

BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD

ANDRE FUNCHES

VS.

MISSISSIPPI DEVELOPMENT
AUTHORITY

FILED

OCT 17 2013

EMPLOYEE APPEALS BOARD

APPELLANT

NO.13-010

APPELLEE

ORDER

This cause came on for hearing on May 14, and July 11, 2013, in Jackson, Mississippi. The Appellant, Andre Funches appeared pro se, and Royce Cole represented the Mississippi Development Authority ("MDA").

SUMMARY

Andre Funches is employed as a MDA-Associate Manager. In October of 2012, MDA posted a job opening for the position of MDA-Associate Manger Senior Finance. Funches applied for that position and was not chosen. Beginning in December of 2012, Funches filed a series of six grievances involving MDA's decision not to hire Funches for the MDA Associate Manager Senior Finance position. Those six grievances can be summarized as follows: (1) sexual harassment by Funches' supervisor, Katrina Wells; (2) Not being chosen for the job of MDA Associate Management Finance Senior was retaliation for not responding to his supervisor, Katrina Wells, sexual advances; (3) Tameka Shelwood, the person chosen for the position of MDA Manger Finance Senior, falsified the information on her application; (4) improper hiring practices, in that Shelwood was unqualified for the position of MDA Associate Manager Finance Senior; (5) breach of confidentiality by a personnel officer, Tracy Davis; (6)

Retaliatory harassment, for filing the previous 5 grievances, in the form of a reprimand, by Funches' current, supervisor, Brian Daniels.

On February 7, 2013, Funches filed 6 appeals with the Mississippi Employee Appeals Board. As all of the appeals concerned the same basic facts they were consolidated into the instant case. The MDA subsequently filed a Motion to Dismiss the appeal. This tribunal granted that motion in part and denied that motion in part. In a Pre Hearing Order addressing the Motion to Dismiss this tribunal summarized the remaining issues to be determined as follows: Funches' claim that he was not hired for the position of Associate Finance Manager as retaliation for being unresponsive to his supervisor's sexual advances; sexual discrimination in hiring for the position of MDA-Associate Manager Senior Finance; breach of confidentiality; and retaliation for filing the first five grievances. This tribunal hereby finds that Funches did not meet his burden of proof and this matter is dismissed with prejudice.

FINDINGS

Funches claims that following an Office meeting on July 9, 2012, his supervisor Katrina Wells made sexual advances toward him. Funches further claims that when he refused, Wells implied that she was helping him to keep his job, and would not continue to assist him unless he cooperated with her demands. Funches did not report this incident to anyone in his supervisory chain, or to the Human Resources office at MDA. Wells denies that this incident occurred.

In October of 2012, the MDA posted an agency only recruitment notice

for the position of MDA-Associate Manager Senior Finance. The responsibilities were listed as follows:

- Knowledgeable of grants management system (GMS)
- Knowledgeable of SAAS and COGNOS
- Process GAAP reports (sub-grant schedules)
- Process payments for Grants
- Process Quarterly Reports
- Analyze Grants reports
- Reconcile Grants reports
- Perform other related duties as assigned

The minimum qualifications were listed as follows:

Education:

A Master's Degree from an accredited four-year college or university

AND

Experience:

Three (3) years of professional experience in the field of banking or finance;

OR

Education:

A Bachelor's Degree from an accredited four-year college or university,

AND

Experience:

Four (4) years of experience in work related to the above described duties, three (3) years of which must have been professional experience in the field of banking or finance;

OR

Experience:

One (1) year of experience as a MDA-Associate Manager, Finance

Although the recruitment announcement did not specify any particular undergraduate major or master's concentration an undated MDA Job Content Questionnaire completed by Katrina Wells', Funches' immediate supervisor and the supervisor of the open position of MDA-Associate Manager Senior Finance states that a an "Accounting or Business degree with at least three years of experience in Grant Accounting" is required for satisfactory job performance.

Everyone at MDA who applied for the position and was deemed qualified

by the State Personnel Board was interviewed for the position (whether they had an accounting degree or not). The applicant who was chosen for the position, Shelwood, has an accounting degree and was deemed qualified by the Mississippi State Personnel Board when she applied, and after she was chosen for the position.

Following Shelwood's appointment to the position of MDA-Associate Manager Senior Finance, Funches filed the aforementioned six grievances. Following Funches' filing of the grievances, he was removed from Katrina Wells' immediate supervision, and placed under Brian Daniels' supervision. On December 19, 2012, Brian Daniels asked Funches to make a correction to a Grant account and report back to him. Instead, Funches responded directly to the persons who had initiated the issue regarding the correction and copied Daniel. On December 21, 2012, Daniel informally reprimanded Funches by email. .

In December of 2012, Tracey Davis, a Personnel Officer in the MDA Human Resources Office had a conversation with Angela Reed, a Development Specialist in the Community Services Division, warning Ms. Davis to be careful about spending time with Mr. Funches, because her association with him could have repercussions for Reed's career at MDA. Reed and Davis denied that Reed referred to Funches, by name in that conversation; but Reed acknowledged that she knew that Davis was referring to Funches in the conversation. During this period of time there was general office gossip concerning the fact that Funches had not received the job of MDA-Associate

Manager Senior Finance, and Funches had openly expressed his dissatisfaction with his failure to receive the position.

The organizational chart shows that in the Bureau of Financial Reporting and Grants Management there are 5 female employees and 2 male employees. In the Accounting Office, there are a total of 22 employees, 6 males and 17 females.

Funches had previously received a lateral transfer, within MDA, because of an issue involving communication with his previous supervisor and other employees in the Community Services Division. Prior to July of 2012, Wells had expressed dissatisfaction with Funches' error rate to Daniels. Daniels observed that Funches did not communicate well with his fellow employees. Although, in general Funches was a satisfactory employee, he required repeated directions in how to perform some tasks and questioned his supervisor regarding the procedures he was required to follow even before he was familiar with his position. The reasons given by MDA for failing to hire Funches for the position of MDA-Associate Manager Sr. Finance was "because an Accounting degree is preferred for this position and his opposition or inability to communicate effectively with his supervisor or co-workers."

OPINION

MEAB Rule XX B. provides that "[a]n appealing party shall have the burden of proving that the reasons stated in the notice of the agency's final decision are not true or are not sufficient grounds for the action taken. "

Accordingly Funches has the burden of proving that MDA did not have sufficient grounds for their responses to his grievances.

With regard to the claim of sexual discrimination in hiring, i.e. that Funches was not hired because he is male; there was insufficient evidence to support this allegation. Mere numbers do not prove discrimination on the basis of one's sex.

Additionally, Funches' claim that MDA knew that Shelwood did not qualify for the position of MDA Associate Finance Senior, yet hired her because she was a female, is not supported by the facts. The Mississippi State Personnel Board determined that Shelwood was eligible for the position on two different occasions, prior to the interviews when it placed her on the list of eligible candidates and following her appointment when it verified her credentials. There is no evidence that Shelwood was verified as qualified for the position prior to the job interview and prior to her appointment because she is female.

With regard to the breach of confidentiality claim, it is evident that Tracey Davis, an employee in the Human Resources Office discussed Funches' employment difficulties with Angela Reed and warned her to avoid him. While there is no doubt that this an inappropriate conversation for someone who works in Human Resources to be having under these particular circumstances, this tribunal cannot find that Reed violated confidentiality, because she did not specifically talk about Funches' failure to receive the

position of Associate Manager Finance Senior or the grievances that Funches filed, and at the time of the conversation there was office gossip concerning Funches' reaction to this failure to receive the position of MDA-Associate Finance Senior.

Finally, Funches' claim that he was not appointed to the position of Associate Manager Finance Senior because he declined sexual advances from his supervisor Tameka Wells must be addressed. Funches has claimed that he is the victim of "quid pro quo" sexual harassment, i.e. that he was not hired for the position of MDA Associate Manager Finance Senior because he was not receptive to Wells' sexual advances. There is no specific Mississippi law regarding sexual harassment, therefore we look to well established federal law for guidance in reviewing this claim. There is a long standing and clear cut process for determining liability in federal claims of this nature, which provides a template for reviewing this matter. *Casiano v. AT&T Corporation*, 213 F.3d 278 (5th Cir. 2000).

The first step in this process is to determine if there has been a tangible employment action. In Funches' case, the answer is yes, in that he was not hired for the position for which he applied.

The next step is to determine if the "acceptance or rejection of the harassment was the cause of the tangible employment action." In other words, was Funches' refusal of any sexual advances the cause of his failure to get the position of MDA-Associate Manager Finance Senior? If the answer to

this question is no, no further analysis is required and the employer of the "harasser" is not liable. In the instant matter, based on the preponderance of the evidence, the answer to this question is no. The evidence shows that the reason Funches was not hired was because of management's opinion that he lacked sufficient communication skills to function effectively in the position of MDA Finance Manager Senior. Pursuant to this analysis this tribunal cannot substantiate Funches' claim of quid pro quo sexual harassment.

For the foregoing reasons this tribunal finds that Funches did not meet his burden of proof and this matter is dismissed.

SO ORDERED THIS THE 17th DAY OF October, 2013.

MISSISSIPPI EMPLOYEE APPEALS BOARD

BY:



INGRID DAVE WILLIAMS

Hearing Officer