

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

KENNETH D. CRAVEY,

Petitioner,

v.

LAKESIDE BEHAVIORAL HEALTH  
CARE,

Respondent.

2011 MAR -3 A 11:

DIVISION OF  
ADMINISTRATIVE  
HEARINGS

EEOC Case No. 15D201000145

FCHR Case No. 2009-02968

DOAH Case No. 10-5016

FCHR Order No. 11-023

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

Preliminary Matters

Petitioner Kenneth D. Cravey 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 Lakeside Behavioral Health Care committed unlawful employment practices on the basis of Petitioner's age (DOB: 2-17-58) by denying Petitioner promotion, unfairly disciplining Petitioner, and terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on June 3, 2010, 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 Orlando, Florida, on September 13, 2010, before Administrative Law Judge Jeff B. Clark.

Judge Clark issued a Recommended Order of dismissal, dated December 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 discrimination Petitioner must show "that he is a member of a protected class; that he suffered an adverse employment action; that he received disparate treatment from other similarly-situated individuals in a non-protected class; and that there is sufficient evidence of bias to infer a causal connection between his age and the disparate treatment." Recommended Order, ¶ 15.

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), Monteiro v. Atria Windsor Woods, FCHR Order No. 09-047 (June 3, 2009), and Wolfe v. Frito-Lay, FCHR Order No. 10-074 (September 21, 2010). But, cf., Royster v. Pate Stevedore Co., Inc., FCHR Order No. 08-031 (May 6, 2008), citing St. John's School District v. O'Brien, 973 So. 2d 535 (Fla. 5<sup>th</sup> DCA 2007) 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)(1), Florida Statutes (2009).

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 given the Administrative Law Judge's conclusion that Petitioner failed to make a showing that he

received dissimilar treatment from individuals in a non-protected class. Recommended Order, ¶ 16.

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

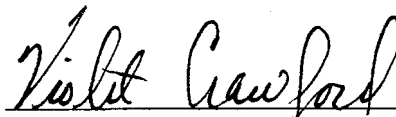
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 2<sup>nd</sup> day of March, 2011.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Watson Haynes, II; and  
Commissioner Darcell Streeter

Filed this 2<sup>nd</sup> day of March, 2011,  
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:

Kenneth D. Cravey  
1201 Lavanham Court  
Apopka, FL 32712

Lakeside Behavioral Health Care  
c/o Deborah L. La Fleur, Esq.  
c/o Matthew A. Klein, Esq.  
GrayRobinson, P.A.  
301 East Pine Street, Suite 1400  
Post Office Box 3068  
Orlando, FL 32802-3068

Jeff B. Clark, 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 2<sup>nd</sup> day of March, 2011.

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