

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANNA L. ELAM,)
)
 Petitioner,)
)
 vs.) Case No. 03-3331
)
 FLAGLER COUNTY,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to Notice, this matter came on for hearing before Robert S. Cohen, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, in Bunnell, Florida, on February 17, 2004. The appearances were as follows:

APPEARANCES

For Petitioner: Anna L. Elam, pro se
No appearance

For Respondent: Andrew B. Thomas, Esquire
1625 Lakeside Drive
Deland, Florida 32720

STATEMENT OF THE ISSUES

The issues to be resolved in this proceeding concern whether the Petitioner, Anna L. Elam, was not offered employment as an elementary school teacher and was therefore discriminated against by the Respondent, Flagler County Schools, on the basis of her age.

PRELIMINARY STATEMENT

This cause arose on February 15, 2003, when the Petitioner filed an Amended Charge of Employment Discrimination with the Florida Commission on Human Relations ("Commission"). The amended complaint alleged that the Petitioner was denied employment with the Respondent as of September 4, 2002, because of her age. The Petitioner alleged that she had applied for employment with the Respondent; had been interviewed several times; but had not been offered employment. The Petitioner alleged that she met one of the other applicants for a position for which she applied and that the applicant was younger than she. Petitioner further alleged that the Flagler County School Administrator said she was too old to be hired as an elementary school teacher. The allegations in the amended complaint were investigated and, on July 28, 2003, the Commission issued a determination of "no cause" to believe that a discriminatory act had occurred. The Petitioner then filed a Petition for Relief and was granted a formal proceeding and an evidentiary hearing. The hearing was held in the Flagler County Courthouse in Bunnell, Florida, pursuant to notice, before the undersigned Administrative Law Judge, on February 17, 2004.

The cause came on for hearing as noticed. The day prior to the hearing, the Petitioner called and spoke with both the assistant to Administrative Law Judge P. Michael Ruff (to whom

the case had originally been assigned) and to the assistant to the undersigned, to inform them that she had no legal representation and was therefore not going to appear at the hearing on February 17, 2004. Both Judge Ruff's and the undersigned's assistants informed the Petitioner that she must attend the hearing and tell the undersigned personally of her intent to abandon her case if this was her desire. The Petitioner stated that she understood and both judicial assistants assumed that she would appear at the hearing in Bunnell. Upon convening the hearing at approximately 20 minutes after the appointed hour, the Petitioner had not appeared. The undersigned inquired of counsel for the Respondent as to how he wished to proceed and was informed that the Respondent would ore tenus move for a recommended order of dismissal of the action, since it appeared clear that the Petitioner had voluntarily absented herself from the final hearing.

The Petitioner has the burden of proof and a recommended order of dismissal could be entered based upon the Petitioner's failure to appear without justification, of which none has been filed or communicated to the judge. The Respondent elected not to put on its case-in-chief, choosing to allow the case to be recommended for dismissal as though the Petitioner had filed a voluntary dismissal of the cause. The hearing had been duly noticed and the Petitioner had clearly been aware of the time

and place of the hearing based upon contact made the day before the hearing with the assistants to both Judge Ruff and the undersigned.

Upon conclusion of the hearing, the undersigned closed the proceedings, noting that the Petitioner had failed to appear of her own volition since no calls had been made to the Clerk's Office at the Flagler County Courthouse or to the Division of Administrative Hearings, other than the calls referenced above as having been made to Judge Ruff and the undersigned's assistants, which indicated the Petitioner's voluntary absence from the hearing. Since no evidence or testimony was taken at the hearing, the undersigned agreed to prepare a recommended order of dismissal of the cause without benefit of a transcript or proposed recommended orders.

References to statutes are to Florida Statutes (2002) unless otherwise noted.

FINDINGS OF FACT

1. The Petitioner filed an Amended Charge of Employment Discrimination with the Florida Commission on Human Relations ("Commission") on February 15, 2003.

2. The Commission investigated the amended complaint and issued a determination of no cause that discrimination had occurred.

3. The Petitioner timely requested a formal administrative hearing and the petition was duly referred to the Division of Administrative Hearings by the Commission.

4. Upon notice, this matter was set for formal hearing on December 18, 2003, at the Flagler County Courthouse in Bunnell, Florida.

5. Following a Motion for Continuance filed by the Respondent, the final hearing was reset for February 17, 2004, at the same location in Bunnell, Florida.

6. The Petitioner called and spoke with Melissa Young, assistant to Administrative Law Judge P. Michael Ruff, and to Claudia Lladó, assistant to the undersigned, to inform them that she had no legal counsel and was therefore not going to appear at the February 17, 2004, hearing. Both assistants informed the Petitioner that she should attend the hearing and inform the undersigned personally as to her intention of whether to proceed.

7. The undersigned convened the hearing in Bunnell, Florida, on February 17, 2004.

8. Counsel for the Respondent appeared at the hearing along with approximately five witnesses for the Respondent who intended to testify.

9. Neither the Petitioner nor anyone purporting to be counsel or a qualified representative for the Petitioner

appeared at the hearing or within 45 minutes of the time scheduled for the hearing, 10:00 a.m.

10. Neither the Petitioner nor anyone purporting to be counsel or a qualified representative for the Petitioner submitted any evidence via deposition, sworn testimony or documentary evidence prior to, at the time of, or subsequent to the hearing on February 17, 2004.

11. Other than the calls to the assistants to the judges, neither the Petitioner nor anyone purporting to be counsel or a qualified representative for the Petitioner has contacted the undersigned or his assistant subsequent to the hearing on February 17, 2004.

CONCLUSIONS OF LAW

12. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Sections 120.57(1) and 120.569, Florida Statutes.

13. The Petitioner has failed to prove a prima facie case of discrimination on account of her age because she voluntarily failed to appear and present evidence at the duly- and properly-noticed formal hearing. Since the Respondent chose not to present any evidence or testimony at the hearing, the record is devoid of any possible set of facts or circumstances to support a claim of age discrimination in the Respondent's lack of hiring

the Petitioner as an elementary school teacher in Flagler County.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, arguments of the Respondent and the fact that the Petitioner voluntarily absented herself from the hearing, it is, therefore,

RECOMMENDED that a Final Order be entered by the Florida Commission on Human relations dismissing the Petition for Relief in its entirety.

DONE AND ENTERED this 19th day of February, 2004, in Tallahassee, Leon County, Florida.



ROBERT S. COHEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of February, 2004.

COPIES FURNISHED:

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Anna L. Elam
23 Patric Drive
Palm Coast, Florida 32164

Andrew B. Thomas, Esquire
1625 Lakeside Drive
Deland, Florida 32720

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.