

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CLARENCE CRAY,

Petitioner,

v.

WHITE SPRINGS AGRICULTURAL
CHEMICAL, INC.,

Respondent.

4.11.05
FILED
C5 JUN 16 AM 9:22
EEOC Case No. 15DA401081

FCHR Case No. 2004-22666

DOAH Case No. 04-3887

FCHR Order No. 05-062

EJD
closed

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

Preliminary Matters

Petitioner Clarence Cray 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 White Springs Agricultural Chemical, Inc., committed an unlawful employment practice on the basis of Petitioner's race (Black) by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on September 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 Lake City, Florida, on January 7, 2005, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated April 11, 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 Petitioner must show that "(a) he belongs to a racial minority; (b) he was subject to adverse employment action(s); (c) he was qualified for his position; and (d) the employer treated similarly situated employees outside the protected class more favorably." Recommended Order, ¶ 45.

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, 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), Saint Fleur v. Superior Protection, FCHR Order No. 03-072 (November 21, 2003), and Cesarin v. Dillard's, Inc., FCHR Order No. 03-037 (April 29, 2003), all in which similar corrections were made by the Commission under similar circumstances.

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

With this correction, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

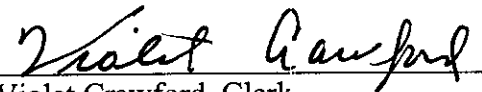
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 15th day of June, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 15th day of June, 2005,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
209 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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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 15th day of June, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 15th day of June, 2005.

By: *Kimberly Crawford*
Clerk of the Commission
Florida Commission on Human Relations