

ORIGINAL

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO
Cause No. 39915-6-II

Thurston County Superior Court Cause No. 07-2-02508-9

CHRISTOPHER DAVIS,

Petitioner

v.

WASHINGTON STATE DEPARTMENT OF
CORRECTIONS, et al

Respondents

FILED
COURT OF APPEALS
DIVISION TWO
10 APR 23 AM 11:49
STATE OF WASHINGTON
BY *W*
DEPUTY

REPLY BRIEF OF PETITIONER

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I. INTRODUCTION

I started to write a new brief in response to DOC's reply, and I found myself rewriting my initial brief. DOC has not raised any issues that were not addressed in the initial brief or refuted the facts or law as presented by Mr. Davis on appeal. DOC has ignored the **contested facts**, and cited law. Instead, DOC alleges its employees are more credible than Mr. Davis. Mr. Davis previously sued DOC as a Whistleblower that suffered PTSD due to DOC's negligent acts, and the intentional acts of Superintendent Waddington and Doctor Smith (a doctor employed by DOC). CP 369-389. The former case settled. Mr. Davis recovered from his PTSD and requested placement. WAC 357-19-470 required DOC to determine what positions Mr. Davis was qualified to fill and assist Mr. Davis in the rehiring process. Appendix A-2 pg. 1. Mr. Davis was a qualified Correctional Officer Level Two (CO2). CP 648-649. Instead of finding open CO2 positions DOC referred Mr. Davis to a web cite and told him they did not hire CO2's. CP 666 lines 14-18. Contrary to that representation, months later after involvement of counsel and numerous requests for placement and assistance, finally DOC interviewed Mr. Davis for two potential CO2 positions. Mr. Davis was offered both jobs. Then DOC withdrew the offers without notice or justification, and never interviewed or contacted Mr. Davis about those or any other open CO2 positions again. Furthermore, when Mr. Davis was offered the first

position, he was told it would be up to former defendant Superintendent Waddington whether he was hired as a CO1 or a CO2. Rather than calling him back to set up a drug test, the same day they offered the job, Mr. Davis was sent a form rejection letter saying another candidate had been chosen. Appendix C-1 pg. 1, CP 672. No drug test was even mentioned. This is contrary to DOC policy and procedure, which mandates that a person be removed from the register if they refuse a drug test. CP 670. The letter explicitly states his name will remain on the register. CP 672.

This occurred during a period of critical shortage of trained correctional officers that was so severe DOC publicized the need. CP 666 lines 4-8, CP 709 – 710, CP 661. Superintendent Waddington acknowledged there were shortages in 2006 and 2007 of Correctional Officer II's. CP 639-640 lines 25-6. DOC relies, as they did in the trial court, on a single WAC that states to be reemployed a disability-separated employee must meet the criteria for a position, yet they do not address the statutes and WAC's that show Mr. Davis met the criteria for a CO2. CP 769; Appendix A-3 at 2 (b). Furthermore, DOC has cited to letters that contain misinformation. Many "facts" relied upon by DOC are hearsay contained in letters prepared in contemplation of litigation. This reliance on hearsay was the subject of a Motion to Strike at the trial court level. CP 811. Yet again DOC is relying on the hearsay content of letters prepared in anticipation of litigation to support their allegations instead of

sworn statements. Furthermore, allegations by declaration which allege proper procedure is followed are not sufficient evidence to support granting summary judgment. Brown v. Park Place Homes Realty, Inc., 48 Wn.App.554, 739 P.2d 1188 (1987), Ranger Ins. Co. v. Pierce County, 164 Wash.2d 545, 552, 192 P.3d 886, 889 (2008).

The base issues in this case are relatively simple; 1) Where there issues of material fact that prevented summary judgment on the issue of whether DOC discriminated against Mr. Davis in violation of public policy, and in a contract claim; and 2) Did DOC raise any issue that required a response in their motion for summary judgment on the 42 USC 1983 deprivation of civil rights cause of action? These were the only issues raised by Mr. Davis on Appeal. No cross appeal was filed. Therefore, the issues raised by DOC about the civil rights violation and the emotional distress causes of action are not properly before the Court.

