

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CATRINA SORIANO,)
)
 Petitioner,)
)
 vs.) Case No. 07-3029
)
 WALMART,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Upon due notice, a disputed-fact hearing was held in this case on October 1, 2007, in Tallahassee, Florida, before Ella Jane P. Davis, a duly-assigned Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Amy Harrison, Esquire
Lindsay A. Connor, Esquire
Ford & Harrison
225 Water Street, Suite 710
Jacksonville, Florida 32202

STATEMENT OF THE ISSUE

Whether Respondent Employer is guilty of an unlawful employment practice against Petitioner Employee.

PRELIMINARY STATEMENT

Because of the circumstances, those matters normally included in the Preliminary Statement will be included hereafter in the Findings of Fact.

FINDINGS OF FACT

1. On or about November 17, 2006, Petitioner filed an Employment Complaint of Discrimination (formerly known as a "Charge of Discrimination") on the basis of disability/handicap and national origin with the Florida Commission on Human Relations.

2. On June 15, 2007, the Commission entered a Determination: No Cause.

3. On or about July 2, 2007, Petitioner filed a Petition for Relief with the Commission.

4. On or about July 5, 2007, this case was referred by the Commission to the Division of Administrative Hearings.

5. On July 18, 2007, a telephonic conference was held to schedule a final disputed-fact hearing date. The hearing date agreed upon was October 1, 2007, and a Notice of Hearing and Order of Pre-hearing Instructions issued on July 18, 2007.

6. Neither party complied with the Order of Pre-hearing Instructions.

7. At the time noticed for October 1, 2007, Respondent appeared for hearing.

8. In the Joint Response to Initial Order, filed July 16, 2007, and in a subsequent Motion filed September 26, 2007, Respondent referred to itself as "Wal-Mart Stores, East L.P. (incorrectly referred-to in the caption as Wal-Mart Stores)," but made no motion to correct the style of this cause. Respondent acknowledged in its pleadings, and its counsel acknowledged orally at hearing, that it was the appropriate Respondent in this cause, regardless of the case's style.

9. After waiting 30 minutes, Petitioner still had not appeared for hearing.

10. The undersigned made diligent inquiry to ensure that Respondent had done nothing to discourage Petitioner from appearing, and closed the hearing.

CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause, pursuant to Sections 120.57(1), 120.569, and Chapter 760, Florida Statutes.

12. Petitioner bears the duty to go forward herein and the burden of proof established in Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 101 S. Ct. 1089, 67 L.Ed. 2d 207 (1981); and Hilburn v. Murata Electronics North America, Inc., 181 F.3d 1220 (11th Cir. 1999).

13. Petitioner has not borne that burden because she did not appear and put on any evidence.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Employment Complaint of Discrimination and a Petition for Relief.

DONE AND ENTERED this 3rd day of October, 2007, in Tallahassee, Leon County, Florida.



ELLA JANE P. DAVIS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of October, 2007.

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.