

6-10-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
04 MAR 10 PM 1:18
ADMINISTRATIVE

CARMEN CHRISTENSEN,

EEOC Case No. 15DA200573

Petitioner,

AT

FCHR Case No. 22-01589

v.

DOAH Case No. 02-4810

FLB-CWS

CITY OF ORLANDO,

FCHR Order No. 04-040

Respondent.

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

Preliminary Matters

Petitioner Carmen Christensen 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 City of Orlando committed an unlawful employment practice on the basis of Petitioner's sex (female) and age (58) when it terminated Petitioner from the position of Wastewater Operator.

The allegations set forth in the complaint were investigated, and, on November 5, 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 Orlando, Florida, on April 14, 2003, before Administrative Law Judge Fred L. Buckine.

Judge Buckine issued a Recommended Order of dismissal, dated June 10, 2003.

Pursuant to notice, public deliberations were held on February 13, 2004, 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.

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 there must be shown by the evidence that there is a causal connection between Petitioner's protected group and the adverse employment action to which Petitioner was subjected. Recommended Order, ¶ 25.

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) and Ware v. Department of Corrections, FCHR Order No. 03-059 (FCHR July 24, 2003).

Rather, the Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination in a termination case, "the employee must prove (1) that he belongs to a group protected by the statute; (2) that he was qualified for the job; (3) that he was terminated; and (4) that after his termination, the employer hired a person not in petitioner's protected class or retained those having comparable or lesser qualifications, not in the protected class." See Martinez, supra, citing Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993).

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)(I), Florida Statutes (2003).

This correction does not affect the outcome of the case, even though the reason that the Administrative Law Judge appears to have concluded that a prima facie case of discrimination was not established was at least in part the failure to establish this element (see Recommended Order, ¶ 28), because the Administrative Law Judge concluded that Respondent articulated a

legitimate reason for terminating Petitioner and Petitioner failed to show that this reason was either false or a pretext for discrimination. Recommended Order, ¶ 29 and ¶ 30.

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

Exceptions

Petitioner filed exceptions to the Recommended Order in a document entitled, "Appeal of Recommended Order."

The document contains exceptions to facts found by the Administrative Law Judge, including, in some instances, conflict as to what Petitioner testified.

None of the exceptions, if accepted, would appear to alter the Administrative Law Judge's findings that Respondent, based on its investigation of the circumstances, concluded that Petitioner's explanation of the entries was intentionally false and that her entries were intentionally false, and that it decided to terminate Petitioner's employment based on "falsifying city records," and not based on age or gender. See Recommended Order, ¶ 13.


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 9th day of March, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Gayle Cannon,
Panel Chairperson;
Commissioner Keith Roberts; and
Commissioner Mario M. Valle

Filed this 9th day of March, 2004,
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:

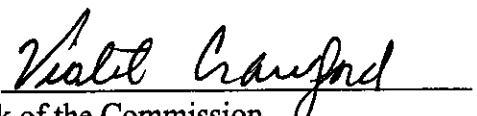
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c/o Amy T. Iennaco, Esq.
400 South Orange Avenue
Orlando, FL 32801

Fred L. Buckine, 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 9th day of March, 2004.

By: 
Clerk of the Commission
Florida Commission on Human Relations