

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PAMELA GUENTHER,)
)
 Petitioner,)
)
 vs.) Case No. 07-1528
)
 DOUGLAS C. HALL, M.D., P.A.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, Administrative Law Judge Don W. Davis of the Division of Administrative Hearings (DOAH) conducted the final hearing in this case on June 5, 2007, in Ocala, Florida. The following appearances were entered.

APPEARANCES

For Petitioner: Pamela Guenther, pro se
801 Northwest 75th Terrace
Ocala, Florida 34482

For Respondent: No Appearance

STATEMENT OF THE ISSUE

The issue for determination is whether Pamela Guenther (Petitioner) was subjected to employment discrimination by Douglas C. Hall, M.D., P.A., (Respondent), due to Petitioner's age in violation of Section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination against Respondent with the Florida Commission on Human Relations (FCHR) on July 13, 2006. The Charge of Discrimination alleged discrimination by Respondent against Petitioner with regard to termination of her employment on the basis of age.

On January 9, 2007, the executive director of FCHR, as authorized by Florida Administrative Code Rules 60Y-2.004(2)(e) and 60Y-5.004, determined that reasonable cause existed to believe that an unlawful employment action had occurred.

Petitioner filed a Petition for Relief on January 29, 2007. FCHR forwarded the case to DOAH on March 30, 2007, where the matter was given Case number 07-1528 and assigned to the undersigned for further proceedings.

At the final hearing, Respondent did not appear and no appearance by counsel or a qualified representative was made on his behalf.

During the final hearing, Petitioner testified on her own behalf, presented testimony of one witnesses and offered five exhibits, all of which were admitted into evidence. No transcript of the proceeding was provided.

Petitioner filed a Proposed Recommended Order. At the time of preparation of this Recommended Order, no post-hearing submission had been filed on behalf of Respondent.

References to Florida Statutes are to the 2006 edition unless otherwise designated.

FINDINGS OF FACT

1. Petitioner was born April 7, 1955.
2. Respondent is a medical doctor who practices in Ocala.
3. In January 2006, Respondent hired Petitioner part-time as the bookkeeper for Progressive Genomics, Inc. (PGI), a nutrition research company operated by Respondent in conjunction with his medical practice. PGI and Respondent's medical practice in obstetrics and gynecology shared both facility and staff.
4. Respondent was beset with financial trouble resulting from insufficient bank funds and an Internal Revenue Service (IRS) audit. In April 2006, Respondent sold the building housing his medical practice and PGI. He simultaneously closed PGI and relocated his medical practice to another location with a specialty in cosmetic medicine.
5. At the same time that Respondent closed PGI, he discharged all older female employees, with exception of those necessary to operation of his medical practice. Respondent then hired new personnel, all under age 50 to replace the terminated

employees. Petitioner was also elevated from her part-time position to full-time by Respondent as Respondent's office manager, giving her a power of attorney to use in her execution of responsibility over business matters related to his practice. This unique exception (hiring of Petitioner) to Respondent's hiring practice of only hiring employees under age 50 was due to influence of Petitioner's daughter, who also worked for Respondent.

6. Respondent required Petitioner, over Petitioner's objection, to work from her home, requiring her to work under different and less favorable terms and conditions of employment than the other employees. Additionally, the separation from coworkers made Petitioner's job more difficult.

7. Isolating Petitioner from her coworkers was intentional on the part of Respondent due to Petitioner's relatively greater age in comparison to the other workers.

8. Petitioner and Respondent had other disagreements in the course of her employment as Respondent's office manager. Respondent directed Petitioner to write checks with insufficient funds to pay them. Respondent also directed Petitioner to ignore IRS notices and write paychecks to staff without time cards or other verification of hours worked.

9. Relying on what appeared to be the offer of permanent employment by Respondent in April 2006, Petitioner sold her

bookkeeping business and, along with her partner, sold a coffee shop business at the time she accepted Respondent's offer and went to work for him as his office manager.

10. Respondent was the employer of more than 15 people, and therefore was not exempt from requirements of the Florida Civil Rights Act of 1992.

11. Respondent provided all of his employees with diet pills to improve their appearance through prescriptions for the drug "Adipec." According to Petitioner, who was given one of these prescriptions, Respondent sought "a certain age, a certain weight, and a certain look" in his employees. At one time Respondent had a picture of Respondent, surrounded by youthful female employees, placed on a billboard to promote his medical practice.

12. On June 20, 2006, Respondent told Petitioner in a telephone conversation that her "services were no longer needed." A female individual, Laurie Johnson, who is 33 years old, replaced her.

13. Petitioner seeks to be awarded back pay for her last paycheck of \$1,240 on which Respondent stopped payment, plus a year's wages in the amount of \$26,000 at a rate of \$500 per week for 52 weeks.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569 and 120.57(1), and Chapter 760, Fla. Stat.

15. Chapter 760, Florida Statutes, the "Florida Civil Rights Act of 1992," provides security from discrimination based upon race, color, religion, sex, national origin, age, handicap, or marital status.

16. The adverse effectuation of an employee's compensation, conditions, and privileges of employment on the basis of age is an unlawful employment practice.

17. The burden of proof rests with Petitioner to show a prima facie case of employment discrimination. After such a showing by Petitioner, the burden shifts to Respondent to articulate a nondiscriminatory reason for the adverse action. If Respondent is successful and provides such a reason, the burden shifts again to Petitioner to show that the proffered reason for adverse action is pretextual. School Board of Leon County v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

18. The Supreme Court of the United States has recognized that direct evidence of discrimination is extremely rare. As a consequence, the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), articulated a method by which

complainants, such as Petitioner in this case, might establish a rebuttable presumption of discrimination. That method requires that Petitioner show (a) that she is a member of a protected class; (b) that she has been subjected to adverse employment action; (c) that she was treated differently than employees not a member of the protected class; and (d) that there is evidence of a causal connection between Petitioner's protected status and her disparate treatment.

19. Petitioner has offered credible evidence that termination of her employment was based on her age. As a consequence, it is concluded that Respondent's action in termination of Petitioner's employment was a pretext to the exercise of employment discrimination on the basis of age.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED:

That a final order be entered directing that Respondent cease the unlawful discriminatory practice of employment on the basis of age, and awarding Petitioner awarded back pay for her last paycheck of \$1,240, plus a year's wages in the amount of \$26,000; and that all amounts be paid to Petitioner within 90 days of entry of a final order.

DONE AND ENTERED this 29th day of June, 2007, in
Tallahassee, Leon County, Florida.

Don W. Davis

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of June, 2007.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.