

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2010 APR 28 A 11:09
DIVISION OF
ADMINISTRATIVE
HEARINGS

MICHAEL L. COYLE,

Petitioner,

v.

KAREN E. RUSHING, SARASOTA
COUNTY CLERK OF CIRCUIT COURT,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2008-02608

DOAH Case No. 09-0981

FCHR Order No. 10-043

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

Preliminary Matters

Petitioner Michael L. Coyle 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 Karen E. Rushing, Sarasota County Clerk of Circuit Court, committed an unlawful employment practice on the bases of Petitioner's age (DOB: 10-24-36) and handicap / disability by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on January 14, 2009, 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 by video teleconference at sites in Sarasota and Tallahassee, Florida, on July 30, July 31 and August 17, 2009, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of dismissal, dated February 24, 2010.

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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Recommended Order in a document entitled "Petitioner's Exceptions to Recommended Order." The document contains exceptions to both the findings of fact and conclusions of law.

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). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Further, it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010).

In addition, the Administrative Procedure Act states, "The agency in its final order may reject or modify conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. 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 upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(l), Florida Statutes (2009).

Finding of Fact Exception 1 – "The sports-based games known to occur were not team-building exercises as persons outside the employment of Respondent were allowed to participate." In this exception, Petitioner takes issue with portions of Recommended

Order paragraphs 8 through 10, 12 through 15, 16, and 17. In our view, this exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented.

Finding of Fact Exception 2 – “While ignoring the violation of its own policies regarding the use of its computers by admittedly and knowingly permitting sports games and the use of Respondent’s equipment and supplies, Judge Holifield made proposed findings that Petitioner violated the same policies by allegedly having inappropriate images on his computer.” In this exception, Petitioner takes issue with portions of Recommended Order paragraphs 18, 19, and 20. In our view, this exception takes issue with facts found and inferences drawn by the Administrative Law Judge from the evidence presented, and takes issue with the credibility determinations of the Administrative Law Judge.

Finding of Fact Exception 3 – “The record evidence reveals a clear inconsistency with the image allegedly observed by Ms. Walsh and the image(s) attached to the termination notice issued to Petitioner.” In this exception, Petitioner takes issue with portions of Recommended Order paragraphs 23 through 32. In our view, this exception takes issue with facts found and inferences drawn by the Administrative Law Judge from the evidence presented, and takes issue with the credibility determinations of the Administrative Law Judge. In addition, Recommended Order paragraph 31 appears to be the Administrative Law Judge’s resolution of conflict in the testimony regarding the issue presented in this exception.

Finding of Fact Exception 4 – “The decision to terminate Petitioner’s employment was based upon the pretext, due to Petitioner’s age and/or due to falsely perceiving or regarding him as being disabled due to his cancer.” In this exception, Petitioner takes issue with portions of Recommended Order paragraphs 34, 36, 39, and 42. In our view, this exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented, and with the credibility determinations made by the Administrative Law Judge.

Finding of Fact Exception 5 – “The medical condition of Petitioner was a significant or contributing factor to his termination.” In this exception, Petitioner takes issue with portions of Recommended Order paragraphs 49, 51, 52, and 54. In our view, this exception takes issue with facts found and inferences drawn by the Administrative Law Judge from the evidence presented.

Finding of Fact Exception 6 – “The Petitioner was subjected to discrimination based upon being perceived or regarded as disabled due to cancer.” In this exception, Petitioner takes issue with portions of Recommended Order paragraph 58. In our view, this exception takes issue with facts found by the Administrative Law Judge from the evidence presented, and takes issue with credibility determinations of the Administrative Law Judge.

Finding of Fact Exception 7 – “The Petitioner was the victim of unlawful age discrimination.” In this exception, Petitioner takes issue with portions of Recommended

Order paragraphs 59 through 62. In our view, this exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented.

Conclusion of Law Exception 1 – “The Petitioner submitted evidence in the record to establish that he was subjected to discrimination based upon being perceived or regarded as disabled due to cancer.” In this exception, Petitioner takes issue with portions of Recommended Order paragraphs 75 through 79. In our view, this exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented. In addition, if the Commission were to accept Petitioner’s exception to the conclusion of law paragraph that indicates Respondent offered a legitimate reason for terminating Petitioner, the Commission’s action would be contrary to the Administrative Procedure Act’s direction, set out above, that the modification of a conclusion of law cannot form the basis for the modification of a finding of fact.

Conclusion of Law Exception 2 – “The Petitioner submitted evidence in the record to establish that he was subjected to unlawful age discrimination.” In this exception, Petitioner takes issue with portions of Recommended Order paragraphs 80 through 87. In our view, this exception takes issue with inferences drawn by the Administrative Law Judge from the evidence presented. In addition, if the Commission were to accept Petitioner’s exception to the conclusion of law paragraph that indicates Respondent offered a legitimate reason for terminating Petitioner, the Commission’s action would be contrary to the Administrative Procedure Act’s direction, set out above, that the modification of a conclusion of law cannot form the basis for the modification of a finding of fact.

Given the role of the Administrative Law Judge set out in Barr, above, with regard to finding facts, drawing inferences from the evidence presented, resolving conflicts, and making credibility determinations; the pronouncement of the Administrative Procedure Act set out above, that correction/modification of a conclusion of law cannot form the basis of a correction/modification of a finding of fact; and noting that we have found the facts contained in the Recommended Order to be supported by competent substantial evidence; Petitioner’s exceptions are rejected.

Dismissal

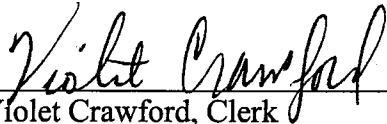
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 27th day of April, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Lizzette Gamero; and
Commissioner Patty Ball Thomas

Filed this 27th day of April, 2010,
in Tallahassee, Florida.



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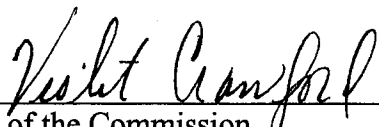
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Carolyn S. Holifield, Administrative Law Judge, DOAH

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 27th day of April, 2010.

By: 

Clerk of the Commission
Florida Commission on Human Relations