

9-24-03

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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TALLAHASSEE, FLORIDA

KIMBERLY HOLDEN,

EEOC Case No. 15DA200057

Petitioner,

FCHR Case No. 21-03141

v.

AT

DOAH Case No. 02-3286

SFD-CLOS

DEPARTMENT OF CORRECTIONS,

FCHR Order No. 04-027

Respondent.

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

Petitioner, KIMBERLY HOLDEN, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, DEPARTMENT OF CORRECTIONS, committed an unlawful employment practice by terminating her due to her race, gender and in retaliation. The allegations set forth in the complaint were not investigated within 180 days. On August 9, 2002, the Petitioner filed an election for an administrative hearing and was granted a formal evidentiary hearing that was held in Marianna, Florida, on August 25, 2003, before Administrative Law Judge Stephen F. Dean.

Judge Dean issued a Recommended Order of Dismissal dated September 24, 2003.

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 and Conclusions of Law

The Commission's file contains a no transcript of the proceeding before the Administrative Law Judge. In the absence of a transcript of the proceeding before the Administrative Law Judge, his Recommended Order is the only evidence for the Commission to consider. National Industries, Inc. vs. Commission on Human Relations, et al., 527 So. 2d 894, at 898 (Fla. 5th DCA 1988).

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spradlin vs. Washington Mutual Bank, d/b/a Great Western, 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted.

The Administrative Law Judge found that at all times relevant the Petitioner was employed by the Department in a probationary status and was not entitled to progressive discipline required under career service status. The ALJ recounted several incidents leading up to the termination in which the Respondent demonstrated legitimate, non-discriminatory reasons for the termination. The ALJ further noted that the Petitioner withdrew her claims of racial and gender discrimination and relied solely upon retaliation for her reporting an incident involving a nurse to a superior above her immediate supervisor. The ALJ found that there was not only no evidence that her reporting of the incident was a statutorily protected right but also that there was no evidence that her report was in any manner related to her discharge.

We adopt the Administrative Law Judge's findings of fact and conclusions of law.

Exceptions

Neither party filed any exceptions to the Recommended Order.

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 9.110.

DONE AND ORDERED this 15th day of April, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita B. Craig, Chairperson
Commissioner Roosevelt Paige
Commissioner Mario Valle

Filed this 15th day of April, 2004
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301
(850) 488-7082

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 to 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:


Kimberly Holden
2103 Vista Road
Marianna, FL 32448

Gary L. Grant, Esquire
Department of Corrections
2601 Blainstone Road
Tallahassee, FL 32399

Honorable Stephen F. Dean, 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 15th day of April, 2004.

BY: 
Clerk of the Commission
Florida Commission on Human Relations