

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

WILLIE FOSTER, JR.,

Petitioner,

v.

PEPSI-COLA BOTTLING COMPANY,

Respondent.

EEOC Case No. ~~None~~

FCHR Case No. 2004-22572

DOAH Case No. 05-1455

FCHR Order No. 05-128

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

Preliminary Matters

Petitioner Willie Foster, Jr., 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 Pepsi-Cola Bottling Company committed an unlawful employment practice on the basis of Petitioner's race (Black), sex (male), and age (not specified in complaint) by failing to hire Petitioner for employment.

The allegations set forth in the complaint were investigated, and, on March 11, 2005, 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 July 20, 2005, in Orlando, Florida, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated October 7, 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, with the cautionary comment set out in the "Conclusions of Law" section of this order, *infra*.

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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

### 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 found, "From August 2003 to January 2005, Respondent hired one female and five age-protected (over age of 40) individuals." Recommended Order, ¶ 12.

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 this cautionary comment, we adopt the Administrative Law Judge's conclusions of law.

### Exceptions

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

### Dismissal

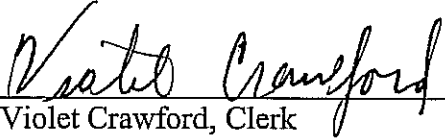
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 14<sup>th</sup> day of December, 2005.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;  
Commissioner Dominique B. Saliba, M.D.; and  
Commissioner Gilbert M. Singer

Filed this 14<sup>th</sup> day of December, 2005,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Violet Crawford, Clerk  
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Daniel M. Kilbride, 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 14<sup>th</sup> day of December, 2005.

By:   
\_\_\_\_\_  
Clerk of the Commission  
Florida Commission on Human Relations