

3-11-03

FILED

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS 3 NOV 24 AM 9:19

DURRICE GARVIN,

Petitioner,

v.

INTERNATIONAL PAPER, d/b/a
CHAMPION INTERNATIONAL
CORPORATION,

Respondent.

EEOC Case No. 15D990156

FCHR Case No. 99-0489

DOAH Case No. 02-3931

FCHR Order No. 03-073

DIVISION OF
ADMINISTRATIVE
HEARINGS

AP

SFH-CWS

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

Preliminary Matters

Petitioner Durrice Garvin 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 International Paper, d/b/a Champion International Corporation committed unlawful employment practices on the basis of Petitioner's age (DOB: 12/7/44) when it disciplined and subsequently terminated Petitioner from his position.

The allegations set forth in the complaint were investigated, and, on September 10, 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 December 20, 2002, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of dismissal, dated March 11, 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 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.

The Administrative Law Judge concluded that to establish a prima facie case of disparate treatment, Petitioner must show: (a) he is a member of the protected age group; (b) he was qualified to do the job; (c) he was subjected to an adverse employment action, such as discipline for violation of workplace rules; and (d) similarly situated employees, who were younger, were treated more favorably. Recommended Order, ¶ 52. The Administrative Law Judge also concluded that to establish a prima facie case of unlawful discharge, Petitioner must establish: (a) he is a member of the protected age group; (b) he was qualified to do the job; (c) he was discharged; and (d) after he was discharged, i) he was replaced by or otherwise lost a position to a younger individual; ii) others who were similarly situated but younger remained in similar positions; and [or] iii) similarly situated persons who were younger were treated more favorably. Recommended Order, ¶ 53.

In both of these tests, the Administrative Law Judge makes reference to individuals who are *younger* than Petitioner. While these could be elements of a prima facie case of age discrimination, they are not necessarily elements of a prima facie case of age discrimination. A Commission panel ruling on similar conclusions of law stated, "The Commission has long held that the age discrimination prohibitions of the Florida Civil Rights Act of 1992, and its predecessor, the Human Rights Act of 1977, as amended, prohibit discrimination in employment on the basis of any age, birth to death. See, Green v. ATC/VANCOM Management, Inc., 20 F.A.L.R. 314 (1997), and Simms v. Niagara Lockport Industries, Inc., 8 F.A.L.R. 3588 (FCHR 1986). Therefore, the required showing would not be necessarily that a younger employee received dissimilar treatment, but rather that an employee of a different age received dissimilar treatment." Musgrove v. Gator Human Services, c/o Tiger Success Center, 22 F.A.L.R. 355, at 356 (FCHR 1999)

We modify these conclusions of law accordingly.

In modifying these conclusions of law of the Administrative Law Judge, we conclude:

(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 modification is 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)(1), Florida Statutes (2001).

With the indicated modifications, 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 Recommended Order." The document contains 9 numbered exception paragraphs.

While suggesting that specified findings of fact were not supported by competent substantial evidence, the exceptions appear to actually take issue with the inferences drawn from the evidence presented and the credibility assigned by the Administrative Law Judge to the evidence presented (see exceptions document, paragraphs 1, 2, 3, 4, 5, 6, 7, 8, and 9). The exceptions document contains no exceptions to the Administrative Law Judge's determination of the law to be applied to the facts found.

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).

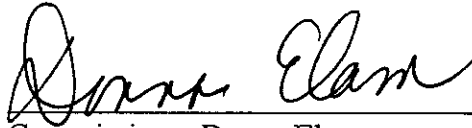
Petitioner's exceptions are rejected.

Dismissal

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

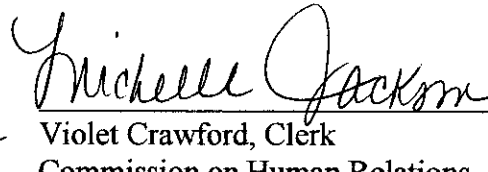
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida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

DONE AND ORDERED this 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
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:

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c/o R. John Westberry, Esq.
Holt & Westberry
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International Paper, d/b/a Champion International Corporation
c/o Thomas R. Brice, Esq.
McGuireWoods, LLP.
50 North Laura Street, Suite 3300
Jacksonville, FL 32202

Suzanne F. Hood, 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