

10-25-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

SUSAN INDISH-MILITELLO,

AD

EEOC Case No. NON

Petitioner,

FCHR Case No. 95-J843

v.

DOAH Case No. 01-2512

CSH-Clos

PINELLAS SUNCOAST TRANSIT
AUTHORITY,

FCHR Order No. 03-005

Respondent.

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

On July 10, 1995, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992 ("FRCA"), Sections 760.01-760.11, Florida Statutes (2001), (and an amended complaint on July 16, 1999, adding a violation of the Americans with Disabilities Act ("ADA")) alleging that the Respondent committed an unlawful employment practice by failing to accommodate Petitioner for her disability and subsequently terminating her. The Commission failed to provide a determination within 180 days and the Petitioner filed a Request for Formal Administrative hearing on May 9, 2001. Respondent filed a Motion to Dismiss for failure to request an administrative hearing within four years of the date of the last act of discrimination. A telephonic hearing was conducted on September 26, 2001 and the ALJ recommended dismissal on January 17, 2002. The Commission rejected the recommendation and remanded the case for further proceedings. See FCHR Order # 02-016. A formal evidentiary hearing was conducted in Largo, Florida, on September 18, 2002, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of Dismissal dated October 25, 2002.

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

Judge Holifield's recommended order states that the Petitioner has failed to establish a prima facie case of discrimination. Recommended Order, ¶ 37. To present a prima facie case of employment discrimination based on a disability or handicap under the FCRA, Petitioner must show that she: (1) is a person with a handicap or disability recognized under the Act; (2) is qualified for the position apart from her handicap or disability; and (3) that she was terminated from her position solely based on her handicap or disability. Smith v. Avatar Properties, Inc., 714 So2d 1103, at 1106 (Fla. 5th DCA 1998). The ALJ found that she neither proved that she had a disability or handicap meeting the standards of FRCA nor that she was terminated solely

based on her alleged disability or handicap. Recommended Order ¶ 40-44. Further, even if she had met her initial burden, Respondent demonstrated that it had legitimate, non-discriminatory reasons for terminating Petitioner's employment. Recommended Order ¶ 45-46. We adopt the Administrative Law Judge's findings as to the fact that the Petitioner failed to carry her burden of proof and that the Respondent demonstrated legitimate, non-discriminatory reasons for terminating Petitioner's employment.

Although the ALJ found on the merits of the case after holding an evidentiary hearing, she continues to assert that the claim was time-barred. Recommended Order; Conclusions of Law ¶ 24-32. We conclude that the Administrative Law Judge committed an error of law in concluding that the Petitioner's Petition for Relief was barred by Section 95.11(3)(f), Florida Statutes (2001); albeit a harmless error since the ALJ proceeded to hold a formal evidentiary hearing and make recommendations on the merits. Finally, we find:

1. that the Administrative Law Judge's conclusions of law we are correcting are within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the time period for filing a Complaint of Discrimination under the Florida Civil Rights Act of 1992;
2. the reason the corrections are being made is that the conclusions of law as stated by the Administrative Law Judge run contrary to previous Commission decisions on the issue; and
3. that in making this correction the conclusions of law we are substituting are as or more reasonable than the conclusions which have been rejected. See Section 120.57 (1)(l), Florida Statutes (2001).

The ALJ correctly analyzed the second threshold issue raised by the Respondent; that of collateral estoppel. Recommended Order ¶ 33-36.

Exceptions

Neither party filed any exceptions to the Recommended Order.

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 26th day of February, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Roosevelt Paige, Panel Chairperson
Commissioner John Corbett
Commissioner Aletta Shutes

Filed this 26th day of FEBRUARY, 2003
in Tallahassee, Florida.

Violet Crawford

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Carolyn S. Holifield, 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 26th day of FEBRUARY, 2003.

BY: Violet Crawford

Clerk of the Commission
Florida Commission on Human Relations