

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KIM C. RHODE,

Petitioner,

v.

JOHN CARLO, INC.,

Respondent.

EEOC Case No. 15D200603735

FCHR Case No. 2006-02306

DOAH Case No. 07-3973

FCHR Order No. 08-038

FILED
2008 JUN -4 P 1:29
DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Kim C. Rhode filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2005), alleging that Respondent John Carlo, Inc., committed unlawful employment practices on the basis of Petitioner's alleged disability (diabetes) by denying Petitioner reasonable accommodations and by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on July 27, 2007, 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 in New Port Richey, Florida, on January 28, 2008, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of dismissal, dated April 4, 2008.

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.

We note that the Administrative Law Judge set out a definition for the term "handicap" that the Recommended Order suggests is found in the Florida Civil Rights Act of 1992. See Recommended Order, ¶ 70. We note that the Florida Civil Rights Act of 1992 does not contain a definition of the term "handicap," and that the statutory section that is cited contains the definition of "handicap" found in the Fair Housing Act. See Section 760.22(7), Florida Statutes (2007).

With this 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

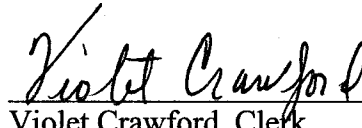
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 2nd day of June, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gilbert M. Singer; and
Commissioner Mario M. Valle

Filed this 2nd day of June, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

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:

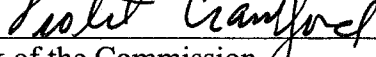
Kim C. Rhode
Post Office Box 1093
New Port Richey, FL 34656

John Carlo, Inc.
c/o Alysia J. Ward, Esq.
Glenn, Rasmussen, Fogarty & Hooker, P.A.
100 South Ashley Drive, Suite 1300
Tampa, FL 33602

Carolyn S. Holifield, 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 2nd day of June, 2008.

By: 
Clerk of the Commission
Florida Commission on Human Relations