

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GREG CHAPMAN,)
)
 Petitioner,)
)
 vs.) Case No. 04-0328
)
 MV TRANSPORTATION, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the administrative hearing of this case on March 25, 2004, in Haines City, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: No Appearance

For Respondent: Laura I. Korson, Esquire
John Baird & Associates
360 Campus Lane, Suite 201
Fairfield, California 94533-1400

STATEMENT OF THE ISSUE

The issue is whether Respondent discriminated against Petitioner on the basis of his race in violation of Section 760.10, Florida Statutes (2003).

PRELIMINARY STATEMENT

On January 6, 2004, the Florida Commission on Human Relations (the Commission) notified Petitioner that the Commission had determined there was no reasonable cause to believe an unlawful employment practice had occurred. Petitioner filed a Petition for Relief on January 26, 2004, and the Commission referred the matter to DOAH to conduct an administrative hearing. At the hearing, Petitioner did not appear and did not present any testimony.

FINDINGS OF FACT

1. No findings are made in this case. Petitioner did not appear and did not submit any evidence to support findings of fact.

CONCLUSIONS OF LAW

2. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2003). The parties received adequate notice of the administrative hearing.

3. There is no direct evidence of discrimination in this case. In the absence of such evidence, discrimination must be shown by circumstantial evidence.

4. The burden of proof in discrimination cases involving circumstantial evidence is set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973). Federal discrimination

law may be used for guidance in evaluating the merits of claims arising under Chapter 760. Tourville v. Securex, Inc., 769 So. 2d 491 (Fla. 4th DCA 2000); Greene v. Seminole Electric Co-op. Inc., 701 So. 2d 646 (Fla. 5th DCA 1997); Brand v. Florida Power Corp., 633 So. 2d 504 (Fla. 1st DCA 1994).

5. Petitioner has the initial burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. Failure to establish a prima facie case of discrimination ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996), aff'd, 679 So. 2d 1183 (1996) (citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Commission enter a final order finding that Respondent did not unlawfully discriminate against Petitioner and dismissing the Petition for Relief.

DONE AND ENTERED this 30th day of March, 2004, in
Tallahassee, Leon County, Florida.



DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of March, 2004.

COPIES FURNISHED:

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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.