

3.18.05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

SUSAN COFFY,

2005 MAY 19 P 2:26

EEOC Case No. 15DA400354

Petitioner,

FCHR Case No. 2004-20767

v.

STATE OF FLORIDA
DIVISION OF
ADMINISTRATIVE
HEARINGS

DOAH Case No. 04-4316

CSH
Closed

PORKY'S BARBEQUE RESTAURANT,

FCHR Order No. 05-053

Respondent.

AT

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

Preliminary Matters

Petitioner Susan Coffy 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 Porky's Barbeque Restaurant committed an unlawful employment practice on the basis of Petitioner's age (DOB: 4-22-53) by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on October 25, 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 on February 4, 2005, in Titusville, Florida, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of dismissal, dated March 18, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

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.

We note that the Administrative Law Judge concluded that one of the elements Petitioner must prove to establish a prima facie case of age discrimination is that "she was replaced by a younger worker" (Recommended Order, ¶ 26). The Administrative Law Judge also concluded that Petitioner "is a member of the protected group in that she is over 40 years of age" (Recommended Order, ¶ 29).

While we agree that Petitioner is a member of the protected group, and establishing that she was replaced by a younger worker could be an element of a prima facie case of age discrimination, we note that it has been stated, "Commission panels have long concluded that the Florida Civil Rights Act of 1992 and its predecessor law the Human Rights Act of 1977, as amended, prohibited age discrimination in employment on the basis of any age "birth to death." See Green v. ATC/VANCOM Management, Inc., 20 F.A.L.R. 314 (1997), and Simms v. Niagara Lockport Industries, Inc., 8 F.A.L.R. 3588 (FCHR 1986). A Commission panel has indicated that one of the elements in determining a prima facie case of age discrimination is that Petitioner is treated differently than similarly situated individuals of a "different" age, as opposed to a "younger" age. See Musgrove v. Gator Human Services, c/o Tiger Success Center, et al., 22 F.A.L.R. 355, at 356 (FCHR 1999). The Commission has concluded that, unlike the federal Age Discrimination in Employment Act (ADEA), the age 40 has no significance in the interpretation of the Florida Civil Rights Act of 1992. See Green, supra, at 315." Williams v. Sailorman, Inc., d/b/a Popeye's Chicken and Biscuits, FCHR Order No. 04-037 (June 2, 2004).

With these cautionary comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

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

Dismissal

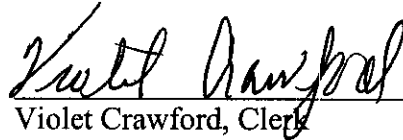
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 18th day of May, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Roosevelt Paige; and
Commissioner Dominique B. Saliba, M.D.

Filed this 18th day of May, 2005,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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:

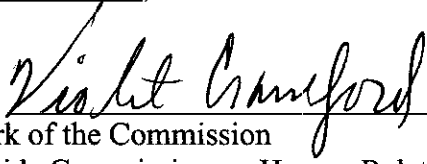
Susan Coffy
2966 Temple Lane
Mims, FL 32754

Porky's Barbeque Restaurant
c/o Walter Milton, Owner
4280 South Washington Avenue
Titusville, FL 32780

Carolyn S. Holifield, 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 18th day of May, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations