

3-26-04

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
2004 AUG 11 A 11:58  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

JULIE BEDELL,

EEOC Case No. NONE

Petitioner,

AP

FCHR Case No. 23-01393

v.

DOAH Case No. 03-3290

FLB-CWS

DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

FCHR Order No. 04-101

Respondent.

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

Petitioner, JULIE BEDELL, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, DEPARTMENT OF CHILDREN AND FAMILIES (DCF), committed an unlawful employment practice by terminating her probationary employment because of age. The allegations set forth in the complaint were investigated and on August 7, 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 by video teleconference in Fort Myers, Florida, on November 18-21, 2003, before Administrative Law Judge Fred L. Buckine.

Judge Buckine issued a Recommended Order of Dismissal dated March 26, 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 ALJ provided a long list of findings of fact based on the 28 witnesses, including herself, called by Petitioner and concluded that there was no competent evidence that DCF used age as a criterion in its determination as to her termination. In fact, he found that the preponderance of the evidence demonstrated that age was not a factor.

The ALJ did question whether the Petitioner established her prima facie case since she was a probationary employee and had not completed the "qualifications" to become a career service employee. The ALJ's conclusion that the Petitioner had failed to establish her prima facie case because she was a probationary employee and had not yet met her full "civil service" requirements is in error; since that fact would merely go to the status of employment and employment rights appurtenant thereto, and not to the issue of discriminatory employment practices covered by Chapter 760, Florida Statutes. In this case, the error was harmless since the ALJ also concluded that the Respondent provided legitimate, non-discriminatory reasons for

terminating her and the material evidence of record, established by both Petitioner's and Respondent's witnesses, proved the Agency had good cause to justify Petitioner's termination.

We modify the conclusions of law accordingly.

In modifying these conclusions of law of the Administrative Law Judge, we conclude: (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 modification is 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)(l), Florida Statutes (2001).

We adopt the Administrative Law Judge's findings of fact and conclusions of law as modified.

#### Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a 13-page document entitled, "Petitioner's Exceptions to Recommended Order of Hearing Officer." In that document, she focused on two issues of law: 1) the ALJ erred when he found that she had not established a *prima facie* case because she was not fully qualified for the position; and 2) the ALJ erred in failing to adopt her evidence that the proffered reasons given by the Respondent for her termination were pre-textual. The Respondent filed a Motion to Strike Petitioner's Exceptions based on three premises: 1) untimely filed; 2) failure to sign pleading and provide Respondent timely copy; and 3) exceptions are not specific and are general in nature. Panel found exceptions to be timely because Petitioner had, within the time period allowed requested and been granted an extension of time (10 additional days) and had signed the cover letter transmitting the exceptions statement. The failure of service seemed to have been satisfied by hand delivery. The panel, therefore, denied the Motion, accepted the Respondent's late response (without objection by Petitioner) and considered the exceptions on their merits.

As to issue 1, the ALJ did correctly state the fact that the Petitioner was a "probationary employee" and, therefore, subject to termination without cause. However, he did err when he concluded that the Petitioner had failed to establish a *prima facie* case because she was "not qualified" under the second prong of the McDonnell-Douglas test. She was qualified to be hired and placed in the probationary position she held and from which she was terminated.

As to issue 2, the ALJ specifically found, and detailed, legitimate, non-discriminatory reasons that the Respondent offered for terminating the Petitioner's probationary employment. In addition, the ALJ found that age was not a factor in the decision to terminate her employment; nor was she treated any differently than other employees whether younger or older. The Petitioner failed to provide credible evidence to demonstrate that the offered reasons were merely a pretext for unlawful age discrimination. Put succinctly, as the court did in St. Mary's Honor Center v. Hicks, 509 U.S. 502 at 519 (1993), "[T]he fact finder must believe the plaintiff's explanation of intentional discrimination." After two days of hearings and 28 witnesses, that is not the case here.

Petitioner essentially takes issue with inferences drawn by the ALJ from the evidence presented and focused on issues of conduct and "good cause" which the Respondent presented to support its legitimate, non-discriminatory reasons for terminating Petitioner. The Commission has stated, "[i]t is well settled that it is the Administrative Law Judge's function to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the ALJ's role to decide between them." Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986) and Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

None of the Petitioner's Exceptions to facts found by the ALJ provide any basis for the legally necessary findings required for the Commission to determine that the [ALJ's] findings are not supported by competent substantial evidence in the record. See §§ 120.57 (1)(l), Florida Statutes (2001). As the courts have often stated, "The agency **may not reject** the hearing officer's finding unless there is no competent, substantial evidence from which the finding could reasonably be inferred. The agency is **not authorized** to weigh the evidence presented, judge credibility of witnesses, or otherwise interpret the evidence to fit its desired ultimate conclusion." [emphasis supplied] Howard Johnson Company v. Kilpatrick, 501 So2d 59, at 60 (Fla. 1st DCA 1987) quoting from Heifetz v Department of Business Regulation, 475 So2d 1277, at 1281 (Fla. 1st DCA 1985).

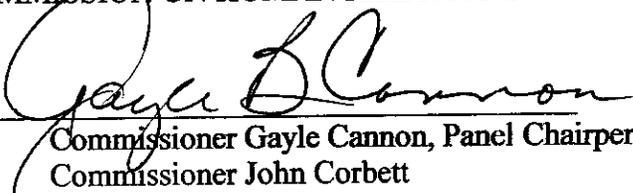
Based on the foregoing, the Petitioner's exceptions are stricken, except as to the exceptions relating to her establishment of a prima facie case based on her qualifications for the probationary employment which exceptions are accepted.

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 10<sup>th</sup> day of August, 2004.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

  
\_\_\_\_\_  
Commissioner Gayle Cannon, Panel Chairperson  
Commissioner John Corbett  
Commissioner Keith A. Roberts

Filed this 10<sup>th</sup> day of August, 2004  
in Tallahassee, Florida.

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Honorable Fred L. Buckine, 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 10<sup>th</sup> day of August, 2004.

BY: Violet Crawford  
Clerk of the Commission  
Florida Commission on Human Relations