

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
SERVICES

STEPHANIE FRANCIS,

EEOC Case No. 15DA300916

Petitioner,

FCHR Case No. 23-03058

v.

DOAH Case No. 04-0392

SBC

HOLMES REGIONAL MEDICAL CENTER,

FCHR Order No. 04-138

CWS

Respondent.

**ORDER REMANDING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

This cause came before the Commission for review of the Recommended Order of Dismissal issued in this matter on June 15, 2004, by Administrative Law Judge Jeff B. Clark.

Pursuant to notice, public deliberations were held on September 30, 2004, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Recommended Order of Dismissal.

Findings of Fact and Conclusions of Law

The Administrative Law Judge found that Petitioner failed to appear at the scheduled final hearing of this matter, and consequently recommended that the Petition for Relief be dismissed.

The Commission typically adopts the recommendation of the Administrative Law Judge that the Petition for Relief and Complaint of Discrimination be dismissed when the Petitioner has failed to appear at the scheduled final hearing of the case. See, e.g., Elam v. Flagler County, FCHR Order No. 04-062 (June 25, 2004), Collins v. Tallahassee Housing Authority, FCHR Order No. 03-080 (December 26, 2003), Peterson v. Pep Boys, FCHR Order No. 03-047 (August 11, 2003), and Knotts v. Department of Corrections, FCHR Order No. 03-052 (August 11, 2003).

However, a review of the record in this case raises some questions with regard to the adequacy of the notice of hearing to the Petitioner.

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The Uniform Rules governing administrative proceedings state, "The presiding officer shall set the time and place for all hearings and shall serve written notice on all parties at their address of record. No less than 14 days notice shall be given for the hearing on the merits of the petition unless otherwise agreed by the parties or unless otherwise provided by law." Fla. Admin. Code R. 28-106.208.

The Administrative Procedure Act states that, in reviewing Recommended Orders of Administrative Law Judges, "[t]he agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law." Section 120.57(1)(l), Florida Statutes (2003).

Applying this to the instant case, the first Notice of Hearing issued in this case indicated a hearing to be held on April 13, 2004, at 9:00 a.m., in Viera, Florida. See Notice of Hearing, dated February 19, 2004. Respondent moved for a continuance and an order was issued granting the motion and rescheduling the hearing for May 25, 2004, at 9:00 a.m., at a new location in Viera, Florida. See Order Granting Continuance and Re-Scheduling Hearing, dated April 14, 2004. On May 24, 2004, the day before the hearing, an Amended Notice of Hearing was issued changing the time of the hearing on May 25, 2004, to 1:30 p.m., at the same location as indicated in the April 14, 2004, Order Granting Continuance and Re-Scheduling Hearing. See Amended Notice of Hearing, dated May 24, 2004.

The Commission's copy of the Amended Notice of Hearing is stamped "received" at 11:39 a.m., May 25, 2004, less than 2 hours prior to the new start-time of the hearing. See Filing. The Recommended Order of Dismissal is silent as to whether the parties agreed to the change (since the change was made within 14 days of the hearing), or, in case Petitioner did not receive the amended notice in time, whether anyone was at the hearing site at 9:00 a.m. to inform Petitioner of the time change if she arrived at the time scheduled in the April 14, 2004, Order Granting Continuance and Re-Scheduling Hearing.

In our view, the record as it currently exists, as described above, raises a question as to whether Petitioner received notice of the hearing at which she failed to appear. Given the lack of findings that the parties agreed to the change of the start-time, or that Petitioner was otherwise noticed of the hearing start-time change, it is possible to conclude, based on the record as it currently exists, that the proceedings on which the finding that Petitioner did not appear is based may not have complied with the essential requirements of law.

Exceptions

Petitioner filed a document with the Commission on June 24, 2004. The document contains several attachments. However, the document simply states, "Fraudulent

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Misrepresentation of higher benefits (pay) and change to higher position when completion of Health Unit Coordinator classes. Submit all papers into records.”

The document does not really except to the Recommended Order of Dismissal.

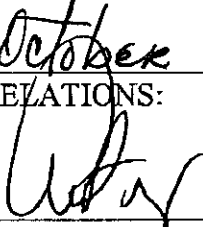
There is no indication on the document that it was served on the Respondent. See Fla. Admin. Code R. 28-106.104(2)(f) and 28-106.104(4), requiring that filings by a party be served on all other parties and that the filing contain a certificate of such service.

Petitioner's exceptions, to the extent they actually are exceptions to the Recommended Order of Dismissal, are rejected.

Remand

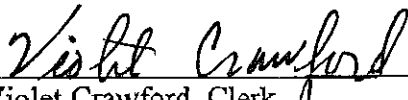
The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for further findings on whether Petitioner received notice of the hearing that complied with the legal requirements for being provided notice, and if Petitioner did not, for further proceedings on the Petition for Relief.

DONE AND ORDERED this 1st day of October, 2004.
FOR THE COMMISSION ON HUMAN RELATIONS:



Commissioner Gilbert M. Singer,
Panel Chairperson;
Commissioner Mario M. Valle; and
Commissioner P. C. Wu

Filed this 1st day of October, 2004,
in Tallahassee, Florida.



Violet Crawford, Clerk
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Jeff B. Clark, Administrative Law Judge, DOAH

James Mallue, 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 October, 2004.

By: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations