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ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MELISSA A. CHENEVERT,

EEOC Case No. NONE

Petitioner,

AT

FCHR Case No. 22-01812

v.

DOAH Case No. 03-4676

CSH-CWS

VIRGIL & BROTHERS, INC.,

FCHR Order No. 04-099

Respondent.

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

Petitioner, MELISSA A. CHENEVERT, filed a complaint of discrimination on April 22, 2002, pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent VIRGIL & BROTHERS, INC., committed an unlawful employment practice by based on her relationship/association with disabled persons. The allegations set forth in the complaint were investigated, and, on October 2, 2003, 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 on November 5, 2003, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding. An evidentiary hearing was held in Sanford, Florida, on April 1, 2004, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of dismissal, dated May 28, 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 and Conclusions of Law

The Petitioner was hired by Respondent in 1999 to work as a receptionist/secretary for the front office and was terminated on March 19, 2002. Throughout her employment, Petitioner had taken time off and/or adjust her work schedule to take her daughter to frequent medical and counseling appointments. In addition, in early 2002, her mother who resided with her and her children had open heart surgery and was diagnosed with lymphoma. Petitioner requested that she be made a part-time employee in/about February 2002. The Respondent denied that request because her position was needed to be filled full-time. On many days, particularly in February and March of 2002, Petitioner would leave work early and miss whole days of work. At some point in time, following the denial to move to part-time, Petitioner request a leave of absence; however, she was unable to estimate the time she would require. Respondent informed Petitioner that her position could not be left open indefinitely.

The basis for the Petitioner's complaint of discrimination was that she was terminated because of her association with disabled or handicapped persons (her daughter and mother). She required and requested accommodation from her full-time employment in order to assist those persons. The Administrative Law Judge found that the plain meaning of Subsection 760.10(1)(a), Florida Statutes (2003), is that an employer is prohibited from discharging an individual from employment because of "such individual's....handicap." The ALJ found that the Petitioner did not meet the threshold requirement when she asserted that her daughter and mother were handicapped and that, because of their conditions, she was required to take time off from to care for them and was, therefore, terminated because of her relationship/association with handicapped or disabled persons. Therefore, Petitioner is not entitled to relief for violations under that provision

We adopt the Administrative Law Judge's Findings of Fact and Conclusions of Law.

Exceptions

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

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 4th day of August, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson
Commissioner Billy Whitefox Stall
Commissioner P.C. Wu

Filed this 4th day of August, 2004,
in Tallahassee, Florida.



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Honorable Carolyn S. Holifield, 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 4th day of August, 2004.

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