

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

FILED  
07 FEB 16 AM 10:59  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

KENEKA JONES,

EEOC Case No. 15DA500837

Petitioner,

FCHR Case No. 2005-02524

v.

DOAH Case No. 06-0583

GENERAL AVIATION TERMINAL,  
INC.,

FCHR Order No. 07-014

Respondent.

**ORDER FINDING UNLAWFUL EMPLOYMENT PRACTICE OCCURRED,  
AWARDING AFFIRMATIVE RELIEF  
FROM AN UNLAWFUL EMPLOYMENT PRACTICE,  
AND REMANDING MATTER FOR DETERMINATION OF  
ADDITIONAL RELIEF**

Preliminary Matters

Petitioner Keneka Jones 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 General Aviation Terminal, Inc., committed unlawful employment practices on the bases of Petitioner's disability (designated in the complaint as "Anxiety Disorder/Learning") and sex (female) by harassing Petitioner and terminating Petitioner.

The allegations set forth in the complaint were investigated, and, on January 6, 2006, the Executive Director issued a 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 Tallahassee, Florida, on June 15, June 26, and August 4, 2006, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order, dated November 28, 2006, recommending that the Commission enter a final order finding that Respondent unlawfully discriminated against Petitioner by harassing Petitioner and creating a hostile work environment on the basis of the disability Petitioner was perceived to have, and reserving jurisdiction as to determination of the appropriate relief, and in so doing indicating, among other things, that Petitioner was entitled to attorney's fees and costs.

Pursuant to notice, public deliberations were held on February 13, 2007, 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

Both Respondent, in its exceptions document, and Petitioner, in its response to Respondent's exceptions document, (both of these filings are referenced in the "Exceptions" section of this Order, below), indicate that the suggestion in Recommended Order, ¶ 32, that Petitioner was in the break room with Andrea Stacy Bennett is incorrect, and that, actually, Petitioner was in the break room with Hillary Bennett. Given the parties' agreement on this issue, we correct this finding of fact accordingly.

With this correction, 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.

#### Respondent's Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's Exceptions to Recommended Order," received by the Commission on December 18, 2006. Petitioner filed a response to these exceptions in a document entitled, "Petitioner's Response to Respondent's Exceptions to the Recommended Order," received by the Commission on January 11, 2007.

Neither of these documents is timely.

Parties have 15 days from the date of the Recommended Order to file exceptions to it. See Fla. Admin. Code R. 28-106.217(1). The date of the Recommended Order is November 28, 2006, and the exceptions were received more than 15 days later on December 18, 2006. Parties have 10 days from the date exceptions were served to file a response to another party's exceptions. See Fla. Admin. Code R. 28-106.217(2). Petitioner's response document was received on January 11, 2007, well past 10 days from either the December 15, 2006, date on which the exceptions were served, or the December 18, 2006, date on which the exceptions were received by the Commission.

Nevertheless, in its response document, Petitioner did not object that Respondent's exceptions were untimely, and the Commission's file contains no objection from

Respondent to the Commission's consideration of Petitioner's response document. Consequently, we will consider these documents.

In the exceptions document, paragraphs 1 through 5, Respondent excepts to the implication in Recommended Order, ¶ 80, that Petitioner is entitled to back pay and reinstatement. In paragraph 6 of the exceptions document, Respondent excepts to the finding in Recommended Order, ¶ 32, that Petitioner was in the break room with her supervisor, Andrea Stacy Bennett, noting that Petitioner was in the break room with Hillary Bennett.

In its response, Petitioner agrees with these exceptions, with the notation that it believes Petitioner is entitled to "damages" for the unlawful employment practice found to have occurred.

Since Petitioner has agreed with Respondent's exceptions, and without now ruling on Petitioner's request for damages, Respondent's exceptions are accepted/granted.

#### Affirmative Relief and Remand

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that unlawful discrimination occurred in this matter in the manner found by the Administrative Law Judge and we note the Administrative Law Judge's reservation of jurisdiction as to remedy issues and the Administrative Law Judge's indication that Petitioner is entitled to, among other things, attorney's fees and costs.

Respondent is hereby ORDERED:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;

(2) to pay Petitioner attorney's fees that have been reasonably incurred in this matter by Petitioner;

(3) to pay Petitioner the amount of costs that have been reasonably incurred in this matter by Petitioner; and

(4) to pay Petitioner such other amounts as Petitioner may be entitled to by law.

The Commission reserves jurisdiction over the determination of the precise remedy in this matter, including, but not limited to, amounts of attorney's fees, and costs awarded Petitioner, and any additional amounts to which Petitioner may be entitled under the law.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties have agreed to the appropriate remedy amounts for the unlawful employment practice found to have occurred, the parties shall prepare and submit to the Commission a Joint Stipulation of Settlement.

If, within 30 days of the date of the filing of this Order by the Clerk of the Commission, the parties are unable to reach agreement as to the remedy amounts for the unlawful employment practice found to have occurred, the Petitioner is directed to file with the Commission a Notice of Failure of Settlement, and the case will be remanded to

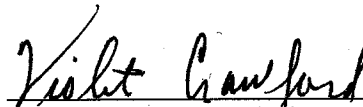
the Administrative Law Judge for determination of the appropriate remedy amounts in this matter, as ordered above.

The Commission shall offer its mediation services to the parties to facilitate settlement within the specified 30-day period.

DONE AND ORDERED this 15<sup>th</sup> day of February, 2007.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Keith Roberts; and  
Commissioner Gilbert M. Singer

Filed this 15<sup>th</sup> day of February, 2007,  
in Tallahassee, Florida.



Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

Copies furnished to:

Keneka Jones  
c/o Carolyn D. Cummings, Esq.  
Cummings, Hobbs & Wallace, P.A.  
462 West Brevard Street  
Tallahassee, FL 32301

General Aviation Terminal, Inc.  
c/o Joanne B. Lambert, Esq.  
JacksonLewis, LLP  
Post Office Box 3389  
Orlando, FL 32802-3389

Suzanne F. Hood, 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 15<sup>th</sup> day of February, 2007.

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

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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**KANEKA JONES,**

**Petitioner,**

**Case No. 06-0583  
FCHR No. 2005-02524  
EEOC No. 15DA500837**

**v.**

**GENERAL AVIATION  
TERMINAL, INC.,**

**Respondent.**

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**RESPONDENT'S EXCEPTIONS TO RECOMMENDED ORDER**

Respondent, GENERAL AVIATION TERMINAL, INC. ("GAT"), by and through its undersigned counsel, and pursuant to Uniform Rule 28-106.217, submits the following exceptions to the Recommended Order entered on November 28, 2006, and states as follows:

1. In Paragraph 80 of the Recommended Order, Judge Hood recommended that jurisdiction be reserved "for the determination of reinstatement, back pay, and appropriate attorney's fees and costs in this proceeding if the parties cannot agree."
2. Clearly, the recommendation that reinstatement and back pay should be available to Petitioner was erroneously included as an oversight, as Judge Hood found that Petitioner failed to mitigate her damages and that her termination was neither discriminatory nor retaliatory.
3. Judge Hood specifically found that Petitioner "certainly did not make a good faith effort to mitigate her damages in this case." (Recommended Order at ¶ 42.) Indeed,

Judge Hood reiterated this finding at the beginning of Paragraph 80, immediately preceding the erroneous recommendation that an award of back pay should be considered.

4. In addition, Judge Hood found that Petitioner was discharged from employment for legitimate, non-discriminatory and non-retaliatory reasons. The specific findings on this issue are as follows:

a. "Petitioner's continued disruptive behavior and her profane and abusive language was insubordinate, leaving Mr. Howell with no choice but to terminate her employment." (Recommended Order at ¶ 41.)

b. "[t]here is no persuasive evidence of a causal link between Petitioner's complaints and the termination of her employment." (Recommended Order at ¶ 78.)

c. "The circumstances of this case prove that Respondent's reason for discharging Petitioner were [sic] not a pretext for retaliation." (Recommended Order at ¶ 79.)

