

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

TEQUILLA Y. LOCKWOOD,

EEOC Case No. 15D202000361

Petitioner,

FCHR Case No. 202021773

v.

DOAH Case No. 20-4114

STATE OF FLORIDA DEPARTMENT OF
JUVENILE JUSTICE,

FCHR Order No. 21-024

Respondent.

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

Preliminary Matters

Petitioner, Tequilla Y. Lockwood, filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, sections 760.01 - 760.11, Florida Statutes (2019), alleging that Respondent, State of Florida Department of Juvenile Justice, committed unlawful employment practices on the bases of Petitioner's age (over 40) and race (African American).

The allegations set forth in the complaint were investigated, and, on August 11, 2020, 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 conducted via Zoom conference, on November 17, 2020, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order, dated January 13, 2021.

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 note that the Administrative Law Judge concluded that to establish a prima facie case of age discrimination, Petitioner must show that “[1] she is a member of a protected age group (i.e., over 40); [2] she was qualified for the job; [3] she suffered adverse employment action; and [4] she was treated less favorably than substantially younger persons.” Recommended Order, ¶ 58.

We disagree with the content of elements [1] and [4] of this test as set out by the Administrative Law Judge. Accord Torrence v. Hendrick Honda Daytona, FCHR Order No. 15-027 (May 21, 2015), Chun v. Dillard’s, FCHR Order No. 14-029 (August 21, 2014), Collins v. Volusia County Schools, FCHR Order No. 12-029 (June 27, 2012), Bratcher v. City of High Springs, FCHR Order No. 11-091 (December 7, 2011) and Brown v. SSA Security, Inc., FCHR Order No. 10-062 (August 10, 2010).

With regard to element [1], Commission panels have concluded that one of the elements for establishing a prima facie case of age discrimination under the Florida Civil Rights Act of 1992 is a showing that individuals similarly-situated to Petitioner of a “different” age were treated more favorably, and Commission panels have noted that the age “40” has no significance in the interpretation of the Florida Civil Rights Act of 1992. See, e.g., Downs v. Shear Express, Inc., FCHR Order No. 06-036 (May 24, 2006), and cases and analysis set out therein; see also, Boles v. Santa Rosa County Sheriff’s Office, FCHR Order No. 08-013 (February 8, 2008), and cases and analysis set out therein.

Consequently, we yet again note that the age “40” has no significance in the interpretation of the Florida Civil Rights Act of 1992. Accord, e.g., Grasso v. Agency for Health Care Administration, FCHR Order No. 15-001 (January 14, 2015), Cox v. Gulf Breeze Resorts Realty, Inc., FCHR Order No. 09-037 (April 13, 2009), Toms v. Marion County School Board, FCHR Order No. 07-060 (November 7, 2007), and Stewart v. Pasco County Board of County Commissioners, d/b/a Pasco County Library System, FCHR Order No. 07-050 (September 25, 2007). But, cf., City of Hollywood, Florida v. Hogan, et al., 986 So. 2d 634 (4th DCA 2008).

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 Qualander v. Avante at Mt. Dora, FCHR Order No. 13-016 (February 26, 2013), Collins, supra, 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, supra. But, cf., Hogan, supra.

We modify accordingly the Administrative Law Judge's conclusions of law regarding the test for the establishment of a prima facie case of age discrimination.

The errors in the test used by the Administrative Law Judge to establish whether a prima facie case of age discrimination existed are harmless, given the Administrative Law Judge's conclusion that Petitioner did not establish that she suffered an adverse employment action. Recommended Order, ¶ 60.

In modifying these conclusions of law of the Administrative Law Judge, we conclude: (1) that the conclusions of law being modified are conclusions of law over which the Commission has substantive jurisdiction, namely conclusions 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 modifications are being made by the Commission is that the conclusions of law as stated run contrary to previous Commission decisions on the issue; and (3) that in making these modifications the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, section 120.57(1)(1), Florida Statutes (2020). We recognize that based on Article V, section 21 of the Florida Constitution, the Administrative Law Judge is not required to defer to the Commission's interpretation of section 760.10, Florida Statutes; however, the Commission has final order authority, and pursuant to section 120.57(1)(1), Florida Statutes, the Commission may reject or modify conclusions of law over which it has substantive jurisdiction.

With these corrections and 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 31 day of March, 2021.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario Garza, Panel Chairperson;
Commissioner Libby Farmer; and
Commissioner Larry Hart

Filed this 31 day of March, 2021,
in Tallahassee, Florida.

Jammy Barton

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Suzanne Van Wyk, Administrative Law Judge, DOAH

Stanley Gorsica, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 31 day of March, 2021.

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