

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PATRICIA ANN CLARK,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 85-1683
)	
DEPARTMENT OF CORRECTIONS,)	
SUMTER CORRECTIONAL INSTITUTE,)	
)	
Respondent.)	
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RECOMMENDED ORDER

By MOTION TO DISMISS dated July 24, 1985, Respondent, by and through its attorney, requests the Petition for Relief filed by Petitioner be dismissed. As grounds therefor it is alleged the petition was not timely filed. Based upon a review of the file in this case, the following is submitted.

FINDINGS OF FACT

1. A NOTICE OF DETERMINATION: No Cause was issued by the Florida Commission on Human Relations and mailed to the parties by certified mail on January 30, 1985. Therein Petitioner was advised that the determination would become final unless: (1) a Request for Redetermination was filed within 20 days of the date of mailing of this notice or (2) Petitioner filed a Petition for Relief within 30 days of the mailing of this notice. Petitioner was further advised that failure of complainant to timely file either a request or petition will result in dismissal of the complaint.

2. Petition for Relief was mailed by Petitioner to the Department of Corrections on March 12, 1982, and the Department of Corrections forwarded the Petition for Relief to the Commission on Human Relations where it was date-stamped as received March 13, 1985.

3. By Order to Show Cause dated April 29, 1985, the Commission on Human Relations directed Petitioner to show cause within 10 days why the petition should not be dismissed as

untimely filed. In response thereto Petitioner submitted a letter dated May 9, 1985, which was received by the Commission on Human Relations on May 13, 1985, enclosing statements verifying a son's illness February 19-22, her mother's hospitalization February 21-28, and that Petitioner had notified the school of days her daughter, Davita Clark, was home sick. No evidence was submitted showing Petitioner took sick leave during any of these periods or did not report for work each of these days.

4. To be timely the Petition for Relief must be filed with the Commission within 30 days of the date determination of no cause was made. In this case the petition should have been received by the Commission on or before March 1, 1985. Section 22T-9.01, Florida Administrative Code. If three days mailing time is allowed for receipt of the notice by Petitioner, the petition was due on or before March 4, 1985. The petition was received by the Commission March 13, 1985, some 12 or 9 days after the 30-day period during which Petitioner was allowed to file a Petition for Relief.

5. None of the reasons given by Petitioner for the delay in filing the Petition for Relief would justify granting an extension of time for filing such petition--if such extension may legally be granted.

CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to, and the subject matter of, these proceedings.

7. Rule 22T-9.08, Florida Administrative Code, provides in pertinent part:

A complainant may file a Petition for Relief from an Unlawful Employment Practice within 30 days of service of . . . a Notice of Determination of No Reasonable Cause.

8. Rule 22T-9.06, Florida Administrative Code, provides the Executive Director, on behalf of the Commission, may dismiss a complaint which has not been timely filed with the Commission.

9. The courts and most state agencies hold that failure to timely file a petition for hearing where notice of such a requirement is given is jurisdictional. Department of

Environmental Regulation in issuing or denying various permits requires the applicant to publish a notice of the Department's intended action on its application and Rule 17-103.150, Florida Administrative Code provides in pertinent part:

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) in accordance with Section 120.57 F.S. The petition must . . . be filed (received) in the office of General Counsel . . . within fourteen (14) days of publication of this notice. Failure to file a request for hearing within this time period shall constitute a waiver of any right such person may have to request an administrative determination (hearing) under Section 120.57 F.S.

10. The Department of Environmental Regulation considers failure to timely file for such hearing to be jurisdictional.

11. The Department of Health and Rehabilitative Services also holds the time in which aggrieved persons whose substantial interests are affected by the Department of Health and Rehabilitative Services' action may appeal such determination is jurisdictional.

12. Rule 10-5.10(8), Florida Administrative Code provides in pertinent part:

. . . persons whose interests are substantially affected by a department decision to issue or deny a Certificate of Need shall have the right to appeal and to demand a fair hearing under the provisions of the Administrative Procedure Act (Chapter 120, Florida Statutes). Any such appeal must be in writing and be received by the department within 30 days of the date the applicant, substantially affected persons and HSA received written notice of the department's action. Publication of Notice of the issuance or denial of a Certificate of Need shall constitute receipt of written notice.

13. Similarly, the courts uniformly hold that the time in which a party has to file a motion in a trial court for rehearing is jurisdictional. Failure to so file within the ten-day period forever bars the court from reconsidering its initial holding albeit egregiously erroneous.

14. The rationale for holding the time in which to appeal or contest an agency's proposed action is jurisdictional is that it is in the interest of all parties to require these issues proceed forthwith to a finite conclusion. Further, if the period beyond which an aggrieved party can protest proposed agency action is not definite and fixed, no agency decision can be final and not subject to reversal at a much later hearing. To cure this uncertainty and render agency action immune to attack after a reasonable period where notice has been given to affected parties, these times, during which agency action can be protested at a Section 120.57 F.S. proceeding, should be jurisdictional. At the expiration of the allowed period for appeal or request for Section 120.57 hearing, neither the agency nor the Division of Administrative Hearings should have jurisdiction to consider the petition. This procedure is followed by Department of Environmental Regulation and Department of Health and Rehabilitative Services, and no valid reason exists not to follow this rationale in Commission on Human Relations cases.

From the foregoing it is concluded that the Petition for Relief from an unlawful employment practice filed by Patricia Ann ClarX was not filed within the time prescribed and neither this tribunal nor the Commission on Human Relations has jurisdiction to consider this petition. It is

RECOMMENDED that the Petition for Relief filed by Patricia Ann Clark against the Florida Department of Corrections be dismissed for lack of jurisdiction.

ENTERED this 30th day of July, 1985, at Tallahassee, Florida.

K. N. AYER
Hearing Officer
Division of Administrative Hearings
Oakland Building
2009 Apalachee Parkway

Tallahassee, Florida 32301
904/488-9675

FILED with the Clerk of the
Division of Administrative Hearings
this 30th day of July, 1985.

COPIES FURNISHED:

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AGENCY FINAL ORDER

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STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PATRICIA ANN CLARK,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,
SUMTER CORRECTIONAL INSTITUTE,

Respondent.

EEOC Case No. 025840521
FCHR Case No. 84-1409
DOAH Case No. 85-1683
FCHR Order No. 85-0033

ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL
EMPLOYMENT PRACTICE

I. Panel of Commissioners

The following three Commissioners participated in the disposition of this matter:

Commissioner Robert R. Joyce, Panel Chairperson; Commissioner

Learna G. Ramsey; and Commissioner Thomas H. Poole, Sr.

II. Appearances

No appearance was entered at the Commission deliberation by or on behalf of Petitioner or Respondent.

III. Preliminary Matters

Patricia Ann Clark, Petitioner herein, filed a complaint of discrimination with this Commission pursuant to the Human Rights Act of 1977, as amended, Section 760.01-760.10, Florida Statutes (1983),¹ alleging that Department of Corrections, Sumter Correctional Institute, Respondent herein, unlawfully discriminated against Petitioner on the bases of sex (female) and race (black).

In accordance with the Commission's rules, the allegations of discrimination set forth in the complaint of discrimination were investigated and a report of said investigation was submitted to the Executive Director. On January 30, 1985, the Executive Director issued his Determination finding no reasonable cause to believe that an unlawful employment practice occurred.

On March 12, 1985, the Petitioner mailed a Petition for Relief from an Unlawful Employment Practice to the Respondent. The petition was forwarded to the Commission on March 13, 1985. On April 29, 1985, the Commission issued an Order to Show Cause, directing Petitioner to show cause within 15 days why her petition should not be dismissed as untimely. Petitioner filed a response to the Order to Show Cause on May 13, 1985. Thereafter, the petition was referred to the Division of Administrative Hearings (DOAH) for the conduct of a formal proceeding pursuant to Rule 22T-8.16(1). On July 24, 1985, Respondent entered a Motion to Dismiss requesting that the petition be dismissed as untimely. The DOAH Hearing Officer, K. N. Ayers, entered a Recommended Order in this matter on July 30, 1985, recommending dismissal.

Neither party filed exceptions to the Recommended Order.

