

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2004 JUN 29 P 1:41
DIVISION OF
ADMINISTRATIVE
HEARINGS

LAMAR T. MUNRO,

EEOC Case No. 15DA300598

Petitioner,

FCHR Case No. 23-01649

v.

AP

DOAH Case No. 03-3591

EJD-CWS

WINN DIXIE STORES, INC.,

FCHR Order No. 04-058

Respondent.

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

Petitioner, LAMAR T. MUNRO, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, WINN DIXIE STORES, INC., committed an unlawful employment practice by denying him promotion due to his age. The allegations set forth in the complaint were investigated and on August 26, 2003, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held in Lake City, Florida, on December 12, 2003, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of Dismissal dated March 23, 2004.

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

The Commission's file contains a transcript of the proceeding before the Administrative Law Judge.

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spradlin vs. Washington Mutual Bank, d/b/a Great Western, 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted.

In the instant case, the Petitioner was a 56-year old white male and the successful applicant was a 49-year old white male who both applied for a meat manager's job at the Lake City Winn Dixie store. Both had substantial experience in meat cutting with the successful candidate having slightly more experience as a manager but less experience with Winn Dixie.

The Administrative Law Judge found that the Petitioner had not established his prima facie case in that the evidence pointed to the fact that the Petitioner (58) and successful applicant (49) were perceived by the decision makers to be approximately the same age, "in their 50s." Also, the manager who was replaced was actually 36 years old or much younger than both applicants. However, the ALJ further found that, even assuming arguendo, that the Petitioner had established his prima facie case, the employer had articulated a legitimate, non-discriminatory reason for the decision to promote the successful candidate. The ALJ recited a number of facts in which the primary decision-maker, the Respondent's District Meat Supervisor, demonstrated that he believed the successful applicant to be better qualified for the position. These facts were based on interviews conducted with both applicants and answers to the same questions asked by the Supervisor. Petitioner offered only his own assessment that he was the "most qualified" and provided no corroborating evidence of his allegations that the successful candidate was "unfit" for the position. In fact, the ALJ specifically found that the management had no knowledge of any of his allegations at the time of deciding on the promotion. The Petitioner therefore failed to prove that the reasons given by the Supervisor were pre-textual to discrimination.

We adopt the Administrative Law Judge's findings of fact

Conclusions of Law

The ALJ indicated that one of the elements of a prima facie case is a showing that "a substantially younger person filled the position." A Commission panel has indicated that one of the elements in determining a prima facie case of age discrimination is that Petitioner is treated differently than similarly situated individuals of a "different" age, as opposed to a "younger" age. See *Musgrove v. Gator Human Services, c/o Tiger Success Center, et al.*, 22 F.A.L.R. 355, at 356 (FCHR 1999). This error is a harmless error in this case.

In making this correction to the conclusions of law of the Administrative Law Judge, we find: (1) that the Administrative Law Judge's conclusions of law being corrected are within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the time period for filing a request for administrative relief under the Florida Civil Rights Act of 1992; (2) that the reason the correction is being made is that the conclusions of law as stated by the Administrative Law Judge run contrary to previous Commission decisions on the issue; and (3) that in making this correction the conclusions of law being substituted are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1) (1), Florida Statutes (2003).

We adopt the Administrative Law Judge's conclusions of law as modified above.

Neither party filed any exceptions to the Recommended Order.

Dismissal

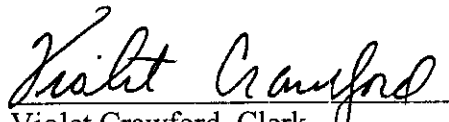
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 25th day of June, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita Craig, Panel Chairperson
Commissioner Roosevelt Paige
Commissioner Keith Roberts

Filed this 25th day of June, 2004
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 the 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

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Honorable Ella Jane P. Davis, Administrative Law Judge (DOAH)

Jim Tait, 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 June, 2004.

BY:

Viola Crawford

Clerk of the Commission

Florida Commission on Human Relations