

8-2-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

02 DEC -5 AM 9:03
NOTED
RECEIVED

PERRY A. FOSTER,

EEOC Case No. 15D996028

Petitioner,

FCHR Case No. 99-03439

v.

DOAH Case No. 02-0957

PMR-CLOS

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 02-083

Respondent.

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Perry A. Foster filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1999), alleging that Respondent Department of Corrections committed an unlawful employment practice by terminating him on the basis of his race (Black) and on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on February 11, 2002, 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 Pensacola, Florida, on May 2, 2002, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal, dated August 2, 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

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 concluded that one of the elements Petitioner must show to establish a prima facie case of race discrimination is "that he (1) belongs to a racial minority..." Recommended Order, ¶ 10.

We note that people of all races are entitled to establish race discrimination claims under the Florida Civil Rights Act of 1992, not just those belonging to a "racial minority."

The Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination in a termination case, such as this one, the first element a Petitioner must demonstrate is "that he belongs to a group protected by the statute..." See Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997), citing Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993).

While not in any way affecting the outcome of this case, it would seem to us that this would be a more legally correct statement of the first element required to demonstrate a prima facie case of discrimination than that used by the Administrative Law Judge.

In modifying this conclusion of law of the Administrative Law Judge, we find: (1) that the conclusion of law being modified is a conclusion of law 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 we are substituting is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(I), Florida Statutes (2001).

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

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

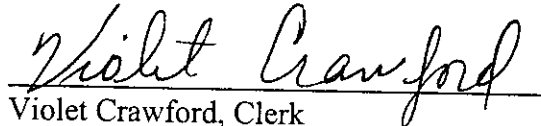
Dismissal

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 4th day of December, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner John Corbett; and
Commissioner Leonie Hermantin

Filed this 4th day of December, 2002,
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:

Perry A. Foster
1882 Gary Circle
Pensacola, FL 32505

Mark J. Henderson, Esq.
Department of Corrections
2601 Blair Stone Road
Tallahassee, FL 32399-2500

P. Michael Ruff, 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 4th day of December, 2002.

By: *Viola Crawford*
Clerk of the Commission
Florida Commission on Human Relations