

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TEESHA WILLIAMS,)
)
 Petitioner,)
)
 vs.) Case No. 06-3665
)
 NORTH BROWARD HOSPITAL)
 DISTRICT,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

This Recommended Order is entered on the Respondent's Revised Motion for Recommended Order of Dismissal, filed October 12, 2006; the Petitioner's Response to Respondent's Revised Motion for Recommended Order of Dismissal; the Respondent's Reply to Petitioner's Response to Respondent's Revised Motion for Recommended Order of Dismissal; and the United States Postal Service receipt provided by the Petitioner.

APPEARANCES

For Petitioner: Teesha Williams, pro se
2701 Tarpon Drive
Miramar, Florida 33023

For Respondent: Wendy Delvecchio, Esquire
Conrad & Scherer, LLP
633 South Federal Highway
Post Office Box 14723
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STATEMENT OF THE ISSUE

Whether the Petitioner timely filed her Petition for Relief from an Unlawful Employment Practice with the Florida Commission on Human Relations ("Commission").

PRELIMINARY STATEMENT

On September 19, 2006, Teesha Williams filed a Petition for Relief from an Unlawful Employment Practice with the Commission, in which she alleged that the North Broward Hospital District ("Hospital District") had discriminated against her on the basis of disability. The Commission transmitted the matter to the Division of Administrative Hearings for assignment of an administrative law judge on September 25, 2006, and a final hearing was scheduled for December 7 and 8, 2006. On October 12, 2006, the Hospital District filed Respondent's Revised Motion for Recommended Order of Dismissal, in which it argued that Ms. Williams had filed her petition for relief untimely. There was some confusion regarding Ms. William's correct address, and the revised motion was not served until November 3, 2006. Ms. Williams filed a response in opposition to the motion on November 8, 2006, and the Hospital District filed a reply to the response on November 13, 2006.

Ms. Williams included several factual assertions in her response in opposition to the revised motion, and a telephone conference was held on November 13, 2006, with Ms. Williams and

counsel for the Hospital District. During the telephone conference, Ms. Williams was asked to provide the undersigned with the receipt she had received from the United States Postal Service ("USPS") when she mailed the petition for relief to the Commission. Ms. Williams filed the receipt by facsimile transmittal on November 14, 2006.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. The Commission is the state agency charged with investigating and acting upon complaints filed under Florida's Civil Rights Act, Sections 760.01-760.11, Florida Statutes (2006).¹ § 760.06, Fla. Stat.

2. On August 14, 2006, the Commission issued a Right to Sue notice, in which it informed Ms. Williams, among other things, that

the FCHR hereby issues this Right to Sue. Since it has been more than 180 days since your complaint was filed, and since no determination was made within 180 days, you are entitled to pursue the case as if the FCHR issued a Determination of Reasonable Cause. . . . (Citation omitted).

You may pursue this case in the Division of Administrative Hearings by filing a Petition for Relief with the FCHR within 35 days from the date of this Right to Sue letter, or you may file a lawsuit in a circuit court of the

State of Florida anytime within one year from the date of this Right to Sue letter, provided such time period is not more than four years from the date the alleged violation occurred.

3. Pursuant to the terms of this notice, Ms. Williams was required to file her Petition for Relief with the FCHR no later than 35 days from the date of the August 14, 2006, notice, that is, no later than September 18, 2006.

4. Ms. Williams completed and signed a Petition for Relief from an Unlawful Employment Practice on September 14, 2006.

5. A receipt from the USPS establishes that, on September 17, 2006, the USPS accepted a letter from Ms. Williams addressed to the Commission; that the letter was sent via express mail; that neither next-day nor second-day delivery was selected; that a third option for delivery, "Add Del Day," was selected. The scheduled date of delivery stated on the receipt was September 20, 2006.

6. Ms. Williams's Petition for Relief from an Unlawful Employment Practice was received by the Commission on September 19, 2006.

7. The USPS tracking website shows that the letter assigned number EQ 628681913 US was delivered on September 19, 2006.

CONCLUSIONS OF LAW

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

9. Section 760.11, Florida Statutes, provides in pertinent part:

4) In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or

(b) Request an administrative hearing under ss. 120.568 and 120.57.

The election by the aggrieved person of filing a civil action or requesting an administrative hearing under this subsection is the exclusive procedure available to the aggrieved person pursuant to this act

* * *

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the

commissioner, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the commissioner shall issue an appropriate proposed order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. If the administrative law judge, after the hearing, finds that a violation of the Florida Civil Rights Act of 1992 has occurred, the administrative law judge shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay. Within 90 days of the date the recommended or proposed order is rendered, the commission shall issue a final order by adopting, rejecting, or modifying the recommended order as provided under ss. 120.569 and 120.57. The 90-day period may be extended with the consent of all the parties. An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission. In any action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs. It is the intent of the Legislature that this provision for attorney's fees be interpreted in a manner consistent with federal case law involving a Title VII action.

(Emphasis added.)

10. The Commission did not make its determination as to whether there was reasonable cause to believe that Ms. Williams had been subjected to unlawful discrimination within the statutorily-required 180 days from the date Ms. Williams filed her complaint. Ms. Williams was, therefore, permitted to

proceed as though the Commission had issued a Determination of Reasonable Cause. § 760.11(8), Fla. Stat.

11. In Wilson v. Brevard County Clerk of the Circuit Court, 31 Fla. L. Weekly D2452 (Fla. 5th DCA September 26, 2006), the court held that a petition for relief from an unlawful unemployment practice seeking an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, must be received by the Commission no later than 35 days after the date of the notice of the Commission's determination and that a petition filed 36 days after the date of the notice was properly dismissed as untimely.

12. The court in Wilson found that the doctrine of equitable tolling could be applied to excuse the late-filing of a petition for relief. Quoting the court in Machules v. Department of Administration, 523 So. 2d 1132, 1134 (Fla. 1988), the court in Wilson noted that one of three circumstances must be proven in order for the doctrine of equitable tolling to apply: "'Generally, the tolling doctrine has been applied when the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum.'"

13. Ms. Williams has not established any circumstance that would excuse the late-filing of her Petition for Relief from an

Unlawful Employment Practice under the doctrine of equitable tolling. In her response in opposition to the Hospital District's Revised Motion for Recommended Order of Dismissal, Ms. Williams stated that "[t]he additional time required for the US Postal Service to deliver the Petition was not within the control of the Petitioner." The USPS receipt provided by Ms. Williams clearly shows, however, that she did not ask for "next-day" delivery, which would have ensured timely delivery of her petition on September 18, 2006, but, rather, requested a different option that would guarantee delivery on September 20, 2006. Under these circumstances, the late-filing of the petition cannot be excused, and her Petition for Relief from an Unlawful Employment Practice should be dismissed.

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 dismissing the Petition for Relief from an Unlawful Employment Practice filed by Teesha Williams.

DONE AND ENTERED this 21st day of November, 2006, in
Tallahassee, Leon County, Florida.



PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of November, 2006.

ENDNOTE

^{1/} All references to the Florida Statutes shall be to the 2006
edition unless otherwise noted.

COPIES FURNISHED:

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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.