

5-16-01

FILED

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS 01 NOV 30 AM 9:11

ANITA KING,

AT

DIVISION OF
EEOC Case No. 115D980509
HEARINGS

Petitioner,

FCHR Case No. 98-1398

v.

DOAH Case No. 00-4169

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 01-062

Respondent.

SDC
Closed

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Anita King filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1997), alleging that Respondent Department of Corrections committed an unlawful employment practice on the bases of Petitioner's race (Black), color, and sex (female), and on the basis of retaliation when it terminated Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on July 18, 2000, 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 and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Perry, Florida, on April 4, 2001, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal on May 16, 2001.

Pursuant to notice, public deliberations were held on November 1, 2001, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order.

Findings of Fact

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

We adopt the Administrative Law Judge's findings of fact, by a two to one vote (Commissioners Craig and Cannon in the majority, Commissioner Paige in the minority).

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We note that the Administrative Law Judge concludes that as an element of establishing a prima facie case of discrimination a causal connection must be shown between the act complained of and the protected class. See, Recommended Order, ¶ 20.

We conclude this to be error, albeit harmless error in this instance.

The Commission has indicated that this element is actually what a Petitioner is attempting to show by establishing a prima facie case of discrimination, and that this should not, itself, be an element of the test for a prima facie case. See, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998), citing Pugh v. Walt Disney World, 18 F.A.L.R. 1971, at 1972 (FCHR 1995), and Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997). See also, Kalmbacher v. Department of Environmental Protection, 23 F.A.L.R. 3377, at 3378, 3379 (FCHR 2001).

In modifying the conclusions of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion 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 conclusion of law as stated runs contrary to previous Commission decisions on the issue; and (3) that in making this modification the conclusion of law we are substituting is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(I), Florida Statutes (1999).

We adopt the Administrative Law Judge's conclusions of law with this modification, by a two to one vote (Commissioners Craig and Cannon in the majority, Commissioner Paige in the minority).

Exceptions

Petitioner filed exceptions to the Recommended Order in a document entitled, "Exception to DOAH Recommended Order," dated June 11, 2001.

As indicated, above, the Commission's file does not contain a transcript of the proceeding before the Administrative Law Judge.

The filing of such a transcript is a requirement to the filing of exceptions to a Recommended Order. See, Fla. Admin. Code R. 60Y-4.025(3), and Fla. Admin. Code R. 60Y-4.027(1). In the absence of the filing of such a transcript the Commission has ordered exceptions stricken. See, e.g., Ebeh v. Consumer Credit Counseling Service of

the Tampa Bay Area, Inc., 16 F.A.L.R. 2149, at 2150 (FCHR 1994), and Lee v. Emmer Development Corporation, 20 F.A.L.R. 3132, at 3134 (FCHR 1998).

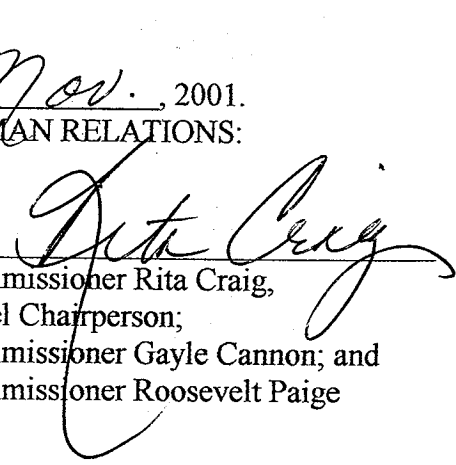
Petitioner's exceptions are hereby stricken, by a two to one vote (Commissioners Craig and Cannon in the majority, Commissioner Paige in the minority).

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice, by a two to one vote (Commissioners Craig and Cannon in the majority, Commissioner Paige in the minority).

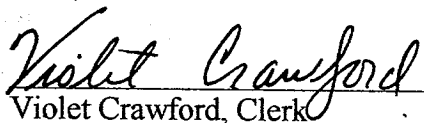
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 1 day of Nov., 2001.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Rita Craig,
Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Roosevelt Paige

Filed this 28th day of November, 2001,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
325 John Knox Rd., Bldg. F, Suite 240
Tallahassee, FL 32303-4149
(850) 488-7082