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5-31-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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ADMINISTRATIVE HEARINGS

AT

LINCE J. MUSGROVE FAVORS

EEOC Case No. N/A

Petitioner,

FCHR Case No. 97-0713

v.

DOAH Case No. 00-1791

DWD-CWS

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

FCHR Order No. 02-066

Respondent.

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Lince J. Musgrove Favors filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1995), alleging that Respondent Department of Children and Family Services committed an unlawful employment practice on the basis of Petitioner's gender, race and marital status when it terminated Petitioner from her position.

The allegations set forth in the complaint were investigated, and, on February 18, 2000, the Executive Director issued his determination finding that there was no reasonable cause to believe than an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice and the Commission transmitted the case to the Division of Administrative Hearings for the conduct of a formal proceeding.

Prior to the conduct of a formal proceeding, Respondent filed a "Motion to Dismiss for Lack of Jurisdiction" and Administrative Law Judge Don W. Davis issued an Order Closing File, dated June 13, 2000.

The Commission issued an Order Remanding Petition for Relief from an Unlawful Employment Practice on February 8, 2001.

After several continuances, a final evidentiary hearing was held before Judge Davis, in Panama City, Florida, on April 25, 2002.

Judge Davis issued a Recommended Order of dismissal on May 31, 2002.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We note that the Administrative Law Judge concludes that as an element of establishing a prima facie case of discrimination a causal connection must be shown between the act complained of and the protected class. See, Recommended Order, ¶ 21.

We conclude this to be error, albeit harmless error in this instance, given the Administrative Law Judge's conclusion that Petitioner did not receive different treatment than those outside Petitioner's protected classes (see Recommended Order, ¶ 22).

The Commission has indicated that this element is actually what a Petitioner is attempting to show by establishing a prima facie case of discrimination, and that this should not, itself, be an element of the test for a prima facie case. See, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998), citing Pugh v. Walt Disney World, 18 F.A.L.R. 1971, at 1972 (FCHR 1995), and Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997).

In modifying the conclusions of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion of law stating what must be demonstrated to establish a prima facie case of unlawful discrimination under the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusion of law as stated runs contrary to previous Commission decisions on the issue; and (3) that in making this modification the conclusion of law we are substituting is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(1), Florida Statutes (2001).

With the modification indicated, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 5th day of NOVEMBER, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gayle Cannon, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner P. C. Wu

Filed this 5th day of NOVEMBER, 2002,
in Tallahassee, Florida.



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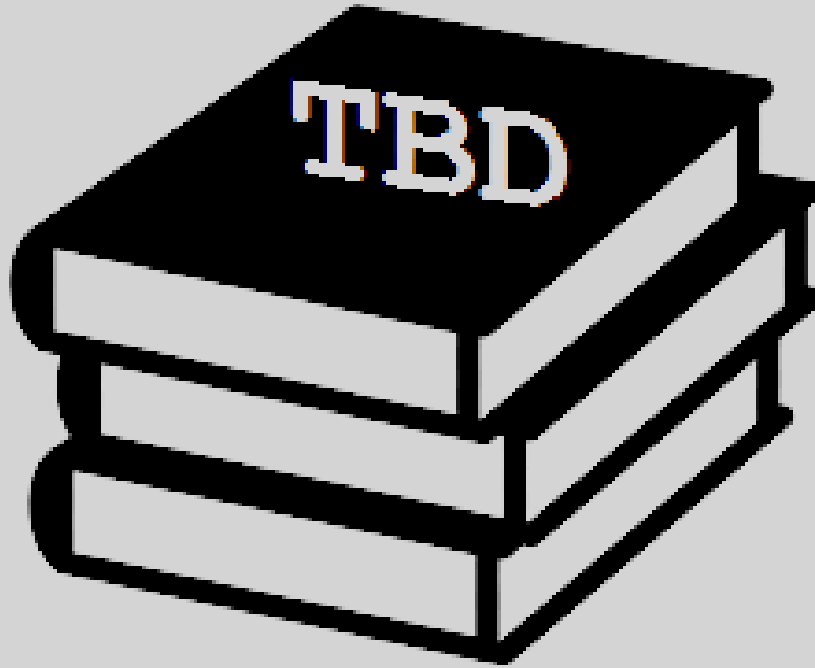
Don W. Davis, Administrative Law Judge, DOAH

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