

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

TERRI TEAL,  
  
Petitioner,

v.

DEPARTMENT OF CORRECTIONS,  
  
Respondent.

EEOC Case No. 15DA301008

FCHR Case No. 23-03237

DOAH Case No. 04-1652

FCHR Order No. 04-111

FILED  
04 SEP 23 AM 9:45  
ADMINISTRATIVE  
HEARINGS  
SFH

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

Petitioner, TERRI TEAL, 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 harassing her due to her sex and in retaliation for her reporting it. The allegations set forth in the complaint were investigated and, on March 24, 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 on April 29, 2004.

Administrative Law Judge Suzanne F. Hood issued a Recommended Order of Dismissal dated June 25, 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**

The Commission's file does not contain a transcript of the proceeding before the Administrative Law Judge. In the absence of a transcript of the proceeding before the Administrative Law Judge, her 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. 5<sup>th</sup> DCA 1988).

The Respondent filed a Motion to Dismiss stating that the Commission's determination was made on March 24, 2004, and showing that the Petition for Relief was not filed until April 29, 2004. The ALJ issued an Order to Show Cause on June 7, 2004, and directed the Petitioner to respond to the Motion by June 18, 2004, or the case would be dismissed. Petitioner filed her response on June 18, 2004, and Respondent filed its Response to the Petitioner's Response on June 22, 2004. Both pointed out that the Petitioner filed her Petition by facsimile transmission at 4:35 pm on April 28, 2004, from Pensacola, Florida. Since Pensacola is on Central Time, the facsimile was received in the Commission's office in Tallahassee after 5:00 pm (Eastern Time)

and, pursuant to Rule 60Y-3.001 (29) and 28-106.104, Florida Administrative Code (2004), was deemed filed on the next regular business day which was April 29, 2004.

On June 25, 2004, the ALJ issued her Recommended Order of Dismissal and found that the Petitioner filed her Petition for Relief on April 29, 2004, which was more than 35 days after March 24, 2004; the date of determination by the Commission that there is no reasonable cause to believe that an unlawful employment practice had occurred.

In order to overcome the failure to timely file a Petition, the Petitioner must provide credible evidence that the failure to file her petition was a result of equitable circumstances that prevented a timely filing ("equitable tolling"). "Generally, the [equitable] tolling doctrine has been applied when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum." Machules v. Department of Administration, 523 So.2d 1132, (Fla. 1988) at 1134. The court also stated, at 1133, "equitable tolling, unlike estoppel, does not require active deception or employer misconduct, but focuses rather on the employee with a reasonably prudent regard for his rights.

It should also be noted, however, that a series of recent cases have rejected the application of an excusable neglect standard in overcoming the failure to file timely a petition for an administrative hearing. See, Cann v. DCFS, 813 So.2d 237 (Fla. 2<sup>nd</sup> DCA 2002) in which the petitioner's attorney delivered the request to the post office one day prior to due date but it was not delivered (received by the agency) until one day after the due date; also Whiting v. FDLE, 849 So.2d 1149 (Fla. 5<sup>th</sup> DCA 2003) in which the Petitioner attempted to fax his request to PERC on the due date but was unsuccessful and completed the fax on the next morning; and Patz v. DOH, 864 So2d 79 (Fla. 3<sup>rd</sup> DCA 2003) in which Respondent obtained a "default judgment" despite a late filed request for a hearing in which the Petitioner stated that he did "not delay for a protracted length of time...[that the filing] was before the Department's motion for default, and because the Department was not prejudiced by the untimely filing."

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

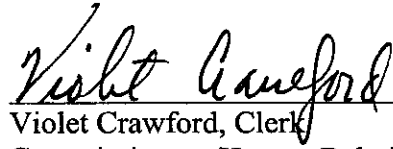
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 22nd day of September, 2004.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita Craig, Panel Chairperson  
Commissioner John Corbett  
Commissioner Dominique B. Saliba, M.D

Filed this 22nd day of September, 2004  
in Tallahassee, Florida.

A handwritten signature in cursive script, appearing to read "Violet Crawford", is written over a horizontal line.

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 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:

For Petitioner:

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Pensacola, FL 32501


For Respondent:

Mark Simpson, Esquire  
Department of Corrections  
2601 Blair Stone Road  
Tallahassee, FL 32399

Honorable Suzanne F. Hood, 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 22nd day of September, 2004.

BY:   
Clerk of the Commission  
Florida Commission on Human Relations