

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2009 MAY 14 A 10:43
DIVISION OF
ADMINISTRATIVE
HEARINGS

DARCELLA D. DESCHAMBAULT,

EEOC Case No. 15D200800107

Petitioner,

FCHR Case No. 2008-00380

v.

DOAH Case No. 08-2596

TOWN OF EATONVILLE,

FCHR Order No. 09-039

Respondent.

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

Preliminary Matters

Petitioner Darcella D. Deschambault filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent Town of Eatonville committed unlawful employment practices on the bases of Petitioner's age (age 51), color (dark), and sex (female), by relieving Petitioner of job duties while still employed, assigning Petitioner unreasonable / less favorable job tasks, involuntarily transferring Petitioner, forcing Petitioner to attend etiquette training classes, and harassing Petitioner.

The allegations set forth in the complaint were investigated, and, on April 21, 2008, the Executive Director issued his determination finding that there was reasonable cause to believe Respondent unlawfully involuntarily transferred Petitioner on the bases of her age and color, but that there was no reasonable cause to believe that an unlawful employment practice had occurred with regard to Petitioner's other allegations.

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 Orlando, Florida, on July 30, 2008, and October 8, 2008, before Administrative Law Judge Lawrence P. Stevenson.

Judge Stevenson issued a Recommended Order of dismissal, dated February 17, 2009.

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 concluded that to establish a prima facie case of age discrimination, Petitioner must show that, "(1) she is a member of the protected group; (2) she was subject to adverse employment action; (3) she was qualified to do the job; and (4) her employer treated similarly-situated younger employees...more favorably. Recommended Order, ¶ 40.

With regard to the fourth element of the test cited by the Administrative Law Judge, we find error.

While we agree that a showing that Respondent "treated similarly-situated younger employees more favorably" could be an element of a prima facie case, we note that Commission panels have long concluded that the Florida Civil Rights Act of 1992 and its predecessor law the Human Rights Act of 1977, as amended, prohibited age discrimination in employment on the basis of any age "birth to death." See Green v. ATC/VANCOM Management, Inc., 20 F.A.L.R. 314 (1997), and Simms v. Niagara Lockport Industries, Inc., 8 F.A.L.R. 3588 (FCHR 1986). A Commission panel has indicated that one of the elements in determining a prima facie case of age discrimination is that Petitioner is treated differently than similarly situated individuals of a "different" age, as opposed to a "younger" age. See Musgrove v. Gator Human Services, c/o Tiger Success Center, et al., 22 F.A.L.R. 355, at 356 (FCHR 1999); accord Boles v. Santa Rosa County Sheriff's Office, FCHR Order No. 08-013 (February 8, 2008).

We modify accordingly the Administrative Law Judge's conclusions of law regarding the test for the establishment of a prima facie case of age discrimination.

The error in the test used by the Administrative Law Judge to establish whether a prima facie case of age discrimination existed is harmless, given the Administrative Law Judge's conclusion that Petitioner "presented no evidence that age...played any role in her on-the-job difficulties or her eventual transfer out of the mayor's office." Recommended Order, ¶ 46.

In modifying these conclusions of law of the Administrative Law Judge, we conclude: (1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions 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 modifications are being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue; and (3) that in making these modifications the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(1), Florida Statutes (2007).

With this correction / 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

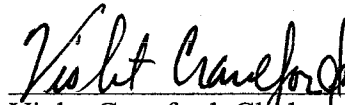
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 12th day of May, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gayle Cannon, Panel Chairperson;
Commissioner Patty Ball Thomas; and
Commissioner Mario M. Valle

Filed this 12th day of May, 2009,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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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:

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611 Calibre Crest Parkway, No. 204
Altamonte Springs, FL 32714

Town of Eatonville
c/o Joseph Morrell, Esq.
1310 West Colonial Drive, Suite 28
Orlando, FL 32804

Lawrence P. Stevenson, 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 12th day of May, 2009.

By: *Viola Crawford*
Clerk of the Commission
Florida Commission on Human Relations