

4-8-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF
ADMINISTRATIVE
HEARINGS

DOROTHY J. McCRIMMON,

EEOC Case No. 15DA200603

Petitioner,

AP

FCHR Case No. 22-01700

v.

DOAH Case No. 02-3575

DMK-CWS

DAIMLERCHRYSLER CORPORATION,

FCHR Order No. 03-076

Respondent.

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

Preliminary Matters

Petitioner Dorothy J. McCrimmon 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 DaimlerChrysler Corporation committed an unlawful employment practice on the basis of Petitioner's race (Black) and sex (female) when it terminated Petitioner from her position.

The allegations set forth in the complaint were investigated, and, on August 6, 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 on February 19 and March 14, 2003, in Orlando, Florida, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated April 8, 2003.

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

While the Recommended Order indicates that a transcript of the proceeding before the Administrative Law Judge was filed with the Division of Administrative Hearings, and the Administrative Law Judge's letter transmitting the case back to the Commission states that a two-volume transcript was enclosed, the Commission's file does not contain a transcript of the proceeding before the Administrative Law Judge, and a letter from the Commission to the parties so-indicating failed to result in the filing of the transcript 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.

In our view, the Administrative Law Judge did commit an error of law, albeit harmless, in the test he used for determining whether a prima facie case of discrimination was established. The Administrative Law Judge concluded that one of the elements for the test for establishing a prima facie case of discrimination is that it must be shown that there is a causal connection between Petitioner's protected group and the adverse employment action to which Petitioner was subjected. Recommended Order, ¶ 43.

The Commission has indicated that this element is actually what a Petitioner is attempting to show by establishing a prima facie case of discrimination, and that this element should not, itself, be an element of the test for a prima facie case. See, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998), citing Pugh v. Walt Disney World, 18 F.A.L.R. 1971, at 1972 (FCHR 1995), and Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997). See, also, Curry v. United Parcel Service of America, 24 F.A.L.R. 3166, at 3167 (FCHR 2000).

In modifying the conclusions of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions 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 modifications are being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue; and (3) that in making these modifications the conclusions of law we are substituting are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2003).

With the indicated modifications, 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 26th day of December, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;
Commissioner John Corbett; and
Commissioner Aletta Shutes

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



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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:

Dorothy J. McCrimmon
5361 Commander Drive
Number 304
Orlando, FL 32822

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c/o Susan K. McKenna, Esq.
Jackson Lewis LLP
390 North Orange Avenue, Suite 1285
Orlando, FL 32801

Daniel M. Kilbride, 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 26th day of DECEMBER, 2003.

By: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations