

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

CHARLES F. O'BRIEN,

EEOC Case No. 15DA401292

Petitioner,

FCHR Case No. 2004-23006

v.

DOAH Case No. 05-3078

ST. JOHN'S COUNTY SCHOOL
DISTRICT,

FCHR Order No. 06-026

Respondent.

pmr

**ORDER AWARDING AFFIRMATIVE RELIEF
FROM AN UNLAWFUL EMPLOYMENT PRACTICE
AND REMANDING MATTER FOR DETERMINATION OF
ADDITIONAL RELIEF**

Preliminary Matters

Petitioner Charles F. O'Brien 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 St. John's County School District committed an unlawful employment practice by failing to hire Petitioner for a teaching position on the basis of the disability it perceived Petitioner to have, alleged in the complaint to be alcoholism.

The allegations set forth in the complaint were investigated, and, on July 18, 2005, the Executive Director issued a 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 St. Augustine, Florida, on October 21, 2005, before Administrative Law Judge Stephen F. Dean.

Judge Dean issued a Recommended Order, dated December 29, 2005, recommending that the Commission enter a final order finding that Respondent unlawfully discriminated against Petitioner, and recommending affirmative relief.

Pursuant to notice, public deliberations were held on March 14, 2006, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel 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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Respondent filed exceptions to findings of fact found at Recommended Order paragraph numbers 1, 2, 3, 10, 11 and 14, and to conclusions of law found at Recommended Order paragraph numbers 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33. The exceptions document was received by the Commission on January 13, 2006.

With regard to the findings of fact, the exceptions to findings 1, 3, 10 and 11 take issue with the facts found and inferences drawn from the evidence presented. The "exceptions" to findings 2 and 14 are not really exceptions, but rather are comments on the findings contained therein.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

With regard to the exceptions to the conclusions of law, Respondent's exception to the conclusions of law at paragraph 21 of the Recommended Order argues that the Administrative Law Judge failed to apply the correct elements for the test for a prima facie case of discrimination, and did not complete the required burden-shifting analysis for determining whether discrimination has been proved by circumstantial evidence.

Specifically, with regard to the test for a prima facie case, Respondent states that one of the required elements for the test is a showing that Petitioner was discriminated against *as the result of his disability*. Respondent suggests that the appropriate test for establishing a prima facie case of discrimination in the instant case is that Petitioner must show that (1) he has a disability; (2) he is a qualified individual with or without

reasonable accommodations; and (3) he was subjected to unlawful discrimination as the result of his disability.

For purposes of identifying the appropriate test to be used for determining a prima facie case of handicap/disability discrimination, the Commission distinguishes situations where Respondent acknowledges that it took the adverse employment action complained of on the basis of Petitioner's alleged disability from situations where Respondent does not acknowledge that it took the adverse employment action complained of on the basis of Petitioner's alleged disability. See, e.g., Casanova v. Worldwide Flight Services, FCHR Order No. 05-043 (April 20, 2005). In the latter situation, the situation presented in the instant case, the Commission does not agree that the third element of the test cited by Respondent is an appropriate element of the test for a prima facie case of discrimination, concluding that this is actually what a Petitioner is attempting to show by establishing a prima facie case. Id.

The test cited by Respondent is appropriate for situations in which Respondent admits it took the adverse employment action complained of on the basis of Petitioner's alleged disability. See Brand v. Florida Power Corporation, 633 So. 2d 504, at 508, footnote 5 (Fla. 1st DCA 1994), and Casanova, supra.

Therefore, in our view, the test set out by the Administrative Law Judge is appropriate for the instant case.

Having concluded this, Respondent appears correct that the Administrative Law Judge did not complete the burden-shifting analysis required to determine whether discrimination was proved by circumstantial evidence. However, there is no error in this, because the Administrative Law Judge concluded that discrimination was proved in this matter by direct evidence. See Recommended Order, ¶ 33.

The exception to the conclusion of law at Recommended Order paragraph 22 is not really an exception.

The exceptions to the conclusions of law at Recommended Order paragraph 24 and paragraph 33 appear to object to the lack of showing a causal relationship between the adverse action complained of and Petitioner's perceived disability. As indicated in the discussion of the exception of the conclusion of law at paragraph 21 of the Recommended Order, above, this is not a requirement to the establishment of a prima facie case, and, besides, the Administrative Law Judge analyzed the case as a "direct" evidence case, not a "circumstantial" evidence case.

The exceptions to the conclusions of law at paragraphs 25, 26, 27, 28, 29, 30, 31, and 32 all seem to object to the inferences drawn from the evidence presented. Drawing inferences from the evidence presented is within the purview of the Administrative Law Judge. See Barr, supra.

Finally, in its exception to the conclusions of law at paragraph 33 of the Recommended Order, Respondent objects to the Administrative Law Judge's findings of direct evidence of discrimination. Findings of fact are within the purview of the Administrative Law Judge. See, Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1208 and 1210 (Fla. 1st DCA 1991), indicating that the finding of

whether discrimination occurred is a finding of fact, and that the Commission may overturn such a finding only if, after reviewing the complete record of the case, the Commission determines that the finding is not supported by competent substantial evidence in the record or that the proceeding leading to the determination did not comply with the essential requirements of law.

Respondent's exceptions are rejected.

Affirmative Relief and Remand

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that unlawful discrimination occurred in this matter in the manner found by the Administrative Law Judge and have adopted the Administrative Law Judge's recommendations for the remedy of the discrimination.

Respondent is hereby ORDERED:

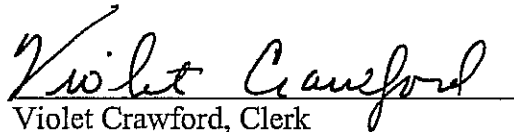
- (1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner, as recommended by the Administrative Law Judge in the Recommended Order; and
- (2) to hire Petitioner upon Petitioner's submitting an application for employment, as recommended by the Administrative Law Judge in the Recommended Order.

The matter is hereby REMANDED to the Administrative Law Judge for determination of damages, to include costs and fees, consistent with the Administrative Law Judge's reservation of jurisdiction over these matters, as set out in the Recommended Order.

DONE AND ORDERED this 16th day of March, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Keith Roberts, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Shahrukh S. Dhanji

Filed this 16th day of March, 2006,
in Tallahassee, Florida.



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Stephen F. Dean, 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 16th day of March, 2006.

By: 
Clerk of the Commission
Florida Commission on Human Relations