

12-30-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

05 FEB 23 AM 9:56
DIVISION OF
ADMINISTRATIVE
HEARINGS

NICOLE M. BRANDON,

Petitioner,

v.

BAPTIST HOSPITAL, INC.,

Respondent.

AT

EEOC Case No.15DA300738

FCHR Case No. 23-02135

DOAH Case No. 04-0757

FCHR Order No. 05-024

SFD
CLOS

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

On April 28, 2003, Petitioner, NICOLE M. BRANDON, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, BAPTIST HOSPITAL, INC., committed an unlawful employment practice by giving her different terms and conditions of employment than white employees and, ultimately, terminating her due to her race. The allegations set forth in the complaint were investigated and on February 9, 2004, 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 given a formal evidentiary hearing in Pensacola, Florida, on November 5, 2004 before Administrative Law Judge Stephen F. Dean.

Judge Dean issued a Recommended Order to dismiss the complaint dated December 30, 2004.

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

A one-volume transcript of the proceeding before the Administrative Law Judge was filed on November 29, 2004, along with Petitioner's Exhibit 1,2 and 4 and Respondent's Exhibits 1-10 filed during the hearing. The Petitioner filed proposed findings on December 13, 2004, and the Respondent filed its proposed Recommended Order on December 14, 2004.

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 established that she was a member of a protected class. The ALJ, however, found that the Respondent demonstrated a legitimate, non-discriminatory reason, falsifying a time card, for the termination. The ALJ further found that, although her supervisor clearly showed a negative animas toward Petitioner based on the current, and prior, confrontations between Petitioner and her supervisor that had nothing to do with race, Petitioner failed to show the reason to be pre-textual.

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

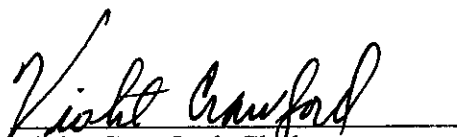
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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

Commissioner Donna Elam, Chairperson
Commissioner Roosevelt Paige
Commissioner Dominique B. Saliba

Filed this 22nd day of February, 2005
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:

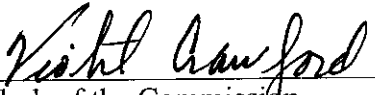
Nicole Brandon
314 East Blount Street
Pensacola, Florida 32503

Russell F. Van Sickle, Esquire
BEGGS & LANE LLP
PO Box 12950
Pensacola, Florida 32591-2950

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 22nd day of February, 2005.

BY: 
Clerk of the Commission
Florida Commission on Human Relations