II. ARGUMENT

A. PROCEDURAL BARS

1. DOC alleges for the first time on Appeal that Washington State law violations are not actionable under 42 USC sec. 1983.

This issue was not raised in the trial court and cannot be raised for the first time on appeal. The issue is did alleging 42 USC sec. 1983 is not a state law cause of action require a response beyond that 42 USC 1983 is a federal statute? DOC must raise an issue in briefing before a

response is required. CR 56, Adickes v. S. H. Kress & Co., 398 U.S. 144, 159, 90 S. Ct. 1598 (1970).

This is becoming a common problem in litigation. Defense attorneys often use summary judgment not to address issues, but rather to force plaintiff's counsel to do defendant's legal research and discovery. If no issue is presented to the court, then no response is required. If in fact DOC has an argument it should have been made in the trial court and Mr. Davis should have been allowed an opportunity to respond. It is not proper to raise issues in responsive pleadings, argument or on appeal and thus not allow the responding party an opportunity to respond to issues. Remand to the trial court to properly address the issue is the appropriate remedy. DOC alleges that the trial court addressed the issue in their order, however the court's order did not address the issue, beyond what was argued in briefing. CP 859-861

2. DOC is alleging that neither outrage nor negligent infliction of emotional distress can ever be brought in an employment action.

This is an incorrect statement of law, however, Mr. Davis did not appeal the dismissal of the emotional distress claims, so the issue is not properly before the Court.

B. SETTLEMENT CONTRACT

DOC alleges that they did not violate the settlement contract in which they agreed not to interfere with future employment. This is an issue of fact that was addressed in the initial brief at pages 33-34. If the facts as alleged by Mr. Davis are believed then a reasonable fact finder could find that DOC did violate the settlement agreement.

C. FACTUAL ISSUE CORRECTIONS

1. Mr. Davis Did Not Refuse Testing

DOC has alleged that Mr. Davis should not be believed when he declares that he never refused to take the evaluation that Mr. Dawler requested, because after he agreed he told Mr. Dawler he would be contacting his lawyer and going ahead with his EEOC complaint. Mr. Davis agreed to the evaluation and told Mr. Dawler he would be contacting his attorney and filing an EEOC complaint. CP 666 lines 10-13; CP 699-700.

2. Mr. Davis's Treating Doctors Were Never Asked The Basis of Their Opinions

DOC alleges belatedly that they wanted another evaluation because Mr. Davis's treating physicians did not have sufficient basis for their positions. However, DOC never asked the physician therapists the basis for their opinions, as provided for in WAC 357-19-475 (3)(a). DOC's citation to the record refers to the only time DOC questioned the treating

physicians opinions, which was during discovery, and the questions were inappropriately addressed to Mr. Davis.

3. Doctor Moslin Never Opined Mr. Davis Could Not Work For DOC

DOC alleges Dr. Moslin initially opined Mr. Davis could not work for DOC in any capacity. DOC cites as authority a hearsay letter in which Superintendent Waddington was attempting to support a forced disability separation during prior litigation. Dr. Moslin's comment on a form is cited out of context. Even the hearsay quoted reads in part, "Pt's disability is primarily of an emotional trauma to his work place and job type. Working in other situations ok." CP 397. In fact Mr. Davis not only anticipated recovery, but DOC accommodated his disability for a time, until he refused to violated safety procedures to reward an inmate for cooperation with Superintendent Waddington. CP 713.

