

1-14-05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2005 MAR 10 A 11: 37

PERRIN S. DAVIS,

EEOC Case No. 15DA400297

Petitioner,

AP

FCHR Case No. 2004-20615

DIVISION OF
ADMINISTRATIVE
HEARINGS

v.

DOAH Case No. 04-2337

BJS

NORTH FLORIDA LUBES, INC.,
d/b/a TEXACO XPRESS LUBE,

FCHR Order No. 05-035

CWS

Respondent.

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

Preliminary Matters

Petitioner Perrin S. Davis filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2003), alleging that Respondent North Florida Lubes, Inc., d/b/a Texaco Xpress Lube, committed unlawful employment practices on the basis of Petitioner's race (Black) by demoting, failing to promote, and terminating Petitioner.

The allegations set forth in the complaint were investigated, and, on May 26, 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 Ocala, Florida, on September 22, 2004, before Administrative Law Judge Barbara J. Staros.

Judge Staros issued a Recommended Order of dismissal, dated January 14, 2005.

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

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.

The Administrative Law Judge indicated that to establish a prima facie case of race discrimination with regard to "demotion" and "failure to promote" Petitioner must show, among other things, that he is a member of a "protected minority" and that with regard to demotion that the position was filled by a "non-minority," and with regard to failure to promote that equally or less qualified employees who are not members of the "protected minority" were promoted. Recommended Order, ¶ 54 and ¶ 55.

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 "protected 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, noting that Petitioner must establish that he is a member of a group protected by the statute, and that with regard to demotion that the position was filled by a person outside Petitioner's protected group, and with regard to failure to promote that equally or less qualified employees who are not members of Petitioner's protected group were promoted. Accord, Cesarin v. Dillard's, Inc., FCHR Order No. 03-037 (April 29, 2003), and, accord, generally, Warren v. Department of Revenue, FCHR Order No. 04-152 (December 7, 2004), Bamawo v. Department of Corrections, FCHR Order No. 04-120 (September 22, 2004), 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 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).

With these corrections, 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 8th day of March, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Gilbert M. Singer; and
Commissioner Mario M. Valle

Filed this 8th day of March, 2005,
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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North Florida Lubes, Inc., d/b/a Texaco Xpress Lube
c/o John F. Dickinson, Esq.
c/o F. Damon Kitchen, Esq.
Costangy, Brooks & Smith, LLC
Post Office Box 41099
Jacksonville, FL 32203-1099

Barbara J. Staros, 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 8th day of March, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations