

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

DWAYNE E. CLARK, SR.,

EEOC Case No. 15D201700093

Petitioner,

FCHR Case No. 2016-02044

v.

DOAH Case No. 17-3272

UNIVERSITY OF FLORIDA  
JACKSONVILLE PHYSICIANS, INC.,

FCHR Order No. 18-011

Respondent.

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

Preliminary Matters

Petitioner Dwayne E. Clark, Sr., filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent University of Florida Jacksonville Physicians, Inc., committed an unlawful employment practice on the bases of Petitioner's race (African American) and age (DOB: 6-2-44) by failing to hire Petitioner for a position for which he had applied.

The allegations set forth in the complaint were investigated, and, on May 3, 2017, 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 Jacksonville, Florida, on August 31, 2017, before Administrative Law Judge W. David Watkins.

Judge Watkins issued a Recommended Order of dismissal, dated November 30, 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 note that the Administrative Law Judge concluded that Petitioner failed to establish a prima facie case of age discrimination, in part, because "Petitioner failed to present any evidence that Respondent filled the position with a substantially younger person..." Recommended Order, ¶ 39.

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 Mahan v. UF IFAS Extension Program, FCHR Order No. 16-020 (April 7, 2016), 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

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.

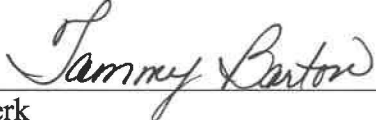
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 8 day of February, 2018.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;  
Commissioner Derick Daniel; and  
Commissioner Jay Pichard

Filed this 8 day of February, 2018,  
in Tallahassee, Florida.

  
Clerk  
Commission on Human Relations  
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W. David Watkins, 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 8 day of February, 2018.

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