

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

WANDA I. PERALES,

EEOC Case No. 510201401250

Petitioner,

FCHR Case No. 2014-00265

v.

DOAH Case No. 14-2210

EZ PAWN FLORIDA, INC.,

FCHR Order No. 15-029

Respondent.

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

Preliminary Matters

Petitioner Wanda I. Perales filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2012), alleging that Respondent EZ Pawn Florida, Inc., committed an unlawful employment practice on the bases of Petitioner's sex (female), national origin (not specified in complaint, but later determined to be Hispanic) and on the basis of retaliation by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on April 8, 2014, the Executive Director issued a 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 December 10, 2014, before Administrative Law Judge Robert S. Cohen.

Judge Cohen issued a Recommended Order of dismissal, dated February 25, 2015.

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) she is a member of a protected class; (2) 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 gender or national origin and the disparate treatment." Recommended Order, ¶ 32.

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), Cottrell v. Concord Custom Cleaners, FCHR Order No. 12-014 (April 23, 2012), Doyle v. GM Appliance / Williams Corporation, FCHR Order No. 12-048 (September 17, 2012) and Williams v. C and C Pumping Services, FCHR Order No. 13-044 (June 19, 2013). 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 (2014).

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 prove Petitioner received disparate treatment from other similarly-situated employees in a non-protected class. Recommended Order, ¶ 33.

With this correction, 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 21 day of May, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Onelia Fajardo-Garcia; and
Commissioner J. Jeff Graber

Filed this 21 day of May, 2015,
in Tallahassee, Florida.


Clerk

Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Wanda I. Perales
c/o Erich Schuttauf, Esq.
Erich E. Schuttauf Attorney at Law
7901 Kingspointe Parkway, Building 9
Orlando, FL 32819

Wanda I Perales
c/o Erich Schuttauf, Esq.
LawyersToday.com
734 West Colonial Drive
Orlando, FL 32804

EZ Pawn Florida, Inc.
c/o Jason Matthew Leo, Esq.
Littler Mendelson, P.C.
111 North Magnolia Avenue, Suite 1250
Orlando, FL 32801

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 26 day of May, 2015.

By: Jimmy Barton
Clerk of the Commission
Florida Commission on Human Relations