

4-20-00

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

2000 JUN 30 P 2:30
FILED
DIVISION OF ADMINISTRATIVE HEARINGS

AUSBON BROWN, JR.,

EEOC Case No. 15D971187

Petitioner,

FCHR Case No. 97-2665

v.

AT

DOAH Case No. 99-4042

DRH-CWS

DEPARTMENT OF REVENUE,

FCHR Order No. 01-039

Respondent.

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Ausbon Brown, Jr., filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1997), alleging that Respondent Department of Revenue committed an unlawful employment practice on the basis of Petitioner's age (born April 25, 1943), sex (male), and race (Black) when it failed to hire him for several positions for which he had applied.

The allegations set forth in the complaint were investigated, and, on August 18, 1999, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

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

An evidentiary hearing was held by video teleconferencing in Tallahassee and Daytona Beach, Florida, on March 2, 2000, before Administrative Law Judge Donald R. Alexander.

Judge Alexander issued a Recommended Order of dismissal on April 20, 2000.

Pursuant to notice, public deliberations were held on May 29, 2001, by means of Communications Media Technology (namely, telephone) and "in person" before this panel of Commissioners (i.e., the parties were given the opportunity to appear both by phone or "in person" before the Commission panel). The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed with the Commission a document entitled "Petitioner's Exceptions to Proposed Recommended Order for DOAH # 99-4042 and FCHR # 97-2665," containing 4 numbered paragraphs, the first of which contains numerous "numbered" and "lettered" subsections.

Paragraphs 1A and 3 appear to complain about the time duration of Petitioner's case, the manner in which the Florida Commission on Human Relations handled the case, and the Administrative Law Judge's handling of discovery requests (see discussion regarding exception 1B, below), but contain no exceptions to the Administrative Law Judge's Recommended Order.

We reject exceptions set out at paragraphs 1A and 3.

Paragraph 1B takes issue with the Administrative Law Judge's handling of Petitioner's discovery requests, most notably the Administrative Law Judge's order, dated January 25, 2000, denying Petitioner's Motion to Compel Discovery and finding Petitioner's attempts at discovery to be legally deficient. See Order.

The Administrative Procedure Act gives a state agency like the Florida Commission on Human Relations the authority to modify only "... conclusions of law over which it has substantive jurisdiction..." See Section 120.57(1), Florida Statutes (1999).

Further, we note that nothing in the Administrative Law Judge's January 25, 2000 order precludes Petitioner from further attempting discovery in a manner in compliance with the rules cited by the Administrative Law Judge. See Order.

We reject the exception set out in paragraph 1B.

Paragraphs 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, and 2 take issue with the Administrative Law Judge's view of the evidence, inferences drawn from the evidence presented, failure to find facts from evidence presented, and credibility of witnesses presented.

A Commission panel has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent

findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

In paragraph 1E and 1K Petitioner excepts to the finding that the race of the successful candidate for position # 4231 is not known. See Recommended Order, ¶ 8 and ¶ 20. Petitioner contends that Respondent's exhibit 23 reflects that the race of the successful candidate is white. See paragraph 1E and 1K of exceptions.

We note that regardless of whether this finding of the Administrative Law Judge is correct or incorrect, the outcome of the case is not affected given the Administrative Law Judge's finding that, "In each case the Department selected someone who was better qualified." Recommended Order, ¶ 22.

We reject the exceptions set out in these paragraphs.

Paragraph 4 is a prayer for relief and not an exception to the Recommended Order and, consequently, we reject Paragraph 4 as an exception.

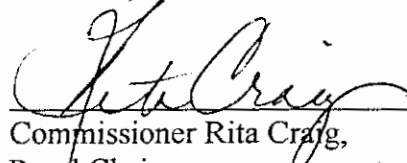
Finally, we note that regardless of our specific rulings on Petitioner's exceptions, we have found the Administrative Law Judge's findings of fact to be supported by competent substantial evidence and that the Administrative Law Judge's conclusions of law result in a correct disposition of the matter, and consequently, for this reason, also, Petitioner's exceptions are rejected.

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 29 day of May, 2001.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Rita Craig,
Panel Chairperson;
Commissioner Clarethea Brooks; and
Commissioner Gayle Cannon

Filed this 13 day of June, 2001,
in Tallahassee, Florida.



Azizi Dixon, Clerk
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NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

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Donald R. Alexander, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel