

5-28-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS
SFH-COS

HAZEL M. CASLER,

EEOC Case No. 15DA300089

Petitioner,

FCHR Case No. 22-03607

v.

AT

DOAH Case No. 03-4848

MANPOWER, INC.,

FCHR Order No. 04-098

Respondent.

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

Petitioner, HAZEL M. CASLER, filed a complaint of discrimination on March 7, 2003, pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent MANPOWER, INC., committed an unlawful employment practice by based on her age, disability and in retaliation. The allegations set forth in the complaint were investigated, and, on November 6, 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 December 8, 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 Pensacola, Florida, on March 11, 2004, and by telephone on March 23, 2004, before Administrative Law Judge Suzanne F. Hood.

Judge Hood 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

The Petitioner was employed by the Respondent from March 30, 1998, until April 9, 2002, as a payroll and billing clerk at Respondent's Pensacola support center. In or about June 1999, Petitioner informed her supervisor that she suffered from allergies and requested the all employees at the center be prohibited from wearing any scented substances, including perfume and colognes. The supervisor informed the Petitioner that she would not impose a scent-free environment but would request all employees to voluntarily refrain from wearing scented substances. Throughout the next several years, the supervisor sent periodic e-mails reminding all employees and also spoke with several employees urging them to not wear scents. Despite her supervisor's active efforts, the Petitioner also confronted certain employees who complained to the supervisor that they were being singled out because other co-workers wearing scents were ignored by Petitioner. In October, 2001, Petitioner also complained about mold in the building to

which the supervisor contacted the owner. The owner remediated the mold damage and, during the remediation, the supervisor let employees leave early. Petitioner took advantage of that offer.

Petitioner sent an e-mail on October 4, 2001, complaining about Respondent's handling of the mold problem and copied various people, including the company's president. She mentioned problems that specified other employees were also having and copied them as well. The three specified employees complained to their supervisor that they had been included in her complaint without their permission and that she had disclosed their medical conditions to others, including the company president. Around the same time, Petitioner made an unannounced visit to a co-worker's home to discuss concerns about mold and air quality. On October 8, 2001, Petitioner received a verbal warning for confronting employees and for inappropriately discussing other employees' medical conditions. After receiving the verbal warning and "counseling," Petitioner continued to confront co-workers and conducted herself in ways that made her co-workers feel threatened and uncomfortable. On March 27, 2002, Respondent gave Petitioner a written warning about her conduct which was "negatively affect[ing] productivity, individual and team performance, and morale, as well as caus[ing] conflict and fear." She had a meeting with her management to discuss the written warning. On April 5, 2002, Petitioner had a conversation with a co-worker about regarding her employment status. Upon receiving a verbal complaint from the co-worker, followed by an e-mail on April 9, Respondent decided to terminate Petitioner for violating the March 27 written warning and to put a stop to the stress and tension Petitioner was bringing to the workplace.

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

Conclusions of Law

The Administrative Law Judge found that, although the Petitioner had not produced any direct evidence of her disability, nor evidence that her disability was within the meaning of the Florida Civil Rights Act and the ADA, the Respondent did treat her as having an impairment. The ALJ, however, found that the Respondent did make a reasonable accommodation for her disability and that a "scent-free work environment" as requested by the Petitioner was not reasonable. See, e.g., Hunt v. St Peter School, 963 F.Supp 843 (W.D. Mo. 1997); Montenez-Denman v. Slater, 208 F.3d 214 (6th Cir. 2000). The ALJ further found that Petitioner had not shown that she was sufficiently harassed so as to create an abusive working environment. Rather, her co-workers avoided her because of her confrontational attitude. Respondent took prompt and effective remedial action when mold was found in the building and when co-workers wore a scent that offended the Petitioner.

As to age discrimination in failing to receive a promotion, the Respondent presented legitimate, non-discriminatory reasons for promoting the individual to the team lead position. There was no evidence presented to show that age was a factor or that other employees were treated more favorably than Petitioner. Petitioner did not prove a causal connection between her complaints to the Respondent and her discharge. Rather, the evidence in the record shows that Respondent terminated Petitioner due to her inappropriate behavior towards her co-workers and the disruptive effects that behavior had on the workplace.

We adopt the Administrative Law Judge's Conclusions of Law.

Exceptions

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

Dismissal

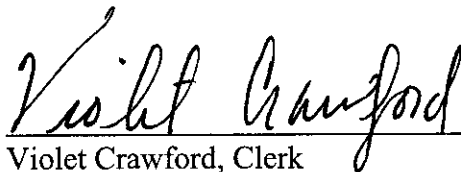
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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.



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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Honorable Suzanne F. Hood, 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: 
Clerk of the Commission
Florida Commission on Human Relations