisdiction. The parties were properly noticed for hearing.

2. On 13 September 2013, Petitioner Willie Joyce Partin filed a Petition for a Contested Case Hearing with OAH, alleging that she was denied three promotions on account of her race, sex, age and handicapping condition and that she had been "unfairly treated in the workplace."

3. At all times relevant to this proceeding, Petitioner was a career state employee, as defined by N.C. Gen. Stat. § 126-1, and was subject to the provisions of the State Personnel Act.

CONCLUSIONS OF LAW

1. The parties are properly before the Office of Administrative Hearings on a Petition pursuant to Chapter 126 of the General Statutes, and the Office of Administrative Hearings has jurisdiction over both the parties and the subject matter as such.

2. At the time she was denied the instant promotions, Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C. Gen. Stat. § 126-1 *et seq.* Pursuant to N.C. Gen. Stat. §§ 126-16 and 126-34.02, it is unlawful for an employer to deny an employee subject to the State Personnel Act a promotion based upon the employee's race, sex, age and handicapping condition.

3. Pursuant to N.C. Gen. Stat. § 126-34.02, a State employee may challenge an employment action she believes was motivated by illegal discrimination on the part of the employing State agency. "[T]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all time with the plaintiff." N.C. Dep't of Corr. v. Gibson, 308 N.C. 131, 138, 301 S.E.2d 78, 83 (1983) (quoting Texas Dep't of Comty. Affairs v. Burdine, 450 U.S. 248, 253, 67 L. Ed. 2d 207, 215 (1981)).

4. The Supreme Court of North Carolina has adopted the standard used by the United States Supreme Court in proving discrimination: 1) the claimant carries the initial burden

of establishing a prima facie case of discrimination; 2) the burden shifts to the employer to articulate some legitimate nondiscriminatory reason for the applicant's rejection; and 3) if a legitimate nondiscriminatory reason for rejection has been articulated, the claimant has the opportunity to show that the stated reason for rejection was, in fact, a pretext for discrimination. Gordon v. NC DOC, 173 N.C. App. 22, 618 S.E.2d 280 (2005).

5. Addressing Petitioner's claim of discrimination with regard to the two Administrative Assistant II promotions, Petitioner has not satisfied her initial burden of establishing a prima facie case of discrimination and her claims are hereby DISMISSED. Petitioner's claim that she was "unfairly treated in the workplace" is also DISMISSED for Petitioner's failure to satisfy her burden. However, with regard to the Processing Supervisor position, Petitioner has satisfied her initial burden of establishing a prima facie case of discrimination by showing that a) as an African-American in her mid-50s, she is a member of protected groups; b) she was qualified for a promotion; c) she was passed over for the promotion; and d) the person receiving the promotion was not a member of the protected racial and age class. Enoch v. Alamance County DSS, 164 N.C. App. 233, 242, 595 S.E.2d 744, 752 (2004).

6. Even though Petitioner established a prima facie case of discrimination, Respondent sufficiently articulated legitimate, nondiscriminatory reasons for Petitioner's rejection from the Processing Supervisor position. Specifically, the selected candidate had superior management experience over Petitioner; provided in-depth answers during her interview for the position; and exhibited eagerness to assume new supervisory duties.

7. An employer is "relatively free to value experience among the applicants as it sees fit in light of the skills required by the position to be filled. This freedom is of intrinsic value to the hiring process and business judgment of decision makers." Id.

8. Respondent has met its burden of proof and established by substantial evidence in the record that it had legitimate and nondiscriminatory reasons for selecting another qualified candidate for the Supervisor position.

9. After the Respondent articulated legitimate and nondiscriminatory reasons for denying promotions to Petitioner, Petitioner was given the opportunity to show that the stated reason for rejection was, in fact, a pretext for discrimination. "In order to prove that a reason for an employer's action is a pretext for discrimination, an employee must prove 'both that the reason was false, and that discrimination was the real reason.'" N.C. Dep't of Crime Control & Pub. Safety v. Greene, 172 N.C. App. 530, 539-540, 616 S.E. 2d 594, 601 (2005) (quoting St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502, 515, 125 L. Ed. 2d 407, 422 (1993)).

10. Petitioner failed to show that Respondent's stated reason for rejection was a pretext for discrimination. Specifically, Petitioner was unable to show that she was, in fact, the best qualified candidate for the Supervisor position.

11. Petitioner failed to prove that she was intentionally discriminated against by the Division of Motor Vehicles based on her race or age in not promoting her to the Supervisor position.

On the basis of the above-noted Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

Respondent articulated legitimate, non-discriminatory reasons for denying the promotion to Petitioner. Additionally, Petitioner did not meet her burden of proof showing that Respondent's stated reason for rejection was, in fact, a pretext for discrimination. Accordingly, Petitioner failed to prove racial or age discrimination and the action of Respondent is UPHELD.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule, 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 4th day of December, 2014.

Donald W. Overby
Administrative Law Judge