

1-4-05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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FILED
ADMINISTRATIVE LAW JUDGE
HEALTH CARE
DWD
CWS

JULIE A. PHILIPPART,

EEOC Case No. 15DA400542

Petitioner,

FCHR Case No. 2004-21178

v.

AT

DOAH Case No. 04-3273

FLORIDA DEPARTMENT OF HEALTH,

FCHR Order No. 05-025

Respondent.

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

On February 18, 2004, Petitioner, JULIE A. PHILIPPART, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent, FLORIDA DEPARTMENT OF HEALTH, committed an unlawful employment practice when Respondent failed to hire her because of her age. The investigation into the allegations set forth in the complaint were not completed within 180 days of her filing her complaint. The Petitioner filed an Election of Rights form, selecting to withdraw her complaint and file a Petition for Relief. Her Petition was filed on August 22, 2004, and she was given a formal evidentiary hearing in Pensacola, Florida, on December 7, 2004.

Judge Don W. Davis issued a Recommended Order of Dismissal dated January 4, 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 and Conclusions of Law

The Commission's file contains a no transcript of the proceeding before the Administrative Law Judge. In the absence of a transcript of the proceeding before the Administrative Law Judge, his Recommended Order is the only evidence for the Commission to consider. National Industries, Inc. vs. Commission on Human Relations, et al., 527 So. 2d 894, at 898 (Fla. 5th DCA 1988).

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 ALJ found that Petitioner failed to offer credible evidence that age was a factor in rejecting her for the position sought and offering it to another. Specifically, the ALJ found that the Respondent hired a qualified applicant who was over 40 (and only two years younger than complainant), had a hematology license that was needed by the Respondent following the resignation of another employee who had the only one at the worksite, and had significant experience for the position as well.

We adopt the Administrative Law Judge's finding as to the fact that the Petitioner failed to carry her burden of proof.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal

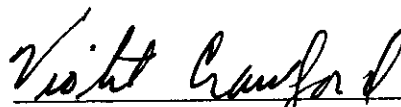
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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:


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Honorable Don W. Davis, 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