STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MARIO MOLINA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-1986
	)	
SEA WORLD OF FLORIDA, INC.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was held before Daniel M. Kilbride, Administrative Law Judge of the Division of Administrative Hearings (DOAH), on August 3, 2006, in Orlando, Florida.

APPEARANCES

For Petitioner: Mario Molina, pro se
116 Coconut Grove Way
Kissimmee, Florida 34758

For Respondent: Thomas R. Brice, Esquire
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STATEMENT OF THE ISSUE

Whether Respondent, Sea World of Florida, Inc. (SWF), subjected Petitioner, Mario Molina, to disparate treatment and terminated his employment because of his national origin (Puerto Rican) and/or alleged disability in violation of Subsection 760.10(1)(a), Florida Statutes (2005).

PRELIMINARY STATEMENT

Petitioner filed a Charge of Discrimination on May 31, 2005, with the Orlando Office of Human Relations (OOHR) and the Equal Employment Opportunity Commission (EEOC), alleging only disability discrimination. The EEOC issued an "unable to conclude" finding on September 30, 2005, and Petitioner failed to timely file suit. Petitioner filed another Charge of Discrimination with the OOHR and the EEOC on July 8, 2005, alleging that SWF terminated his employment in retaliation for his filing the May 31, 2005, Charge of Discrimination. The EEOC also issued an "unable to conclude" finding on this Charge on September 30, 2005, and Petitioner failed to timely file suit on this Charge as well. Petitioner's various allegations of discrimination and retaliation contained in the EEOC Charges are not at issue in the instant action; as they are time-barred and beyond the scope of the Charge of Discrimination filed with the Florida Commission on Human Relations (FCHR).

Petitioner filed a Charge of Discrimination with the FCHR on January 9, 2006, containing the allegations of discrimination presently before this tribunal. Petitioner alleged, for the first time in his FCHR Charge, that SWF discriminated against him because of his national origin and also alleged disability discrimination. Specifically, Petitioner claims that SWF subjected him to disparate treatment and terminated his

employment because of his national origin and alleged disability. Petitioner's FCHR Charge also references age discrimination. However, Petitioner stipulated during the hearing that he is not pursuing an age claim against SWF. The FCHR issued a No Cause determination on May 9, 2006. Petitioner timely filed the Petition for Relief at issue with the FCHR on May 30, 2006. This matter was referred to the DOAH on June 6, 2006, and discovery followed.

Following the denial of Petitioner's multiple motions for continuance, a formal hearing was conducted on August 3, 2006, at which both parties could present witness testimony and documentary evidence. At the hearing, Petitioner testified in his own behalf, but called no additional witnesses nor offered any documentary evidence. Respondent presented the testimony of three witnesses: Christine Runnels, human resources manager; Mark S. Wren, warehouse manager; and Christine E. O'Neal, vice president of Human Resources, and 25 exhibits were admitted in evidence. Following the close of the hearing, Petitioner filed multiple motions to submit evidence after the close of evidence. These motions were denied, as good cause was not shown. Respondent filed a motion for extension of time to file post-hearing submittals, and, over Petitioner's objections, it was granted. Both parties submitted post-hearing submittals, which have been considered in preparation of this Recommended Order.

FINDINGS OF FACT

1. Respondent is an employer, as that term is defined, under the Florida Civil Rights Act (FCRA) of 1992.

2. Petitioner is a male of Puerto Rican descent and is a member of a protected class. Petitioner claims he is disabled due to the pain and limitations following corrective surgery for a lumbar degenerative disc problem in 2003.

3. Petitioner began employment with SWF in 1995 as a warehouse worker in the receiving department. The warehouse worker position required Petitioner to receive and move shipments of merchandise, equipment, and supplies coming into the Warehouse. Petitioner needed to be able to lift up to 50 pounds and assist in lifting up to 100 pounds to shoulder height in order to perform the essential functions of the warehouse worker position.

4. Petitioner had surgery on his back on September 26, 2003, to correct a lumbar degenerative disc problem. Dr. Stephen Goll performed the surgery and provided after-care for Petitioner. SWF granted Petitioner a paid leave of absence from September 26, 2003, until March 19, 2004, in order to allow him to recuperate from his surgery.

