

7-15-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

03 DEC 29 AM 9:35
DIVISION OF ADMINISTRATIVE HEARINGS

SYLVESTER R. BROWN,

EEOC Case No. 15DA00281

Petitioner,

FCHR Case No. 20-01104

v.

AF

DOAH Case No. 02-4175

PMR-Closed

FLORIDA STATE UNIVERSITY,

FCHR Order No. 03-081

Respondent.

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

Preliminary Matters

Petitioner Sylvester R. Brown 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 Florida State University committed an unlawful employment practice on the basis of Petitioner's race (Black), sex (male) and disability (unspecified in complaint) when it terminated Petitioner from his position.

The allegations set forth in the complaint were investigated, and, on September 10, 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 29, 2003, in Tallahassee, Florida, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal, dated July 15, 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.

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 age discrimination was established. The Administrative Law Judge concluded that one of the elements for the test for establishing a prima facie case of age discrimination in a "termination" case such as this one is a showing that Petitioner "was replaced by a younger individual." Recommended Order, ¶ 52.

While this could be an element of a prima facie case of age discrimination, it is not necessarily an element of a prima facie case of age discrimination. A Commission panel ruling on similar conclusions of law 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 (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, 22 F.A.L.R. 355, at 356 (FCHR 1999).

In addition, in our view, the Administrative Law Judge committed 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, ¶ 39.

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 these 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 (2003).

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

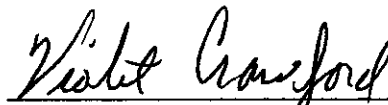
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26th day of December, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;
Commissioner John Corbett; and
Commissioner Aletta Shutes

Filed this 26th day of December, 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:


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P. Michael Ruff, 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 25th day of DECEMBER, 2003.

By: 
Clerk of the Commission
Florida Commission on Human Relations