

12-21-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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DIVISION OF ADMINISTRATIVE HEARINGS

HENRY L. ROBERTS,

EEOC Case No. 15DA10488

Petitioner,

FCHR Case No. 21-02169

v.

DOAH Case No. 03-4711

Dmk
CWS

ARGENBRIGHT SECURITY, INC.,

FCHR Order No. 05-019

Respondent.

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

Preliminary Matters

Petitioner Henry L. Roberts filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1999), alleging that Respondent Argenbright Security, Inc., committed an unlawful employment practice on the bases of Petitioner's race (Black) and age (DOB: 12-23-48) by terminating Petitioner from his position as a District Manager.

The allegations set forth in the complaint were investigated, and, on September 23, 2003, 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 on April 22, 2004, in Orlando, Florida, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated June 25, 2004.

A Commission panel consisting of Commissioners Mario M. Valle, Roosevelt Paige and Aletta Shutes remanded the matter to the Administrative Law Judge in an "Order Remanding Petition for Relief from an Unlawful Employment Practice," dated November 4, 2004.

Judge Kilbride accepted the Commission's remand, and subsequently issued a Recommended Order After Remand, dated December 21, 2004, recommending that the Commission dismiss the Petition for Relief and Complaint of Discrimination.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order After Remand.

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.

We note that in determining whether Petitioner was a member of a protected class for purposes of Petitioner's age discrimination claim the Administrative Law Judge concluded, "...Petitioner satisfies the element of being a member of two protected classifications... Specifically, he is African-American and is above the age of 40." Recommended Order, ¶ 35.

While we agree with the Administrative Law Judge that Petitioner is a member of a protected class for purposes of his age discrimination claim, we note that a Commission panel has stated, "While the federal Age Discrimination in Employment Act uses the age of 40 as the age at which the Act's protection begins (see 29 U.S.C. § 631), the age of 40 has no significance in interpreting the Florida Civil Rights Act of 1992, or its predecessor, the Human Rights Act of 1977, as amended. The Commission has consistently held that Florida law prohibits discrimination in employment on the basis of any age, birth to death..." Green v. ATC/Vancom Management, Inc., 20 F.A.L.R. 314, at 315 (FCHR 1997). Accord, Williams v. Sailorman, Inc., d/b/a Popeye's Chicken and Biscuits, FCHR Order No. 04-037 (June 2, 2004).

In modifying the conclusion of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion 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 stated conclusion of law runs contrary to previous Commission decisions on the issue; and (3) that in making this modification the conclusion of law we are substituting is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(1), Florida Statutes (2003).

Finally, we note that the Administrative Law Judge concluded that Petitioner failed to show that similarly situated non class members were treated differently than Petitioner. Recommended Order, ¶ 37 and ¶ 38. In so doing, the Administrative Law Judge appears to conclude that Mr. Poe and Mr. Beach (younger, Caucasian employees – both district managers) were not "similarly situated" employees or proper comparators. Recommended Order, ¶ 37, ¶ 38, and ¶ 50. We comment that, given that Mr. Poe and Mr. Beach both held district manager positions, the position held by Petitioner, it would seem to us that they are "similarly situated" to Petitioner and are proper comparators,

but as the Administrative Law Judge concluded, they were not treated differently than Petitioner.

Finally, to the extent that error has occurred in Administrative Law Judge's analysis of whether a prima facie case of discrimination has been established, the error is harmless since, regardless of whether a prima facie case of discrimination has been established, the Administrative Law Judge concluded that Respondent articulated legitimate, nondiscriminatory reasons for terminating Petitioner, and Petitioner failed to show that these reasons were a pretext for discrimination. Recommended Order, ¶ 42 and ¶ 43.

With these modifications and comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order After Remand.

Dismissal

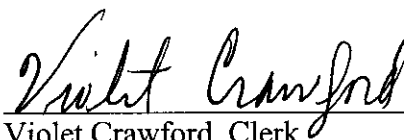
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 22nd day of February, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Roosevelt Paige; and
Commissioner Dominique B. Saliba, M.D.

Filed this 22nd day of February, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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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Daniel M. Kilbride, 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 22nd day of February, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations