

10-10-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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RAY MAYO

AP

EEOC Case No. 15DA200169

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

FCHR Case No. 21-03171

v.

DOAH Case No. 02-2749

SFH-CWS

DAYCO PRODUCTS, INC.,

FCHR Order No. 03-001

Respondent.

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

Preliminary Matters

Petitioner Ray Mayo 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 Dayco Products, Inc., committed an unlawful employment practice on the basis of Petitioner's race (Black) and disability / handicap (unspecified in the complaint, but identified in the Petition for Relief as bi-lateral carpal tunnel syndrome and substance abuse disorder) when it terminated Petitioner from his position.

The allegations set forth in the complaint were investigated, and, on June 21, 2002, 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 Commission transmitted the case to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Ocala, Florida, on September 18, 2002, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of dismissal on October 10, 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, ¶ 35.

We conclude this to be error, albeit harmless error in this instance, given the Administrative Law Judge's conclusion that even if a prima facie case of discrimination had been established, Respondent articulated a legitimate, nondiscriminatory reason for terminating Petitioner, and there was no evidence presented that this reason was a pretext for discrimination (see Recommended Order, ¶ 42 and ¶ 43).

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).

Parenthetically, in a case involving allegations of unlawful handicap discrimination involving termination from employment, a Commission panel has indicated, "We note that to establish a prima facie case of handicap discrimination the Petitioner must show: (1) she is handicapped; (2) that she performed or is able to perform her assigned duties satisfactorily; and (3) that despite her satisfactory performance, she was terminated. Swenson-Davis v. Orlando Partners, Inc., 16 F.A.L.R. 792, at 798 (FCHR 1993)... O'Neill v. Sarasota County School Board, 18 F.A.L.R. 1129, at 1130 (FCHR 1994)." Curry v. United Parcel Service of America, 24 F.A.L.R. 3166, at 3167 (FCHR 2000).

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)(I), 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

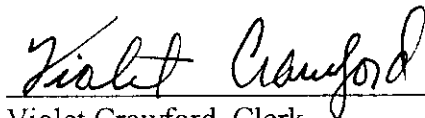
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 21st day of February, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

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



Violet Crawford, Clerk
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 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:

Ray Mayo
708 Southwest Second Street
Ocala, FL 34471

Kade Spencer
Dayco Products, Inc.
3100 Southeast Maricamp Road
Ocala, FL 34471

Suzanne F. Hood, Administrative Law Judge, DOAH

James Mallue, 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: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations