

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

LORRAINE C. MORRIS,

Petitioner,

v.

LEE COUNTY GOVERNMENT,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2005-0616

DOAH Case No. 05-3611

FCHR Order No. 06-058

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

Preliminary Matters

Petitioner Lorraine C. Morris 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 Lee County Government committed an unlawful employment practice on the basis of Petitioner's disability (specified in the complaint to be "upper back, neck injury") when it terminated Petitioner from her position as a bus driver.

The allegations set forth in the complaint were investigated, and, on August 25, 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 February 1, 2006, in Fort Myers, Florida, before Administrative Law Judge William F. Quattlebaum.

Judge Quattlebaum issued a Recommended Order of dismissal, dated March 23, 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 four numbered exceptions to the Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exceptions to Filed Recommended Order."

There is no indication on Petitioner's exception document that it was served on Respondent by Petitioner as is required by Fla. Admin. Code R. 28-106.110.

The exceptions document was received after the expiration of the 15-day period from the date of the Recommended Order for filing exceptions. See, Recommended Order, Notice of Right to Submit Exceptions; Section 120.57(1)(k), Florida Statutes (2005); and Fla. Admin. Code R. 28-106.217(1). The Recommended Order is dated March 23, 2006, the cover letter accompanying the exceptions document is dated April 10, 2006, and the exceptions document was received by the Commission on April 17, 2006.

All exceptions relate to the elements for establishing a prima facie case of discrimination. Exceptions 1 and 4 deal with issues surrounding whether Petitioner was handicapped within the meaning of the law. Exception 2 deals with the issue of whether Petitioner was qualified for the position in question. Exception 3 deals with the issue of whether Petitioner was treated less favorably than other employees.

In our view, if all these exceptions were granted, the outcome of the case would not change, since the Administrative Law Judge concluded that, even if a prima facie case had been established, Respondent established legitimate, nondiscriminatory reasons for terminating Petitioner from her position as a bus driver, namely Petitioner's taking of the indicated prescription drugs and her inability to meet the lifting requirements of the position (Recommended Order, ¶ 42 and ¶ 49), and that there was no showing that these reasons were a pretext for discrimination (Recommended Order, ¶ 49).

Further, 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.



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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 20th day of June, 2006.

By: 
Clerk of the Commission
Florida Commission on Human Relations