4. Mr. Davis's Notes About The Conference Call Support His Position

DOC alleges that an incomplete copy of Mr. Davis's notes taken during the conference call with Margaret Lee and her assistant Gail Robbins contradict his assertions. They do not. Attached hereto for the convenience of the Court is that portion of Mr. Davis's declaration in which he explains the conference call in which Margaret Lee and Gail Robbins participated. Margaret Lee was upset he was applying elsewhere, and asked if he wanted taken off the register. CP 649 lines 19-25. He explained that the second position he was applying for was a CO2

position. Margaret Lee told Mr. Davis it would be up to former defendant Superintendent Waddington whether Mr. Davis was rehired as a CO1 or a CO2 and they would get back to him to make the final arrangements for employment. CP 667; CP 715; Appendix B-2 pg. 1 lines 17-20.

DOC is correct in saying that Mr. Davis's incomplete notes reflect that Ms. Lee at that point said that he would have to take the written psychological test. Mr. Davis informed them he was willing to take the test and he took the written test. CP 699, Appendix B-1 pg. 2. lines 5-20, CP 798. DOC never referred the test for review because they verified that the written psychological test (and review thereof) and physical test and training were only for persons that had not been previously employed for years. This is verified by the messages of both Carrie Flieg and Margaret Lee left on Mr. Davis's machine, and the hiring protocols. CP 627-628, Appendix A-1 pg. 2-3, CP 767 and CP 769. DOC alleges there were new protocols after that time but no new complete protocols have ever been provided.

Mr. Davis's notes go on to explain that DOC had previously requested Dr. Moslin's confirmation that he was qualified to return to his position, in addition to his most recent therapist's opinion. Margaret Lee instructed her assistant Gail Robbins, during that conference call to get the two letters verifying Mr. Davis was medically fit to return to work from

SCCC and put them in his file; thus resolving any issue about his medical condition. Appendix pg. 2 lines 15-16, CP 798.

5. Circumstantial Evidence Supports the Foundation For Ms.

Patten's Declarations

DOC claims there is not adequate foundation to consider the testimony of the witness to the conference telephone call during which Mr. Davis was offered the WCC job. Yet if Ms. Patten's and Mr. Davis's declarations are reviewed the foundation is present. "[C]ourts routinely find a call to be authenticated when self-identification is combined with virtually any circumstantial evidence." Passovoy v. Nordstrom, Inc., 52 Wn.App. 166,171, 758 P.2d 524 (1988) citing 5 A. Tegland, § 458 at n. 1. Obviously, the circumstances indicate there were sufficient indicia of reliability to support the foundation. Mr. Davis addressed the conference call multiple times in the record. Furthermore, Mr. Davis identified the parties to the conference call, and provided the circumstantial evidence that provided the foundation for Ms. Patten's declaration. In addition, Mr. Davis declared the same facts as Ms. Patten and his statement is also admissible and was never challenged. Appendix B-3 pgs. 1-2, CO 758-759; B-4 pg. 1, CP 762.

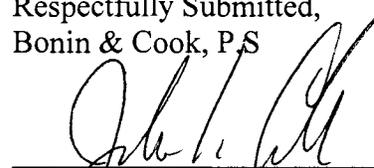
6. A Reasonable Person Could Find Discrimination Occurred

Based On the Facts

DOC alleges that all of the elements have not been met because Mr. Davis has not shown less qualified persons have been hired since he requested reemployment. This issue was covered in the initial briefing at page 21. The most obvious problem with this argument is that DOC denied any CO2 positions existed, and subsequently offered Mr. Davis two CO2 positions. Mr. Davis was only allowed to apply for CO1 positions when he was a CO2. CP 666 lines 17-18. CO1 candidates are by definition less qualified than CO2 candidates.

Dated this 19th day of April, 2010

Respectfully Submitted,
Bonin & Cook, P.S



Julie K. Cook
WSBA #25298
Attorney for Petitioner Christopher Davis

Declaration of Mailing

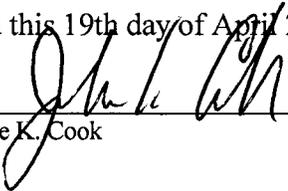
I, Julie K. Cook, certify under penalty of perjury of the laws of the State of Washington that on April 19, 2010, I caused to be mailed the following documents by US Mail 1st class postage prepaid:

Reply Brief of Petitioner

Upon:

Marie Colleen Clarke
Office of the Attorney General
PO Box 40126
Olympia, WA 98504-0001

Signed this 19th day of April 2010, Shelton, WA



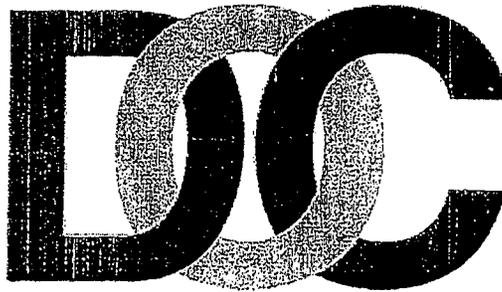
Julie K. Cook

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BY _____
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A-1

Protocols for Correctional Officer Pre-
Employment Screening and Selection
Washington State Dept. of Corrections
C.P. 764, 767, 769

Working Together for Safe Communities



Washington State
DEPARTMENT OF CORRECTIONS

*PROTOCOLS FOR CORRECTIONAL OFFICER
PRE-EMPLOYMENT SCREENING AND SELECTION*

January 2006

Exhibit
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Bonin & Cook, P.S.

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01040001

0-000000764

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AT pg 1

3. Successful completion of a physical ability test for continued employment and participation in the Correctional Worker CORE or Criminal Justice Training Centers, Correctional Officer Academy (COA).
4. Successful psychological assessment. (All candidates, including promotional, for appointment to a CO1 or CO2 permanent, non-permanent, or on-call positions are required to take a psychological assessment).
5. Medical verification to participate in the physical training of the CORE or COA

Use the attached form to make a conditional job offer. If you have to withdraw a conditional job offer, use the attached form letter, which is also attached.

Criminal history background checks: This is a check of prior criminal conviction history.

Pre-Employment Drug and/or Alcohol Testing. This is required for all positions covered by the International Brotherhood of Teamsters, Local Union # 117. See the "C/O pre-employment drug testing process" for specifics.

Physical Ability Testing (P.A.T.). Physical Ability Testing is in accordance with the requirements of the Washington State Criminal Justice Training Commission. To learn more about the P.A.T., see <http://www.cjtc.state.wa.us/policecorps/fitness.htm>.

Psychological assessment: The psychological assessment is a tool to determine suitability to perform the duties and responsibilities of a correctional officer. Because of this, a psychological assessment will not be administered to those who were working as an on-call or non-permanent CO1 or CO2 prior to January 26, 1999.

It is important to plan this part of the selection process in order to have a Psychologist available to conduct the assessments after the conditional job offer has been made. The telephone number to call to schedule a Psychologist is (425) 869-1110. Their office address is 2300 130th Ave NE, Suite A211, Bellevue, WA 98005. Part of the scheduling will include where the assessments will be conducted, either on site or at the psychologists' office.

Follow-up information for Psychologist: Inconsistent information about previous employment issues that come out in the interview and from reference checks can be provided to the psychologist to assist in the interview portion of the assessment process. This information should pertain only to job related behaviors and inconsistencies described by the candidate about previous employment issues.

Psychological Assessment Report: The Psychologist will provide a written graded report to the appointing authority after the assessment interview is completed. The use of this report is to assist in making a decision to tender a final offer of employment. An appointing authority or designee may consult with the Psychologist in order to obtain any clarification on the information contained in the report. This report will be destroyed after this decision is made. They will not be maintained in any local files. The Psychologists will maintain an official report in their offices. This report can only be used as part of the initial hiring process of a candidate for any position of correctional officer within the Washington State Department of Corrections.

