

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

BERGITA EVANS,

EEOC Case No. 15DA301307

Petitioner,

FCHR Case No. 23-03970

v.

AT

DOAH Case No. 04-2033 ^{EJD} closed

COUNTY OF ALACHUA,

FCHR Order No. 05-098

Respondent.

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

Preliminary Matters

2005 AUG 24 P 1:41
ADMINISTRATIVE HEARINGS DIVISION

Petitioner Bergita Evans filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2003), alleging that Respondent County of Alachua committed an unlawful employment practice on the basis of Petitioner's disability (knee injury) when it terminated Petitioner from her position as a detention officer at the Alachua County Jail.

The allegations set forth in the complaint were investigated, and, on May 4, 2004, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on January 11 and 12, 2005, in Gainesville, Florida, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated June 7, 2005.

Pursuant to notice, public deliberations were held on August 18, 2005, 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.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Petitioner's Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Petitioners [sp.] Exceptions to Recommended Order." The document contains 21 numbered exceptions.

The bulk of Petitioner's exceptions except to the Administrative Law Judge's findings and conclusions that the PAT was an essential function of Petitioner's position, and that Petitioner was unable to perform the essential functions of her position either with or without a reasonable accommodation. This basically summarizes the exceptions found at paragraphs 1, 2, 3, 5, 6, 7, 10, 12, 13, 15, 16, 17, 18, 19, and 21 of Petitioner's exceptions document.

Further, the exceptions found at paragraphs 8, 11, 14 and 20 of Petitioner's exceptions document essentially except to the facts found and inferences drawn from the evidence presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

These exceptions are rejected.

The exceptions found at paragraphs 4 and 9 of Petitioner's exceptions document except to the finding that areas to which Petitioner had been assigned to work are "now" manned by only civilian personnel, suggesting that they are actually manned by uniformed sworn detention officers, and arguing that these findings are not supportable by any testimony or evidence presented at the hearing. Respondent's exception document seems to attempt to "correct" this finding, as well, recommending that the word "civilian" be changed to the word "sworn".

Nevertheless, it would seem that such an inference could be drawn from the testimony of Robert Chapman, Director of the Alachua County Jail, found at page 241, lines 8 through 11 of the transcript.

However, even if this finding is incorrect, it would not affect the outcome of the case, given the Administrative Law Judge's conclusion that "Petitioner's view is that she should be assigned to the lobby or elsewhere within the jail so that she will not have to look under bunks, run, climb stairs, or control prisoners, but this proposed 'accommodation' would require that Respondent schedule all its able-bodied detention officers around Petitioner's needs, instead of around Respondent's legitimate business interests. Accommodating Petitioner in this way would eliminate essential functions of the job of a detention officer for a single individual. Employers are not required to eliminate essential functions of the job" (Recommended Order, ¶ 90).

Petitioner's argument is that sworn detention officers are assigned to these posts, therefore, Petitioner could be assigned to them as a reasonable accommodation, however, this ignores (and, indeed, Petitioner disagrees with) the Administrative Law Judge's conclusion that as of at least July 1, 2003, successfully completing the PAT is an essential function of the position of detention officer. See Recommended Order, ¶ 87 and ¶89.

These exceptions are rejected.

Respondent's Exceptions

Respondent filed a document entitled "Respondent's Request for Correction / Clarification of Finding of Fact." While the document does not identify itself as "exceptions" to the Recommended Order, Respondent does request correction / clarification of three issues found as set out in paragraphs 1, 2, and 3 of the document.

The correction requested in paragraph 2 of the document, as in Petitioner's exceptions, excepts to the finding that civilian, as opposed to sworn, personnel are now utilized in the lobby and central control of the jail. This requested correction, along with the corrections requested in paragraphs 1 and 3 of Respondent's exceptions document, take issue with facts found and inferences drawn from the evidence presented.

These exceptions are rejected. See, Barr, supra.

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

DONE AND ORDERED this 23rd day of August, 2005, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig,
Panel Chairperson;
Commissioner Keith Roberts; and
Commissioner Aletta Shutes

Filed this 23rd day of August, 2005,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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:


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Ella Jane P. Davis, 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 23rd day of August, 2005.

By: 
Clerk of the Commission
Florida Commission on Human Relations