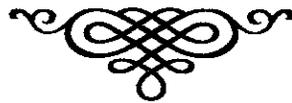




#261039 Franklin Praay
vs. Knight Enterprises, Inc.

Order
Linda V. Parker, Director



**STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION**

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel FRANKLIN PRAAY
Claimant,

v

Case No. 261039

KNIGHT ENTERPRISES INC.
Respondent.

ORDER

At a meeting of the Michigan Civil Rights Commission
held in Lansing, Michigan on the 26th day of January 2004

In accordance with the Rules of the Michigan Civil Rights Commission, a Hearing Referee heard proofs and arguments and made proposed findings of fact and recommendations regarding the issues involved in this case. Commissioner Bishop George Brown, has issued an Opinion, adopted by a unanimous vote of the Commission. That Opinion, shall be made part of this Order. The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Claimant is a resident of Michigan.
2. Respondent is a Michigan corporation that operates a wholesale gasoline business as well as retail service stations.

3. On May 22, 2000, the respondent hired the claimant as a wholesale gasoline salesperson and as an operations manager for the respondent's four retail gasoline stations.
4. The respondent hired the claimant based upon his interview and his resume which reflected 18 years of prior experience.
5. The claimant was 54 years old at the time he was hired by the respondent.
6. The claimant was not offered training by the respondent at the time of hire since the respondent believed that based upon the claimant's prior experience he didn't need training.
7. The claimant was hired at an annual salary of \$30,000 and was eligible to earn a bonus of \$500 for every wholesale gasoline customer that he was able to get to contract with the respondent for purchasing wholesale gasoline.
8. The claimant's specific job duties were to: (a) supervise the respondent's four north central Michigan gasoline stations, (b) to maintain the respondent's relationship with a wholesale customer near Gaylord and promote the respondent's business with the customer and (c) to solicit new wholesale gasoline customers.
9. The claimant was aware that a major part of his job responsibility was to secure new wholesale customers.
10. The respondent provided the claimant with a Lexus automobile as transportation for the purpose of making sales calls.

11. During his employment as operations manager the claimant did not secure any wholesale customers for the respondent.
12. During his employment as operations manager the claimant did not contact the respondent's current Gaylord wholesale customer. The claimant also failed to maintain a relationship with the respondent's three other retail stores that the claimant was hired to supervise.
13. On June 28, 2000, the claimant was reassigned to the role of the Grayling station manager and cashier.
14. In January 2001, the respondent hired Christopher Bailey, age 23, to assume the sales and management duties that had previously been performed by the claimant.
15. On January 11, 2002, the claimant was discharged from his previous duties and on January 15, 2002, was rehired as a cashier at the rate of \$7.00 per hour working under the supervision of Bailey.
16. On July 28, 2002, the claimant voluntarily quit his job without notice. The claimant was 55 years old when he quit.

CONCLUSIONS OF LAW

1. The claimant meets the definition of a covered individual on the basis of age as established under the Elliott-Larsen Civil Rights Act.
2. The evidence supports a finding of no direct evidence of age discrimination.
3. The claimant was not able to establish that he was qualified to perform the job for which he was hired.

4. The claimant was unable to show that the respondent's legitimate non-discriminatory reason for the adverse employment action against the claimant was false or pretextual.
5. The evidence supports a finding that there is no prima facie case of age discrimination.
6. The claimant was not constructively discharged by the respondent. The evidence supports the finding that the claimant voluntarily quit his position as cashier.
7. For the reasons stated above there was no violation by the respondent of the Elliott-Larsen Civil Rights Act.

WHEREFORE IT IS HEREBY ORDERED that the Claimant's complaint under the Elliott-Larsen Civil Rights Act is dismissed.

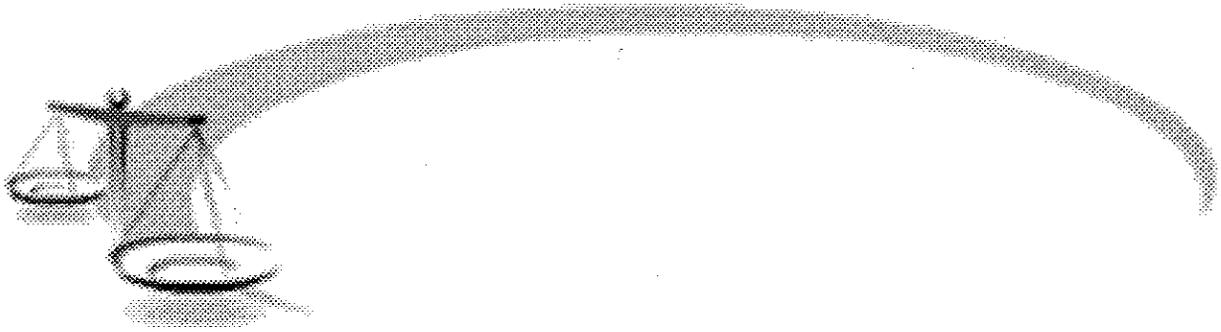
MICHIGAN CIVIL RIGHTS COMMISSION

Dated: 2/2/04


Linda V. Parker, Director

NOTICE OF RIGHT TO APPEAL

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan having jurisdiction as provided by law. MCLA 37.2606



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vs. Knight Enterprises, Inc.

Opinion
George E. Brown, Commissioner



**STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION**

MICHIGAN DEPARTMENT OF CIVIL RIGHTS

ex rel Franklin Praay

Claimant,

v

KNIGHT ENTERPRISES INC.

Respondent.

