

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JULIE A. PHILIPPART, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-3273  
 )  
 DEPARTMENT OF HEALTH, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) conducted the final hearing in this case on December 7, 2004, in Pensacola, Florida. The following appearances were entered.

APPEARANCES

For Petitioner: Julie A. Philippart, pro se  
303 Washington Avenue  
Gulf Breeze, Florida 32561

For Respondent: Stephen W. Foxwell, Esquire  
Department of Health  
4052 Bald Cypress Way, Bin A02  
Tallahassee, Florida 32399-1703

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner was subjected to employment discrimination by the Department of Health (Respondent), due to Petitioner's age 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 February 18, 2004. The Charge of Discrimination alleged discrimination by Respondent against Petitioner with regard to her application for employment on the basis of age.

On August 22, 2004, Petitioner requested that FCHR, as authorized by Section 760.11(4)(b) and (8), Florida Statutes, forward the Charge of Discrimination to DOAH for formal administrative proceedings in the absence of action by FCHR within 180 days of the filing of the Charge of Discrimination.

By Transmittal of Petition, dated September 17, 2004, FCHR forwarded the Charge of Discrimination to DOAH where the matter was given Case number 04-3273, and assigned to the undersigned for further proceedings. Final hearing was scheduled to commence on December 7, 2004, a delay occasioned by hurricane damage to the City of Pensacola.

During the final hearing, Petitioner testified on her own behalf, presented testimony of nine witnesses and offered seven exhibits, all of which were admitted into evidence. Respondent presented testimony of four witnesses, but presented no evidentiary exhibits. No transcript of the proceeding was provided.

Respondent filed a Proposed Recommended Order. At the time of preparation of this Recommended Order, no post-hearing submission had been filed on behalf of Petitioner.

References to Florida Statutes are to the 2004 edition unless otherwise designated.

FINDINGS OF FACT

1. Julie A. Philippart (Petitioner) was born May 12, 1956.
2. Respondent is an agency of the State of Florida with a medical laboratory located in Pensacola, Florida.
3. The director of the laboratory is Dr. John Parker, age 65. When the position of Medical Laboratory Scientist II needed to be filled, Parker delegated responsibility for screening applicants and determining the best applicant to be hired to Dr. Leah Gillis, age 51.
4. Gillis, proceeded with Parker's approval, to enlist two other fellow employees, Beverly Butler, age 62, and Bill Nakashima, to assist in the interviewing and screening of applicants.
5. Following advertisement of the vacancy and receipt of applications, six of the applicants were selected for an interview. While a step in the process, the subsequent interviews were not completely determinative of which applicant was the best. Petitioner was one of the six applicants interviewed.

6. Gillis and Nakashima interviewed Petitioner. After the initial interviews, Petitioner was considered the primary candidate. Since Petitioner had previously worked in the laboratory during the period 1994-1998, Gillis checked with Parker and Butler about Petitioner's prior work experience. Further, Butler checked past lab records for work that Petitioner may have performed.

7. As a result of her consultations with Parker and Butler, Gillis developed concerns that Petitioner's experience and background might not be as ideal as indicated by the interview. Particularly, Butler had expressed concern that Petitioner did not have a hematology license, which was needed in the lab following the resignation of another employee whose licensure in that area previously covered this need for the lab.

8. While still considering Petitioner as an applicant, Gillis resolved to interview other candidates. Through Butler, contact was made with Virginia Winchester, age 50, regarding the position. Winchester had the appropriate hematology license and experience for the position. But, when Winchester was advised that she should get vaccinations for rabies and hepatitis to work in the position, she consulted with her physician and withdrew her application.

9. Stephanie Buben was another applicant considered for the position. She had the appropriate license and experience,

but, because her current employer increased her salary, withdrew her application following offer of the position.

10. Linda Boutwell, personnel liaison for the lab and Star Metcalfe, assistant human resource director, located in Jacksonville and Tallahassee, Florida, respectively, advised Gillis to re-advertise the position.

11. Gillis re-advertised the position. Of six additional applicants for the position, two were granted interviews. Patricia Jones was called in for a second interview. Jones, like Petitioner, is over age 40 and is less than two years younger than Petitioner.

12. Jones had the preferred hematology license and 16 years of "bench" or actual experience. Jones was offered and accepted the position. Age was not a criterion for the position and was not considered in the hiring decision.

#### CONCLUSIONS OF LAW

13. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), and Chapter 760, Fla. Stat.

14. 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.

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

16. 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 pretextual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

17. The Supreme Court of the United States has recognized that direct evidence of discrimination is extremely rare. As a consequence, the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), articulated a method by which complainants, such as Petitioner in this case, might establish a rebuttable presumption of discrimination. That method requires that Petitioner show (a) that she is a member of a protected class; (b) that she has been subjected to adverse employment action; (c) that she was treated differently than employees not a member of the protected class; and (d) that there is evidence of a causal connection between Petitioner's protected status and her disparate treatment.

18. Petitioner has failed to offer credible evidence that rejection of her employment application was based on her age. As a consequence, it is concluded that Petitioner has not shown that Respondent's rejection of her employment application was a pretext to the exercise of employment discrimination on the basis of age.

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 4th day of January, 2005, in Tallahassee, Leon County, Florida.



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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 4th day of January, 2005.

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.