

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BOBBI DEBOSE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 00-3426  
 )  
 COLUMBIA NORTH FLORIDA REGIONAL )  
 MEDICAL CENTER, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

This cause came on for consideration pursuant to the terms of the Order entered herein on September 27, 2000, by the undersigned Administrative Law Judge, Ella Jane P. Davis.

STATEMENT OF THE ISSUE

Whether the Petition for Relief from an unlawful employment practice was timely-filed, and if it was not timely-filed, is this cause barred?

PRELIMINARY STATEMENT

Respondent's Motion to Dismiss, served August 20, 2000, was not responded-to by Petitioner.

By the September 27, 2000 Order, Petitioner was given until October 9, 2000, in which to file any written response in opposition to the Motion and any disputation, explanation, or

mitigation of the documents attached to the Motion, upon which documents the Motion relies.

Petitioner has filed no response, thereby indicating that no dispute exists as to the authenticity of the documents attached to the Motion and that no legal argument is put forth against the Motion.

#### FINDINGS OF FACT

1. Petitioner filed an undated Charge of Discrimination on the basis of "race and "age" with the Florida Commission on Human Relations (Commission).

2. On June 21, 2000, the Commission issued its Notice of Determination: No Cause and mailed a copy thereof to Petitioner.

3. Petitioner was required by Section 760.11(7), Florida Statutes, to request a formal hearing "within 35 days of the date of determination" of no reasonable cause, failing which the claim would be barred and the complaint dismissed.

4. The Commission notified Petitioner of this 35-day deadline in its Notice of Determination: No Cause served on Petitioner on June 21, 2000.

5. Rules 60Y-5.004(5) and 60Y-4.007(2), Florida Administrative Code, provide that the Petition for Relief must be filed within 33 days of the date of a No-cause Determination which is served on a complainant by mail.

6. The thirty-third day following the June 21, 2000, issuance of the No-cause Determination expired on Monday, July 24, 2000. The thirty-fifth day following the June 21, 2000, issuance of the No-cause Determination expired on Wednesday, July 26, 2000.

7. The Petition for Relief was postmarked July 31, 2000, which is five days after expiration of the statutory filing deadline.

8. The Petition was stamped-in by the Commission Clerk on Tuesday, August 1, 2000, which is six days after the statutory filing deadline.

9. The certified copy of the Petition stamped-in by the Commission and its post-marked envelope show that the Petition for Relief was not timely-filed with the Clerk of the Commission.

10. There has been no affirmative showing of excusable neglect by Petitioner.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction for purposes of this Order, pursuant to Section 120.57(1), Florida Statutes.

12. Section 760.11(7), Florida Statutes, provides in pertinent part as follows:

If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause . . . . If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred. (Emphasis added)

13. Rules 60Y-5.004(5) and 60Y-4.007(1) and (2), and 60Y-4.004(1), Florida Administrative Code, provide as follows:

60Y-5.004 Executive Director's Investigatory Determination; Notice.  
(5) A Notice of Determination of No Reasonable Cause, No Jurisdiction or Untimeliness shall advise the complainant of the right to file a Petition for Relief, pursuant to Rule 60Y-5.008, within 30 days of service of the notice. A form, Petition for Relief, hereby incorporated by reference, in blank, shall be provided to the complainant at the time of service of the notice.

\* \* \*

60Y-4.007 Computation of Time Periods.  
(1) In computing any period of time referred to in the rules of the Commission or contained in any order of the Commission, the day of the act, event, or occurrence from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday observed by the State of Florida, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday observed by the State of Florida. All time periods

are measured by calendar days except which working days are expressly indicated.

(2) Whenever a party has a right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon that party and such notice or paper is served by mail, 3 days shall be added to the prescribed period.

\* \* \*

60Y-4.004 Filing and Copies.

(1) "Filing" or "file" with the Commission, means actual receipt of a document by the Clerk of the Commission at its office, except that during the course of a hearing, a hearing officer or presiding officer may accept a document for filing, in which event the hearing or presiding officer shall note thereon the filing date and shall transmit it to the Clerk. When a document is received by mail, the date of filing shall relate back to the date of the postmark.

(Emphasis added)

14. Petitioner filed her Petition for Relief six days late, pursuant to the 35-day notice by the Commission and pursuant to the statute. She filed her Petition for Relief eight days late, pursuant to the Commission's "three days for mailing" rule. Even if one applies Rule 60Y-4.004(1), Florida Administrative Code, whereby the date of filing relates back to the postmarked date of July 31, 2000, the Petition for Relief was mailed/filed a minimum of five days late.

15. The date of filing of the Petition for Relief is jurisdictional, and late-filing bars Petitioner from proceeding before the Division of Administrative Hearings. See Garland v.

Department of State, DOAH Case No. 00-1797 (Recommended Order entered July 24, 2000), the Petition for Relief should be dismissed for untimeliness; McGill v. U.S. Marine/Bayliner Marine Corp., DOAH Case No. 95-6018 (Recommended Order entered March 18, 1996; Final Order received by DOAH July 3, 1997, but date of entry of Final Order unavailable), wherein a petition filed 47 days after notice was dismissed as untimely; Hall v. Boeing Aerospace Operation, DOAH Case No. 94-6976 (Recommended Order entered March 29, 1995; Final Order received by DOAH on June 19, 1997, but date of entry of Final Order unavailable), wherein a petition filed one-day past the statutory deadline was dismissed as untimely; Wright v. HCA Central Florida Regional Hospital, Inc., DOAH Case No. 94-0070 (Recommended Order entered July 27, 1995; Final Order entered January 26, 1995), wherein a 20-day late petition was dismissed; and Pusey v. Knapp, DOAH Case No. 96-3321 (Recommended Order entered November 25, 1996; Final Order entered October 16, 1997), holding that failure to file a petition within an extension of time granted by the Human Relations Commission required dismissal of the Petition absent proof of equitable tolling or excusable neglect.

#### RECOMMENDATION

Based upon the findings of fact and conclusions of law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 20th day of October, 2000, in Tallahassee, Leon County, Florida.

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ELLA JANE P. DAVIS  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 20th day of October, 2000.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.