



In the Matter of:

**OFFICE OF FEDERAL
CONTRACT COMPLIANCE
PROGRAMS,**

ARB CASE NO. 97-054

ALJ CASE NO. 95-OFC-1

PLAINTIFF,

DATE: August 25, 1997

v.

**SOUTHERN FARM BUREAU
LIFE INSURANCE COMPANY,**

DEFENDANT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

FINAL DECISION AND ORDER

The Administrative Law Judge (ALJ) submitted a Recommended Decision and Order (R. D. & O.) in this case arising under Executive Order No. 11,246, 3 C.F.R. 339 (1964-65), *reprinted as amended* in 42 U.S.C. § 2000e note (1988), finding that Defendant did not discriminate against the complainant Monica Bolden when it failed to hire her in 1991 for the position of computer programmer. R. D. & O. at 32. Plaintiff, the Office of Federal Contract Compliance Programs, did not file exceptions to the ALJ's R. D. & O. 41 C.F.R. § 60-30.28 (1995).

The record in this case has been reviewed and it fully supports the ALJ's conclusion that Defendant did not violate the Executive Order by discriminating against Ms. Bolden when it filled four computer programmer positions in December 1991. R. D. & O. at 28-32.^{1/} At most,

^{1/} We note only that the ALJ's extensive discussion of whether Plaintiff established a *prima facie* case was unnecessary. In a case such as this, in which the Defendant articulated legitimate, nondiscriminatory reasons for its alleged adverse action and the case has been fully tried or submitted (continued...)

the record shows that Ms. Bolden had qualifications generally similar to those of the applicants selected for the computer programmer jobs, and there is no other evidence of discrimination. As the court held in *Chock v. Northwest Airlines, Inc.* 113 F.3d 861, 864 (8th Cir. 1997), “a comparison that reveals that the plaintiff was only similarly qualified as the selected candidate would not raise an inference of racial discrimination.”

Accordingly, the complaint in this case is **DISMISSED**.

SO ORDERED.

DAVID A. O'BRIEN
Chair

KARL J. SANDSTROM
Member

JOYCE D. MILLER
Alternate Member

^{1/2}(...continued)

on a stipulated record, as here,, the question whether the Plaintiff previously established a *prima facie* case becomes irrelevant. *Carroll v. Bechtel Power Corp.*, Case No. 91-ERA-0046, Sec. Dec. and Order, Feb. 15, 1995, slip op. at 11, *aff'd*, *Carroll v. United States Dept. of Labor*, 78 F.3d 352, 356 (8th Cir. 1996). “The [trier of fact] has before it all the evidence it needs to determine whether ‘the defendant intentionally discriminated against the plaintiff.’” *USPS Bd. of Governors v. Aikens*, 460 U.S. 711, 715 (1983) (quoting *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253(1981)). Rather, the question is whether OFCCP established by a preponderance of the evidence that Southern Farm Bureau discriminated against Bolden on the basis of race. *See Carroll*, 78 F.3d at 356.