

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RHONDA S. DOYLE,

EEOC Case No. 15D201100333

Petitioner,

FCHR Case No. 2011-01739

v.

DOAH Case No. 12-0113

GM APPLIANCE / WILLIAMS
CORPORATION,

FCHR Order No. 12-048

Respondent.

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

Preliminary Matters

Petitioner Rhonda S. Doyle filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2010), alleging that Respondent GM Appliance / Williams Corporation committed unlawful employment practices on the basis of Petitioner's age (DOB: 2-23-56) by subjecting Petitioner to a hostile work environment and by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on November 22, 2011, the Executive Director issued a determination finding that there was 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 Panama City, Florida, on April 25, 2012, before Administrative Law Judge Robert S. Cohen.

Judge Cohen issued a Recommended Order of dismissal, dated June 25, 2012.

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 the following: "(1) that she is a member of a protected class; (2) that she suffered an adverse employment action; (3) that she received disparate treatment from other similarly-situated individuals in a non-protected class; and (4) that there is sufficient evidence of bias to infer a causal connection between her age or sex and the disparate treatment." Recommended Order, ¶ 31.

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), Wolfe v. Frito-Lay, FCHR Order No. 10-074 (September 21, 2010), Brown v. NuVox, FCHR Order No. 11-024 (March 2, 2011), Arias v. McGowan's Heating and Air Conditioning, FCHR Order No. 11-083 (November 3, 2011), and Cottrell v. Concord Custom Cleaners, FCHR Order No. 12-014 (April 23, 2012). 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. 5th 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)(l), Florida Statutes (2012).

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 any similarly-situated employees outside Petitioner's protected class were treated more favorably. Recommended Order, ¶ 41 and ¶ 42.

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

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner's Written Exceptions to Recommended Order."

Petitioner's exceptions document contains 12 numbered paragraphs.

Paragraphs 1, 2, 3, and 4, except to findings of fact in Recommended Order paragraphs 14, 16, 18, and 20, respectively.

In each instance, these exceptions take issue with inferences drawn by the Administrative Law Judge from the evidence presented.

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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

The exceptions set out in paragraphs 1, 2, 3, and 4, of Petitioner's exceptions document are rejected.

Paragraphs 5 through 12 of Petitioner's exceptions document take issue with the Administrative Law Judge's conclusion that Petitioner failed to establish a prima facie case of discrimination, and ultimately failed to find that unlawful discrimination had occurred.

We have discussed the Administrative Law Judge's prima facie case analysis in detail in the "conclusions of law" section of this Order, above, concluding that there is no legal basis to overturn the Administrative Law Judge's conclusion that a prima facie case of discrimination was not demonstrated.

The exceptions set out in paragraphs 5 through 12 of Petitioner's exceptions document 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 17th day of September, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia Fajardo; and
Commissioner Michael Keller

Filed this 17th day of September, 2012,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Rhonda S. Doyle
c/o Robert C. Jackson, Esq.
Harrison Sale McCloy
Post Office Drawer 1579
Panama City, FL 32402-1579

GM Appliance / Williams Corporation
c/o Daniel Harmon, Esq.
Daniel Harmon. P.A.
23 East 8th Street
Panama City, FL 32401

Robert S. Cohen, 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 17th day of September, 2012.

By: _____/s/_____
Clerk of the Commission
Florida Commission on Human Relations