

6-4-04

FILED
04 OCT -4 PM 1:46
ADMINISTRATIVE
HEARINGS

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

JACK CATALDO,

EEOC Case No. 15DA301061

Petitioner,

FCHR Case No. 23-03364

v.

AT

DOAH Case No. 03-4674

SFH-CLOS

ST. JAMES EPISCOPAL SCHOOL,

FCHR Order No. 04-135

Respondent.

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

Petitioner, JACK CATALDO, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, ST. JAMES EPISCOPAL SCHOOL, committed an unlawful employment practice by terminating him because of his religion, marital status and gender. An investigation was conducted and, on November 4, 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 Deland, Florida, on February 18, 2004, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of Dismissal dated June 4, 2004.

Pursuant to notice, public deliberations were held on September 30, 2004, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the above-indicated Order.

Findings of Fact and Conclusions of Law

Judge Hood found Petitioner was employed by Respondent as a part-time guitar teacher in September 2002. He was terminated on September 27, 2002, following the school's receipt of a criminal history report from the Florida Department of Law Enforcement indicating that the Petitioner had been arrested earlier that year for battery/domestic violence. The ALJ further found that, upon the occasion of being confronted by the principal with the result of the criminal history report and a later telephone call, he became loud and intimidating which further convinced the principal that she made the right decision in terminating him. The principal on both occasions informed the police and requested their assistance.

The Petitioner filed his complaint using three basis for discrimination: 1) religion; 2) marital status; and 3) gender (sex). The ALJ dismissed the basis on religion at the beginning of

FCHR Order No. 04-135

Page No. 2

the hearing, after oral argument, by granting the Respondent's Motion to Dismiss (originally filed as a Motion for Summary Judgment).

The ALJ concluded that in both of the other bases (marital status and gender) the Petitioner failed to prove his prima facie case. He presented no direct evidence of discrimination and did not meet the McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) test; specifically, its fourth element requiring a showing that a similarly situated employee outside the protected class was not discharged. The ALJ further concluded that, even if he had proven his prima facie case, the Respondent presented a legitimate, non-discriminatory reason for terminating him and that the Petitioner failed to show that reason was a pretext to discrimination.

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

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document titled, "Exceptions to Recommended Order," in which he outlined his exceptions 1) generally to perceived procedural errors made by the ALJ and 2) specific comments on certain paragraphs in the recommended order.

As to his general comments on the "procedural errors" by the ALJ, he attempted to introduce facts not in the record, was argumentative and was not supported by the record. The record reflects that when he indicated that he had trouble with discovery, the judge initiated a telephonic hearing and resolved those issues. In addition, he asserted that he was not allowed to subpoena witnesses but demonstrated his capacity by subpoenaing one of his witnesses. He also indicated that the ALJ should have "set a retrial;" however, he did not point to anyplace in the record in which he requested such. These exceptions do not demonstrate the proceeding leading to the ALJ's findings and conclusions did not comply with the essential requirements of law.

As to his specific comments on certain paragraphs in the recommended order, they were argumentative, raised facts not in the record, questioned inferences made by the judge and reweighed and reordered facts found by the judge. Petitioner essentially took issue with inferences drawn by the ALJ from the evidence presented. The Commission has stated, "It 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 Specific Exceptions provide any basis for the legally necessary findings required for the Commission to **determine that the [ALJ's] finding is 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

FCHR Order No. 04-135

Page No. 3

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).

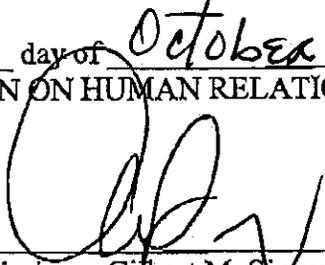
Based on the foregoing, the Petitioner’s exceptions are stricken.

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 1st day of October, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS



Commissioner Gilbert M. Singer, Panel Chairperson
Commissioner Mario M. Valle
Commissioner P.C. Wu

Filed this 1st day of October, 2004
in Tallahassee, Florida.

Violet Crawford
Violet Crawford, Clerk
Commission on Human Relations
209 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

FCHR Order No. 04-135

Page No. 4

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

Copies furnished to:

For Petitioner:

Jack Cataldo
417 Nautilus Avenue
Daytona Beach, Florida 32118

For Respondent:

Thomas J. Leek, Esquire
COBB & COLE
PO Box 2491
Daytona Beach, FL 32115-2491

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 1st day of October, 2004.

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