5. Petitioner returned to work on March 19, 2004, with restrictions of sedentary work only and no lifting of more than ten pounds. Petitioner's restrictions varied after his surgery,

but he was never cleared to lift more than 20 pounds. Petitioner never requested an accommodation that would allow him to lift up to 50 pounds.

6. SWF provided Petitioner with light-duty work, in accordance with his restrictions as defined by Dr. Goll, from his return to work on March 19, 2004, until November of 2004. Specifically, Warehouse Manager Mark S. Wren assigned Petitioner to the pricing table where he was not required to lift more than ten pounds.

7. On November 1, 2004, Dr. Goll examined Petitioner and determined that he had reached maximum medical improvement (MMI) with a three percent impairment rating. He put in place a permanent restriction of no lifting of more than ten pounds.

8. Accordingly, Petitioner could not perform the essential functions of his warehouse worker position, which required lifting up to 50 pounds. Further, there were no permanent light-duty positions available in the Warehouse.

9. Therefore, on November 29, 2004, Warehouse Manager Wren, Human Resources Manager Christine Runnels, and Human Resources Director Teri Robertson met with Petitioner to explain that SWF had no permanent work in the Warehouse that he could perform within his restrictions. During his meeting, SWF offered Petitioner the opportunity either to be assigned to SWF's internal temporary worker pool, known as Workforce, and

work as a temporary employee as needed, or to take a six-month personal leave of absence to look for a position at SWF which met his medical restrictions. Petitioner, who complained of continued back pain, elected to take a six-month personal leave of absence from December 4, 2004, through June 4, 2005. He could retain his health benefits during this period.

10. Despite being unable to perform the essential functions of the warehouse worker position, Petitioner was capable of working in a broad range of jobs offered by SWF within his medical restrictions. During Petitioner's six-month personal leave of absence, SWF had 417 positions open. Nevertheless, Petitioner only inquired about two positions during his six-month leave period -- one in the Call Center and one as a horticulturist.

11. Petitioner was not selected for a position in the Call Center because he was unwilling to work the required hours. Petitioner admitted he did not have the required degree to work as a horticulturist. Petitioner never submitted a transfer request for any of the 415 other positions available at SWF during his six-month personal leave of absence.

12. Nevertheless, Petitioner sought to have his leave extended to six months after his leave expired on June 4, 2005. SWF's vice president of Human Resources reviewed Petitioner's request for a leave extension, as well as his personnel file

pertaining to the reason for his leave of absence. Christine E. O'Neal discovered that Petitioner had permanent lifting restrictions, preventing him from performing the essential functions of his former position in the Warehouse. O'Neal further learned that despite granting Petitioner six months to find another position, he had done little in furtherance of that goal. In fact, O'Neal determined that Petitioner had only applied for two positions during the entire six months of his leave. Therefore, O'Neal made the decision to deny Petitioner's request for a leave extension, effectively terminating Petitioner's employment on June 4, 2005.

13. Petitioner presented no evidence indicating that SWF terminated his employment because of his alleged disability or national origin. Further, each of the three witnesses who testified at the hearing stated that employment decisions affecting Petitioner were not related to his national origin or alleged disability, and this testimony is credible.

14. SWF submitted legitimate non-discriminatory reasons for Petitioner's termination. Specifically, SWF terminated Petitioner's employment because he had a permanent lifting restriction prohibiting him from performing the essential functions of his position as a warehouse worker, and he failed to actively seek another position during his leave period.

15. Petitioner submitted no evidence establishing that SWF discriminated against him because of his national origin, or that he was handicapped under the FCRA, or that SWF's non-discriminatory reasons for terminating Petitioner was a pretext for unlawful discrimination.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Sections 120.569 and 760.11 and Subsection 120.57(1), Florida Statutes (2005).

