

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

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GLORIA J. BROWDY,

EEOC Case No. 15D990253

Petitioner,

FCHR Case No. 99-1367

v.

DOAH Case No. 01-4348

WRC-CWS

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 02-093

Respondent.

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Gloria J. Browdy 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 basis of Petitioner's race (African American) and on the basis of retaliation when it failed to hire Petitioner.

The allegations set forth in the complaint were investigated, and, on October 5, 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 Brooksville, Florida, on January 14, 2002, before Administrative Law Judge William R. Cave.

Judge Cave issued a Recommended Order of dismissal on March 11, 2002.

Pursuant to notice, public deliberations were held on October 22, 2002, 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

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

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 in "failure to hire" cases such as the instance presented in this case, a Commission panel has concluded that to establish a prima facie case of discrimination a Petitioner must establish, "(1) that he belongs to a protected group; (2) that he was qualified for the job for which the employer was seeking applicants; (3) that he was rejected despite his qualifications; and (4) that after rejection, the position remained opened and the employer continued to seek applicants with the Petitioner's qualifications." Longariello v. The School Board of Dade County, Florida, 19 F.A.L.R. 1960, at 1961 (FCHR 1996); see also conclusions of law adopted by a Commission panel in Blum v. National Enquirer, Inc., 21 F.A.L.R. 426, at 434 (FCHR 1998), in which it is indicated that to establish a prima facie case of discrimination in "failure to hire" cases, Petitioner must show, "(i) that he belongs to [a] protected group; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications he was rejected; and (iv) that, after his rejection, the position remained open, the employer continued to seek applicants from persons of complainant's qualifications."

This test is somewhat different from the test used by the Administrative Law Judge in this case in that the last element of the test used by the Administrative Law Judge requires a showing that "other equally or less qualified applicants who were not members of her race were hired." See Recommended Order, ¶ 21.

The Administrative Law Judge concluded that Petitioner failed to present sufficient evidence to show this element and stated, "For this reason Petitioner has failed to establish a prima facie case." Recommended Order, ¶ 22.

Noting that the Administrative Law Judge concluded that there was no dispute that Petitioner was qualified and applied for the position of correctional officer and was rejected despite her qualifications (Recommended Order, ¶ 22), it would seem that Petitioner established a prima facie case of race discrimination given the Administrative Law Judge's further findings that Petitioner is African American (Recommended Order, ¶ 1) and that at least when Petitioner applied for a position in 2000, she was considered for a position by Respondent (Recommended Order, ¶ 10).

For this reason we conclude the Administrative Law Judge committed an error of law in finding that Petitioner did not establish a prima facie case of race 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).

Finally, we note that this correction to the conclusions of law does not affect the outcome of the case given the Administrative Law Judge's conclusion that even if Petitioner had established a prima facie case of discrimination, Respondent articulated a legitimate, nondiscriminatory reason for not hiring Petitioner, and that there is no evidence establishing this explanation to be pretextual. Recommended Order, ¶ 23.

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

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner's Exceptions to Proposed Recommended Order." The exceptions are not numbered and it is difficult to identify individual, specific exceptions, but, in our view, the exceptions presented by Petitioner can be grouped into two categories.

First, the Petitioner excepts to the Administrative Law Judge's refusal to allow Petitioner to present additional evidence after the close of the hearing, and objects to the Administrative Law Judge's handling of evidentiary issues (e.g., witnesses not allowed to be called) at the hearing. See Filing.

In the absence of a showing that the proceeding before the Administrative Law Judge did not comply with the essential requirements of law, we decline to enter the purview of the Administrative Law Judge with regard to the conduct of proceedings before the Administrative Law Judge.

We deny Petitioner's exceptions in this category.

Second, Petitioner excepts to inferences drawn by the Administrative Law Judge from the evidence presented at the hearing. See Filing.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

We deny Petitioner's exceptions in this category.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

Copies furnished to:

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Spring Hill, FL 34609

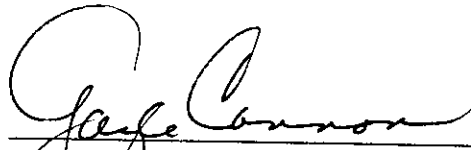
Gary L. Grant, Esq.
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William R. Cave, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

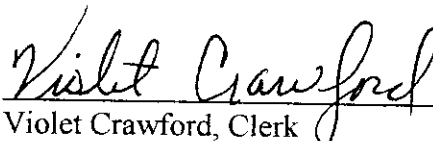
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida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

DONE AND ORDERED this 8th day of November, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Gayle Cannon,
Panel Chairperson;
Commissioner Aletta Shutes; and
Commissioner Billy Whitefox Stall

Filed this 8th day of November, 2002,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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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.