Psychological Assessment Results and sharing with candidates: No employee of the Department of Corrections will share any information about the results of a psychological assessment with any candidate.

the job would be based on the information acquired during the screening processes, i.e. criminal history, references from previous employers, results of the psychological assessment.

EXAMPLES: Information that does not match up with information contained on the application such as education levels achieved and information collected demonstrates it was not achieved. Also, failing to disclose information on the application such as previous employers, etc. Information from the psychological assessment that indicates the candidate should not be hired to be a correctional officer for various reasons. Poor performance references from previous employers.

Retirees hired as an on-call: No psychological assessment is required.

Re-employment: No psychological assessment if we have five or more years of work history with the Washington State Department of Corrections and they have been away from the job less than two years. Use the following information as part of the hiring process for those considered for re-employment:

- Physical Ability Test
- Work Style Survey
- Interview
- Reference Checks
- Criminal History check
- Pre-Employment Drug and/or Alcohol Testing (Teamsters Only)
- Medical clearance for CORE or COA if more than two years since being a CO

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01040006

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A-2

Special Assistance WAC's

WAC 357-26-010

WAC 357-19-465

WAC 357-19-470

WAC 357-26-010 When must an employer provide reasonable accommodation? An employer must reasonably accommodate a known disability of a qualified candidate or employee as required by chapter 49.60 RCW and the federal Americans with Disabilities Act.

WAC 357-19-465 Must employers provide reemployment services to employees separated due to disability under the provisions of WAC 357-46-160? Employers must provide **special reemployment assistance** to separated former permanent status classified employees of the employer for two years following separation due to disability under the provisions of WAC 357-46-160.

WAC 357-19-470 What reemployment services does the employer provide to a former employee seeking reemployment under the provisions of WAC 357-19-465?

The employer will provide assistance, such as the following, to an eligible former employee seeking reemployment under the provisions of WAC 357-19-465:

- (1) Determination of job classes and/or positions for which the former employee is qualified;
- (2) Assistance regarding the employment/application process;
- (3) Reemployment consideration in accordance with the employer's certification procedure for positions for which the individual meets the competency and other position requirements; and
- (4) Access to training programs relevant to the job classes for which the former employee may become qualified.

A-3

Correction Academy Certification
WAC 139-10-215

Basic corrections academy equivalency certification

WAC 139-10-215

Basic corrections academy equivalency certification.

(1) A certificate of equivalent basic corrections training shall be issued only to corrections employees who successfully complete the equivalency process as required by the Washington state criminal justice training commission and shall be recognized in the same manner as the certificate of completion of a basic corrections academy.

(2) Eligibility for participation in the basic equivalency process shall be limited to regular, full-time custody and case management employees of publicly funded corrections agencies within this state who have either:

(a) Obtained certification through successful completion of an accepted basic corrections training program in this or another state.

(b) Previously held certification in this state and incurred a break or interruption of corrections employment in excess of twenty-four months.

The determination of program acceptability shall be the responsibility of the commission's executive director or his/her designee and shall be based upon a description and/or curriculum specifying subject areas and hourly allocation thereto.

(3) The decision to request an employee's participation within the equivalency process shall be discretionary with the chief executive officer of the employing agency. Such request shall be made to the commission in the approved form, signed by the chief executive officer of the requesting agency and shall include:

(a) Documented certification of successful completion of a basic corrections training program accepted by the training commission for the purposes of equivalency participation pursuant to the provisions of section (2) above;

(b) Written curriculum detailing specific areas of training and hours of training in specific areas;

(c) Copies of current and valid basic cardiopulmonary resuscitation (CPR) card and current and valid basic or advanced first-aid card(s) taken within the past year;

(d) Statement of applicant's health and physical condition from a licensed physician giving clearance for participation in physical training and defensive tactics coursework.

(4) Following receipt and acceptance of the above by the training commission, the applicant may participate in the equivalency process which shall include written examinations of specific core material classes, practical testing in basic skill areas, and full participation in mock scenes.