17. The State of Florida, under the legislative scheme contained in Chapter 760, Florida Statutes (2005), incorporates and adopts the legal principles and precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e et seq. The Florida law prohibiting unlawful employment practices is found in Section 760.10, Florida Statutes (2005). This section prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's national origin and/or handicap. § 760.10(1)(a), Fla. Stat. (2005). The FCHR and the Florida courts interpreting the provisions of the FCRA of 1992 have determined that federal discrimination law should be used as guidance when construing

provisions of the Act. See Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991); Cooper v. Lakeland Regional Medical Center, 16 FALR 567, 574 (FCHR 1993); Downing v. United Parcel Service, Inc., 215 F.Supp 2d 1303, 1308 (M.D. Fla. 2002).

18. Petitioner has the ultimate burden to prove discrimination either by direct or indirect evidence. Direct evidence is evidence which, if believed, would prove the existence of discrimination without inference or presumption. Carter v. City of Miami, 870 F.2d 578, 581-82 (11th Cir. 1989). Blatant remarks, whose intent could be nothing other than to discriminate, constitute direct evidence of discrimination. See Earley v. Champion International Corporation, 907 F.2d 1077, 1081 (11th Cir. 1990). There is no record of any direct evidence of discrimination on the part of Petitioner's supervisor. There is no evidence that Wren made any national origin or disability-related comments or slurs. Petitioner has not presented any documentary evidence which would constitute direct evidence of discrimination.

19. Absent any direct evidence of discrimination, the Supreme Court established, and later clarified, the burden of proof in disparate treatment cases in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Department of Community

Affairs v. Burdine, 450 U.S. 248 (1981), and again in the case of St. Mary's Honor Center v. Hicks, 509 U.S. 502, 113 S.Ct. 2742 (1993). The FCHR has adopted this evidentiary model. Kilpatrick v. Howard Johnson Co., 7 FALR 5468, 5475 (FCHR 1985). McDonnell Douglas places upon Petitioner the initial burden of proving a prima facie case of national origin discrimination. See also Davis v. Humana of Florida, Inc., 15 FALR 231 (FCHR 1992); Laroche v. Department of Labor and Employment Security, 13 FALR 4121 (FCHR 1991).

20. Judicial authorities have established the burden of proof for establishing a prima facie case of discriminatory treatment. Petitioner must show that:

a. Petitioner is a member of a protected group;

b. The employee is qualified for the position; and

c. The employee was subject to an adverse employment decision (Petitioner was terminated);

d. The position was filled by a person of another race or that he was treated less favorably than similarly-situated persons outside the protected class:

e. Crapp v. City of Miami Beach, 242 F.3d 1017, 1020 (11th Cir 2001); Canino v. EEOC, 707 F.2d 468 (11th Cir. 1983); Smith v. Georgia, 684 F.2d 729 (11th Cir. 1982); Lee v. Russell County Board of Education, 684 F.2d 769 (11th Cir. 1982), appeal after remand, 744 F.2d 768 (11th Cir. 1984).

21. Proving a prima facie case serves to eliminate the most common non-discriminatory reasons for Petitioner's disparate treatment. See Teamsters v. U.S., 431 U.S. 324, 358, n. 44 (1977). It is not, however, the equivalent of a factual finding of discrimination. It is simply proof of actions taken by the employer from which discriminatory animus is inferred because experience has proved that, in the absence of any other explanation, it is more likely than not that those actions were bottomed on impermissible considerations. The presumption is that more often than not people do not act in a totally arbitrary manner, without any underlying reason, in a business setting. Furnco Construction Corp. v. Waters, 438 U.S. 567, 577 (1978).

22. Once Petitioner has succeeded in proving all the elements necessary to establish a prima facie case, the employer must then articulate some legitimate, non-discriminatory reason for the challenged employment decision. The employer is required only to "produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not been motivated by discriminatory animus." Texas Department of Community Affairs v. Burdine, at 257. The employer "need not persuade the court that it was actually motivated by the proffered reasons . . . [i]t is sufficient if the [employer's] evidence raises a genuine issue of fact as to

whether it discriminated against the plaintiff." Id. at 254. This burden is characterized as "exceedingly light." Perryman v. Johnson Products Co., Inc., 698 F.2d 1138 (11th Cir. 1983).

