

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
06 SEP 12 AM 10:32
DIVISION OF
ADMINISTRATIVE
HEARINGS

MIKE JONES,

Petitioner,

v.

SUWANNEE COUNTY SCHOOL BOARD,

Respondent.

EEOC Case No. 15DA50094

FCHR Case No. 2005-02727

DOAH Case No. 06-1434

FCHR Order No. 06-088

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

Preliminary Matters

Petitioner Mike Jones 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 Suwannee County School Board committed an unlawful employment practice on the basis of Petitioner's race (Black) by subjecting Petitioner to disparate treatment, creating a hostile work environment, resulting in Petitioner's constructive discharge.

The allegations set forth in the complaint were investigated, and, on March 14, 2006, 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 June 7, 2006, in Live Oak, Florida, before Administrative Law Judge Don W. Davis.

Judge Davis issued a Recommended Order of dismissal, dated July 5, 2006.

Pursuant to notice, public deliberations were held on September 7, 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

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

Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

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 indicated that for Petitioner to establish a prima facie case of discrimination in this case, it must be shown that: "(a) he belongs to a racial minority; (b) he was subjected to an adverse employment action; (c) he was qualified for his position; and (d) Respondent treated similarly-situated employees outside the protected class more favorably." Recommended Order, ¶ 22.

As indicated, the Administrative Law Judge concluded that one of the elements Petitioner must show to establish a prima facie case of discrimination is that he is a member of a "racial minority."

It should be noted that people of all races are entitled to establish discrimination claims under the Florida Civil Rights Act of 1992, not just those belonging to a "racial minority."

The Commission has adopted conclusions of law that reflect that to establish a prima facie case of discrimination one of the elements a Petitioner must demonstrate is "that he belongs to a group protected by the statute..." See Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997), citing Arnold v. Department of Health and Rehabilitative Services, 16 F.A.L.R. 576, at 582 (FCHR 1993),...or that "she belongs to a protected group." Martinez v. Boca Diner, FCHR Order No. 04-019 (February 25, 2004), adopting conclusions of law set out in the Recommended Order of DOAH Case No. 03-1277, dated October 31, 2003.

These are more legally correct statements of the first element required to demonstrate a prima facie case of discrimination than that used by the Administrative Law Judge, and we accordingly make this modification to the first element of the test set out by the Administrative Law Judge. Accord, Cesarin v. Dillards, Inc., FCHR Order No. 03-037 (April 29, 2003); Saint Fleur v. Superior Protection, FCHR Order No. 03-072 (November 21, 2003); Bamawo v. Department of Corrections, FCHR Order No. 04-120 (September 22, 2004); Warren v. Department of Revenue, FCHR Order No. 04-152 (December 7, 2004); Assily v. Memorial Hospital of Tampa, FCHR Order No. 05-059 (May 31, 2005); Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005); McGee v. AIG Marketing, Inc., FCHR Order No. 06-023 (March 7, 2006); Mays v. Progress Energy Corporation, FCHR Order No. 06-024 (March

7, 2006), all in which similar modifications to the conclusions of law were made by Commission panels.

In modifying this conclusion of law of the Administrative Law Judge, we conclude: (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 being substituted is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(l), Florida Statutes (2005).

This correction will not affect the outcome of the case given the Administrative Law Judge's conclusion that Petitioner failed to establish a prima facie case of discrimination. See Recommended Order, ¶ 22.

With the indicated correction, we adopt the Administrative Law Judge's conclusions of law.

Petitioner's Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions and Responses," received by the Commission on July 19, 2006, and containing four numbered exceptions paragraphs (although two of the numbered paragraphs are numbered "3"), and attachments.

There is no indication on the exceptions filing that it was served on Respondent as is required by Fla. Admin. Code R. 28-106.110.

The first exception paragraph does not except to the contents of the Recommended Order, and does not set out circumstances suggesting that the proceeding leading to the findings of fact did not comply with the essential requirements of law. See Section 120.57(1)(l), Florida Statutes (2005).

The remaining three paragraphs take issue with facts found, facts not found, and inferences drawn from the evidence presented.

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).

Further, as indicated above, the Commission's file does not contain a transcript of the proceeding on the merits before the Administrative Law Judge. With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review *of the entire record*, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law [emphasis added]." Section 120.57(1)(l), Florida Statutes (2005).

As stated above, in the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See, National Industries, Inc., supra. Accord, Johnson v. Tree of Life, Inc., FCHR Order No 05-087 (July 12, 2005).

Petitioner's exceptions are rejected.

Respondent's Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a letter to Commission Chief Legal Counsel, Cecil Howard, received by the Commission on July 20, 2006.

Respondent first excepts to the statement in the Recommended Order that Petitioner submitted a proposed Recommended Order to the Administrative Law Judge. Additionally, Respondent notes that it filed a Motion for Attorney's Fees pursuant to Section 57.105, Florida Statutes, notes that the Recommended Order contains no ruling with respect to the motion, and requests the Commission to remand the matter to the Administrative Law Judge for determination of whether the motion should be granted.

The indication of whether Petitioner filed a proposed Recommended Order is of no consequence to the work of the Commission, since it is the Commission's responsibility to review the Recommended Order of the Administrative Law Judge, not to review the proposed Recommended Orders of the parties filed with the Administrative Law Judge. See, generally, Barr, supra, at 1730, citing Rathkamp et al. v. Department of Community Affairs, 21 F.A.L.R. 1902, at 1904 (DCA 1998).

With regard to the Petitioner's Motion for Attorney's Fees, the Commission does not have "Final Order" authority over an award of attorney's fees pursuant to Section 57.105, Florida Statutes, and consequently there is no need for the Commission to remand the matter to the Administrative Law Judge. See Section 57.105(5), Florida Statutes (2005), indicating that in administrative proceedings attorneys fees sought under this section shall be awarded by an Administrative Law Judge and that for purposes of appeal such award shall be a "final order." Parenthetically, the Commission is in receipt of a "notice" from the Division of Administrative Hearings, suggesting that Respondent's request for attorney's fees is now the subject of a separate "fees" case, noted as Division of Administrative Hearings case number 06-2659F.

Respondent's exceptions are rejected.

Dismissal

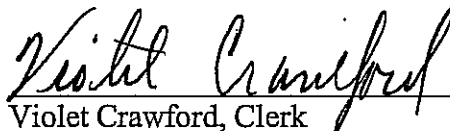
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 11th day of September, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gayle Cannon, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Billy Whitefox Stall

Filed this 11th day of September, 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:


Mike Jones
Post Office Box 372
Live Oak, FL 32064

Suwannee County School Board
c/o Andrew J. Decker, IV, Esq.
c/o Andrew J. Decker, III, Esq.
Post Office Box 1288
Live Oak, FL 32064

Don W. Davis, 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 11th day of September, 2006.

By: 
Clerk of the Commission
Florida Commission on Human Relations