

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

EILEEN E. CARROLL,                    )  
  )  
      Petitioner,                        )  
  )  
vs.                                        )    Case No. 00-5096  
  )  
FLORIDA STATE UNIVERSITY,         )  
  )  
      Respondent.                       )  
\_\_\_\_\_  
  )

RECOMMENDED ORDER OF DISMISSAL

A formal hearing was conducted in this case on March 2, 2001, in Tallahassee, Florida, before the Division of Administrative Hearings, by its Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: No appearance

For Respondent: Leslie G. Street, Esquire  
Florida State University  
Office of the General Counsel  
424 Wescott Building  
Tallahassee, Florida 32306-1400

STATEMENT OF THE ISSUE

The issue is whether Respondent committed an unlawful employment act by discriminating against Petitioner based on her age.

PRELIMINARY STATEMENT

Petitioner Eileen E. Carroll (Petitioner) filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) on October 16, 1997. This charge alleged that Respondent Florida State University (Respondent) had violated Section 760.10, Florida Statutes, by discriminating against Petitioner based on her age.

On or about November 7, 2000, FCHR issued a Determination: No Cause. Petitioner filed a Petition for Relief on December 4, 2000.

FCHR referred the Petitioner for Relief to the Division of Administrative Hearings on December 19, 2000. Respondent filed an answer to this petition on January 4, 2001.

A Notice of Hearing dated January 5, 2001, scheduled the case for formal hearing on March 2, 2001. An Order of Pre-hearing Instructions was also issued on March 2, 2001.

Respondent filed a witness list on February 15, 2001, and a Motion in Limine on February 26, 2001. Petitioner did not file any pre-hearing pleadings.

Petitioner did not make an appearance at the hearing. Respondent made an ore tenus motion to dismiss the case based on Petitioner's failure to appear.

### FINDINGS OF FACT

1. The Notice of Hearing dated January 5, 2001, was sent to Petitioner at her address of record. The United States Postal Service did not return said notice to the Division of Administrative Hearings as undeliverable.

2. Respondent's counsel had a telephone conversation with Petitioner on February 21, 2001. At that time, Respondent's counsel understood that Petitioner intended to make an appearance at the hearing.

3. The hearing commenced at 10:00 a.m. on March 2, 2001, as scheduled. Petitioner did not make an appearance. Shortly thereafter, the undersigned's office attempted to contact Petitioner by telephone. There was no response at Petitioner's telephone number of record.

4. Petitioner did not contact Respondent or the Division of Administrative Hearings to explain her non-appearance.

5. The undersigned adjourned the hearing at 10:30 a.m. on March 2, 2001.

### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties on the subject matter of this proceeding. Sections 120.569, 120.57(1), and 760.11, Florida Statutes.

7. Section 120.569(1), Florida Statutes, provides as follows in relevant part:

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency. . . . Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases.

8. By her non-appearance, Petitioner has abandoned her claim of age discrimination against Respondent. Her failure to appear indicates that there are no disputed issues of material facts. Accordingly, Petitioner is not entitled to an opportunity for a formal hearing pursuant to Section 120.57(1), Florida Statutes.

9. Moreover, in order to sustain her claim of age discrimination, Petitioner must first prove a prima facie case, showing the following: (a) she is a member of a protected class; (b) she was qualified for the position for which she applied; (c) she was rejected in spite of her qualifications; and (d) the individual who was hired or promoted is not a member of a protected group and had lesser or equal qualifications. Carter v. Three Springs Residential Treatment, 132 F.3d 635 (11th Cir. 1998), citing McDonald Douglas Corp. v. Green, 411 U.S. 792 (1973). Petitioner's non-appearance means that she has not presented a prima facie case.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED:

That FCHR enter a final order dismissing the Petition for Relief.

DONE AND ORDERED this 6th day of March, 2001, in Tallahassee, Leon County, Florida.

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SUZANNE F. HOOD  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of March, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.