23. Once the employer articulates a legitimate reason for the action taken, the evidentiary burden shifts back to Petitioner, who must prove that the reason offered by the employer for its decision is not the true reason, but is merely a pretext. The employer need not prove that it was actually motivated by the articulated non-discriminatory reasons or that the replacement was more qualified than Petitioner. Texas Department of Community Affairs v. Burdine, at 257-8.

24. In Burdine, the Supreme Court emphasized that the ultimate burden of persuading the trier of fact that Respondent intentionally discriminated against Petitioner remains at all times with Petitioner. Texas Department of Community Affairs v. Burdine, at 253. The Court confirmed this principle again in St. Mary's Honor Center v. Hicks, 509 U.S 502, 113 S. Ct. 2742 (1993).

Most of Petitioner's Disparate Treatment Claims Are Time-Barred.

25. It is a clear principle of law that Petitioner must file a charge of discrimination with the FCHR within 365 days of a discriminatory act in order to seek relief for alleged disability or national origin discrimination. § 760.11(1), Fla. Stat. (2005). Petitioner filed the Charge of Discrimination at

issue on January 9, 2006. Accordingly, all allegations of discrimination contained in Petitioner's Charge and Petition for Relief occurring prior to January 9, 2005, are time-barred.

26. Specifically, the following allegations of disparate treatment are time-barred: (1) Petitioner's claim that Warehouse Lead Albert Capuano intentionally bumped into him, injuring his back, on April 9, 2004; (2) Petitioner's claim that Warehouse Manager Wren assigned inventory work only to white employees in 2004; (3) Petitioner's claim that Wren humiliated and insulted him in September 2004; (4) Petitioner's claim that Wren, Warehouse Lead Ron Beck, and Capuano pressured him to work faster, watched him constantly, and isolated him in September 2004; (5) Petitioner's claim that Wren counseled him for tardiness on September 17, 2004; and (6) Petitioner's claim that Beck timed him performing his duties in 2003.

27. Accordingly, only two of Petitioner's claims are not time-barred: (a) Petitioner's claim that SWF terminated his employment because of his national origin and/or alleged disability, and (b) Petitioner's claim that SWF failed to create a position for him because of his national origin.

Petitioner's Disability Discrimination Claim

28. In order to establish a prima facie case of handicap discrimination under the McDonnell-Douglas burden shifting method, Petitioner must show that he: (1) is actually disabled

or regarded as disabled; (2) is a qualified individual with a disability; and (3) was subjected to an adverse employment action under circumstances that give rise to an inference of handicap discrimination. Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1285 (11th Cir. 1997). An individual with a handicap may establish discrimination by showing that an employer failed to reasonably accommodate the disability, or that he was subjected to disparate treatment as a result of the handicap. Id. at 1285. Petitioner is unable to satisfy any of the elements required to establish a prima facie case.

29. SWF was under no duty to accommodate Petitioner because he is not handicapped under the statute. Petitioner never requested an accommodation that would allow him to perform the lifting required of a warehouse worker. Smith v. Midland Brake, 180 F.3d 1154 (10th Cir. 1999) (Plaintiff must request a reasonable accommodation in order to pursue a claim for failure to accommodate). Further, Petitioner brought a failure to accommodate claim in his first EEOC Charge of Discrimination and failed to timely file suit within 90 days of his receipt of his Notice of Right to Sue. Accordingly, any failure to accommodate claim is time-barred. 42 U.S.C. § 2000e-5(f)(1)(A). Moreover, Petitioner does not allege a failure to accommodate claim in his FCHR charge. Therefore, Petitioner cannot bring a failure to

accommodate claim for the additional reason that such a claim is beyond the scope of the Charge and time-barred. Lieberman v. Miami-Dade County, 2000 U.S. Dist. LEXIS 14789 (S.D. FL 2000).

30. In any event, SWF provided Petitioner with more than reasonable accommodations by providing him with six months of paid leave, light-duty assignment within his medical restrictions for seven months, and an additional six-month unpaid personal leave of absence to look for another job. Epps v. City of Pine Lawn, 353 F.3d 588, 593 (8th Cir. 2003) (Six-month leave of absence exceeds reasonable accommodation requirements of the Americans with Disabilities Act (ADA)).

