

4.1.05

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

05 JUN 16 AM 9:21
ADMINISTRATIVE
HEARINGS DIVISION

CONSTANCE GATEWOOD,

EEOC Case No. 15DA400875

Petitioner,

FCHR Case No. 2004-22077

v.

DOAH Case No. 04-3893 *pmr closed*

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

FCHR Order No. 05-069

Respondent.

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

Preliminary Matters

Petitioner Constance Gatewood 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 Department of Children and Family Services committed unlawful employment practices on the bases of Petitioner's race (Black), disability (potentially life-threatening reactions to exposure to chemicals and perfumes), and retaliation by transferring Petitioner to a new position and failing to accommodate Petitioner's disability.

The allegations set forth in the complaint were investigated, and, on September 27, 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 Marianna, Florida, on January 3, 2005, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal, dated April 1, 2005.

Pursuant to notice, public deliberations were held on June 9, 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 filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exception[s] to the Recommended Order of the Hearing Officer."

The document tracks the paragraph numbers of the Recommended Order and indicates whether Petitioner excepts to the paragraph, and if there is an exception to a paragraph, an explanation of the exception.

Collectively, the exceptions paragraphs take issue with the facts found (8, 9, 13, 15, 16, 21, and 22), and not found (3, 7, 9, 16, 17, and 19), and inferences drawn from the evidence presented (5, 6, 8, and 9).

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).

In addition, some exceptions paragraphs take issue with the manner in which the Administrative Law Judge applied the law (4, 18, and 20).

As indicated, above, we find that the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

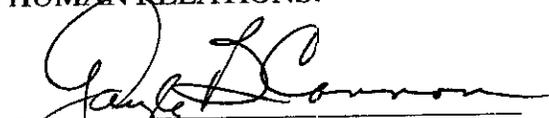
We reject Petitioner's exceptions.

Dismissal

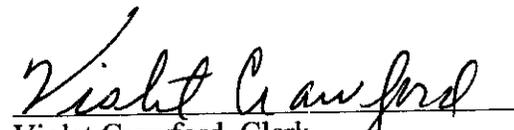
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 15th day of June, 2005.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:


Commissioner Gayle Cannon,
Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Roosevelt Paige

Filed this 15th day of June, 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:

Constance Gatewood
Post Office Box 262
Campbellton, FL 32426

Department of Children and Family Services
c/o Amy McKeever Toman, Esq.
Agency for Persons with Disabilities
Sunland Center
3700 Williams Drive
Marianna, FL 32446

P. Michael Ruff, 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 15th day of June, 2005.

By: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations