

9-12-01

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

02 MAR 21 PM 9:33
OFFICE OF THE
ADMINISTRATIVE
HEARINGS

ALTON M. SAUNDERS,

EEOC Case No. 15DA00614

Petitioner,

FCHR Case No. 20-01980

v.

DOAH Case No. 01-0872

JBC-Closed

HANGER PROSTHETICS AND
ORTHOTICS, INC.,

FCHR Order No. 02-006

Respondent.

FINAL ORDER DISMISSING REQUEST FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Alton M. Saunders filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1999), alleging that Respondent Hanger Prosthetics and Orthotics, Inc., committed an unlawful employment practice on the basis of Petitioner's age when it terminated him from employment.

Petitioner requested an administrative hearing, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Orlando, Florida, on June 6 and 7, 2001, before Administrative Law Judge Jeff B. Clark.

Judge Clark issued a Recommended Order of dismissal, dated September 12, 2001.

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

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.

However, we note and correct two errors of law by the Administrative Law Judge, which do not affect the outcome of the case.

The Administrative Law Judge concluded that Petitioner's request for administrative hearing was untimely, and therefore should be dismissed, because it was not filed within 35 days of the completion of the initial 180-day period following the filing of the complaint. Recommended Order, ¶ 29 through ¶ 44.

We conclude that Petitioner's request for administrative hearing is timely.

The Florida Civil Rights Act of 1992 (Act) states, "In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause." Section 760.11(8), Florida Statutes (1999).

The referred to subsection (4) states, "In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either: (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or (b) Request an administrative hearing under ss. 120.569 and 120.57." Section 760.11(4), Florida Statutes (1999).

With regard to civil suits, the Act states, "A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission." Section 760.11(5) Florida Statutes (1999).

With regard to administrative proceedings, the Act states, "An administrative hearing pursuant to (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission." Section 760.11(6), Florida Statutes (1999).

In a case such as the instant case, in which no "determination" was issued by the Commission and in which the Commission noted that the request for administrative hearing was filed both more than four years after the filing of the initial complaint, and, obviously then, more than four years after the date of harm, the Commission concluded the request for administrative hearing to be timely filed. See Prentice v. North American Realty Corp., d/b/a North American Acquisition Corp., FCHR Order No. 00-021 (FCHR 2000).

In so doing, the Commission panel in Prentice noted, "In interpreting these statute sections a Commission panel stated, '...we conclude that the plain meaning of the cited statutory provisions is that a complainant may request an administrative hearing at any time after the conclusion of the initial 180-day period following the filing of the complaint and no later than 35 days after the date of a determination by the Commission (or simply no later than 35 days after the date of determination, if the Commission's investigation is completed within 180 days of the filing of the complaint).' Wilson v. Scotty's, Inc., FCHR Order No. 98-032 (FCHR 1998)." Prentice, supra.

We conclude that the Administrative Law Judge committed an error of law in concluding that a request for administrative hearing must be made within 35 days of the initial 180-day period following the filing of a complaint.

In so doing, we find: (1) that the Administrative Law Judge's conclusion of law we are correcting is within the substantive jurisdiction of the Florida Commission on Human Relations,

namely the interpretation of the time period for filing a request for administrative relief under the Florida Civil Rights Act of 1992; (2) the reason the correction is being made is that the conclusion of law as stated by the Administrative Law Judge runs contrary to previous Commission action on the issue; and (3) that in making this correction the conclusion of law we are substituting is as or more reasonable than the conclusion which has been rejected. See, Section 120.57(1)(1), Florida Statutes (1999).

We further 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, ¶ 50.

We conclude this to be error, albeit harmless error in this instance.

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); see also, Kalmbacher v. Department of Environmental Protection, 23 F.A.L.R. 3377, at 3378, 3379 (FCHR 2001).

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 (1999).

With these corrections, 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 Request 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 20th day of March, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Donna Elam

Filed this 20th day of March, 2002,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
325 John Knox Rd., Bldg. K
Tallahassee, FL 32303-4149
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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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Jeff B. Clark, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel