

4-14-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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COMMISSION OF
ADMINISTRATIVE
LAW JUDGES

FERNANDO J. CONDE

EEOC Case No. 15DA301019

Petitioner,

FCHR Case No. 23-03286

v.

DOAH Case No. 03-4670

WALT DISNEY WORLD CO.

FCHR Order No. 04-089

AT

Respondent.

DMK-CLOS

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

Petitioner, FERNANDO J. CONDE, filed a complaint of discrimination on July 3, 2003, pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent WALT DISNEY WORLD CO, committed an unlawful employment practice by based on his gender (male), age and national origin (Venezualian). The allegations set forth in the complaint were investigated and on October 2, 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 on October 10, 2003. A formal hearing on the Petition for Relief was held in Orlando, Florida, on February 19, 2004, before the Administrative Law Judge Daniel M. Kilbride. A two-volume transcript of the hearing was filed on March 8, 2004.

This matter is before the Commission for consideration of the Recommended Order of Dismissal, dated April 14, 2004, issued in the above-styled matter by Administrative Law Judge Daniel M. Kilbride.

Findings of Fact and Conclusions of Law

The Petitioner was employed as a lifeguard by the Respondent. The ALJ found that the Petitioner suffered an automobile accident and, although not injured, lost his transportation to work and was absent a number of days. Upon failing to obtain transportation, he voluntarily resign his position. Approximately two months later, he applied for rehiring and requested his old job back with the same location and supervisors. However, because of his failure to complete required monthly training during his first employment and his absenteeism, he had been placed in a "restricted rehire" category requiring completion of certain conditions, including current employment for six months or longer. Upon being told of his status, Petitioner became abusive to interviewer and threatened suit. The interviewer cut short the comments and prepared the standard evaluation after he left. She recommended that he not be considered for rehire, particularly for the position of lifeguard where he would be dealing with guests on a regular basis.

The ALJ further found that, not only did the Respondent provide a legitimate, non-discriminatory business reason for its actions, but that the Petitioner failed to meet the standards for a prima facie case of discrimination in any of his bases. There was no direct evidence that he was discriminated against based on his age, national origin or sex. Further, there was no evidence that he was treated any differently than any other similarly situated employee regardless of age, sex or national origin. The ALJ further noted that he had voluntarily resigned and showed no evidence of hostile environment nor had he made any complaints to his supervisors or to employee relations. He also "utterly failed to raise any credible evidence to support his claim that any actions by Respondent were pretextual."

We adopt the Administrative Law Judge's Findings of Fact and Conclusions of Law..

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

Dismissal

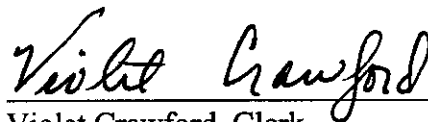
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 4th day of August, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson
Commissioner Billy Whitefox Stall
Commissioner P.C. Wu

Filed this 4th day of August, 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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Honorable Daniel M. Kilbride, 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 4th day of August, 2004.

By: *Viola Crawford*
Clerk of the Commission
Florida Commission on Human Relations