

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

2004 DEC -9 P 1:51

BRENDA E. WARREN,

Petitioner,

v.

DEPARTMENT OF REVENUE,

Respondent.

EEOC Case No. 15DA300134

FCHR Case No. 23-00317

DOAH Case No. 04-1197

FCHR Order No. 04-152

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

EJD

CLDS

AP

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

Preliminary Matters

Petitioner Brenda E. Warren filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Department of Revenue committed unlawful employment practices on the basis of Petitioner's race (Black) by subjecting Petitioner to a hostile work environment, subjecting Petitioner to different terms and conditions of employment, and by retaliating against Petitioner for her involvement with another Charge of Discrimination.

The allegations set forth in the complaint were investigated, and, on March 24, 2004, 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 in Gainesville, Florida, on June 16, 2004, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated September 3, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

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.

The Administrative Law Judge indicated that to establish a prima facie case of race discrimination Petitioner must show that "(a) she belongs to a racial minority; (b) she was subjected to adverse employment action[s]; (c) she was qualified for her position; and (d) the employer treated similarly situated employees outside the protected class more favorably." Recommended Order, ¶ 72.

The first element of this test needs correction.

People of all races are entitled to establish race discrimination claims under the Florida Civil Rights Act of 1992, not just those belonging to a "racial minority."

The Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination one of the elements Petitioner must demonstrate is "that he belongs to a group protected by the statute..." See Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997), citing Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993).

We correct the Administrative Law Judge's language referenced, above, to be consistent with that set out in Martinez, supra. Accord, Bamawo v. Department of Corrections, FCHR Order No. 04-120 (September 22, 2004), Cesarin v. Dillard's, Inc., FCHR Order No. 03-037 (April 29, 2003), and Saint Fleur v. Superior Protection, FCHR Order No. 03-072 (November 21, 2003), all in which similar corrections were made by the Commission under similar circumstances.

In addition, the Administrative Law Judge concluded that to establish a prima facie case for a hostile work environment one of the elements that must be established is that "she [i.e. Petitioner] and other Black employees have been subject to unwelcome harassment." Recommended Order, ¶ 80. However, the required showing for this element would actually be only that Petitioner had been subjected to unwelcome harassment. See Alexander v. Boehm, Brown, Seacrest, Fischer & Lefever, P.A., FCHR Order No. 03-054 (August 11, 2003), adopting conclusions of law set out in the Recommended Order of DOAH Case No. 02-4524.

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

Finally, we note that the Administrative Law Judge concluded that Petitioner's receipt of an "oral reprimand" and Petitioner's receipt of a "memo of counseling" did not amount to adverse employment actions. Recommended Order, ¶ 75. While we will not disturb these conclusions as made by the Administrative Law Judge within the circumstances of the facts of this case, we do note that the receipt of these types of discipline can amount to an adverse employment action. See, generally, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583 (FCHR 1998).

With these corrections 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.

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 7<sup>th</sup> day of December, 2004.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;  
Commissioner Roosevelt Paige; and  
Commissioner Dominique B. Saliba, M.D.

Filed this 7<sup>th</sup> day of December, 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:

Brenda E. Warren  
6406 Northeast 27<sup>th</sup> Avenue  
Gainesville, FL 32609

Department of Revenue  
c/o Cindy Horne, Esq.  
Post Office Box 6668  
Tallahassee, FL 32399-0100

Ella Jane P. Davis, 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 7<sup>th</sup> day of December, 2004.

By:   
Clerk of the Commission  
Florida Commission on Human Relations