

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANNETTE CARROLL,)
)
 Petitioner,)
)
 vs.) Case No. 04-2691
)
 DEPARTMENT OF CHILDREN AND)
 FAMILY SERVICES,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) held a formal hearing in this cause in Chattahoochee, Florida, on October 13, 2004. The following appearances were entered:

For Petitioner: Annette Carroll, pro se
10202 Northwest Third Street
Bristol, Florida 32321

For Respondent: Kathi Lee Kilpatrick, Esquire
Department of Children and
Family Services
Florida State Hospital
Post Office Box 1000
Chattahoochee, Florida 32324

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner was subjected to an unlawful employment practice by Respondent due to Petitioner's race, age, sex, or as retaliation in violation of Section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination against Respondent with the Florida Commission on Human Relations (FCHR) on April 22, 2003, alleging her termination by Respondent was the result of discrimination on the basis of her age, race, color, sex and age.

On or about June 30, 2004, the FCHR issued its determination: No Cause.

On or about July 26, 2004, Petitioner filed a Petition for Relief with the FCHR. Subsequently, on or about August 2, 2004, the case was forwarded to DOAH for formal proceedings.

During the final hearing, Petitioner testified in her own behalf and presented two witnesses. Respondent presented one witness and three exhibits.

No transcript of the final hearing was provided. Both parties were offered the opportunity to file proposed findings of facts and proposed conclusions of law. Respondent filed a Proposed Recommended Order, which has been reviewed and considered in the preparation of this Recommended Order. No post-hearing submission was filed on behalf of Petitioner.

FINDINGS OF FACT

1. Respondent employed Petitioner, a 56-year-old African-American female, as a Food Support Worker at Florida State

Hospital in Chattahoochee, Florida, at all times relevant to these proceedings.

2. Petitioner was promoted to the position of Food Service Worker on May 10, 2002, with probationary status until May 10, 2003.

3. On February 12, 2003, Petitioner was terminated from her employment for failure to satisfactorily complete her probationary period in the career service.

4. In the course of her employment with Florida State Hospital, Petitioner was aware of the strict safety guidelines implemented by Respondent to protect employees from injury. Petitioner also knew that violation of the safety rules could result in dismissal of an erring employee. Violations of these policies had resulted in dismissal of both non-minority and minority employees in the past.

5. On February 9, 2003, due to an unsafe act and violation of Respondent's safety rules, Petitioner proceeded to cut the tip of her left thumb in the process of slicing cabbage. Petitioner was not using a cutting glove, a mandatory requirement of the safety rules.

6. As a result of this rule violation, Respondent terminated Petitioner's employment on February 12, 2003.

7. At final hearing, Petitioner admitted the cutting injury to her finger, but contended that termination of

employment had not been effected for other younger white employees for similar offenses in the past. These allegations of Petitioner were non-specific and uncorroborated; they are not credited.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings. §§ 120.56(9) and 120.57(1), Fla. Stat.

9. Chapter 760, Florida Statutes, the "Florida Civil Rights Act of 1992," provides security from discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.

10. The adverse effectuation of an employee's compensation, conditions and privileges of employment on the basis of race is an unlawful employment practice.

11. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action. If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pre-textual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

12. The testimony and other evidence produced by Petitioner are not sufficient to establish that racial discrimination by employees or supervisors of Respondent toward Petitioner occurred. Petitioner failed to show that Respondent's basis for her termination, violation of safety rules, was pre-textual in any way.

13. Petitioner violated safety rules established by Respondent and suffered a termination of employment as a consequence of that violation.

RECOMMENDATION

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

RECOMMENDED:

That a Final Order be entered dismissing the Petition for Relief.

DONE AND ENTERED this 3rd day of November, 2004, in Tallahassee, Leon County, Florida.



DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 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.