

3-27-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

03 JUL -8 PM 12:57
ADMINISTRATIVE
HEARINGS

MARK J. ARMESTO,

EEOC Case No. 15DA200650

Petitioner,

FCHR Case No. 22-01916

v.

DOAH Case No. 02-3996

EJD-CWS

COASTAL LUMBER COMPANY,

FCHR Order No. 03-041

Respondent.

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

Preliminary Matters

Petitioner Mark J. Armesto 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 Coastal Lumber Company committed an unlawful employment practice on the basis of Petitioner's age (72) when it failed to hire Petitioner for the position of Purchasing Agent.

The allegations set forth in the complaint were investigated, and, on September 26, 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 Tallahassee, Florida, on January 21, 2003, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated March 27, 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.

The Administrative Law Judge concluded, "To establish a prima facie case of age discrimination, Petitioner must show that he (1) was a member of a protected age group, (2) was subjected to adverse employment action, (3) was qualified to do the job, and (4) that he lost the position to a younger individual." Recommended Order, ¶ 46.

While we agree that such a showing would establish a prima facie case of age discrimination, we note that Petitioner would not necessarily be required to demonstrate that he lost the position to a "younger" individual.

A Commission panel has stated, "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 in employment 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 [to establish a prima facie case of age discrimination] 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).

Likewise, we conclude that the last element of the test for a prima facie case of age discrimination set out by the Administrative Law Judge, supra, would be better stated, "that he lost the position to an individual of a different age than Petitioner."

In correcting the indicated conclusion of law of the Administrative Law Judge, we conclude: (1) that the conclusion of law being corrected is one 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 correction 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 correction the conclusion of law being substituted is as or more reasonable than the conclusion of law being rejected. See, Section 120.57(1)(1), Florida Statutes (2001).

With this correction, 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 3rd day of July, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner Leonie Hermantin; and
Commissioner Billy Whitefox Stall

Filed this 3rd day of July, 2003,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

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:

Mark J. Armesto
c/o Gary Lee Printy, Esq.
The Law Offices of Gary Lee Printy
1804 Miccosukee Commons Drive, Suite 200
Tallahassee, FL 32308

Coastal Lumber Company
c/o Maura M. Bolivar, Esq.
c/o David K. Miller, Esq.
Broad & Cassel, P.A.
215 South Monroe Street, Suite 400
Post Office Box 11300
Tallahassee, FL 32302

Ella Jane P. Davis, 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 3rd day of July, 2003.

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