

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CORRINE HAMILTON,)
)
 Petitioner,)
)
 vs.) Case No. 07-3369
)
 FLORIDA STATE HOSPITAL,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice this cause came on for formal proceeding and hearing before P. Michael Ruff duly-designated Administrative Law Judge of the Division of Administrative Hearings in Quincy, Florida, on January 28, 2008. The appearances were as follows:

APPEARANCES

For Petitioner: Corrine Hamilton, pro se
440 South Cone Street
Quincy, Florida 32351

For Respondent: Jacqueline H. Smith, Esquire
Department of Children and
Family Services
Post Office Box 1000
Chattahoochee, Florida 32324-1000

STATEMENT OF THE ISSUE:

The issue to be resolved in this proceeding concerns whether the Respondent, Florida State Hospital, is an "employer"

as statutorily defined at Section 760.02(7), Florida Statutes (2007).

PRELIMINARY STATEMENT

This cause arose when the Petitioner filed a Complaint alleging discrimination based upon race, allegedly caused by her being terminated from her employment by Florida State Hospital. The complaint was filed on March 26, 2007. On July 7, 2007, a "Notice of Determination: No Jurisdiction" was entered by the Florida Commission on Human Relations (Commission). In that Notice of Determination the Commission found that the Respondent, Florida State Hospital was not the employer of the Petitioner during times pertinent to this proceeding, because the Respondent did not have sufficient control over the Petitioner and her duties in order to be deemed an employer, for purposes of the above-cited statute.

The Petitioner filed a Petition for Relief after entry of the Commission's Notice of Determination, on or about July 20, 2007, and the matter was ultimately referred to the Division of Administrative Hearings for formal proceeding.

A Motion for Summary Final Order was filed by the Respondent on July 31, 2007, asserting that the only issue in this case was the question of jurisdiction based upon the question of the Florida State Hospital's status as an alleged employer. The Administrative Law Judge assigned to the case at

that time, Suzanne F. Hood, entered an Order on that Motion dismissing the merits of the Petitioner's claim of racial discrimination and limiting evidence to be adduced at hearing to the question of jurisdiction. The matter was later transferred to the undersigned Administrative Law Judge before hearing.

The cause came on for hearing as noticed. The Petitioner testified on her own behalf and offered two exhibits which were admitted into evidence. The Respondent presented the testimony of two witnesses and offered one exhibit which was admitted into evidence. The parties were thereafter afforded the opportunity to submit proposed recommended orders which have been considered in the rendition of this Recommended Order.

FINDINGS OF FACT

1. Behavioral Health Solutions LLC is a private business entity (BHS). The Petitioner was employed by BHS as a clerk-typist beginning on October 6, 2006, and until February 6, 2007, when she was terminated.

2. BHS and the Department of Children and Family Services/Florida State Hospital entered into a contract on September 16, 2006, whereby BHS was to be responsible for providing staff for various positions for the provision of services to residents of Florida State Hospital. One of those positions was that occupied by the Petitioner, at times pertinent to this proceeding.

3. The contract provided that BHS would be responsible for hiring, transferring, promoting, discipline, and discharge/termination of BHS staff. BHS was also responsible for providing its staff with salaries, benefits, compensation packages and training.

4. BHS has its own organizational structure which was not integrated into that of the Respondent Florida State Hospital's organizational structure. The Respondent Florida State Hospital was charged with supervising BHS's staff and with recommendations where required, for disciplinary action or removal from the work site. BHS had the final authority to reassign, discipline or terminate BHS staff, however, by the terms of the contract.

5. The Petitioner was hired by BHS as of October 6, 2006. The offer of employment which she accepted came from BHS. The Petitioner was told later that she was terminated in February 2007 by Angie Burge, the BHS Human Resources Manager. The Petitioner's date of employment were October 6, 2006, through February 6, 2007.

6. The testimony of Angie Burge and Amy Bryant establishes that BHS employees such as the Petitioner, were trained by BHS. Ms. Bryant established through her testimony, as the Operations and Management Consultant for the Department of Children and Families (Department) that neither the Department nor Florida

State Hospital had controlling responsibility over employee relations matters regarding BHS's staff/employees, such as the Petitioner. Although she and Florida State Hospital worked in conjunction with Ms. Burge and BHS on employee training requirements, BHS employees, including the Petitioner, were trained by BHS and its staff.

