

1-31-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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AP

DIVISION OF ADMINISTRATIVE HEARINGS

CARMEN CHRISTENSEN,

EEOC Case No. 155DA200639

Petitioner,

FCHR Case No. 22-01785

v.

DOAH Case No. 02-3356

DMK-CLOS

CITY OF WINTER PARK,

FCHR Order No. 03-060

Respondent.

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

Preliminary Matters

Petitioner Carmen Christensen 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 City of Winter Park committed an unlawful employment practice on the basis of Petitioner's sex (female) when it failed to hire Petitioner.

The allegations set forth in the complaint were investigated, and, on August 6, 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 Orlando, Florida, on December 12, 2002, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated January 31, 2003.

Pursuant to notice, public deliberations were held on July 9, 2003, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

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.

In our view, the Administrative Law Judge did commit an error of law, albeit harmless, in the test he used for determining whether a prima facie case of discrimination was established. The Administrative Law Judge concluded that one of the elements for the test for establishing a prima facie case of discrimination is that there must be shown by the evidence that there is a causal connection between Petitioner's protected group and the adverse employment action to which Petitioner was subjected. Recommended Order, ¶ 35.

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 element 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, 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 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)(1), Florida Statutes (2001).

With the indicated modifications, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed a document with the Commission dated February 20, 2003, excepting to the Administrative Law Judge's Recommended Order. The document states in its entirety, "I am appalled at the recommended order letter from Judge Kilbride. It was totally for the employer. Nothing was mentioned about my findings. I take exception to this and want to proceed to the next step."

Respondent filed a document moving to strike these "exceptions."

We note that we have found that the Administrative Law Judge's findings of fact are supported by competent substantial evidence, and that the error of law that did occur in this matter was harmless as to the outcome of this case.

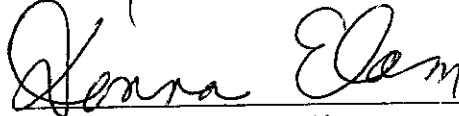
We reject Petitioner's exceptions.

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.

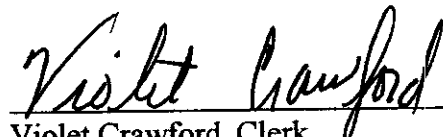
DONE AND ORDERED this 10 day of July, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Donna Elam,
Panel Chairperson;
Commissioner Mario M. Valle; and
Commissioner P. C. Wu

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Filed this 24th 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:

Carmen Christensen
5419 Shiloh Dr.
Adamsville, AL 35005

City of Winter Park
c/o Paul J. Scheck, Esq.
Shutts & Bowen LLP
300 South Orange Avenue, Suite 1000
Post Office Box 4956
Orlando, FL 32802-4956

Daniel M. Kilbride, 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 24th day of July, 2003.

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