

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

WILLIAM T. MAHAN, JR.,

EEOC Case No. 15D201400278

Petitioner,

FCHR Case No. 2014-00215

v.

DOAH Case No. 14-4582

UF IFAS EXTENSION PROGRAM,

FCHR Order No. 16-020

Respondent.

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

Preliminary Matters

Petitioner William T. Mahan, Jr., filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2013), alleging that Respondent UF IFAS Extension Program committed unlawful employment practices on the basis of Petitioner's age (DOB: 12-19-54) and on the basis of retaliation by giving Petitioner an unsubstantiated performance appraisal, rating Petitioner's performance as less than satisfactory, and involuntarily transferring Petitioner to a different position.

The allegations set forth in the complaint were investigated, and, on August 25, 2014, 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 by video teleconference at sites in Gainesville and Tallahassee, Florida, on April 17, June 10, and June 12, 2015, and in Tallahassee, Florida, on July 1, 2015, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated February 4, 2016.

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.

We note that the Administrative Law Judge concluded that one of the elements Petitioner must prove to establish a prima facie case of age discrimination is that "he was replaced by, or treated less favorably than, a substantially younger person."

Recommended Order, ¶ 105.

While we agree that such a showing could be an element of a prima facie case, we note that Commission panels have long concluded that the Florida Civil Rights Act of 1992 and its predecessor law, the Human Rights Act of 1977, as amended, prohibited age discrimination in employment on the basis of any age "birth to death." See Green v. ATC/VANCOM Management, Inc., 20 F.A.L.R. 314 (1997), and Simms v. Niagara Lockport Industries, Inc., 8 F.A.L.R. 3588 (FCHR 1986). 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 Ellis v. American Aluminum, FCHR Order No. 15-059 (September 17, 2015), Qualander v. Avante at Mt. Dora, FCHR Order No. 13-016 (February 26, 2013), Collins v. Volusia County Schools, FCHR Order No. 12-029 (June 27, 2012), 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). But, cf., City of Hollywood, Florida v. Hogan, et al., 986 So. 2d 634 (4<sup>th</sup> DCA 2008).

With these comments, 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 Exceptions to Recommended Order," received by the Commission on February 19, 2016.

A review of this filing suggests that Petitioner excepts to the following Recommended Order paragraph numbers: 3, 4, 10, 12, 13, 15, 16, 17, 19, 20, 21, 25, 26, 27, 28, 29, 30, 31, 32, 33, 38, 39, 40, 41, 43, 44, 45, 48, 50, 51, 52, 57, 60, 61, 62, 63, 65, 70, 71, 72, 73, 75, 76, 77, 79, 80, 81, 82, 83, 89, 93, 94, 95, 96, 97, 98, 106, 107, 108, 110, 112, 113, 114, 115, 124, and 125.

In each instance, Petitioner appears to except to facts found, facts not found, inferences drawn from the evidence presented, credibility determinations made by the Administrative Law Judge, and / or is presenting argument or discussion about the indicated Recommended Order paragraph.

The Administrative Procedure Act establishes the extent to which the Commission can modify or reject a finding of fact or conclusion of law contained in a Recommended Order. It states, “The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction...Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law.” Section 120.57(1)(l), Florida Statutes (2015).

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), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014).

In addition, it has been stated, “The ultimate question of the existence of discrimination is a question of fact.” Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1<sup>st</sup> DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010), Eaves, supra, and Taylor, supra.

Petitioner’s exceptions are rejected.

#### Dismissal

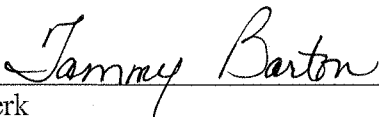
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 7 day of April, 2016.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Tony Jenkins; and  
Commissioner Jay Pichard

Filed this 7 day of April, 2016,  
in Tallahassee, Florida.

  
Clerk  
Commission on Human Relations  
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Suzanne Van Wyk, 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 7 day of April, 2016.

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