

10-1-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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D. PAUL SONDEL,

EEOC Case No. 15DA201021

Petitioner,

AT

FCHR Case No. 22-03067

v.

DOAH Case No. 03-1985 SPH-Clos

APALACHEE CENTER FOR HEALTH SERVICES,

FCHR Order No. 04-029

Respondent.

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

Petitioner, D. PAUL SONDEL, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, APALACHEE CENTER FOR HEALTH SERVICES, committed an unlawful employment practice by failing to hire him due to his race, gender and age. The allegations set forth in the complaint were investigated and on May 19, 2003, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held in Tallahassee, Florida, on August 12, 2003, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of Dismissal dated October 1, 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 and Conclusions of Law

The Commission's file contains a transcript of the proceeding before the Administrative Law Judge.

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spradlin vs. Washington Mutual Bank, d/b/a Great Western, 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted.

The Administrative Law Judge found that the Petitioner presented no direct evidence of age, sex or race bias on the part of the Respondent or its employees. The Petitioner stated at the

hearing that he did not believe the Respondent discriminated against him based on his race. He further withdrew his complaint as to one of the two positions he had cited because it was filed before his application was submitted. Assuming, arguendo, that he established a prima facie case, the most persuasive evidence indicates that the Respondent demonstrated legitimate, non-discriminatory reasons for not hiring the Petitioner for the position in question. See Chapman v. AI Transport, 229 F.3d 1012, at 1030-31 (11th Cir. 2000); also, Elrod v. Sears, Roebuck & Co., 939 F.2d 1466, at 1470 (11th Cir. 1991) and Nix v. WLCY Radio-Rahall Communications, 738 F.2d 1181, at 1187 (11th Cir. 1984). Petitioner made no attempt to show that the Respondent's reasons for not hiring him were pretextual. Accordingly, Petitioner failed to prove his ultimate burden that Respondent refused to hire him due to his race, sex or age.

We adopt the Administrative Law Judge's findings of fact and conclusions of law.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal

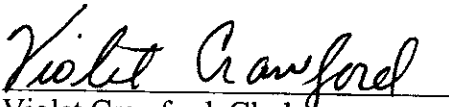
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 15th day of April, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita B. Craig, Chairperson
Commissioner Roosevelt Paige
Commissioner Mario Valle

Filed this 15th day of April, 2004
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 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 the 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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Honorable Suzanne F. Hood, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 15th day of April, 2004.

BY: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations