

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MICHELINE VERELLO, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 04-2032  
 )  
 UNITED STATES CELLULAR )  
 CORPORATION, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice a telephone hearing was conducted on July 27, 2004, to allow the parties to present argument regarding the Respondent's Motion to Dismiss. The facts set forth below are not disputed. Dates most favorable to the Petitioner have been presumed accurate. During the conference call, the parties were represented by counsel.

APPEARANCES

For Petitioner: Andrew Degraffenreidt, III, Esquire  
Powers, McNalis & Torres  
P.O. Box 21289  
West Palm Beach, Florida 33416

For Respondent: Jennifer Schilling, Esquire  
Piper Rudnick, LLP  
203 North LaSalle Street, Suite 1800  
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STATEMENT OF THE ISSUE

Whether the Petitioner, Micheline Verello, timely filed

a Petition for Relief in connection with a claim filed with the Florida Commission on Human Relations.

PRELIMINARY STATEMENT

The Florida Commission on Human Relations transferred this case to the Division of Administrative Hearings on June 9, 2004. Accompanying the Petition for Relief were the Notice of Determination: No Cause, the Determination: No Cause, along with an amended Charge of Discrimination. The Initial Order was entered on June 10, 2004.

Thereafter, the Respondent, United States Cellular Corporation, filed a Motion to Dismiss. The motion alleged, in pertinent part, that the Petitioner, Micheline Verello, had failed to timely file the request for an administrative hearing and that, as such, her claim was barred as a matter of law.

On July 14, 2004, the Petitioner filed a written response to the Motion to Dismiss along with an affidavit of Angie Henriksen. In substance, the response denied the petition was untimely. In substance, the affidavit stated the Petition for Relief was mailed to the Florida Commission on Human Relations on June 1, 2004.

On July 16, 2004, a Notice of Telephone Conference was entered scheduling the conference call on the Motion to

Dismiss. Both parties were afforded time to present argument on the motion.

FINDINGS OF FACT

1. On or about March 15, 2003, the Petitioner, Micheline Verello, submitted an Amended Employment Charge of Discrimination with the Florida Commission on Human Relations. Such complaint alleged that the Respondent, United States Cellular Corporation, had discriminated against the Petitioner in an employment action based upon the Petitioner's age.

2. On April 21, 2004, the Florida Commission on Human Relations entered a Determination: No Cause regarding the Petitioner's claim. That determination set forth that there was "no reasonable cause to believe that an unlawful employment practice has occurred."

3. The Notice of Determination: No Cause was also entered and mailed to the Petitioner on April 21, 2004. The notice provided, in pertinent part:

PLEASE TAKE NOTICE that a Determination has been made on the above referenced complaint that there is no reasonable cause to believe that an unlawful employment practice has occurred. A copy of the Determination is attached.

Complainant may request an administrative hearing by filing a PETITION FOR RELIEF within 35 days of the date of this NOTICE OF DETERMINATION: NO CAUSE.

A Petition for Relief form is enclosed with Complainant's notice. It may be beneficial

for Complainant to seek legal counsel prior to filing the petition.

If the Complainant fails to request an administrative hearing with (sic) 35 days of the date of this notice, the administrative claim under the Florida Civil Rights Act of 1992, Chapter 760, will be dismissed pursuant to section 760.11, Florida Statutes.

4. The Notice of Determination: No Cause was dated April 21, 2004. The Petitioner received the Notice of Determination: No Cause on April 26, 2004. Based upon the date stated on the face of the Determination: No Cause, the Petitioner was required to file a Petition for Relief not later than May 26, 2004. The Petitioner did not mail her Petition for Relief until June 1, 2004.

5. The Florida Commission on Human Relations received the Petition for Relief on June 3, 2004. Thereafter, the matter was forwarded to the Division of Administrative Hearings and filed for formal proceedings on June 9, 2004.

#### CONCLUSIONS OF LAW

6. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.569, and 120.57(1), Fla. Stat.

7. Section 760.11(7), Florida Statutes (2003) provides, in part:

If the commission determines that there is not reasonable cause to believe that a violation of the Florida Civil Rights Act

of 1992 has occurred, the commission shall dismiss the complaint. The aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause and any such hearing shall be heard by an administrative law judge and not by the commission or a commissioner. If the aggrieved person does not request an administrative hearing within the 35 days, the claim will be barred.

8. In this case the Petitioner did not file a Petition for Relief within 35 days of the Determination: No Cause. The statute unambiguously places that burden on the Petitioner to timely assert her claim. She did not do so.

9. The Notice of Determination: No Cause, placed the Petitioner on notice of the time restrictions applicable to this case. Moreover, the Florida Commission on Human Relations provided a Petition for Relief form to the Petitioner along with the Notice of Determination: No Cause. In short, neither the statute nor the rules applicable to this case provide for an extension of time to file a complaint. Accordingly, the Petitioner's claim is barred as a matter of law.

10. Florida Administrative Code Rule 60Y-5.008(1) requires that a Petition for Relief be filed within 35 days of the date of determination. "Date of filing" is defined as a completed complaint that is received by the Florida Commission on Human Relations prior to 5:00 p.m. (Eastern time). See

Fla. Admin. Code Rule 60Y-3.001(29). Based upon the foregoing, it is concluded the Petitioner did not timely assert her administrative remedy.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a Final Order dismissing the claim filed by this Petitioner.

DONE AND ENTERED this 29th day of July 2004, in Tallahassee, Leon County, Florida.



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Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of July 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.