

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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NORA E. BARTOLONE,

Petitioner,

v.

BEST WESTERN HOTELS,

Respondent.

EEOC Case No. 15DA600579

FCHR Case No. 2006-01609

DOAH Case No. 07-0496

FCHR Order No. 07-045

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Nora E. Bartolone 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 Best Western Hotels committed an unlawful employment practice on the basis of Petitioner's sex (female) by sexually harassing Petitioner, and on the basis of retaliation by terminating Petitioner for speaking out against the sexual harassment.

The allegations set forth in the complaint were investigated, and, on January 8, 2007, 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 March 26 and 27, 2007, in Bartow, Florida, before Administrative Law Judge T. Kent Wetherell, II.

Judge Wetherell issued a Recommended Order of dismissal, dated June 8, 2007.

Pursuant to notice, public deliberations were held on August 22, 2007, 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 letter sent to Commission Chief Legal Counsel, Cecil Howard, received by the Commission on June 15, 2007.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2006).

A review of Petitioner's exceptions document suggests that all matters discussed in the letter do not comply with this statutory provision.

Nevertheless, the letter does appear to take issue with facts found relating to whether Petitioner sought additional work after she was terminated by Respondent, and the appropriateness of the disciplinary write-ups Petitioner received. Further, in the letter, Petitioner specifically takes issue with Recommended Order, ¶ 67, which states that Petitioner is not entitled to any relief in this proceeding because she failed to prove her claims, and with Recommended Order, ¶ 68, which states that even if Petitioner proved her claims she would not be entitled to monetary damages because she affirmatively chose not to look for another job in an effort to bolster her claim for Social Security disability benefits.

With regard to the exceptions designated above, other than the exception to Recommended Order, ¶ 68, it is noted that 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 the Administrative Law Judge's conclusion in Recommended Order, ¶ 68, that Petitioner would not be entitled to relief even if she had proved her claims, this conclusion is of no consequence to this case, given the Administrative Law Judge's conclusions and findings that Petitioner did not prove her claims.

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 24th day of August, 2007.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Onelia A. Fajardo

Filed this 24th day of August, 2007,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

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:

Nora E. Bartolone
119 Alachua Drive Southeast
Winter Haven, FL 33884

Best Western Hotels
c/o Donald T. Ryce, Esq.
908 Coquina Lane
Vero Beach, FL 32963

T. Kent Wetherell, II, 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 24th day of August, 2007.

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