Case No. 261039

OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

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5. The claimant was 54 years old at the time he was hired by the respondent.
6. The claimant was not offered training by the respondent at the time of hire since the respondent believed that based upon the claimant's prior experience he didn't need training.
7. The claimant was hired at an annual salary of \$30,000 and was eligible to earn a bonus of \$500 for every wholesale gasoline customer that he was able to get to contract with the respondent for purchasing wholesale gasoline.
8. The claimant's specific job duties were to: (a) supervise the respondent's four north central Michigan gasoline stations, (b) to maintain the respondent's relationship with a wholesale customer near Gaylord and promote the respondent's business with the customer and (c) to solicit new wholesale gasoline customers.
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11. During his employment as operations manager the claimant did not secure any wholesale customers for the respondent.
12. During his employment as operations manager the claimant did not contact the respondent's current Gaylord wholesale customer. The claimant also failed to maintain a relationship with the respondent's three other retail stores that the claimant was hired to supervise.
13. On June 28, 2000, the claimant was reassigned to the role of the Grayling station manager and cashier.
14. In January 2001 the respondent hired Christopher Bailey, age 23, to assume the sales and management duties that had previously been performed by the claimant.
15. On January 11, 2002, the claimant was discharged from his previous duties and on January 15, 2002, was rehired as a cashier at the rate of \$7.00 per hour working under the supervision of Bailey.
16. On July 28, 2002, the claimant voluntarily quit his job without notice. The claimant was 55 years old when he quit.

CONCLUSIONS OF LAW

1. The claimant meets the definition of a covered individual on the basis of age as established under the Elliott-Larsen Civil Rights Act.
2. The evidence supports a finding of no direct evidence of age discrimination.
3. The claimant was not able to establish that he was qualified to perform the job for which he was hired.
4. The claimant was unable to show that the respondent's legitimate non-discriminatory reason for the adverse employment action against the claimant was false or pretextual.
5. The evidence supports a finding that there is no prima facie case of age discrimination.
6. The claimant was not constructively discharged by the respondent. The evidence supports the finding that the claimant voluntarily quit his position as cashier.

OPINION

The claimant, a 55 year old man, alleges that he was demoted from his position as operations manager by the respondent because of his age and replaced by a less qualified 23 year old man. The claimant further alleges that as a result of the respondent's actions he was constructively discharged from his position as cashier.

Both the claimant and respondent agree that as operations manager the claimant was to supervise four respondent owned gasoline stations. He was also to secure new customers for the respondent's wholesale gasoline station as well as keep in contact with an independent gasoline station in Gaylord that was currently purchasing wholesale gasoline from the respondent. Shortly after being hired the claimant was assigned to reopen and manage a respondent owned gasoline station that had been closed.

The evidence presented during a public hearing in this matter disclosed that the claimant was unfamiliar with the operation of gasoline service stations such as the respondent owned. The evidence further showed that the claimant failed to secure a single new wholesale customer for the respondent or to call on the respondent's current wholesale customer. The claimant also failed to supervise the respondent's other three gasoline stations that he had been hired to supervise. As a result the respondent hired a 23 year old man to perform the duties that the claimant failed to do. The claimant was kept on as manager of the reopened station and subsequently terminated and rehired as a cashier at the station.

The claimant contends that he was satisfactorily performing the job of station manager and it was his understanding that was what the respondent wanted him to do. Further the claimant states that he was given no training by the respondent at the time of his hire and that when the respondent replaced him he was told it was because the respondent found a young man who was full of "piss and vinegar." The claimant contends that this isolated statement allegedly made by the respondent is proof of direct evidence of discrimination. The hearing referee after listening to both sides and examining all the evidence reached the conclusion that it was doubtful that the respondent ever made the alleged, young and full of "piss and vinegar" statement. Further, even if the statement was made, it would only be descriptive of Christopher Bailey and not direct evidence of age discrimination. The claimant admits that the above statement is the only evidence the claimant has that would support a direct evidence theory of discrimination. This alleged isolated comment must be weighed against the fact that the respondent knew the claimant's approximate age at the time he was hired. Also, Carroll Knight, the same person who hired the claimant was the person who made the decision to replace him a year later. Finally, the evidence shows that out a workforce of 185 employees the respondent has 37 over the age of 55, and 76 over the age of 40.

There is undisputed witness testimony that the claimant had difficulty performing the job duties of station manager. The evidence did not support the claimant's allegations that he was subjected to a difference of treatment by the respondent because of his age. The claimant states he was not given any training at the time of his hire while his replacement was. The respondent admits that the claimant did not receive any formal training and states that because the claimant indicated that he had more

than 18 years direct experience and a prior history of sales it was believed that no additional training was necessary. The respondent contends that the claimant never requested any training or asked any questions of the respondent regarding his job duties or expectations.

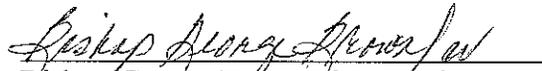
It was the conclusion of the hearing referee that there is a finding of no direct evidence of age discrimination, no finding of a prima facie case of age discrimination, and no finding of unlawful retaliation or constructive discharge. Therefore, no damages are warranted as a result of the findings.

Both the claimant and respondent were provided the opportunity to submit exceptions to the referee's findings to the commission and to request oral argument before the commission. Since neither side takes exception to the referee's report, findings and recommendations, the referee's report should be accepted as factual and correct.

For the reasons cited above, there is no violation of the Elliott-Larsen Civil Rights Act.

Respectfully submitted,

Dated: January 26, 2004


Bishop George Brown, Commissioner