

12-4-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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BARBARA J. MORGAN,

AP

EEOC Case No. 15D970233

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

FCHR Case No. 97-0211

v.

DOAH Case No. 00-1133

DSM-2603

LA AMISTAD R.T.C.,

FCHR Order No. 03-004

Respondent.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

On September 19, 1996, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice by causing her constructive termination based on her race (black). The allegations set forth in the complaint were not investigated and referred the matter to DOAH more than 761 days after the 180-day statutory limit based on the Petitioner's Request for an Administrative Hearing made on February 5, 2000. The ALJ, on June 6, 2000, entered an Amended Recommended Order of Dismissal determining that the Petitioner's claim was barred by Section 760.11 (7); citing Milano v. Moldmaster, 703 So2d 1093 (Fla. 4th DCA 1997) as controlling. The Commission, on August 1, 2001, remanded the matter for an administrative hearing citing the fact that Milano, supra, had been overruled by Joshua v. City of Gainesville, 768 So2d 432 (Fla. 2000), and that the Commission had consistently held that where the Commission never issued a determination a Request for Hearing could be made at any time by a Complainant. See, Commission Order # 01-036. The Complainant was granted a formal evidentiary hearing that was held in Viera, Florida, on October 17, 2002, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of Dismissal dated December 4, 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

The Commission's file contains a transcript of the proceeding, including exhibits, before the Administrative Law Judge.

The Administrative Law Judge found that the Petitioner was an African-American female and was employed by Petitioner. The ALJ further found that Respondent did not change Petitioner's conditions of employment throughout her employment; that is, Petitioner's job duties, responsibilities, schedule and conditions of employment remained the same although an increase in workload occurred due to economic factors (reduction in staff) rather than

discrimination. Also, Petitioner never expressed any complaints to management about the alleged hostile work environment. See, Recommended Order, ¶ 14 –16.

The ALJ further found that Petitioner failed to show by a preponderance of the evidence that Respondent discriminated against her on the basis of a perceived handicap or disability of obesity and that the evidence was also insufficient to show that Respondent constructively discharged Petitioner or retaliated against Petitioner for a prior charge of discrimination. See, Recommended Order, ¶ 20.

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

Conclusions of Law

The Administrative Law Judge concluded that, as a threshold matter, Petitioner failed to show that Respondent perceived Petitioner as having a disability. The ALJ further concluded that the evidence was insufficient to support an inference of discrimination. See, Recommended Order, ¶ 23 and 27. The ALJ further found that, even though the evidence does not support the inference of discrimination, the Respondent articulated a legitimate, non-discriminatory reason for its action. Petitioner failed to present sufficient evidence to show that Respondent either should not be believed or that discriminatory reasons, rather than the proffered reason, more likely motivated the adverse employment action. See, Recommended Order, ¶ 29-31.

We note that the ALJ 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, ¶ 24. We conclude this to be error, albeit harmless 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, Baxia 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 employment 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 state 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)(l), Florida Statutes (2001).

If a prima facie case is established, “the Respondent must articulate some legitimate nondiscriminatory reason for its action.” Hart v. Double Envelope Corporation, 15 F.A.L.R. 1664, at 1673 (FCHR 1992). Once this is articulated, the burden returns to the Petitioner to demonstrate the Respondent intentionally discriminated against the Petitioner; that is, the reason is only a pretext to cover discriminatory intent. O’Neill v. Sarasota County School Board, 18 F.A.L.R. 1129, at 1130 (FCHR 1994).

The ALJ concluded that the Petitioner failed to make a prima facie case and further found that the Respondent did articulate a legitimate nondiscriminatory reason for not hiring the Petitioner in those instances.

With the modification indicated, we adopt the Administrative Law Judge's conclusions of law that Petitioner failed to rebut the Respondent's articulated legitimate, nondiscriminatory business reason for hiring and further failed to present any credible evidence to support a prima facie case of discrimination.

Exceptions

Neither party filed any exceptions to the 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 21st day of February, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Roosevelt Paige, Panel Chairperson
Commissioner John Corbett
Commissioner Aletta Shutes

Filed this 21st day of February, 2003
in Tallahassee, Florida.

Violet Crawford
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Commission on Human Relations
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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 the 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

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Daniel Manry, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 21st day of FEBRUARY, 2003.

BY: *Kristin Crawford*
Clerk of the Commission
Florida Commission on Human Relations