

1-17-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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AP

EEOC Case No. 15DA200139

DIVISION OF
ADMINISTRATIVE
HEARINGS

ROBERT F. CLARKE,

Petitioner,

FCHR Case No. 22-00951

v.

DOAH Case No. 02-3088

BJS-Closed

SANTA FE COMMUNITY COLLEGE,

FCHR Order No. 03-024

Respondent.

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

Preliminary Matters

Petitioner Robert F. Clark filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Santa Fe Community College committed an unlawful employment practice on the basis of Petitioner's age (DOB 6/20/32) and disability (unspecified) by failing to hire Petitioner as its Library Director.

The allegations set forth in the complaint were investigated, and, on July 25, 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 case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Gainesville, Florida, on October 25, 2002, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated January 17, 2003.

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.

We note that the Administrative Law Judge concluded that one of the elements of the test for establishing a prima facie case of discrimination in this failure-to-hire case was a showing that Petitioner "lost the position to a younger person." Recommended Order, ¶ 20.

In a case in which an Administrative Law Judge made this same conclusion, and also concluded that one of the elements for establishing a prima facie case of age discrimination was a showing that a similarly situated younger employee received dissimilar treatment, a Commission panel stated, "While we agree that these could be elements of a prima facie case of age discrimination, we note that they are not necessarily elements of a prima facie case of age discrimination. The Commission has long held that the age discrimination prohibitions of the Florida Civil Rights Act of 1992, and its predecessor, the Human Rights Act of 1977, as amended, prohibit discrimination on the basis of any age, birth to death. See, e.g., Green v. ATC/VANCOM Management, Inc., 20 F.A.L.R. 314 (FCHR 1997), and Simms v. Niagara Lockport Industries, Inc., 8 F.A.L.R. 3588 (FCHR 1986). Therefore, the required showing would not be necessarily that a younger employee received dissimilar treatment, but rather that an employee of a different age received dissimilar treatment." Musgrove v. Gator Human Services, c/o Tiger Success Center, et al., 22 F.A.L.R. 355, at 356 (FCHR 1999).

In our view, the element stated, supra, while being a legitimate element of a prima facie case of age discrimination in some instances, would more appropriately require a showing that Petitioner "lost the position to a person of an age different than that of Petitioner."

In addition, the Administrative Law Judge concluded that one of the elements for the test for establishing a prima facie case of disability discrimination is a showing that Petitioner was "discriminated against by the employer because of his disability." Recommended Order, ¶ 21.

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).

We note that this does not affect the outcome of the case given the Administrative Law Judge's conclusion that Petitioner failed to establish that he was disabled. Recommended Order, ¶ 22.

In modifying the conclusions of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions 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 modifications are being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue;

and (3) that in making these modifications the conclusions of law we are substituting are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2001).

With these clarifications and 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 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 29th day of April, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Leonie Hermantin; and
Commissioner Mario M. Valle

Filed this 29th day of April, 2003,
in Tallahassee, Florida.

Violet Crawford
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:

Robert F. Clarke
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906 North Monroe Street
Tallahassee, FL 32303

Barbara J. Staros, 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 29th day of April, 2003.

By: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations