2012 IL App (1st) 113641-U

FOURTH DIVISION
October 11, 2012

No. 1-11-3641

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

INDIRA ADUSUMILLI,	)	Petition for Review of an
	)	Order of the Chief Legal
Petitioner-Appellant,	)	Counsel of the Illinois
	)	Department of Human
v.	)	Rights.
	)	
CHIEF LEGAL COUNSEL OF THE ILLINOIS	)	
DEPARTMENT OF HUMAN RIGHTS; ILLINOIS	)	
DEPARTMENT OF HUMAN RIGHTS; and	)	Charge No. 2007CN3833
KELLY SERVICES	)	
	)	
Respondent-Appellees.	)	

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Petitioner's charge that respondent Kelly Services discriminated against her when it did not refer her for an employment position was properly dismissed for lack of substantial evidence.

¶ 2 Petitioner Indira Adusumilli filed a *pro se* charge of discrimination with the Illinois Department of Human Rights (Department), alleging that Kelly Services had discriminated against her in its employment referrals on the basis of her race (Asian), her national origin

(Indian) and her age (46). The Department dismissed the charge based upon a report by its investigator, who found that there was no substantial evidence to support it. Petitioner appealed to the Department's chief legal counsel (CLC), who sustained the Department's dismissal, also finding that there was no substantial evidence to support Petitioner's charge. Petitioner then filed this direct appeal, *pro se*, alleging that there was substantial evidence of discrimination against her by Kelly Services and seeking remand for further proceedings.

¶ 3 Petitioner filed this charge of discrimination with the Department against Kelly Services on March 8, 2007. According to the July 7, 2011 report of the Department's investigator, petitioner stated that she first contacted Kelly Services, an employment agency, in 2003. In 2004 she was tested by Kelly and submitted her resume and application. Petitioner admitted that one of Kelly's representatives subsequently called to offer her a job of executive secretary at Rush Hospital, but when she called there she found that the job had been filled. Complainant stated that she subsequently sent her resume to Kelly several times. She also repeatedly telephoned Kelly until February 2007, letting them know that she remained available for general office work. She called weekly for the first three or four months, then monthly, and finally every six weeks or so. Petitioner denied that she was ever asked by Kelly to come back in. Her resume and educational records indicated that she had a Master of Public Administration from the Illinois Institute of Technology, a Bachelor of Arts from Northeastern Illinois University, a Bachelor of Science degree from Andhra University, and a Diploma in Secretarial Practice from the International Polytechnic for Women.

¶ 4 Petitioner never obtained another work referral from Kelly. According to the investigator's report, petitioner believed that Kelly failed to attempt to find work for her. Petitioner speculated that Kelly's recruiters "may believe" that a person born outside of the United States should be excluded from consideration, although she did not know the national

origins of other applicants. Although nobody at Kelly made reference to her race, national origin, or age, petitioner also expressed the belief that Kelly may prefer whites or blacks or "younger candidates."

¶ 5 The report related that Kelly's equal employment opportunity manager, Danette Duron-Willner, stated that Kelly did not have records going back to 2004 because Kelly's practice was to "purge" records older than three years. Candidates were encouraged to update their records, but Kelly had no record of an updated resume or skills training results for petitioner. These updated records would have been needed to place petitioner, but Kelly only had a record of petitioner's weekly telephone calls. According to Duron-Willner, Kelly did not keep a record of the races, ages and national origins of candidates for temporary employment, but Kelly had to be diverse in its hiring to be globally competitive. Finally, Duron-Willner noted that it was a "tight market" for employment.

¶ 6 A Kelly branch manager, Melissa Goldberg, stated that Kelly recommended that candidates update their hiring information weekly. Kelly required a resume, interview, and necessary tests and skills analysis for candidates in order to determine what assignments were appropriate. Candidates were required to come into a Kelly office for testing. Petitioner had repeatedly been asked to come in for such testing, but she had failed to do so. In petitioner's case, Kelly would have tested her typing skills, reading comprehension, and her MS Office skills. According to Goldberg, without this skills information it would be "nearly impossible" for Kelly to match a candidate to available jobs. Goldberg denied that Kelly had excluded petitioner due to her race, national origin, or race. She noted that Chicago was a very diverse city, and it would not have been productive to fail to work with petitioner, as Kelly made its money by placing as many candidates as possible in available assignments.

¶ 7 Based upon this information, the Department's investigator recommended in the report that there be a finding of lack of substantial evidence of petitioner's charge of employment discrimination. The investigator noted that petitioner had failed to comply with Kelly's hiring procedures by updating her records with them and found that this explained the failure to refer petitioner for employment. The Department subsequently dismissed petitioner's charge. Petitioner next sought review by the Department's Chief Legal Counsel (CLC). On review, the CLC determined that petitioner had failed to establish even a *prima facie* case of discrimination by Kelly and that, in any event, the record failed to establish substantial evidence of such discrimination. The CLC affirmed the Department's dismissal of petitioner's charge. Petitioner then filed her direct appeal to this court.

¶ 8 In our review we must determine whether the decision of the CLC is arbitrary and capricious or an abuse of discretion. *C.R.M. v. Chief Legal Counsel of Illinois Department of Human Rights*, 372 Ill. App. 3d 730, 733 (2007); *Owens v. Department of Human Rights*, 356 Ill. App. 3d 46, 51-52 (2005). It is not our function to reweigh the evidence or to substitute our judgment for that of the Department as the trier of fact. *Owens*, 356 Ill. App. 3d at 52. The dismissal of a charge of discrimination is warranted where a petitioner fails to present substantial evidence of a *prima facie* violation. *Owens*, 356 Ill. App. 3d at 52; *Alcequeire v. Human Rights Commission*, 292 Ill. App. 3d 515, 520 (1997). To establish a *prima facie* case of employment discrimination, a petitioner must show that: (1) she was a member of a protected class; (2) she applied and was qualified for a job for which the employer was seeking applicants; (3) she was rejected despite her qualifications; and (4) after she was rejected, the position remained open and the employer sought other applicants who had petitioner's qualifications. *C.R.M.*, 372 Ill. App. 3d at 733; *Stone v. Department of Human Rights*, 299 Ill. App. 3d 306, 315 (1998). Because petitioner brought this charge against an employment agency, she was also required to show that

the agency failed to refer her to available job openings. But in any event we find that petitioner failed to establish a *prima facie* case of employment discrimination because she could not establish that she was qualified for a position. The report of the Department's investigator established that to maintain her eligibility, petitioner had to update her qualifications by coming into a Kelly office for testing and evaluation of her skills. Petitioner was repeatedly asked to come in for this purpose but failed to do so. Instead, from her initial testing and evaluation at an unspecified time in 2004 until February 2007 she made repeated telephone inquiries to Kelly about whether there were job openings. Because petitioner did not bring her qualifications up to date by coming into a Kelly office for testing and evaluation, she was not eligible for employment and thus could not establish a *prima facie* case of employment discrimination. For this reason, we affirm the CLC's decision to affirm the Department's dismissal of petitioner's charge.

¶ 9 Affirmed.