

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CAROL MANZARO,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Respondent.

9.13.05 AP
DIVISION OF ADMINISTRATIVE HEARINGS
05 NOV -7 PM:2:21
FILED
EEOC Case No. NONE

FCHR Case No. 2004-22128

DOAH Case No. 05-0685

FCHR Order No. 05-123

JVL
closed

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

Preliminary Matters

Petitioner Carol Manzano filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Department of Children and Family Services committed an unlawful employment practice on the basis of Petitioner's age (DOB: 1-3-48) by forcing Petitioner to involuntarily demote into a position that resulted in a significant loss in wages.

The allegations set forth in the complaint were investigated, and, on January 26, 2005, the Executive Director issued his determination finding that there was 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 by video teleconference at sites in Tallahassee and West Palm Beach, Florida, on July 22, 2005, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of dismissal, dated September 13, 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.

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 "a member of the protected class [i.e. between the ages of 40 and 70]." Recommended Order, ¶ 26.

While we agree with the Administrative Law Judge that Petitioner is a member of a protected class (see Recommended Order, ¶ 27), 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 (FCHR 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)." Coffy v. Porky's Barbeque Restaurant, FCHR Order No. 05-053 (May 18, 2005). Accord, Johnson v. Tree of Life, Inc., FCHR Order No. 05-087 (July 12, 2005) and Bean v. Department of Transportation, FCHR Order No. 05-107 (September 23, 2005).

In addition, the age 70 also has no significance in the interpretation of the Florida Civil Rights Act of 1992, and is no longer an upper threshold even in the federal Age Discrimination in Employment Act. See, 29 U.S.C. Section 631.

We conclude this error to be harmless in this case, given the Administrative Law Judge's conclusion that the matter is time-barred. See Recommended Order, ¶ 23.

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)(1), Florida Statutes (2005).

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

Exceptions

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

Dismissal

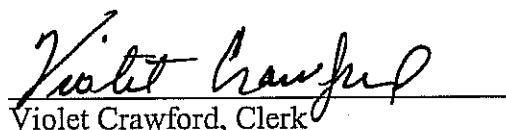
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 3rd day of November, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Gilbert M. Singer

Filed this 3rd day of November, 2005,
in Tallahassee, Florida.


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John G. Van Laningham, 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 3rd day of November, 2005.

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