5. Accordingly, Petitioner is not entitled to an award of reinstatement or back pay.


6. The Recommended Order also contains one clear factual error. Paragraph 32 states, in pertinent part, that Petitioner was having breakfast in the break room on February 28, 2006 with her "supervisor, Ms. Bennett." The record clearly reflects that Petitioner was eating breakfast that day with *Hillary* Bennett, who was her co-worker. (Hearing Transcript at p. 184.) Petitioner's immediate supervisor was *Andrea Stacy* Bennett, who is Hillary Bennett's sister. (Hearing Transcript at p. 318.) There is no testimony in the record that Andrea Stacy Bennett, Petitioner's supervisor, was in the break room on February 28, 2006.

WHEREFORE, Respondent, GAT, respectfully requests that the Commission adopt the exceptions to the Recommended Order noted herein, and that any Final Order entered in this matter not include an award of reinstatement or back pay.

DATED this 15<sup>th</sup> day of December, 2006

Respectfully submitted,


JACKSON LEWIS LLP  
390 North Orange Avenue, Suite 1285  
Post Office Box 3389  
Orlando, Florida 32802-3389  
Telephone: (407) 246-8440  
Facsimile: (407) 246-8441

By:   
Joanne B. Lambert  
Florida Bar No. 0899062

Attorneys for Respondent, General Aviation Terminal, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of December, 2006, a true and correct copy of the foregoing Respondent's Exceptions to Recommended Order was furnished by mail to: Carolyn D. Cummings, Esq., 462 W. Brevard Street, Tallahassee, FL 32301.

  
Attorney



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DIVISION OF  
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HEARINGS

**PETITIONER'S RESPONSE TO RESPONDENT'S  
EXCEPTIONS TO THE RECOMMENDED ORDER**

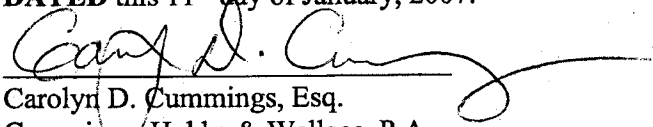
COMES NOW, the Petitioner, KENEKA JONES, by and through the undersigned Counsel, pursuant to Rule 28-106.217, Florida Administrative Code, and responds to the Exceptions to the Recommended Order filed by the Respondent and states as follows.

1. Admits.
2. Agrees in part and denies in part.
  - a. In paragraph 64 of the Recommended Order, the Judge found that the Respondent "is subject to vicarious liability for subjecting the Petitioner to harassment and to a hostile work environment based on her mental retardation." (emphasis added).
  - b. Agrees that in paragraph 75, the Judge found on the issue of Gender Discrimination, that the Petitioner's firing was not a pretext for intentional discrimination.
  - c. Agrees that in paragraph 79, the Judge found on the issue of Retaliation, that the Respondent's reasons for discharging the Petitioner were not a pretext for retaliation.

- d. Agrees that perhaps the Judge included as an oversight jurisdiction to determine reinstatement, back pay and attorney's fees and costs, and that perhaps the language should have stated that jurisdiction was reserved to determine damages because of the Judges' findings in Paragraph 64 in general and to determine attorney fees and costs.
3. Admits.
4. Admits.
5. Admits that based on the Hearings Officer's Conclusions of Law that the Petitioner is not entitled to reinstatement or back pay but that she is entitled to damages based on being subjected to harassment and a hostile work environment because of her mental retardation, and to attorney fees and costs.
6. Admits.


**WHEREFORE**, the Petitioner respectfully requests that the Florida Commission on Human Relations accept the findings of the Hearing Officer, and enter a Final Order which includes a finding, consistent with the Hearing Officer's finding in paragraph 64, that the Petitioner is awarded damages for being subjected to a hostile work environment based on her mental retardation, and that the Petitioner is entitled to attorney fees and costs.

**DATED** this 11<sup>th</sup> day of January, 2007.

  
Carolyn D. Cummings, Esq.  
Cummings, Hobbs & Wallace, P.A.  
462 W. Brevard Street  
Tallahassee, Florida 32301  
850-224-3730 850-224-2202 facsimile

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the Petitioner's Response to Exceptions filed by the Respondent has been furnished by Regular U. S. Mail this 11<sup>th</sup> day of January, 2007, to Joanne Lambert, Esq., Jackson, Lewis, LLP, 390 N. Orange Avenue, Suite 128, Orlando, Florida, 32801.

  
Carolyn D. Cummings