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FLORIDA COMMISSION ON
HUMAN RELATIONS

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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GAYLE STEVENSON, M.D.,

AT

EEOC Case No. 15D996028

Petitioner,

FCHR Case No. 20-01216

v.

DOAH Case No. 00-00240

JACKSON MEMORIAL HOSPITAL
Respondent.

FCHR Order No. 02-106

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ADMINISTRATIVE
HEARINGS
OFFICE

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

Petitioner, GAYLE STEVENSON, M.D., filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that Respondent, JACKSON MEMORIAL HOSPITAL, committed an unlawful employment practice by terminating Petitioner because of her race and in retaliation for an internal complaint of racial discrimination (remarks made to her).

The allegations set forth in the complaint were investigated, and, on December 10, 2001, the Executive Director issued his 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 on January 14, 2002, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Miami, Florida, on July 12, 2002, before Administrative Law Judge Claude B. Arrington.

Judge Arrington issued a Recommended Order of Dismissal dated August 16, 2002.

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

The Administrative Law Judge found that Petitioner was terminated because she had made false statements on both her application (on March 19, 1997) and personnel form (on July 17, 1997) after verifying that both forms were "true, correct and complete to the best of her knowledge." The Respondent confronted the Petitioner about the foregoing omissions and, in response, Petitioner submitted a letter in which she tried to explain why she failed to divulge the information. Her letter was not satisfactory and on June 3, 1998, she was issued a "Disciplinary Action Report" advising her that she was being recommended to be dismissed from the residency program (thereby terminating her employment with the Respondent) and on June 29, 1998, she was terminated.

Petitioner filed a timely review of the matter with the Respondent's Senior Vice President for Medical Affairs who agreed with the termination decision on July 21, 1998. The Petitioner then requested and received a hearing before a Peer Review Committee consistent with the applicable collective bargaining agreement. On December 1, 1998, the Peer Review Committee upheld the termination and on December 23, 1998, the President of the Public Health Trust advised the Petitioner that he upheld her dismissal based on the Peer Review Committee's findings and recommendation. The Petitioner then filed a grievance pursuant to her collective bargaining agreement in which an evidentiary hearing was conducted by an arbitrator on October 21, 1999. On November 1, 1999, the arbitrator entered his order that upheld the termination.

Petitioner thereafter filed a complaint of discrimination with the FCHR on or about March 27, 2000 in which she alleged that the Respondent fired her in retaliation for her complaint that another resident had made a derogatory racial comment towards her. The ALJ found that "there was no evidence, other than Petitioner's self-serving, uncorroborated testimony that Dr. O'Neal (another resident) actually made the derogatory remark attributed to her." ¶ 26 and footnote 4 of the Recommended Order.

The ALJ finally found that "Respondent established that Petitioner was terminated because she failed to adhere to Respondent's and the Public Health Trust's clear policies requiring applications and other employment documents to be truthful, correct and complete."

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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

The Petitioner filed a "Notice of Right to Submit Exceptions" in which she stated that: "I, Dr. Gayle Stevenson, petitioner, requesting to file exception to the order submitted to me by judge Claude Arrington. I am therefore filing an appeal to your ruling dated August 16, 2002." She filed further details in a three page "Notice of Right to submit exceptions" faxed to the Commission on October 7, 2002, after being granted an extension of time by the General Counsel to file additional information on exceptions by October 8, 2002. The following is an evaluation of her exceptions based on her numbering system that seems to refer to the appropriate paragraph number of the Recommended Order to which she takes exception.

Exception (4) relates to the fact that she failed to disclose her residency at Howard University Hospital "under the advice of her attorney." She did make that statement several times in her testimony at the hearing held on July 12, 2002, and evidently in her letter to the Chairman of the Department dated May 22, 1998, as reflected in Respondent's exhibit #8. Other than her own self-serving statements, there is no corroborative evidence in the record (i.e., letter or statement from attorney) supporting

her allegation that she was instructed not to reveal that she had attended the Howard residency program. In fact, most settlement agreements containing non-disclosure commitments refer to “terms and conditions” of the settlement and not to withholding information relevant to work experience.

Exception (11) relates also to her reason for failure to disclose her prior residency at Howard University Hospital. Neither exception (4), nor (11), dispute the facts as stated by the Administrative Law Judge in his findings of the same number.

Exception (12) seems to relate more to paragraphs 21-27 of the Recommended Order and provides no support for a finding that the ALJ’s finding that “there was no evidence to establish a link between the complaint made by Petitioner to Dr. Craythorne pertaining to Dr. O’Neil and the decision to terminate her participation in the residency program.” ¶ 27 of Recommended Order; see also ¶26 and footnote 4.

Exception (15) restates her positions on several issues she raised at the hearing. One was that the Respondent had no written policy as to not having a resident who had been in more than one previous program in anesthesiology—although the ALJ found this not determinative in her termination. See footnote 3 in the Recommended Order. Another issue again related to her attorney advising her not to discuss or make mention of her prior residency. She stated that the attorney “attended the hearing on my [her] behalf via telephone, stating [this].” There is no evidence in the record of such appearance or statement. The third related to her complaints of racial discrimination and her evaluations being inconsistent. Again, there is no evidence that her evaluations had any bearing on her termination, nor did her complaint against the other resident for her remarks.

Petitioner essentially takes issue with inferences drawn by the ALJ from the evidence presented. The Commission has stated, “It is well settled that it is the Administrative Law Judge’s function ‘to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the ALJ’s role to decide between them. Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986) and Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

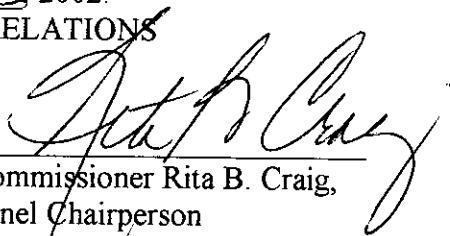
Based on the foregoing, Petitioner’s exceptions are not accepted.

Dismissal


The Request 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, Rule 9.110.

DONE AND ORDERED this 17 day of Dec 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS


Commissioner Rita B. Craig,
Panel Chairperson
Commissioner Gayle Cannon and
Commissioner Keith Roberts

Filed this 23rd day of DECEMBER, 2002
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
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NOTICE TO COMPLAINANT/PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request the EEOC review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131

Copies furnished to:

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Miami, Florida 33128

Claude B. Arrington, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 23rd day of DECEMBER, 2002

BY: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations