

thirties who formerly held the position of Security Supervisor at defendant's Kimberly Road office. Jones had been with defendant for approximately fourteen years and had previously filled the position of acting assistant chief of security on a temporary basis when Mills was on medical leave. Plaintiff claims this temporary appointment of approximately two weeks was the result of reverse race and age discrimination.

{¶3} Plaintiff also claims that his reassignment from first shift to second shift in March 2000 was a result of reverse race and age discrimination. He worked that security shift for less than one year.

{¶4} Plaintiff maintains that he was the victim of discrimination because his chief, Mills, obtained a criminal background check which revealed that plaintiff had no criminal record. He also claims that defendant's employees discriminated against him because they circulated a copy of a newspaper article in which plaintiff was mentioned. That article appeared in the Columbus Dispatch on February 10, 2000. The main focus of the article was that criminal charges had been filed against Fairfield County Sheriff Gary DeMastry. The article noted a number of other criminal charges involving sheriffs and said that in 1992 plaintiff "resigned [as Richland County Sheriff] to avoid prosecution. He was accused of misspending about \$400 in public money by making more than 150 personal calls from his office and buying souvenirs."

When this article appeared in the Dispatch a secretary clipped and copied it because it mentioned an agency employee. Copies were provided to Mills and others. Mills questioned whether plaintiff had been entirely honest on his job application. No further action was taken, and the matter was dropped. Plaintiff claims that the article was improperly copied and circulated based upon age and reverse race discrimination.

{¶5} Plaintiff has the burden of proof in a discrimination claim. *Texas Dept. of Community Affairs v. Burdine* (1981), 450 U.S. 248. The elements of a claim of discrimination as set forth in *McDonnell Douglas Corp. v. Green* (1973), 411 U.S. 792, are as follows:

{¶6} "1) that plaintiff is a member of a protected class;

{¶7} "2) that plaintiff is qualified for the job which he was performing and that he satisfied the normal job requirements for the position;

{¶8} "3) that plaintiff suffered an adverse employment action;

{¶9} "4) that plaintiff was replaced by another person not in the protected class with the same or less qualifications or that similarly situated nonprotected class employees were treated differently than plaintiff."

{¶10} If plaintiff can prove a prima facie case of discrimination, then defendant must articulate a legitimate, nondiscriminatory basis for its decision. The burden then shifts to plaintiff to prove that the stated reason is a sham or pretext to support discrimination. Id.

{¶11} To prove reverse race and age discrimination, plaintiff must prove: 1) that defendant is the unusual employer who discriminates against the majority; and, 2) that the employer treated differently employees who were similarly situated but not members of the protected class. *Filichia v. Open Shelter, Inc.* (June 28, 1996), Franklin App. No. 96APE02-136.

{¶12} As to plaintiff's race discrimination claim, the court finds that plaintiff has failed to prove, by a preponderance of the evidence, that the temporary appointment of Jones as Assistant Chief of Security was based on age or race factors. Plaintiff and Jones were both qualified to serve as Temporary Assistant Chief. The court finds that Jones' years of service in the department and his previous experience as assistant chief justified his temporary appointment.

{¶13} As to plaintiff's claim of age discrimination, the court finds that plaintiff has also failed to prove that the shift assignment, criminal background check, and newspaper article distribution were motivated by age discrimination.

{¶14} The court finds that plaintiff has failed to prove his claim of reverse age and race discrimination by a preponderance of the evidence. Accordingly, judgment will be rendered in favor of defendant.

FRED J. SHOEMAKER
Judge

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