

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

GESSNER T. HARRIS,

Petitioner,

v.

LAKE COUNTY SCHOOL DISTRICT,

Respondent.

2006 JUN 21 A 11:16
EEOC Case No. NONE

DIVISION OF
FCHR Case No. 2005-0082
ADMINISTRATIVE
HEARINGS

DOAH Case No. 05-2405

FCHR Order No. 06-057

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

Preliminary Matters

Petitioner Gessner T. Harris 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 Lake County School District committed an unlawful employment practice on the basis of Petitioner's race (Black) when it failed to promote her to a position for which she had applied. (The initial complaint included allegations of unlawful retaliation which were withdrawn, and allegations of unlawful sex discrimination which were not pursued at hearing.)

The allegations set forth in the complaint were investigated, and, on May 31, 2005, 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 December 13 and 14, 2005, in Leesburg, Florida, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated April 13, 2006.

Pursuant to notice, public deliberations were held on June 16, 2006, 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.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order." While the exceptions document was sent to the Division of Administrative Hearings rather than the Commission, it was filed with the Division of Administrative Hearings within fifteen days after the issuance of the Recommended Order, and therefore should be deemed timely filed. Accord, Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

The exceptions document contains twenty-two numbered paragraphs. Collectively, these paragraphs take issue with facts found, facts not found, and inferences drawn from the evidence presented. In addition, some of the paragraphs take issue with the credibility determinations of the Administrative Law Judge.

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, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Petitioner's exceptions are rejected.

Dismissal

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

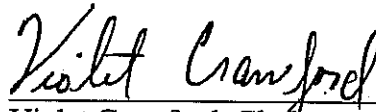
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 20th day of June, 2006.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Mario M. Valle

Filed this 20th day of June, 2006,
in Tallahassee, Florida.



Violet Crawford, Clerk
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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 20th day of June, 2006.

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