7. BHS and the Respondent Florida State Hospital had a contract for BHS to provide staff for the forensic unit at Florida State Hospital, where the Petitioner was employed by BHS and the contract included the requirement that BHS operate that unit. At orientation, BHS provided its employees or new hires, including the Petitioner, all policies and procedures of BHS and trained them as to such policies and procedures. Ms. Burge, a BHS staff member, provided that training. BHS had authority to hire employees or to terminate them or discipline them and to make final decisions on the performance of the duties of the staff it hired, including the Petitioner. Florida State Hospital and the Department did not have final authority on such matters but could only recommend to BHS.

8. The salary and benefits plan of BHS was very different from that of Florida State Hospital. It was based upon the parent company's pay and benefits scheme, the parent company being Lakeview Center, Inc. The administrators of Florida State

Hospital did not have any decision-making authority in employee regulation, discipline, hiring, and termination decisions.

9. Ms. Burge, the BHS Human Resources Manager, made the decision and informed the Petitioner of her termination. The Petitioner has not presented persuasive evidence that Florida State Hospital had sufficient control over the terms and conditions of the Petitioner's employment, or the employment of other BHS staff members, so that such staff members, including the Petitioner, could be deemed employees of the Respondent.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2007).

11. The Petitioner has the ultimate burden of proof in this case. The Petitioner must show by a preponderance of evidence that the Respondent Florida State Hospital was the employer for the purposes of Section 760.02(7), Florida Statutes (2007). See § 120.57(1)(j), Fla. Stat. (2007) and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). See also McDonnell-Douglas Corporation v. Green, 411 U.S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) and Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991).

12. The Petitioner has not established by preponderant evidence that the Respondent Florida State Hospital was her employer within the meaning of Sections 760.02(7) and 760.10, Florida Statutes (2007).

13. Section 760.02(7), Florida Statutes, defines:

Employer is any person employing at least 15 persons during a specified.

In the instant case there is no dispute that the Respondent and BHS both employed at least 15 persons, but the Respondent does not otherwise meet the test to be employer of the Petitioner. In determining whether there is an employment relationship, the Eleventh Circuit applies a common law test. Cuddeback v. Florida Board of Education, 381 F.3d 1230, 1234 (11th Cir. 2004) ("under this test, the term 'employee' is construed in light of general common law concepts and should take into account the economic realities of the situation, viewed in light of the common law principles of agency and the right of the employer to control the employee.") (Quoting Cobb v. Sun Papers, Inc., 673 F.2d 337, 341 (11th Cir. 1982)). Some factors that may indicate control include "the authority to hire, transfer, promote, discipline or discharge; the authority to establish work schedules or direct work assignments; [and] the obligation to pay or the duty to train the charging party." Lyes v. City of Rivera Beach, 166 F.3d 1332, 1345 (11th Cir. 1999) (quoting Oaks

v. City of Fair Hope, 515 F. Supp. 1004, 1035 (So. Dist. Ala. 1981)). The preponderant, persuasive evidence in this case shows that the authority to hire, promote, discipline or discharge, to direct the nature of work assignments, the obligation to pay and the duty to train the Petitioner, all were the duties of BHS and not the Respondent. Thus, in applying the holdings by the Eleventh Circuit in the cases cited herein, it is apparent that BHS, in paying the salary of the Petitioner, training the Petitioner, having the authority to discipline, control the work assignments and ultimately the authority to terminate the Petitioner, renders BHS to be the employer of the Petitioner and not the Respondent Florida State Hospital and the Department. Accordingly, the Respondent was not the Petitioner's employer and there is no jurisdiction, therefore, for the Petitioner to bring the subject claim against the Respondent.

RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, the evidence of record, the candor and demeanor of the witnesses, and the pleadings and the arguments of the parties, it is, therefore,

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the Petition for Relief in its entirety due to lack of jurisdiction.

DONE AND ENTERED this 5th day of March, 2008, in
Tallahassee, Leon County, Florida.



P. MICHAEL RUFF
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2008.

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.