(5) Upon completion of the examination process outlined in section (4) and evaluation of the applicant's performance, the training commission shall:

(a) Issue a certificate of equivalent basic training;

(b) Issue a certificate of equivalent basic training upon applicant's successful completion of additional training as the training commission may require;

(c) Require completion of the appropriate basic corrections academy program.

(6) Any waiver of, or variance in, any above requirement for equivalency participation and/or certification may be granted by the training commission if it is determined that sufficient justification exists for such action. Any action or determination by commission staff regarding a requestor or applicant for equivalency certification may, upon written request of the involved individual or agency, be appealed to the training commission executive director, or designee.

[Statutory Authority: RCW 43.101.080. 03-13-098, § 139-10-215, filed 6/17/03, effective 7/18/03; 00-17-017, § 139-10-215, filed 8/4/00, effective 9/4/00. Statutory Authority: RCW 43.101.080(2). 91-01-041, § 139-10-215, filed 12/12/90, effective 1/12/91.]

A-4

Peace Officer Certificate Statue
RCWA 42.101.125

Lapsed peace officer certification--Reinstatement--Rules

West's RCWA 43.101.125

West's Revised Code of Washington Annotated Currentness

Title 43. State Government--Executive (Refs & Annos)

Chapter 43.101. Criminal Justice Training Commission--Education and Training Standards Boards (Refs & Annos)

➔43.101.125. Lapsed peace officer certification--Reinstatement--Rules

A peace officer's certification lapses automatically when there is a break of more than twenty-four consecutive months in the officer's service as a full-time law enforcement officer. A break in full-time law enforcement service which is due solely to the pendency of direct review or appeal from a disciplinary discharge, or to the pendency of a work-related injury, does not cause a lapse in certification. The officer may petition the commission for reinstatement of certification. Upon receipt of a petition for reinstatement of a lapsed certificate, the commission shall determine under this chapter and any applicable rules of the commission if the peace officer's certification status is to be reinstated, and the commission shall also determine any requirements which the officer must meet for reinstatement. The commission may adopt rules establishing requirements for reinstatement.

B-1

Declaration of Christopher Davis RE:
Late filed Summary Judgment Documents
C.P. 797-799

1 and set a time and place- this was never done. I never got any call back just the
2 letter. I expecting the call back on February 9, 2007 and made sure the phone was
3 monitored all day. I never even knew that DOC was making the allegation that I
4 failed to take a drug test until DOC responded to my EEOC complaint.

5 The same is true of the untrue statement that I refused to take participate in
6 psychological testing. I never expected DOC to claim I had refused psychological
7 testing and had no idea they would make that claim until they responded to the
8 EEOC complaint. I never refused testing. As I have stated before I took the long
9 written psychological test. I was told multiple times afterward that I did not need
10 to, and that my being given the test was a mistake. When Mr. Dowler called I told
11 him that, and that I did not want someone who was biased against me that had
12 worked with Doctor Smith to review the test. When we got off the phone I
13 expected the review of the written test to be scheduled. When I was offered the job
14 at WCC on February 9, 2007 Margaret Lee made it clear the issue of psychological
15 testing was resolved and told her assistant to put copies of the expert opinions in
16 my file and that would take care of any issues about my PTSD. By the time Mr.
17 Dowler called me in March I was pretty sure DOC had never really intended to
18 reemploy me and I was discussing the situation with the EEOC. There had just
19 been too much delay and too many excuses offered for me to think DOC was going
20 to follow through with any job offer.

