

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

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MARIE A. ERICKSON,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 21-03208

v.

DOAH Case No. 04-0464

MEMORIAL HOSPITAL OF TAMPA,

FCHR Order No. 06-073

Respondent.

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

On August 17, 2001, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice when she was constructively terminated (resigned under protest on August 17, 2000) because of her age. The initial handwritten complaint was shortened and typed by Commission staff and the typed complaint, as amended, was then signed on September 21, 2001, and date-stamped received by the Commission on September 26, 2001. The allegations set forth in the complaint were investigated and on July 21, 2003, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred.

The Petitioner filed a Petition for Relief and, on May 28, 2004, the Respondent filed a Motion to Dismiss based on the date of the amended complaint which was signed and received by the Commission more than 365 days after the date of the alleged discriminatory action. In response, the Petitioner filed a Motion to Continue which the ALJ treated as a response in opposition to the Respondent's Motion to Dismiss. Judge William F. Quattlebaum issued a Recommended Order of Dismissal based on the lack of timeliness for the complaint dated June 7, 2004. A Commission panel considered the record of this matter and determined that the ALJ focused on the dates the Commission's staff prepared its (typed) complaint and not on the original date in which a handwritten complaint was actually filed. The Commission panel determined that the complaint was actually filed timely and remanded the complaint for a formal evidentiary proceeding. FCHR Order No. 04-106.

Subsequently, the Respondent appealed the Commission's action to the Second District Court of Appeal and the ALJ placed the case in abeyance pending resolution of the appeal. On December 16, 2005, the parties filed a status report that indicated the District Court had declined to hear the appeal and requested that the case be rescheduled for hearing. The hearing was subsequently conducted on April 13 and 14, 2006, before Judge Quattlebaum. Judge Quattlebaum issued his Recommended Order of Dismissal on June 6, 2006.

Findings of Fact and Conclusions of Law

Judge Quattlebaum's order finds that the Respondent made the employment decision to terminate, and communicated its decision to, the Petitioner on March 30, 2000. The Petitioner's filing of the Charge of Discrimination on August 17, 2001 (or the later date of September 26, 2001) was clearly beyond the statutory 365-day period, and the complaint must be dismissed.

The ALJ, for purposes of judicial economy, also discussed the merits of the case as presented at the hearing. He found that there was no evidence of age discrimination and that the Respondent had articulated a legitimate, nondiscriminatory business reason for the employment decision to reassign the Petitioner, at no loss in salary, to a different position and, failing acceptance by the Petitioner in assuming the offered position, to terminate her. He further found that the Petitioner offered no creditable evidence that the Respondent's reason was pretextual and specifically noted that the Respondent had taken a similar action to another employee who was significantly younger.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal

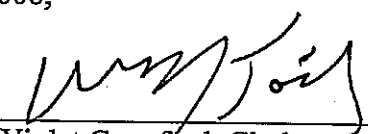
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 of appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 1<sup>st</sup> day of AUGUST, 2006.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Dominique B. Saliba, M.D.

Filed this 1<sup>st</sup> day of AUGUST, 2006,  
in Tallahassee, Florida.

  
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Violet Crawford, Clerk  
Commission on Human Relations  
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Copies furnished to:

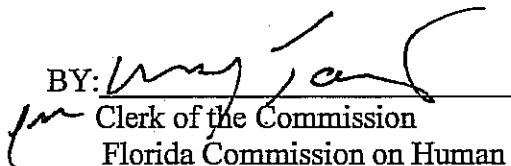
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Honorable William F. Quattlebaum, Administrative Law Judge (DOAH)

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 17 day of March, 2006.

BY:   
Clerk of the Commission  
Florida Commission on Human Relations