

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS

on the Complaint of

WILLIAM B. TAYLOR,

Complainant,

v.

ROCHESTER CITY SCHOOL DISTRICT,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10112771

PLEASE TAKE NOTICE that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order ("Recommended Order"), issued on December 8, 2008, by Spencer D. Phillips, an Administrative Law Judge of the New York State Division of Human Rights ("Division"). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS ("ORDER"). In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

PLEASE TAKE FURTHER NOTICE that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is

the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

ADOPTED, ISSUED, AND ORDERED.

DATED:

Bronx, New York
APR 14 2009



GALEN D. KIRKLAND
COMMISSONER

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**RECOMMENDED FINDINGS OF
FACT, OPINION AND DECISION,
AND ORDER**

Case No. **10112771**

SUMMARY

Complainant alleged that Respondent unlawfully discriminated against him on the bases of race and disability. Complainant failed to prove his case and the complaint is dismissed.

PROCEEDINGS IN THE CASE

On August 15, 2006, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to employment in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Spencer D. Phillips, an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on September 3-4, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq. Respondent was represented by Cara M. Briggs, Esq. of Rochester, New York.

Permission to file post-hearing briefs was granted. Untimely briefs were received from each party.

FINDINGS OF FACT

1. Complainant is African American. (ALJ Exh. 1)
2. In early January, 2006 Complainant interviewed for a Mechanic I position with Respondent. The interview was conducted by Joe Griffin, Respondent's Maintenance Inspector, and Bill Santangelo, a Foreman. Griffin is Caucasian. (Tr. 203, 247-48)
3. Possession of a valid New York State driver's license is a requirement for the Mechanic I position. Complainant did not possess a valid driver's license at the time of hire and assured Griffin that he would quickly obtain a valid driver's license. (ALJ Exh. 1; Tr. 16, 248-49, 256-57)
4. On January 3, 2006, Griffin hired Complainant for the Mechanic I position, and gave Complainant the highest salary available for the position. (Tr. 248-51)
5. In early May, 2006 Complainant became disabled when he injured his foot. (Complainant's Exh. 6; Tr. 27)
6. Complainant took four days off from work after injuring his foot. Upon his return to work, Complainant gave a doctor's note to Griffin. (Tr. 259)
7. On May 25, 2006 Complainant attended a meeting with his union representative, his supervisors, and Charles Dye, Respondent's Human Resources Director. At this meeting, the

individuals present discussed Complainant's unsatisfactory work performance and Respondent's intention to terminate Complainant's employment. (Complainant's Exh. 2; Tr. 32, 259, 261-62, 350-54)

8. Complainant's coworkers reported to Griffin that Complainant's skills were substandard. (Tr. 207, 254-55, 264, 275, 308)

9. Complainant and his union representative asked Respondent to reconsider its decision to terminate Complainant's employment. Respondent agreed to extend Complainant's probationary period for six months. (Tr. 262, 354-55)

10. After the May 25, 2006 meeting Complainant began engaging in violent and threatening behavior toward his supervisors and coworkers, began missing many days of work, and completely stopped going to work after August, 2006. (Respondent's Exh. 6; Tr. 153, 263-64)

11. On July 10, 2006 Complainant became upset with Griffin regarding a payroll discrepancy which Griffin had previously remedied. Complainant told Griffin "You'll get yours!" (Respondent's Exh. 15; Tr. 278, 281)

12. On or about August 21, 2006, Complainant returned to work from a week-long, injury-related absence. Upon his arrival, Griffin gave Complainant a "Certificate of Personal Illness" (CPI) form and directed Complainant to complete the form. Complainant did not return the CPI form until thirty days later. (ALJ Exh. 1; Tr. 54, 67, 140-45, 159, 282-84)

13. The CPI form is required by union contract, and is provided to all employees returning from a medical absence of three or more days. (Tr. 283, 361-63)

14. On October 4, 2006 Complainant threatened Santangelo that he would "get physical" with his supervisors in order to get vacation pay for which Complainant did not qualify. (Respondent's Exh. 8, 9)

15. On October 5, 2006 Complainant threatened Santangelo that he would “cut off the heads” of several of Respondent’s employees. (Respondent’s Exh. 8, 9)

16. On or about October 5, 2006 Complainant made numerous threatening and harassing telephone calls to several of Respondent’s employees. These threats necessitated police intervention and the issuance of an order of protection against Complainant. (Respondent’s Exh. 8, 9, 12, 13, 14, 15, 16; Tr. 162-64, 233-35, 241-44, 276, 304, 334, 368-69)

17. On October 16, 2006 Griffin terminated Complainant’s employment. (Respondent’s Exh. 17)

18. On March 5, 2007 Complainant again threatened to cut off Griffin’s head. This comment was made at the close of a Workers’ Compensation hearing, in the presence of both an Administrative Law Judge and an attorney. (Respondent’s Exh. 12)

OPINION AND DECISION

Complainant alleges that Respondents unlawfully discriminated against him on the basis of race and disability. The Human Rights Law makes it an unlawful discriminatory practice for an employer, “because of the...national origin [or] disability...of any individual...to discriminate against such individual in compensation or in terms, conditions or privileges of employment.” Human Rights Law § 296.1(a).

To satisfy his prima facie burden of unlawful discrimination, Complainant must demonstrate that he was a member of a protected class, that he was qualified for his position, and that he suffered an adverse employment action which occurred under circumstances giving rise to an inference of unlawful discrimination. *Pace College v. Commission on Human Rights of the City of New York*, 38 N.Y.2d 28, 39-40, 377 N.Y.S.2d 471 (1975), citing *McDonnell Douglas*

Corp. v. Green, 411 U.S. 792 (1973).

Complainant is African American. Complainant became disabled when he suffered a foot injury in May, 2006. On October 16, 2006, Complainant suffered an adverse employment action when Respondent terminated his employment. However, Complainant cannot satisfy his prima facie burden because he was not qualified for his position, his employment was not terminated under circumstances giving rise to an inference of discrimination, and he suffered no other adverse employment actions because of his race or disability.

Complainant was not qualified for the position which he held. After five months of working in the position, Complainant's performance evaluation established that he still "need[ed] improvement" or performed in an "unsatisfactory" manner in more than fifty percent of his job duties. Furthermore, Complainant's own coworkers reported to Griffin that Complainant's skills were substandard.

Complainant was not terminated under circumstances giving rise to an inference of discrimination. Griffin, the Caucasian supervisor who terminated Complainant's employment, was the same individual who hired Complainant just ten months earlier at the highest possible salary for Mechanic I position despite the fact that Complainant did not, at that time, hold a valid driver's license. *Singh v. State Office of Real Property Services.*, 40 A.D.3d 1354, 837 N.Y.S.2d 378 (3d Dep't. 2007) (explaining that a strong inference exists that no discrimination was involved where the supervisors who terminated an employee were the same supervisors who hired the employee approximately one year earlier).

During the final months of his employment, Complainant became increasingly absent from the workplace, and completely stopped going to work after August, 2006. Furthermore, Complainant threatened on two separate occasions to "chop off" his supervisor's head and

engaged in other violent, threatening behavior toward his supervisors and coworkers.

Complainant's violent behavior, coupled with severe and unexcused absenteeism between June and October, 2006, and his unsatisfactory work performance, establishes that Complainant's termination did not occur under circumstances suggestive of discrimination.

Finally, Complainant did not suffer any other adverse employment action because of his race or disability. Complainant alleged that Respondent imposed conditions upon Complainant that were not imposed upon Caucasian employees, including the possession of a valid driver's license and the required use of the CPI form. However, the proof established that these conditions were imposed upon all employees regardless of race or disability.

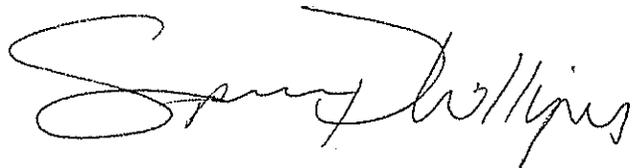
Because Complainant was not qualified for the position he held, was not terminated under circumstances giving rise to an inference of discrimination, and did not suffer any other adverse employment action because of his race or disability, his claims of unlawful discrimination must be dismissed.

ORDER

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED, that the complaint be, and the same hereby is, dismissed.

DATED: December 8, 2008
Rochester, New York

A handwritten signature in black ink, appearing to read "Spencer D. Phillips". The signature is fluid and cursive, with a large initial "S" and "P".

Spencer D. Phillips
Administrative Law Judge