

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

LOYDA R. MICHAEL,

Petitioner,

v.

DELTA HEALTH GROUP,

Respondent.

EEOC Case No. 15D600386

FCHR Case No. 2006-01076

DOAH Case No. 06-3879

FCHR Order No. 08-017

FILED
2008 FEB 27 P 2:10
DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Loyda R. Michael filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2005), alleging that Respondent Delta Health Group committed an unlawful employment practice on the basis of Petitioner's National Origin (Panamanian / Hispanic) by terminating Petitioner from her position as a Certified Nursing Assistant.

The allegations set forth in the complaint were investigated, and, on August 28, 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 July 24, 2007, in Pensacola, Florida, before Administrative Law Judge P. Michael Ruff.

Judge Ruff issued a Recommended Order of dismissal, dated November 28, 2007.

Pursuant to notice, public deliberations were held on February 22, 2008, 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.

The Administrative Law Judge indicated that Respondent moved for an award of attorney's fees pursuant to Sections 57.105, Florida Statutes, and 120.595(1)(e)(1), Florida Statutes, and the Administrative Law Judge denied that motion.

Generally speaking, Section 57.105, Florida Statutes (2007), provides a mechanism for awarding attorneys fees as a sanction against a party who has raised unsupported claims and defenses. See Statute.

We note that the Commission does not have "final order" authority over an award granting or denying attorney's fees and damages pursuant to Section 57.105, Florida Statutes. See Section 57.105(5), Florida Statutes (2007), indicating that, in administrative proceedings, attorneys fees sought under this section shall be awarded by an Administrative Law Judge and that for purposes of appeal such award shall be a "final order;" accord, Dawson v. Bank of America, FCHR Order No. 07-069 (December 17, 2007), Toms v. Marion County School Board, FCHR Order No. 07-060 (November 7, 2007), and Jones v. Suwannee County School Board, FCHR Order No. 06-088 (September 11, 2006).

With this comment, 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 December 11, 2007. The document contains six numbered exceptions paragraphs.

Exceptions paragraph 1 takes issue with the Administrative Law Judge's finding in Findings of Fact paragraphs 23 and 24 that Respondent's belief that Petitioner had pierced the resident's ear was reasonable, indicating that the overwhelming evidence was that Petitioner did not pierce the ear of the resident.

A Commission panel has indicated, "The employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. Nix v. WLCY Radio / Rahall Communications, 738 F.2d 1181 (11th Cir. 1984)." Brown v. Florida Transportation Services, FCHR Order No. 06-014 (January 30, 2006).

This exception is rejected.

Exception paragraph number 2 takes issue with Conclusion of Law paragraph 31 dealing with the issue of "comparators" to the Petitioner. This issue applies to whether a prima facie case has been established, and is of no ultimate consequence in this case given the Administrative Law Judge's further conclusions that even if a prima facie case of discrimination had been established, Respondent presented a legitimate,

nondiscriminatory reason for firing Petitioner (Recommended Order, ¶ 32 and ¶ 33), and there was no showing that this reason was a pretext for discrimination (Recommended Order, ¶ 35).

This exception is rejected.

In Exceptions paragraphs 3, 4, 5, and 6, Petitioner takes issue with Conclusion of Law paragraph numbers 32, 34, 35, 36, and 40. Presumably, the exceptions are to the facts stated / found in each of these paragraphs, though the specific exception to each is not particularly clear from the exceptions document, in our view.

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). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

These exceptions are rejected.

Dismissal

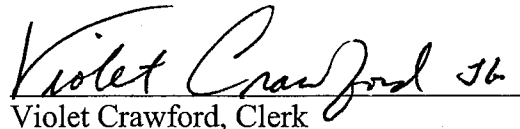
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26 day of February, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Gilbert M. Singer

Filed this 26 day of February, 2008,
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:

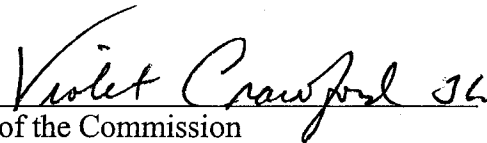
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P. Michael Ruff, Administrative Law Judge, DOAH

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 26 day of February, 2008.

By: 
Clerk of the Commission
Florida Commission on Human Relations