

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FRANCES G. DANELLI,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2017-01005

v.

DOAH Case No. 17-6311

FRITO-LAY, INC.

FCHR Order No. 18-042

Respondent.

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

Preliminary Matters

Petitioner Frances G. Danelli 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 Frito-Lay, Inc., committed unlawful employment practices on the basis of Petitioner's sex (female) by allowing Petitioner to be subjected to third-party sexual harassment, and on the bases of Petitioner's sex (female) and age (DOB: 10-21-57) by suspending and ultimately terminating Petitioner from employment. Petitioner also alleged that Respondent engaged in unlawful retaliation.

The allegations set forth in the complaint were investigated, and, on October 13, 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 Lauderdale Lakes, Florida, on March 14 and 15, 2018, before Administrative Law Judge John G. Van Laningham.

Judge Van Laningham issued a Recommended Order of dismissal, dated July 11, 2018.

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 to demonstrate a prima facie case of age discrimination Petitioner must show, among other elements, that "...similarly situated employees outside her protected class (i.e., younger...) were treated differently." Recommended Order, ¶ 59.

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 Clark v. University of Florida Jacksonville Physicians, Inc., FCHR Order No. 18-011 (February 8, 2018), 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 (4th 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 14 day of September, 2018.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Mario Garza

Filed this 14 day of September, 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 14 day of September, 2018.

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