

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2006 NOV 15 P 1:30

GENNIE C. BAGLEY,

Petitioner,

v.

CITY OF TAMPA, FLORIDA,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2005-02204

DOAH Case No. 06-0592

FCHR Order No. 06-101

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Gennie C. Bagley 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 City of Tampa, Florida, committed an unlawful employment practice on the basis of Petitioner's race (Black) when it terminated Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on January 20, 2006, 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 June 14, 2006, in Tampa, Florida, before Administrative Law Judge Susan B. Harrell.

Judge Harrell issued a Recommended Order of dismissal, dated August 15, 2006.

Pursuant to notice, public deliberations were held on November 2, 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 note that the Administrative Law Judge concluded that the complaint in this matter was not timely-filed (i.e., that it was not filed within 365 days of the alleged discriminatory act), and therefore the Petition for Relief should be dismissed (See Recommended Order, ¶ 20). But the Administrative Law Judge also decided the case on the merits, indicating that Petitioner failed to establish a prima facie case of discrimination (Recommended Order, ¶ 27).

In a similar situation a Commission panel stated, "Because of findings of fact and conclusions of law indicating that the matter should be dismissed for lack of the existence of a prima facie case of discrimination, we find it unnecessary to either accept or reject the conclusion of law that the complaint of discrimination was untimely. Accord, Cox v. University of Florida, FCHR Order No. 04-145 (November 4, 2004), in which a Commission panel declined to either accept or reject a conclusion of law which was not dispositive of the case given the decision on the merits, namely, that the Petition for Relief was not timely." Roche v. J. C. Penney Company, Inc., FCHR Order No. 06-078 (September 18, 2006).

Similarly, because of the decision on the merits against Petitioner, we conclude it is unnecessary to either accept or reject the conclusion of law that the complaint of discrimination was untimely.

With this comment, we adopt the Administrative Law Judge's other conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner Gennie C. Bagley 'Appeal for Exceptions / Objections / Errors / to the Recommended Order of the State of Florida Division of Administrative Hearings dated August 15-2006, Putsuant [sp.] to Fourteenth Amendment'."

A review of the exceptions document suggests that Petitioner's exceptions take issue with the facts found, facts not found, and inferences drawn from the evidence presented. Many of the pages contain merely argument with no reference to the record or the Recommended Order. Many of the exceptions seem to argue that Petitioner was deprived of her Fourteenth Amendment due process rights and argue that because Petitioner prevailed at her unemployment compensation hearing she should prevail on her discrimination complaint, as opposed to focusing on specific errors in the Recommended Order.

The Administrative Procedure Act states, "An agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that

does not include appropriate and specific citations to the record.” Section 120.57(1)(k), Florida Statutes (2005).

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).

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 13th day of November, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner Shahrukh S. Dhanji; and
Commissioner Donna Elam

Filed this 13th day of November, 2006,
in Tallahassee, Florida.



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Susan B. Harrell, 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 13th day of November, 2006.

By: 
Clerk of the Commission
Florida Commission on Human Relations