31. Petitioner's disability claims must fail because he is not "disabled" or "handicapped" within the meaning of the law. "Disability" is defined as a "physical or mental impairment that substantially limits one or more of the major life activities." 42 U.S.C. § 12102(2). EEOC regulations identify "major life activities" as "such functions as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 29 C.F.R. § 1630.2(j). The Supreme Court has made clear that "the ADA does not define 'substantially limits,' but 'substantially' suggests 'considerable' or 'specified to a large degree.'" Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999). An impairment alone does not constitute a disability under the ADA. Standard

v. A.B.E.L. Services, Inc., 161 F.3d 1318, 1327 (11th Cir. 1998).

32. Petitioner failed to establish that he was substantially limited in any major life activity. Rather, Petitioner had only a three percent impairment rating and a ten-pound lifting restriction that prevented him for working at SWF as a warehouse worker. Courts that have considered impairments virtually identical to Petitioner's impairments routinely find that such impairments do not constitute a disability. See Marinelli v. City of Erie, 216 F.3d 354 (3d Cir. 2000) (ten-pound lifting restriction does not constitute disability as a matter of law); Lorenzen v. GKW Armstrong Wheels Inc., 345 F. Supp. 2d 977 (N.D. IA 2004)(five percent impairment rating does not constitute disability); Helfler v. United Parcel Service, Inc., 115 F.3d 613 (8th Cir. 1997) (Plaintiff not substantially limited in any major life activity where Plaintiff was restricted to light-duty with no lifting items weighing more than ten pounds); Freund v. Lockheed, Inc., 930 F. Supp. 613 (S.D. Ga. 1996) (inability to lift objects weighing over ten pounds does not constitute a disability). See also 29 C.F.R. § 1630.2(j)(3)(i).

33. Petitioner is clearly not substantially limited in the major life activity of working. An individual is considered substantially limited in the major life activity of working only

if his impairment significantly restricts his ability to perform a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities. Sutton v. United Airlines, Inc., 527 U.S. 471 (1999). In Sutton, the Supreme Court explained:

> When the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that Plaintiffs allege that they are unable to work in a broad class of jobs . . . To be substantially limited in the major life activity of working, then one must be precluded from more than one type of job, a specialized job, or a particular job of choice. If jobs utilizing an individual's skills (but perhaps not his or her unique talents) are available, one is not precluded from a substantial class of jobs. Similarly, if a host of different jobs are available, one is not precluded from a broad range of jobs.

Id. at 2150.

34. While it is clear that Petitioner could not perform the essential functions of his physically demanding job as a warehouse worker, he was not substantially limited in the major life activity of working, because his impairments did not prohibit him from working in a broad range of jobs.

35. Petitioner claims to have difficulty walking distances. However, Petitioner admitted that he was able to walk sufficiently to perform the duties of his warehouse worker position and that he could walk a mile to his doctor's office.

Moreover, Petitioner failed to enter into evidence any medical records evidencing a disability. Therefore, Petitioner failed to establish that he was actually disabled or handicapped. See Swain v. Hillsborough Cty. Sch. Bd., 146 F.3d 855, 857 (11th Cir. 1998) (Plaintiff must provide some evidence beyond the mere existence and impact of a physical impairment to establish a claim).

36. Petitioner may also qualify for protection under the law by establishing that he was "regarded as" having an impairment which substantially limited one or more of his major life activities. 42 U.S.C. § 12102(2)(c); Sutton, 119 S. Ct. at 2149; Gordon v. E.L. Hamm & Assoc., Inc., 100 F.3d 907, 918 (11th Cir. 1996), cert. den., 118 S. Ct. 630 (1997). However, Petitioner does not even allege that SWF regarded him as disabled. Further, there is no evidence in the record showing that any decision-maker at SWF regarded Petitioner as substantially limited in any major life activity.

