

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
06 JUN 16 PM 2:08
DIVISION OF
ADMINISTRATIVE
HEARINGS

JONATHAN A. RACE,

Petitioner,

v.

ORANGE COUNTY FIRE RESCUE,

Respondent.

EEOC Case No. 15DA500419

FCHR Case No. 2005-00837

DOAH Case No. 05-3971

FCHR Order No. 06-055

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

Preliminary Matters

Petitioner Jonathan A. Race 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 Orange County Fire Rescue committed an unlawful employment practice on the basis of Petitioner's disability (Pace Maker) by preventing Petitioner from being a combat firefighter.

The allegations set forth in the complaint were investigated, and, on September 14, 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 January 13, 2006, in Orlando, Florida, before Administrative Law Judge Robert S. Cohen.

Judge Cohen issued a Recommended Order of dismissal, dated May 11, 2006.

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 concluded that to establish a prima facie case of discrimination, Petitioner must demonstrate that: "(1) he is physically disabled; (2) he is a 'qualified individual,' meaning he can perform the essential requirements of the job in question with or without reasonable accommodation; and (3) he was discriminated against because of his disability." Recommended Order, ¶ 33. The Administrative Law Judge concluded that a prima facie case was not established because Petitioner failed to establish that he was disabled. Recommended Order, ¶ 42.

We note that, 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 the Respondent acknowledges that it took the adverse employment action complained of on the basis of Petitioner's alleged disability from situations where the 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 Commission does not agree that the third element of the test cited by the Administrative Law Judge 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 instant case, however, is an example of the former situation.

The test cited by the Administrative Law Judge is essentially the same as that set out in Brand v. Florida Power Corporation, 633 So. 2d 504 (Fla. 1st DCA 1994), at page 510. The Brand decision identifies three types of handicap discrimination cases: first, one in which the employer contends the employment decision was made for reasons unrelated to the person's handicap; second, one wherein the employer contests the plaintiff's claim that he or she is a qualified handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question; and three, one in which the employer asserts it is unable to provide the accommodation necessary, because it would impose an undue hardship on its operations. See Brand, at 508, footnote 5. That particular test cited by the Administrative Law Judge was applicable in the Brand case because the Brand case fell into the second category of cases listed above. The instant case also falls into the second category of cases, and, thus, the test cited by the Administrative Law Judge is appropriate for this case. Id. Accord, Weaver v. Swift Transportation, FCHR Order No. 06-011 (February 24, 2006).

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

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

Dismissal

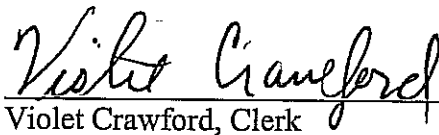
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Dominique B. Saliba, M.D.; and
Commissioner Billy Whitefox Stall

Filed this 15th day of June, 2006,
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:

Jonathan A. Race
1081 Dean Street
St. Cloud, FL 34771

Orange County Fire Rescue
c/o Gary M. Glassman, Esq.
Orange County Attorney's Office
Litigation Section
435 North Orange Avenue, 3rd Floor
Orlando, FL 32801

Robert S. Cohen, 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, 2006.

By: *Violet Cranford*
Clerk of the Commission
Florida Commission on Human Relations