

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SHIRLEY FLEMING-BRICKOUS, 2010 SEP -8 A 11:25 EEOC Case No. NONE

Petitioner,

FCHR Case No. 2009-01592

v.

DOAH Case No. 09-7036

BREVARD COUNTY SHERIFF'S
OFFICE,

FCHR Order No. 10-065

Respondent.

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

Preliminary Matters

Petitioner Shirley Fleming-Brickous 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 Brevard County Sheriff's Office committed an unlawful employment practice on the bases of Petitioner's race (African-American) and sex (female), and retaliation, by involuntarily transferring Petitioner to work for a person against whom Petitioner had filed a complaint, and compensating Petitioner less than Petitioner's white counterparts, resulting in Petitioner's constructive discharge.

The allegations set forth in the complaint were investigated, and, on November 18, 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 Tallahassee and Melbourne, Florida, on May 13, 2010, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of dismissal, dated June 15, 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.

The Administrative Law Judge concluded that to establish a prima facie case of race discrimination, Petitioner must show "that Petitioner is a member of a protected class, that she suffered an adverse employment action, that she received disparate treatment compared to other similarly-situated individuals in a non-protected class, and that there is sufficient evidence of bias to infer a causal connection between her race and the disparate treatment." Recommended Order, ¶ 18.

With regard to the last element of the test cited by the Administrative Law Judge, a showing of a "causal connection" between the protected class and the alleged discriminatory act, the Commission has indicated that this element is actually what a Petitioner is attempting to show by establishing a prima facie case of discrimination, and that this element should not, itself, be an element of the test for a prima facie case. See, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998), citing Pugh v. Walt Disney World, 18 F.A.L.R. 1971, at 1972 (FCHR 1995), and Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997). See, also, Curry v. United Parcel Service of America, 24 F.A.L.R. 3166, at 3167 (FCHR 2000). Accord, Kelley v. Waterwise, FCHR Order No. 06-083 (September 18, 2006), Lawhorn v. Department of Corrections, FCHR Order No. 07-046 (August 24, 2007), Plegue v. Save A Lot / Jerry's Enterprises, FCHR Order No. 08-033 (May 27, 2008), Zemba v. Phantom Fireworks, FCHR Order No. 09-012 (January 27, 2009), and Monteiro v. Atria Windsor Woods, FCHR Order No. 09-047 (June 3, 2009). But, cf., Royster v. Pate Stevedore Co., Inc., FCHR Order No. 08-031 (May 6, 2008) regarding cases involving allegations of handicap / disability discrimination.

This conclusion of law is corrected accordingly.

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

We note that this correction does not change the Administrative Law Judge's finding that Petitioner did not establish a prima facie case of discrimination (see Recommended Order, ¶ 3) given the Administrative Law Judge's conclusion that "[a] preponderance of the evidence does not show that Petitioner received disparate treatment compared to similarly situated individuals..." Recommended Order, ¶ 18.

With this correction, 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 7th day of September, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Lizzette Gamero; and
Commissioner Watson Haynes, II

Filed this 7th day of September, 2010,
in Tallahassee, Florida.



Violet Crawford, Clerk
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Copies furnished to:

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Daniel Manry, 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 7th day of September, 2010.

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