

6-6-01

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

03 JUL 28 AM 9:22

AP

EEOC Case No. 15D511604
DIVISION OF ADMINISTRATIVE HEARINGS

FCHR Case No. 97-2756

DOAH Case No. 01-0692

FCHR Order No. 03-059

OTIS WARE,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

SDC-CLWS
03 JUL 23 PM 2:11
RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

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

Preliminary Matters

Petitioner Otis Ware 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 disability, and on the basis of retaliation, when it terminated Petitioner.

The allegations set forth in the complaint were investigated, and, on January 12, 2001, 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 Trenton, Florida, on April 27, 2001, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated June 6, 2001. Pursuant to notice, public deliberations were held on July 9, 2003, 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 Petition for Relief.

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.

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 indicated that, "In order to establish a prima facie case, Petitioner must establish that: (a) He is a member of a protected group; (b) He is qualified for the position; (c) He was subject to an adverse employment decision; (d) He was treated less favorably than similarly-situated persons outside the protected class; and (e) There is a causal connection between (a) and (c)." Recommended Order, ¶ 18.

With regard to the last element of the test cited by the Administrative Law Judge, 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 element 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, Curry v. United Parcel Service of America, 24 F.A.L.R. 3166, at 3167 (FCHR 2000).

Rather, the Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination in a termination case, "the employee must prove (1) that he belongs to a group protected by the statute; (2) that he was qualified for the job; (3) that he was terminated; and (4) that after his termination, the employer hired a person not in petitioner's protected class or retained those having comparable or lesser qualifications, not in the protected class." See Martinez, supra, citing Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993).

In accordance with these Commission decisions, we modify the test set out by the Administrative Law Judge for the establishment of a prima facie case of discrimination. In so doing, we find: (1) that the conclusion of law being modified is one 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 being substituted is as or more reasonable than the conclusion of law being rejected. See, Section 120.57(1)(1), Florida Statutes (2001).

With the indicated modification, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

The Commission is treating a letter from Petitioner, addressed to the Commission, dated June 22, 2001, and received by the Commission on June 28, 2001, as an exception to the Recommended Order.

As indicated, above, the Commission's file does not contain a transcript of the proceeding on the merits 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), an employment discrimination case, and Lee v. Emmer Development Corporation, 20 F.A.L.R. 3132, at 3134 (FCHR 1998), a housing discrimination case.

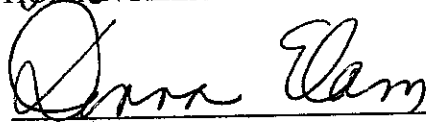
Based on the foregoing, Petitioner's exceptions are stricken.

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 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 day of July, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Donna Elam,
Panel Chairperson;
Commissioner Mario M. Valle; and
Commissioner P. C. Wu

03 JUL 23 PM 2:11
RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS

Filed this 24th day of July, 2003,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

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:

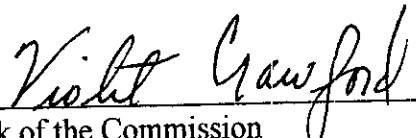
Otis Ware
Post Office Box 2155
Trenton, FL 32693

Department of Corrections
c/o Gary Grant, Esq.
2601 Blair Stone Road
Tallahassee, FL 32399-2500

Diane Cleavinger, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 24th day of July, 2003.

By: 

Clerk of the Commission
Florida Commission on Human Relations