21 I never asked to be taken off the job roster at WCC as DOC is now alleging.
22 I was asked if I would prefer placement at SCC. I told them that one reason the job
23 at SCC was looking better was that it was for a CO2 position. That was when I was
24

25 DECLARATION OF CHRISTOPHER DAVIS
RE: LATE FILED SUMMARY JUDGMENT
DOCUMENTS

Bonin and Cook, P.S.
A Professional Service Corporation
P.O. Box 783 Shelton, WA 98584
(360) 427-7474
(360) 427-7475

0-000000798

1 told it would be up to Doug Waddington whether I would be hired as a CO1 or
2 CO2. Likely they spoke to Doug Waddington about the issue and that was the real
3 reason they suddenly withdrew the job offer. Doug Waddington was a party to my
4 prior lawsuit and accused breaking flagrant misuses of power in violation of DOC
5 rules and policy.

6 I have never been called in for another custodial position interview at DOC
7 in spite of having high scores for employment eligibility. I originally tested with
8 DOC in 2006 and scored higher than even what my current scores indicate. In
9 2007 I was notified by the Department of Personnel that the DOC was changing its
10 testing guidelines and that I was going to have to re-take the tests. I did and scored
11 a few points lower, but my scores still remain high.

12 It looks like DOC is interfering with my employment in other areas as well.
13 On June 24, 2009 I attended a long interview and orientation at a juvenile facility,
14 Green Hill that is run by the State, DSHS. They brought us all in an orientation
15 type interview as if the applicants were already accepted pending a background
16 investigation. I was there several hours doing the interview/and tour. Then was
17 notified I wasn't selected as if there was problem with my background or other
18 issues. It appears DOC has once again interfered with my right to employment
19 with a state agency. I was the most experienced person chosen, (there were six of
20 us), and I was the only one with correctional experience with juveniles.

21 I declare under penalty of perjury that the foregoing is true and accurate in
22 all respects. Signed this 31st day of July, 2009 in Mason County, Washington.

23
24
25 DECLARATION OF CHRISTOPHER DAVIS
RE: LATE FILED SUMMARY JUDGMENT
DOCUMENTS

Bonin and Cook, P.S.
A Professional Service Corporation
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0-000000799

19

B1 - pg 3

B-2

Deposition of Christopher Davis
C.P. 644

1 reiterated I was under that 24 months, and then that I was
2 testing for Stafford Creek and I submitted those notes very
3 recently. It was, I think, approximately six pages. But it
4 was documented from a phone call that I had with Margaret
5 Lee and the HR manager -- or the, excuse me, the roster
6 manager.

7 Q Do you know the roster manager's name?

8 A Gail Roberts. And, basically, at that point they were
9 offering me a CO1 position, and they argued that I refused
10 to proceed with these testing when -- We had a three-way
11 phone call and that was witnessed by Teresa Patton, a
12 coworker at Michael's, and, basically, in that
13 conversation -- it was on speakerphone -- that Margaret Lee
14 instructed Gail Roberts to contact Stafford Creek to get my
15 doctor's release. And they asked me if I would be
16 interested in a CO2 position, because prior to that was a
17 CO1, and that Margaret Lee said it was ultimately Doug
18 Waddington's decision but, basically, she said that -- she
19 directed Gail Roberts to -- to get ahold of me and to
20 proceed with that process.

21 And then later that Monday I got a rejection letter on
22 the 12th, dated the 9th, the very date of that call that was
23 received by Gail Roberts and Margaret Lee. So for whatever
24 reasons they didn't contact Stafford Creek and get that
25 release and proceed with that -- with that -- with that job.

0-000000644

20

BZ pg 1

B-3

Declaration of Teresa Patten provided in
response to motion for summary judgment
C.P. 758-759

My name is Teresa Patten and I am an employee at Michaels, a place where Chris Davis used to work. Chris Davis and I were working in "trailer central" at Michaels together on February 9, 2007. Our shift was from 1pm - 9:30 pm. Shortly after we started the telephone rang and I answered it. The caller identified as someone from the Washington State Department of Corrections and asked for Chris Davis. I knew Chris had been applying to obtain a job in Corrections and I knew the call would be important to him but he was not yet inside Trailer Central so I immediately located him and had him come to the Trailer. Chris put the call on speaker phone in my presence.

