

**STATE OF INDIANA
CIVIL RIGHTS COMMISSION**

DOCKET NO. EMra04050259

CLEVELAND WITHERSPOON,
Complainant,

FILE DATED

v.

JAN 30 2009

UNIVERSITY OF INDIANAPOLIS,
Respondent.

Indiana State Civil Rights Commission

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On December 29, 2006, Robert D. Lange, Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC"), entered his Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

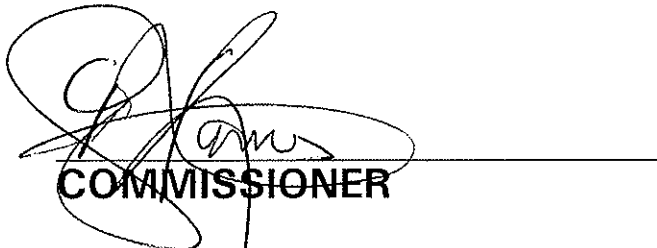
INDIANA CIVIL RIGHTS COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

Dated: 30 January 2009

~~To be served by certified mail, return receipt requested on the following parties and attorneys of record:~~

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University of Indianapolis
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STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra04050259

CLEVELAND WITHERSPOON,
Complainant,

FILE DATED

v.

DEC 29 2008

UNIVERSITY OF INDIANAPOLIS,
Respondent.

Indiana State Civil Rights Commission

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

On November 5, 2008, Respondent, University of Indianapolis ("the University"), filed Respondent's Motion For Summary Judgment, Respondent's Designation Of Evidence In Support Of Motion For Summary Judgment, and its Brief In Support of Respondent's Motion For Summary Judgment. On December 5, 2008, Complainant, Cleveland Witherspoon ("Witherspoon"), filed Plaintiff's (*sic*) Response In Opposition To Defendant's (*sic*) Motion For Summary Judgment.

Having carefully considered the foregoing and being duly advised in the premises the undersigned Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Witherspoon's complaint alleges that the University suspended him from his position as Assistant football coach in May of 2004 after an arrest for battery. Witherspoon, an African American, contends that this was unlawful discrimination because of race in violation of the Indiana Civil Rights Law, IC 22-9. ("the ICRL") because another coach, a white man, was not suspended after being arrested for battery.

Witherspoon also alleges that the University had engaged in a pattern of racial discrimination against him, including (1) that Witherspoon was denied the opportunity to seek a promotion to Defensive Coordinator in early 2004, (2) that the University had continuously denied Witherspoon opportunity for advancement, raises, teaching opportunities, and employment benefits after Witherspoon had spoken to the provost, and (3) the University had refused to pay for some undergraduate classes while similarly situated white employees had been afforded such benefits. COMPLAINT OF DISCRIMINATION (May 26, 2004) ("COMPLAINT").

2. Witherspoon filed a civil action in the United States District for the Southern District of Indiana, Cause No. 1:06-cv-1423-LJM-WTL ("the federal action") claiming that the University's actions constituted unlawful race discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C §2000e ("Title VII") and 42 U.S.C. §1981, as well as unlawful retaliation under Title VII.

3. After extensive discovery and thorough briefing, the federal court decided the federal action, on its merits, in favor of the University and against Witherspoon. The court addressed, and resolved, each and every claim made by Witherspoon in the COMPLAINT.

4. There is no genuine issue as to any material fact.

5. Any Conclusion Of Law that should have been deemed a Finding Of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the subject matter and the parties.

2. The claim preclusion branch of the doctrine of *res judicata* applies when a final judgment has been rendered and acts as a complete bar to a subsequent action on all matters that were or might have been litigated in the prior action between those parties and their privies. Hood v. G.D.H. by Elliott , 599 N.E.2d 237, 239 (Ind. Ct. App. 1992).

3. Claim preclusion requires: (1) the former judgment was rendered by a court of competent jurisdiction; (2) The former judgment was rendered on the merits; (3) the matter now in issue was, or might have been, determined in the former suit; and (4) the controversy in the former action must have been between parties to the present proceeding or their privies. Kieler v. C.A.T. by Trammel, 616 N.E.2d 34, 36 (Ind. Ct. App. 1994).

3. In this case, the federal court, a court of competent jurisdiction, issued a judgment on the merits concerning the matters now at issue in a case involving the parties to this COMPLAINT. As a result, the COMPLAINT is barred by the claim preclusion branch of the doctrine of *res judicata*.

4. The issue preclusion branch of the doctrine of *res judicata*, also referred to as collateral estoppel, bars the subsequent re-litigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former suit. Wedel v. American Electric Power Service Corporation, 681 N.E.2d 1122, 1131 (Ind. Ct. App. 1997), Mendenhall v. City of Indianapolis, 717 N.E.2d 1218, 1225 (Ind. Ct. App. 1999).

5. To bar re-litigation of an issue by virtue of issue preclusion requires: (1) a final judgment on the merits in a court of competent jurisdiction; (2) identity of issues; and (3) the party to be estopped was a party in the prior action or the privity of a party in the prior action. Infectious disease of Indianapolis, P.S.C. v. Toney, 813 N.E.2d 1223, 1228 (Ind. Ct. App. 2004).

6. In this case, the federal court, a court of competent jurisdiction, issued a final judgment on the merits addressing the identical issues raised in this COMPLAINT and did so in a proceeding to which Witherspoon was a party. concerning the matters now at issue in a case. As a result, the COMPLAINT is barred by the claim preclusion branch of the doctrine of *res judicata*.

7. The University is entitled to an adjudication in its favor as a matter of law.

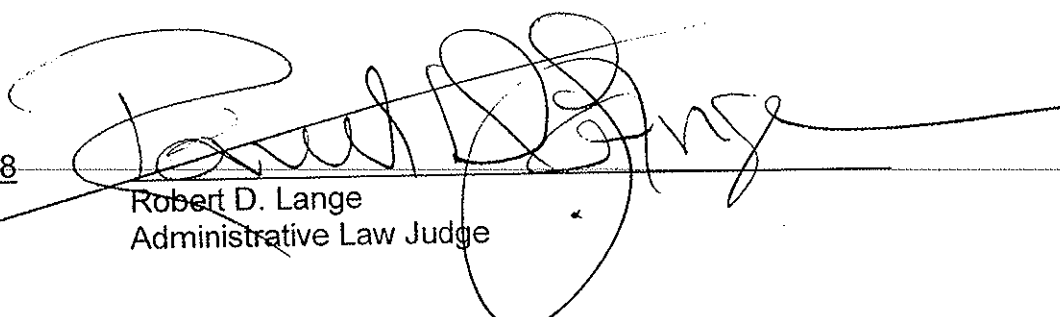
8. Administrative review of this proposed decision may be obtained by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days after service of this proposed decision. IC 4-21.5-3-29(d).

9. Any Finding Of Fact that should have been deemed a Conclusion Of Law is hereby adopted as such.

ORDER

1. Respondent's Motion For Summary Judgment is **GRANTED**.
2. Witherspoon's complaint is **DISMISSED**, with prejudice.

Dated: 29 December 2008



Robert D. Lange
Administrative Law Judge

To be served by first class mail this 29th day of December, 2008 on the following parties and attorneys of record:

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and to be personally served this 29th day of December, 2008 on the following:

Indiana Civil Rights Commission
c/o The Honorable Tony A. Kirkland, Executive Director
Indiana Government Center North
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Indianapolis, IN 46204-2255