

6-24-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF ADMINISTRATIVE HEARINGS

EMORY L. MOSLEY,

EEOC Case No. 15D995708

Petitioner,

AP

FCHR Case No. 99-V1731

v.

DOAH Case No. 03-0137

SDC-CUBS

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 03-069

Respondent.

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

Preliminary Matters

Petitioner Emory L. Mosley 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 Department of Corrections committed an unlawful employment practice on the basis of Petitioner's race (African-American), religion (Christian), age (DOB: 10-26-40), disability (unspecified in the complaint), and on the basis of retaliation, when Respondent transferred Petitioner.

The allegations set forth in the complaint were investigated, and, on December 9, 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 on April 9, 2003, in Tallahassee, Florida, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated June 24, 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

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 found that in this case a written reprimand for insubordination received by Petitioner from Respondent did not amount to an "adverse employment action" for purposes of determining whether a prima facie case of discrimination existed, because "no pay benefits or other significant conditions of employment were affected by..." the reprimand. Recommended Order, ¶ 20 and ¶ 21.

Without identifying this conclusion as error in this instance, given the absence of a transcript of the proceeding before the Administrative Law Judge, we note that if this conclusion is erroneous, the error is harmless, given the Administrative Law Judge's finding that even if a prima facie case of discrimination occurred, the Respondent articulated a legitimate nondiscriminatory reason for issuing the reprimand, and Petitioner presented no evidence to indicate that this reason was pretextual. Recommended Order, ¶ 22. We point out that the Commission has indicated that the discriminatory implementation of discipline is unlawful under the Florida Civil Rights Act of 1992. See, e.g., Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998).

In our view, the Administrative Law Judge did commit an error of law, albeit harmless, in the test used for determining whether a prima facie case of disability discrimination was established. The Administrative Law Judge concluded that one of the elements of the test for establishing a prima facie case of disability discrimination is that it must be shown that Petitioner "was unlawfully discriminated against because of [his] disability." Recommended Order, ¶ 20.

The Commission has indicated that a causal connection between Petitioner's protected group and the adverse employment action to which Petitioner was subjected 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., supra, 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), for the application of this specifically to a handicap/disability discrimination case.

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

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

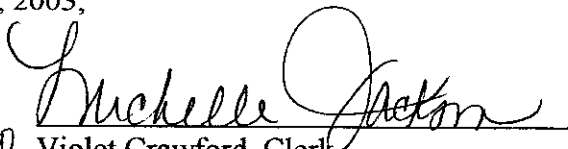
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 20th day of November, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner Aletta Shutes; and
Commissioner P. C. Wu

Filed this 20th day of November, 2003,
in Tallahassee, Florida.

for 
Michelle Jackson
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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:


Emory L. Mosley
Post Office Box 8
Monticello, FL 32345

Department of Corrections
c/o Gary L. Grant, Esq.
2601 Blair Stone Road
Tallahassee, FL 32399-2500

Diane Cleavinger, 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 20th day of November, 2003.

for By: 
Clerk of the Commission
Florida Commission on Human Relations