Pursuant to notice, public deliberations were held on September 13, 1985, in Tallahassee, Florida, before the aforementioned Panel of Commissioners, at which deliberations the Panel determined the action to be taken upon the petition.

IV. Findings of Fact

Having considered the Hearing Officer's findings of fact, and being particularly mindful of the record in this proceeding, the Panel finds that the Hearing Officer's findings of fact are supported by competent substantial evidence and will not be

disturbed. The Hearing Officer's findings of fact are hereby adopted.

V. Conclusions of Law

The Hearing Officer found that the Petitioner did not file a Petition for Relief from an Unlawful Employment Practice within the 30 day filing period as provided by Commission rules. The Hearing Officer concluded that the petition should be dismissed with prejudice, reasoning that satisfaction of the filing period requirement is prerequisite to the exercise of subject matter jurisdiction of this case by DOAH and the Commission. The Panel rejects the Hearing Officer's conclusion that the 30 day filing period established in Rule 22T-9.08(1) is a jurisdictional requirement.

An agency's interpretation of its own rules and statutory provisions are entitled to great weight. Florida Commission on Human Relations v. Human Development Center, 413 So. 2d 1251 (Fla. 1st DCA 1982). The Commission has consistently held that neither the 180 day statutory filing period for complaints of discrimination² nor the 20 day rule filing period for requests for redeterminations³ is jurisdictional. Similarly, the Commission has interpreted the 30 day rule filing period for Petitions for Relief as a limitation period subject to equitable tolling, estoppel and waiver, rather than as a jurisdictional requirement. Owens v. Blue Cross and Blue Shield of Florida, Inc., FCHR Order No. 84-019 (FCHR 9/26/84); Dittrich v. Wackenhut Services, Inc., FCHR Order No. 84-020 (FCHR 9/26/84). Not only is the Commission's interpretation consistent with other limitation periods contained in the Human Rights Act of 1977, and rules, this interpretation is consistent with federal practice in Title VII cases. See, e.g., Baldwin County Welcome Center v Brown 104 S.Ct. 1723 (1984).

While the 30 day filing requirement of Rule 9.08 is subject to equitable principles, Petitioner in this case has failed to show that such principles should be applied. See generally, Kourtis v. Eastern Airlines, 2 T:ALR at 1599-A. Cf. Glass v. City of Mascotte, 3 FALR at 239-A; Park v. Southern Bell Telephone and Telegraph Company, 4 FALR at 1796-A.

The Hearing Officer's conclusions of law, as modified in this section, are a correct application of law. The Hearing Officer's conclusions of law, as modified above, are hereby adopted.

VI. Dismissal

The Hearing Officer's recommendation is adopted and his Recommended Order is incorporated herein by reference.

Accordingly, the Petition for Relief from an Unlawful Employment Practice and the complaint of discrimination are hereby DISMISSED with prejudice.

Petitioner is advised of her right to petition the Florida District Court of Appeal for review of this Order within 30 days of the date that this Order is filed with the Clerk of the Commission. Section 120.68, Fla. Stat. (1983); Fla. R. App. P. 9.110(b).

It is so ORDERED.

DATED this 26th day of September, 1985

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

BY _____
Commissioner Robert R. Joyce,
Panel Chairperson;
Commissioner Learnna G. Ramsey; and
Commissioner Thomas H. Poole, Sr.

FILED this 27th day of September, 1985, in Tallahassee,
Florida.

Betsy Howard,
Clerk of the Commission

ENDNOTES

1/ Unless otherwise indicated, all statutory references are to Florida Statutes (1983), and all rule references are to Florida Administrative Code.

2/ See, e.g., Kourtis v. Eastern Airlines, 2 FALR 1599-A (FCHR 10/31/80), affd., 409 So. 2d 139 (Fla 4th DCA 1982); Glass v. City of Mascotte, 3 FALR 238-A (FCHR 10/31/80).

3/ See, e.g., Kitchen v. Borden Smith/Douglas, FCHR Order No. 83-059 (FCHR 1/16/84); Park v. Southern Bell Telephone and Telegraph Company, 4 FALR 1795-A (FCHR 6/29/82).

Copies Furnished:

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Paulette H. Simms, Administrator of Employment Investigations

K. N. Ayers, DOAH Hearing Officer