

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ADALBERTO LOPEZ,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2016-01617

v.

DOAH Case No. 17-2417

INSYNC STAFFING, INC.,

FCHR Order No. 18-004

Respondent.

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

Preliminary Matters

Petitioner Adalberto Lopez filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2015), alleging that Respondent inSync Staffing, Inc., committed an unlawful employment practice on the basis of Petitioner's age (DOB: 4-23-42) by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on March 16, 2017, 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 by video teleconference at sites in Tallahassee and West Palm Beach, Florida, on July 28, 2017, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of dismissal, dated October 26, 2017.

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 disagree with the Administrative Law Judge's statement of the test for a prima facie case of age discrimination set out in Recommended Order, ¶ 17. The Administrative Law Judge acknowledges and explains this disagreement in Endnote 1 of the Recommended Order. Further in response to the representation in Endnote 1 that under the Commission's interpretation of the law an age difference of one year between Petitioner and comparator could lead to a finding of age discrimination, we note that a Commission Panel has concluded that a three-year age difference between Petitioner and comparator is sufficient to support a claim of age discrimination. See Gatewood v. The Unlimited Path, Inc., FCHR Order No. 17-072 (September 14, 2017) and the additional citation on this issue contained therein.

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

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order.

The exceptions document contains four numbered exceptions.

In our view, the exceptions numbered 1, 2 and 3 are not really exceptions to the Recommended Order.

The exception numbered 4 takes issue with the Administrative Law Judge's failure to admit a document into evidence.

A Commission Panel has concluded, "The Commission, as the agency charged with reviewing the Recommended Order, does not have substantive jurisdiction to review 'admissibility of evidence' determinations of the Administrative Law Judge. See Barfield v. Department of Health, Board of Dentistry, 805 So. 2d 1008 (1st DCA 2001)." Lewis v. Royal American Management, Inc., FCHR Order No. 16-028 (June 9, 2016). See also, Nieman v. Carolina Casualty Insurance Company (W.R. Berkley), FCHR Order No. 17-010 (September 14, 2017). Further, see Section 120.57(1)(I), Florida Statutes (2017) regarding an agency's authority to correct only those conclusions of law within its "substantive jurisdiction."

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 11 day of January, 2018.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Latanya Peterson; and
Commissioner Gilbert M. Singer

Filed this 11 day of January, 2018,
in Tallahassee, Florida.



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John G. Van Laningham, 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 11 day of January, 2018.

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