

9-16-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

FILED
03 MAR 18 AM 9:09
DIVISION OF
ADMINISTRATIVE
HEARINGS

SHEILA DAVIS

EEOC Case No. 15D995983

Petitioner,

FCHR Case No. 99-0192

v.

DOAH Case No. 01-3466

POLK COUNTY SHERRIFF'S OFFICE

FCHR Order No. 03-017

Respondent.

FLB-CLDS
03 MAR 13 PM 3:09
COMMUNICATIONS SECTION

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

On October 7, 1998, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice based on her marital status. The allegations set forth in the complaint were investigated and on July 20, 2001, 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 Lakeland, Florida, on February 20 and 21, 2002, before Administrative Law Judge Fred L. Buckine.

Judge Buckine issued a Recommended Order of Dismissal dated September 16, 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

Judge Buckine found that Petitioner was employed by the Polk County Sheriff's Office primarily as a Booking Clerk from 1994 until her termination on May 29, 1998. The Petitioner was married to Curtis C. Young in 1997, in Pasco County, and subsequently divorced him at some point in time prior to April, 1998. In December, 1997, the Sheriff initiated an administrative investigation into allegations that Petitioner was passing confidential information about inmates to her then husband, Young. This investigation continued through April, 1998.

On January 3, 1998, while on duty the Petitioner observed and reported an incident of an officer allegedly beating a handcuffed inmate. Later, her supervisor was made aware of the report and made jokes about her use of the slang term "Jacked Up" in her report. The following morning, January 4, Petitioner was working at the Booking Area information desk. During her tour of duty, she got into an argument with a civilian. After a discussion between Petitioner and her supervisor, she was relieved of duty in the Booking Area and reassigned to duty in the Control Tower. As the exchange between the two became "tense," she was also reported as being "insubordinate," relieved of duty and sent home for the remainder of the night shift. The

above incident was reported to the Lieutenant (Officer in Charge) who instructed her supervisor to suspend her for the remainder of the January 4th tour of duty. Upon informing the Petitioner of her suspension, another argument ensued between her and her supervisor. On January 5, 1998, based on the report by her supervisor and with the concurrence of the Lieutenant, the Petitioner was charged with violating Sheriff's General Orders relating to Respect toward Supervisors; Abusiveness; and Compliance and Execution of Lawful Orders.

Petitioner also, at some time prior to January, 1998, began to participate in the Polk County Crime Stoppers, a program for civilians to report known and suspected criminals and criminal activities. The program often provided monetary rewards. Petitioner became aware that her ex-husband, Young, may have been incarcerated in the Pinellas County Jail under an alias. Sometime during April, 1998, Petitioner contacted the Pinellas County Sheriff's Office that she may have some information about one of their inmates (as part of Crime Stoppers). Upon becoming aware that she was an employee of the Polk County Sheriff's Office, the Pinellas Lieutenant advised Petitioner to work through her office and not directly contact Pinellas Sheriff's Office in the future. He also informed the Polk Sheriff's Office and Lt. Blackwelder, of the Polk Administrative Investigation Department, initiated a joint effort. Lt. Blackwelder instructed the Petitioner to cease calling the Pinellas County Sheriff's Office regarding Young. At this meeting an argument ensued. Subsequent to this meeting, Petitioner contacted the Pinellas County Sheriff's Office regarding Young for the intended purpose of collecting a Crime Stoppers award. She was then alleged to have violated Sheriff's General Orders relating to Compliance and Execution of Lawful Orders and Respect towards Supervisors. She was suspended with pay for these violations on or about April 22, 1998.

In May, 1998, a pre-disciplinary hearing was held and all charges were sustained resulting in the termination of her employment. The ALJ found that her termination came about because of her repeatedly argumentative and insubordinate behavior towards her supervisors and superiors. See, ¶ 26 and 28, Recommended Order. A review of the transcript and exhibits clearly indicate competent and substantial evidence supporting these findings.

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

Conclusions of Law

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank d/b/a Great Western, 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted

The Administrative Law Judge concluded that the Petitioner failed to establish, by a preponderance of the evidence, a prima facie case of discrimination by the Respondent. See, ¶ 29, Recommended Order. He specifically found that there was no causal connection between her membership in a protected group and the adverse employment action (termination) that was

inferences drawn by the Administrative Law Judge in his findings and conclusions. She also introduces evidence or inferences that were never presented in the evidentiary hearing. Specifically, the Petitioner states:

Exception #1 (first two paragraphs of letter) consists of complaints about the failure of the Commission's clerk to transmit "all of my [Petitioner's] original complaint," and the fact that Petitioner also requested case to be based on Whistleblower's Protection. The DOAH hearing is "de novo" based upon the Petitioner's Petition for Relief. All matters must be pled and supported before the ALJ. Also, there is nothing in the file that reflects the Petitioner's alleged request to base her case on Whistleblower's Protection and, even if there was, the Commission has no authority over local government whistleblowers; that authority is vested in the Circuit Courts of the state. The Commission rejects Petitioner's exception #1.

Exceptions # 2 and 15-19, inclusive, relate to alleged activities by the Respondent and its officers, as well as suggested further actions that Petitioner believes the Commission should take, and is beyond the scope of this proceeding and unsupported by any evidence in the record. The Commission rejects Petitioner's exceptions #2 and 15-19.

Exceptions #3-5 and 8-11, inclusive, restate and reargue facts before the ALJ and do not show that the ALJ's findings and conclusions were not supported by the evidence in the case. The Commission rejects Petitioner's exceptions #3-5 and 8-11.

Exceptions #6-7 and 14 raise issues and present arguments that were not presented at the evidentiary hearing and are beyond the record in the case. The Commission rejects Petitioner's exceptions #6-7 and 14.

Exceptions #12 and 13 raise an issue of Petitioner's state of mind, and a possible disability, that was not included in her initial complaint or Petition for Relief, and was not investigated by either the Commission or the ALJ. These exceptions are beyond the scope of the issue presented. The Commission rejects Petitioner's exceptions #12 and 13.

Based on the foregoing, the Petitioner's exceptions are not accepted.

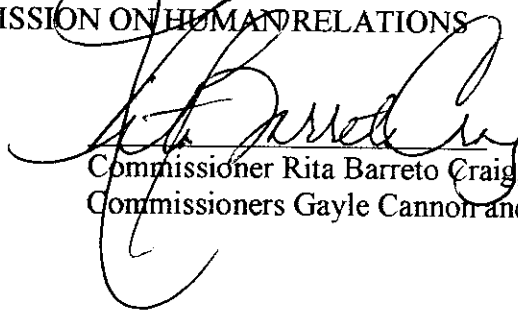
Dismissal

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, Rule 9.110.

DONE AND ORDERED this 17th day of March, 2003.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS



Commissioner Rita Barreto Craig, Chairperson and
Commissioners Gayle Cannon and P.C. Wu

03 MAR 13 PM 3:10

Filed this 17th day of March, 2003
in Tallahassee, Florida.

Violet Crawford
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 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 the EEOC 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:
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Fred L. Buckine, Administrative Law Judge (DOAH)
Jim Tait, Legal Advisor for Commission Panel

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COMM. ON HUMAN RELATIONS
TALLAHASSEE, FL
03 MAR 13 PM 3:10

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 17th day of March, 2003.

BY: Violet Crawford
Clerk of the Commission