

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
08 FEB 14 AM 10:31
DIVISION OF
ADMINISTRATIVE
HEARINGS

JANNEL CHERRINGTON,

Petitioner,

v.

BARRY UNIVERSITY,
SNHS-ANESTHESIOLOGY,

Respondent.

EEOC Case No. 15D200603592

FCHR Case No. 2006-01744

DOAH Case No. 06-4648

FCHR Order No. 08-010

REM
Closed

JANNEL CHERRINGTON,

Petitioner,

v.

WOLVERINE ANESTHESIA
CONSULTANTS,

Respondent.

EEOC Case No. 15D200603593

FCHR Case No. 2006-01691

DOAH Case No. 06-4650

FCHR Order No. 08-010

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

This matter is before the Commission for re-consideration of the Recommended Order, dated June 1, 2007, issued in the above-styled consolidated cases by Administrative Law Judge Robert E. Meale.

Pursuant to notice, public deliberations were held on January 10, 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.

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, "Exceptions to Recommended Order by Petitioner," received by the Commission on June 19, 2007.

Petitioner's exceptions take issue with the facts found, facts not found and inferences drawn from the evidence presented.

Petitioner excepts to statements in Recommended Order, ¶ 5 and ¶ 12, that Petitioner "withdrew" from the program, arguing that Petitioner was dismissed from the program. It would seem that Petitioner's testimony on page 245 of Volume II of the transcript that she was "terminated" because she would not accept probation is sufficient for the Administrative Law Judge to draw the inference that Petitioner "withdrew."

Petitioner's exceptions to Recommended Order, ¶ 6 and ¶ 7, essentially suggest revision to or provide comment on facts found regarding the financial relationship of the Respondents.

Petitioner's exceptions to Recommended Order, ¶ 8, ¶ 9, ¶ 10, and ¶ 11, all relate to the inference drawn by the Administrative Law Judge that neither Respondent is Petitioner's employer.

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).

These exceptions are rejected.

Petitioner excepts to conclusions of law set out at Recommended Order, ¶ 17 through ¶ 23, all of which relate to the ultimate conclusion that Respondents are not Petitioner's "employer" and therefore Commission jurisdiction does not exist over Petitioner's claims of "employment" discrimination.

We have concluded that the Administrative Law Judge's application of the law to facts reflects a correct disposition of this issue.

These exceptions are rejected.

Petitioner excepts to the conclusions of law set out in Recommended Order, ¶ 26, which reflect that Respondents are not “persons” who could unlawfully discriminate against Petitioner under Section 760.10(5), Florida Statutes (2005), relating to discrimination against persons attempting to gain a licensure.

For reasons set out in “Respondents’ Joint Motion for Reconsideration of the Florida Commission on Human Relations’ Final Order Rejecting the Administrative Law Judge’s Recommended Order as to Jurisdiction Under Subsection 760.10(5), Fla. Stat. (2007),” this exception is rejected.

Dismissal

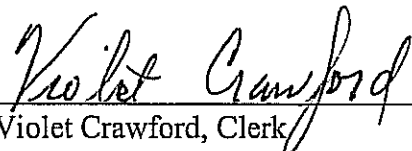
Having found that the Respondent did not bear a relationship to the Petitioner, as described in Section 760.10, Florida Statutes, that confers jurisdiction upon the Florida Commission on Human Relations to investigate Petitioner’s claims of racial discrimination under the Florida Civil Rights Act of 1992, Sections 760.01-760.11 and 509.092, Florida Statutes, FCHR Order No. 07-047 is hereby rescinded and the Petitions for Relief and Complaints 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 February, 2008.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Anice R. Prosser, Panel Chairperson;
Commissioner Shahrukh S. Dhanji; and
Commissioner Gilbert M. Singer

Filed this 13th day of February, 2008,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
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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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Robert E. Meale, Administrative Law Judge, DOAH

Wayne Knight, 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 February, 2008.

By: 
Clerk of the Commission
Florida Commission on Human Relations