

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

JIMMY O. GATHERS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 07-4827  
 )  
 DEL-JIN, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER OF DISMISSAL

Pursuant to notice this cause came on for formal proceeding and hearing before P. Michael Ruff, a duly-designated Administrative Law Judge of the Division of Administrative Hearings in Panama City, Florida, on January 22, 2008. The appearances were as follows:

APPEARANCES

For Petitioner: No appearance

For Respondent: M. Kristen Allman, Esquire  
Oagletree, Deakins, Nash, Smoak &  
Stewart, P.C.  
100 North Tampa Street, Suite 3600  
Tampa, Florida 33062

STATEMENT OF THE ISSUE:

The issue to be resolved in this proceeding concerns whether the Petitioner, because of his race, was given different terms and conditions of employment by being denied training,

being unfairly disciplined, retaliated against, terminated, and, if those allegations are proven, what remedy is warranted.

PRELIMINARY STATEMENT

This cause arose upon the filing of a Charge of Discrimination on February 1, 2007, by the above-named Petitioner. After investigation the Florida Commission on Human Relations (Commission) made a Determination of "No Cause," after which the Petitioner exercised his right to file a Petition for Relief and to have the matter referred for formal proceeding to the Division of Administrative Hearings. The referral was made and the proceeding was ultimately assigned to the undersigned Administrative Law Judge.

The cause came on for hearing as noticed. The Petitioner failed to appear at the hearing, and no evidence was adduced in proof of the Petitioner's claims. The Petitioner bears the burden of proof and, therefore, inasmuch as no evidence was presented for the Petitioner, it was unnecessary for the Respondent to go forward with its case and evidence. After giving an ample opportunity for the Petitioner to appear and prosecute his claim, the hearing was adjourned.

FINDINGS OF FACT

1. The Petitioner, Jimmy O. Gathers, filed a Petition for Relief asserting that he was wrongfully terminated from his position with the Respondent employer and, before termination,

was subjected to inadequate and improper training, inadequate work materials, was unfairly disciplined, and was ultimately retaliated against and terminated, all because of his race (African-American). The cause was set for hearing on the Petition for Relief for January 22, 2008, at the Office of the Judges of Compensation Claims, hearing room two, 2401 State Avenue, Suite 100, Panama City, Florida, at 10:00 a.m. Central Time. The Notice of Hearing was sent to the Petitioner's last known address of record at 621 Maine Avenue, Panama City, Florida 32401, notifying the Petitioner of the hearing on the above date, time, and place. There was no communication from the Petitioner by motion, letter, telephonically, or otherwise indicating that the Petitioner had any difficulty which might prevent his attending the hearing at the noticed date, time, and place.

2. Upon convening the hearing, the Petitioner failed to appear. A substantial period of time was allowed to elapse, nearly one hour, in which the undersigned and the Respondent and Respondent's witnesses waited for the Petitioner to appear to put on his case. Additionally, various persons in attendance, Respondent's counsel and employees or personnel of the Respondent were requested and did observe within the building at the hearing site and in the immediate environs of the building to see if the Petitioner was observed in the vicinity of the

hearing site. The Petitioner was not observed in the environs of the hearing site and never appeared at the hearing during the additional time allowed him for his appearance. Finally, after waiting a substantial period of time, as referenced above, it was determined that the Petitioner had not appeared to prosecute his claim and, since the Petitioner bears the burden of proof in this proceeding, it was determined that it was unnecessary for the Respondent to adduce any evidence in support of its position in this case and the hearing was adjourned.

3. In excess of one month has elapsed since the hearing date, and there has been no communication from the Petitioner with the undersigned, and no indication from the Respondent that any communication from the Petitioner has been received by the Respondent, which might explain the Petitioner's absence from the noticed hearing.

#### CONCLUSIONS OF LAW

4. 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.

5. The Petitioner bears the burden of proof in this proceeding St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993). The Petitioner failed to appear and has failed to communicate with the undersigned and no indication from the Respondent has been received by the undersigned which would

indicate any effort by the Petitioner to communicate with the Respondent on the day of or since the day of the noticed hearing. The Petitioner bears the burden of proof in this proceeding to put on evidence probative of his claims regarding racial discrimination in the employment practices of the Respondent. The Petitioner failed to appear and put on such evidence. Therefore, the Respondent had no necessity to adduce evidence in support of its case. After waiting a substantial period of time, nearly an hour, with no appearance from the Petitioner, the hearing was adjourned. Inasmuch as no cause has been demonstrated by the Petitioner for his failure to appear and prosecute his claims, it is determined that the Petitioner has failed to prosecute his claim. Therefore, at this time, in excess of one month after the time and date set for hearing, this matter should be dismissed for lack of prosecution.

#### RECOMMENDATION

Having considered the foregoing Findings of Fact, Conclusions of Law, it is, therefore,

RECOMMENDED that a final order be entered by the Florida Commission on Human Relations dismissing the subject petition in its entirety.

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



---

P. MICHAEL RUFF  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 5th day of March, 2008.

COPIES FURNISHED:

Cecil Howard, General Counsel  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, Florida 32301

M. Kristen Allman, Esquire  
Oagletree, Deakins, Nash, Smoak &  
Stewart, P.C.  
100 North Tampa Street, Suite 3600  
Tampa, Florida 33062

Jimmy O. Gathers  
621 Marine Avenue  
Panama City, Florida 32401

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.