37. Therefore, while it is clear that SWF relied upon the limitations imposed by Petitioner's doctor in determining that he was unable to perform the essential functions of his position as a warehouse worker, there is no evidence in the record showing that any managerial employee of SWF perceived Petitioner as disabled.

38. Assuming, arguendo, that Petitioner could establish that he was disabled, his claim must fail because he cannot establish that he is a qualified individual with a disability entitled to the protections of the ADA. 42 U.S.C. § 12112. In order to establish that he is a qualified individual with a disability, Petitioner must show that he could perform the essential functions of his position as a warehouse worker with or without reasonable accommodation. 42 U.S.C. § 12111(8). SWF's job description for the warehouse worker position specifically states that the physical requirements of the position require:

> Good physical condition. Able to lift up to 50 lbs. and assist in lifting up to 100 lbs. to shoulder height.

39. As set forth more fully above, Dr. Goll imposed a ten-pound permanent lifting restriction on November 1, 2004. Clearly, the lifting restrictions imposed upon Petitioner by Dr. Goll prevented him from performing the essential functions of his position as a warehouse worker. During the hearing, Petitioner admitted that he could not perform the essential functions of his position.

40. Petitioner never identified or requested any accommodation that would allow him to perform the lifting required by the warehouse worker position. Therefore,

Petitioner is not a qualified individual with a disability and not entitled to pursue a claim for disability discrimination.

41. Petitioner also failed to identify any evidence giving rise to an inference that he was subjected to disability discrimination. Therefore, Petitioner failed to establish a prima facie case.

42. Even if Petitioner had established a prima facie case of disability discrimination, his claim must still fail because SWF has produced legitimate non-discriminatory business reasons for its decision to terminate him. Petitioner has not established that SWF's reasons are pretext for disability discrimination. SWF terminated Petitioner's employment on June 4, 2005, because he was unable to perform the essential functions of his position as a warehouse worker, and he failed to actively seek other employment at SWF during his six-month leave period. Accordingly, Petitioner's disability claim must fail even if he could establish that he was a qualified individual with a disability.

Petitioner's National Origin Discrimination Claims

43. In order to establish a prima facie case of national origin discrimination, Petitioner must prove that: (1) he is a member of a protected class; (2) he was subjected to an adverse employment action; (3) his employer treated similarly situated employees outside of his classification more favorably; and

(4) he was qualified to do his job. See Faucette v. National Hockey League, 2006 U.S. Dist. LEXIS 5188 (M.D. Fla. 2006); citing Maniccia v. Brown, 171 F.3d 1364, 1368 (11th Cir. 1999).

44. Petitioner claims that SWF created a light-duty position for former Caucasian employee Ellis Edwards and that SWF discriminated against him by refusing to create a light-duty position for him. However, Petitioner presented no evidence in support of his contention that SWF created a position for Edwards. Contrastingly, SWF Human Resources Vice President O'Neal clearly testified that SWF did not create a position for Edwards and that SWF terminated Edwards under circumstances similar to Petitioner's termination. Similarly, Petitioner failed to identify any evidence showing that SWF treated any other employee outside of his protected class more favorably with regard to termination decisions. Accordingly, Petitioner has not established a prima facie case of discrimination.

45. As set forth more fully above, Petitioner admitted that he could not perform the essential functions of his position as a warehouse worker. Specifically, Petitioner could not perform the lifting requirements of the job. Accordingly, Petitioner has not established a prima facie case, because he was not qualified to do his job.

46. Even if Petitioner could establish a prima facie case of national origin discrimination, his discrimination claims

must fail, because he failed to establish that SWF's legitimate non-discriminatory reasons for his termination and refusal to create a light-duty position for him were pretext for unlawful discrimination. Rather, Petitioner admitted that he had no evidence supporting his claim that SWF terminated him because of his national origin. Similarly, Petitioner failed to submit any evidence indicating that SWF refused to create a light-duty position for him because of his national origin.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order which DENIES the Petition for Relief and dismisses Petitioner's claim.

DONE AND ENTERED this 2nd day of November, 2006, in Tallahassee, Leon County, Florida.

DANIEL M. KILBRIDE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the final order in this case.