The caller and Chris talked for about half an hour and then a third party came on identifying herself as upper level Human Resources. The call continued for some time and I was very excited for Chris because it sounded like he had the job. The caller who was put on the conference call later in the telephone call stated that she would be calling Chris back later that day. Chris told both callers that he was working and would have the same phone number that they called him at until 9:30 that night and that he would be ready for their call.

After the call Chris and I both talked about how wonderful it was for him and how from my perspective as someone listening in that it sounded like the job was already his.

Declaration of Teresa Patten provided in
response to motion for summary judgment- 2

Bonin & Cook, P.S.
A Professional Service Corporation
P.O. Box 783 Shelton, WA 98584
(360) 427-7474

Exhibit
Page 2 of 3
Bonin & Cook PS

0-000000758

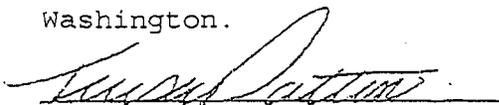
21

B-3 pg 1

The phone system at Michaels is set up so that if you have to leave your location any phone call to your number is forwarded directly to you. Chris and I coordinated to keep someone near the telephone for that entire day and there is also a recorded phone message system that picks up if the phone is busy or not answered. Well after six pm that night (at a time when Chris stated it was so late that there was no way that they would be calling back that night) we had to forward calls from Trailer Central while we conducted duties outside of the trailer for a few MINUTES, but even though Chris said it was well after Department of Correction administration business hours we used the forwarding system to make certain that no calls were missed if they were made. We closed that night at 9:30. When we closed no additional calls other than the one I have identified in this declaration were ever made from Department of Corrections to Chris.

I declare under penalty of perjury that the foregoing is true and accurate.

Signed this 17 day of April (month) in Lewis County, Washington.



Teresa Patten

Declaration of Teresa Patten provided in response to motion for summary judgment- 3

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A Professional Service Corporation
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Exhibit ~~J~~
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2nd Declaration of Teresa Patten
C.P. 762

1 THE UNDERSIGNED, UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE
2 OF WASHINGTON STATES AND DECLARES:
3

4 I am TERESA PATTEN and HEREBY DECLARE the following is true and correct:
5

6 I was asked on June 10, 2009 whether or not I remembered DOC asking Chris Davis to take a
7 drug test during the phone call at work on speakerphone that I referenced in my prior declaration.
8 I have spent some time thinking about it and I do not remember anyone from DOC requesting a
9 drug test. That is the sort of thing I would expect to remember if it occurred. In addition, Mr.
10 Davis was working very hard during that period of time to obtain employment from DOC, and
11 was very focused on that goal. I cannot see him blowing an opportunity by failing to do
12 something as simple as drug testing. It would have been totally out of character.
13
14
15

16 I declare under penalty of perjury that the foregoing is true and accurate.

17 Signed this 12 day of June in Lewis County, Washington.
18
19
20

21 

22 Teresa Patten
23

24 2 2nd DECLARATION OF TERESA
25 PATTEN

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Exhibit K
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Bonin & Cook, P.S.

0-000000762

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February 9, 2007 Rejection Letter
C.P. 672



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
WASHINGTON CORRECTION CENTER
P.O. BOX 900 • Shelton, Washington • 98584

Feb. 9, 2007

Thank you for taking the time to interview for the position of Correctional Officer at the Washington Corrections Center.

There are a variety of factors in addition to the oral interview that are considered when selecting a candidate for hire. These factors include employment history, education, work style survey, psychological testing, criminal history, and reference checks.

This letter is to inform you that another applicant has been selected for the position. Your name will remain on the register and you are free to contact other facilities. You may request another interview with us after one year.

Sincerely,

Gail Robbins
Roster Manager

Cc: File

Exhibit F
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Bonin & Cook, P.S.

C. Davis v. State
D1010012

0-000000672

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CH pg 1