

89-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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ERIC C. QUIROZ,

EEOC Case No. 15DA301366

Petitioner,

FCHR Case No. 23-04103

v.

AT

DOAH Case No. 04-1184 (ST) closed

HEALTH CENTRAL HOSPITAL,

FCHR Order No. 04-123

Respondent.

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

On September 18, 2003, 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 he was unfairly demoted and subjected to a hostile working environment because of his national origin (Hispanic). The allegations set forth in the complaint were investigated and on March 25, 2004, 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 was given a formal evidentiary hearing by video teleconference between Orlando and Tallahassee, Florida, on July 27, 2004. He failed to make an appearance at the hearing.

Judge Carolyn S. Holifield issued a Recommended Order of Dismissal dated August 9, 2004.

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

Judge Holifield's order states that Petitioner failed to appear at a formal hearing that he requested under Section 120.57(1), Florida Statutes, and did not submit any evidence to support findings of fact.

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.

We adopt the Administrative Law Judge's finding as to the fact that the Petitioner did not pursue the complaint and further conclude the Petitioner has failed to carry his burden of proof.

Exceptions

Petitioner wrote a letter dated August 20, 2004, and received by the Division of Administrative Hearings on August 30, 2004 (by the Commission on September 9, 2004, as forwarded by the Clerk of the Division) that purported to be an exercise of Petitioner's right to file exceptions. In the letter, the Petitioner recited certain facts about his filing with the Commission and its investigation, among others, but nothing to refute any factual findings or conclusions drawn by the Administrative Law Judge. He did not provide any reason for his failure to attend the evidentiary hearing or to ask for any continuance. The Commission, therefore, does not accept the letter as exceptions to the recommended order but rather as an ex parte communication from the Petitioner relating to facts that he could have brought out at the formal hearing.

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 21st day of October, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita Craig, Panel Chairperson
Commissioner Roosevelt Paige
Commissioner Dominique B. Saliba, M.D

Filed this 21st day of October, 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:


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Honorable Carolyn S. Holifield, 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 21st day of October, 2004.

BY: 
Clerk of the Commission
Florida Commission on Human Relations