

7-29-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
04 MAY 13 AM 11:24
DIVISION OF ADMINISTRATIVE
HEARINGS

JESSIE F. JENKINS,

EEOC Case No. 150980799

Petitioner,

FCHR Case No. 98-2062

v.

DOAH Case No. 03-0292

pmr-closed

EPISCOPAL CHILDREN'S SERVICES,

FCHR Order No. 04-056

Respondent.

AT

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

Preliminary Matters

Petitioner Jessie F. Jenkins filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1997), alleging that Respondent Episcopal Children's Services committed an unlawful employment practice on the basis of Petitioner's age (DOB: 7-25-40) when it terminated Petitioner from employment.

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 Starke, Florida, on May 6, 2003, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal on July 30, 2003.

Pursuant to notice, public deliberations were held on April 26, 2004, in Gainesville, Florida, before this panel of Commissioners, at which deliberations the 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.

We note that the Administrative Law Judge concluded that Petitioner was a member of a protected class, stating, "In this case it is undisputed that the Petitioner was over 40 years of age at the time of her termination." Recommended Order, ¶ 15.

While, clearly, the Administrative Law Judge was correct in concluding that Petitioner was a member of a protected class for the analysis of an age discrimination case, the reference to "40 years of age" warrants comment. A Commission panel has stated, "While the federal Age Discrimination in Employment Act uses the age of 40 as the age at which the Act's protection begins (see 29 U.S.C. § 631), the age of 40 has no significance in interpreting the Florida Civil Rights Act of 1992, or its predecessor, the Human Rights Act of 1977, as amended. The Commission has consistently held that Florida law prohibits discrimination in employment on the basis of any age, birth to death..." Green v. ATC/Vancom Management, Inc., 20 F.A.L.R. 314, at 315 (FCHR 1997).

With this comment, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order."

In the document, Petitioner excepts to the Administrative Law Judge's conclusion that a prima facie case of age discrimination had not been established, specifically taking issue with the Administrative Law Judge's conclusion that it was not shown that a similarly situated employee outside Petitioner's protected class was treated differently. See Recommended Order, ¶ 15.

This determination is not dispositive of the case, since the Administrative Law Judge concluded that even if a prima facie case of age discrimination had been established Respondent presented evidence of a legitimate nondiscriminatory reason for terminating Petitioner, and Petitioner offered no evidence to show that Petitioner's explanation for the termination of her employment was pretextual. Recommended Order, ¶ 18 through ¶ 20.

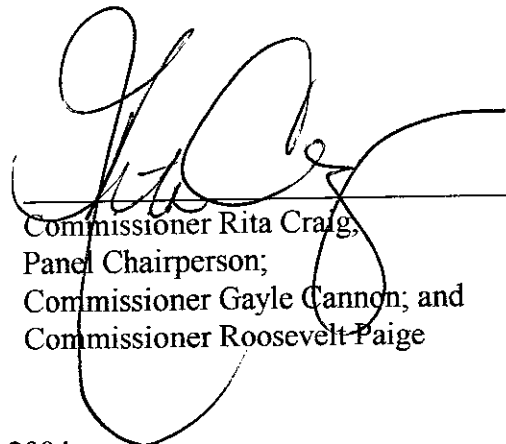
We reject Petitioner's exceptions.

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 12th day of May, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Rita Craig,
Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Roosevelt Paige

Filed this 12th day of May, 2004,
in Tallahassee, Florida.



Violet Crawford, Clerk
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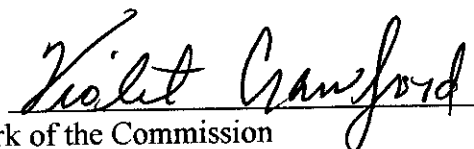
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P. Michael Ruff, Administrative Law Judge, DOAH

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 12th day of May, 2004.

By: 
Clerk of the Commission
Florida Commission on Human Relations