

3.2.05

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED

2005 JUN -2 P 2:27

WALTER F. GIBSON,

EEOC Case No. 15DA300387

Petitioner,

FCHR Case No. 23-00981

v.

DOAH Case No. 04-2287 W F Q

ORLANDO HMA, INC., d/b/a  
UNIVERSITY BEHAVIORAL CENTER,

FCHR Order No. 05-058

Respondent.

AT

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

Preliminary Matters

Petitioner Walter F. Gibson filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Orlando HMA, Inc., d/b/a University Behavioral Center, committed unlawful employment practices in the manner in which Petitioner was disciplined and terminated from employment, on the basis of Petitioner's race (Black) and on the basis of retaliation for having filed complaints against Respondent.

The allegations set forth in the complaint were investigated, and, on May 25, 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 in Orlando, Florida, on December 1 and 2, 2004, before Administrative Law Judge William F. Quattlebaum.

Judge Quattlebaum issued a Recommended Order of dismissal, dated March 2, 2005.

Pursuant to notice, public deliberations were held on May 24, 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 Petition for Relief.

### 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.

### Exceptions

Petitioner requested an extension of time within which to file exceptions to the Administrative Law Judge's Recommended Order, and was granted until April 1, 2005, to file exceptions. On March 28, 2005, Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a one-page letter which states Petitioner "is objecting to particular portions of the Recommended Order because the hearing officer did not include any of the evidence from the transcript that involves retaliatory animus. Specifically, the particular portions of the evidence are set forth in Petitioner's Proposed Findings of Fact and Conclusions of Law, pages 18-21, paragraphs 79-85." On April, 27, 2005, Petitioner filed a more formalized exceptions document entitled, "Petitioner's Exceptions to Recommended Order."

Petitioner's exceptions appear to take issue with the facts found, *and not found*, by the Administrative Law Judge, and with the inferences drawn from the evidence presented. See exceptions Filing along with Petitioner's Proposed Findings of Fact and Conclusions of Law; see, also Centeno v. Orange County, Florida Public Utilities, FCHR Order No. 05-039 (March 8, 2005), for similar exceptions, particularly exceptions to facts *not found*. Collectively, the two documents appear to except to the Administrative Law Judge's failure to draw the inference that Petitioner's termination was the result of unlawful retaliation.

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). Accord, Centeno, supra.

We reject Petitioner's exceptions.

FCHR Order No. 05-058

Page 3

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 31<sup>st</sup> day of May, 2005.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Mario M. Valle,  
Panel Chairperson;  
Commissioner Gayle Cannon; and  
Commissioner Billy Whitefox Stall

Filed this 31<sup>st</sup> day of May, 2005,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 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:

Walter F. Gibson  
c/o Stephen M. Smith, Esq.  
c/o Jennifer Smith, Esq.  
2311 Republic Street  
New Orleans, LA 70119

Orlando HMA, Inc., d/b/a University Behavioral Center  
c/o York Flik, Esq.  
Allen, Norton & Blue, P.A.  
121 Majorca Avenue, 3<sup>rd</sup> Floor  
Coral Gables, FL 33134

William F. Quattlebaum, 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 31<sup>st</sup> day of May, 2005.

By: Vivian Crawford  
Clerk of the Commission  
Florida Commission on Human Relations