

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ALMA W. JESTER,

Petitioner,

v.

HAVERTY'S,

Respondent.

EEOC Case No. 15DA500790

FCHR Case No. 2005-01927

DOAH Case No. 06-0733

FCHR Order No. 06-089

FILED

2006 OCT 16 P 1:17

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Alma W. Jester 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 Haverty's committed unlawful employment practices on the basis of Petitioner's sex (female) and on the basis of retaliation, stating that Petitioner was subjected to harassment, unfair terms and conditions, discipline, constructive discharge and termination. (The Administrative Law Judge indicated in the Recommended Order that the Petition for Relief did not mention the retaliation claim, and concluded that Petitioner intended to go forward only with allegations of gender discrimination based on disparate treatment.)

The allegations set forth in the complaint were investigated, and, on January 26, 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 May 16 and 17, 2006, in Shalimar, Florida, before Administrative Law Judge Harry L. Hooper.

Judge Hooper issued a Recommended Order of dismissal, dated July 17, 2006.

Pursuant to notice, public deliberations were held on October 10, 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, "Petitioner's Exceptions to Recommended Order," received by the Commission on August 1, 2006. The document contains 11 numbered exceptions.

Petitioner's exceptions take issue with the facts found (paragraphs 1, 2, 4, 7, 8, and 10), facts not found (paragraphs 3, 9, and 11), and inferences drawn (paragraphs 5 and 6) from the evidence presented.

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).

With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(1), Florida Statutes (2005).

Petitioner's exceptions are rejected.

Dismissal

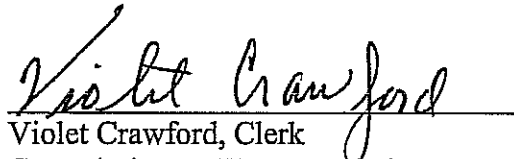
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 12th day of October, 2006.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Anice R. Prosser; and
Commissioner Billy Whitefox Stall

Filed this 12th day of October, 2006,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

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:

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Harry L. Hooper, 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 12th day of October, 2006.

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