

2-21-03

FILED

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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ROSEMOND SAINT FLEUR,

EEOC Case No. 150A200256

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

FCHR Case No. NONE

v.

AP

DOAH Case No. 02-3471

JVL-Closed

SUPERIOR PROTECTION,

FCHR Order No. 03-072

Respondent.

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

Preliminary Matters

Petitioner Rosemond Saint Fleur filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Superior Protection committed an unlawful employment practice on the basis of Petitioner's national origin (Haitian) when it reduced the number of hours Petitioner was scheduled to work.

Petitioner requested an administrative hearing, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held by video teleconference at sites in Tallahassee and Miami, Florida, on December 10, 2002, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of dismissal on February 21, 2003.

Pursuant to notice, public deliberations were held on September 23, 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 Recommended Order.

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 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 belongs to a racial minority." Recommended Order, ¶ 19.

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 one of the elements 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).

We, accordingly, correct the Administrative Law Judge's language referenced, above, to be consistent with that set out in Martinez, supra. Accord, Cesarin v. Dillard's, Inc., FCHR Order No. 03-037 (April 29, 2003).

In modifying the indicated conclusion of law of the Administrative Law Judge, we conclude: (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 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 Submission of Exception(s)."

Petitioner argues that had the Administrative Law Judge used a different test for determining whether a prima facie case of discrimination had been established than the one used by the Administrative Law Judge, a prima facie case of discrimination would have been found to exist.

We note that the Administrative Law Judge found that even if a prima facie case of discrimination had been established, Respondent proved a legitimate, nondiscriminatory reason for taking the action it did, and there was no proof that this action was a pretext for discrimination. See Recommended Order, ¶ 22.

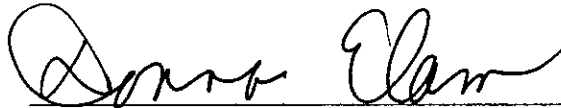
We reject Petitioner's exceptions.

Dismissal

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

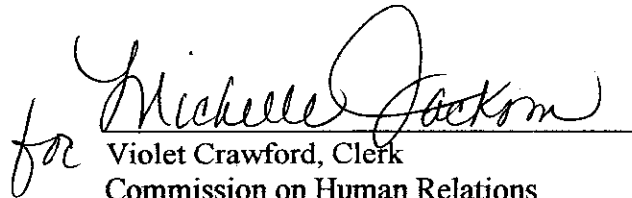
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida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

DONE AND ORDERED this 21st day of November, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Donna Elam,
Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner John Corbett

Filed this 21st day of November, 2003,
in Tallahassee, Florida.

for 

Violet Crawford, Clerk
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John G. Van Laningham, 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 21st day of November, 2003.

for By: 
Clerk of the Commission
Florida Commission on Human Relations