

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

ROLF BIERMAN,

Petitioner,

v.

BRUNSWICK BOAT GROUP,

Respondent.

EEOC Case No. 15D200900361

2010 MAY 26 A 11:07

FCHR Case No. 2009-00907

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

DOAH Case No. 09-3950

FCHR Order No. 10-045

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

Preliminary Matters

Petitioner Rolf Bierman 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 Brunswick Boat Group committed an unlawful employment practice on the bases of Petitioner's age (DOB: 12-21-49) and disability by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on July 1, 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 in Viera, Florida, on December 10, 2009, before Administrative Law Judge J. D. Parrish.

Judge Parrish issued a Recommended Order of dismissal, dated March 9, 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.

With regard to the allegations of age discrimination, the Administrative Law Judge concluded, "...the Petitioner failed to present any evidence that he was discharged in favor of a younger person or that younger less qualified persons were retained over him." Recommended Order, ¶ 25. While the Administrative Law Judge's reference to "younger" persons is no doubt because of the allegations in Petitioner's complaint that he was discriminated against in favor of younger persons, we note that 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 Lombardi v. Dade County Circuit Court, FCHR Order No. 10-013 (February 16, 2010), Deschambault v. Town of Eatonville, FCHR Order No. 09-039 (May 12, 2009) and Boles v. Santa Rosa County Sheriff's Office, FCHR Order No. 08-013 (February 8, 2008).

With this comment, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

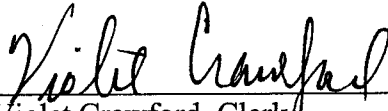
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 25<sup>th</sup> day of May, 2010.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Gilbert M. Singer; and  
Commissioner Darcell Streeter

Filed this 25<sup>th</sup> day of May, 2010,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 200  
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:

Rolf Bierman  
1035 Palmer Road  
Rockledge, FL 32955

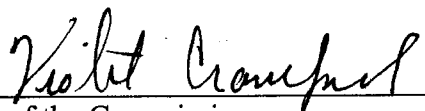
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Suzanne F. Hood, Administrative Law Judge, DOAH

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 25<sup>th</sup> day of May, 2010.

By:   
Clerk of the Commission  
Florida Commission on Human Relations