

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LATONIA M. ENZOR,)
)
 Petitioner,)
)
 vs.) Case No. 08-1227
)
 TALLAHASSEE CONTRACTORS, LLC,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

On April 23, 2008, a hearing was held in Tallahassee, Florida, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: Latonia Enzor, pro se
3535 Roberts Avenue, Number 274
Tallahassee, Florida 32310

For Respondent: Steve Ghazvini, Director
Tallahassee Contractors, LLC
662 Crossway Road
Tallahassee, Florida 32305

STATEMENT OF THE ISSUE

Whether Respondent is an employer as defined in Section 760.02(7), Florida Statutes.

PRELIMINARY STATEMENT

This case commenced with the filing of a complaint with the Florida Human Relations Commission (Commission) alleging an unlawful employment practice by her employer, Tallahassee

Contractors, LLC. On November 13, 2007, the Commission issued a Notice of Determination: No Jurisdiction and a Determination: No Jurisdiction (less than 15 employees). The basis for the Determination was that Tallahassee Contractors did not meet the definition of an employer as provided in Section 760.02(7), Florida Statutes.

On December 21, 2007, the Commission issued a Notice of Dismissal indicating again that dismissal was based upon the lack of jurisdiction because Respondent did not meet the definition of an employer. On February 22, 2008, the Commission issued a Rescission of Notice of Dismissal; Determination - No Jurisdiction and Notice of Determination - No Jurisdiction. The Rescission indicated that all three documents were rescinded and stated that the Determination and Notice of Determination - No Jurisdiction "was mailed by way of Certified Mail to an incorrect address and was therefore returned to the Commission as unclaimed on December 5, 2007." However, the Certificate of Filing and Service indicated "that a copy of the foregoing NOTICE OF DISMISSAL was filed at Tallahassee, Florida, and served upon the above-named addressees this 22nd day of February, 2008 by U.S. Mail."

On March 18, 2008, Petitioner filed a Petition for Relief with the Commission, which forwarded it to the Division of Administrative Hearings on March 12, 2008, for the assignment of an administrative law judge.

The case was duly noticed for hearing April 23, 2008. The Notice stated that the issue for hearing was limited to whether Respondent is an employer as defined in Section 760.02(7), Florida Statutes. The Notice also advised the parties that they shall arrange to have all witnesses and evidence present at the time and place for hearing, and that continuances would only be granted by order of the administrative law judge for good cause shown.

At hearing, both parties appeared. However, Petitioner did not present any witnesses and did not offer any exhibits. She indicated that one witness could testify for her if that witness could be reached by telephone, but had made no motion to request that he appear via telephone and had made no arrangements for the use of a notary. She then requested a continuance, which was denied. However, Petitioner was allowed one week to late file any exhibits she might have. Respondent elected to proceed and presented the testimony of Petitioner and Respondent's Exhibits numbered 1 through 8 were admitted into evidence.

On April 30, 2008, Petitioner filed what is construed as Petitioner's Proposed Recommended Order. Attached to the document were excerpts from letters and documents filed in Case No. 08-1229, with Petitioner's handwritten comments written on different pages. While Petitioner's Proposed Recommended Order refers to a Drug Free Workplace Policy, no such document is included. To the extent Petitioner is seeking to admit the

excerpts of pages from another case as exhibits in this case, said documents as submitted are not admissible.

On May 7, 2008, Respondent filed a letter which is construed as its Proposed Recommended Order. In it, Respondent advised that as of May 2, 2008, Respondent had received no supporting documentation from Petitioner. Based on the evidence presented and accepted, the following findings of fact and conclusions of law are found.

FINDINGS OF FACT

1. Petitioner, Latonia Enzor, was an employee of Tallahassee Contractors, LLC. While the exact dates of her employment are not in evidence, she was first paid by the company on December 29, 2006, and last paid on June 8, 2007.

2. Based upon federal tax returns submitted, for the July-September quarter of 2006, Tallahassee Contractors had nine employees. This tax return was signed by Frank Williams, as Manager member of the company.

3. For the October-December quarter of 2006, Tallahassee Contractors had nine employees. This tax return was signed by Frank Williams, as Manager member of the company.

4. For the January-March quarter of 2007, Tallahassee contractors had 9-11 employees. This tax return was signed by Frank Williams, as Manager member of the company.

5. For the April-June quarter of 2007, Tallahassee Contractors had 11 employees. This tax return was signed by Frank Williams, as Manager member of the company.

6. Each of the tax returns also listed Connie Fletcher as "an employee, a paid tax preparer, or another person [allowed] to discuss this return with the IRS." The Department of Revenue unemployment compensation return for the quarter ending March 31, 2007, also included an e-mail address for Ms. Fletcher at cfletcher@sandcofl.com. Sandco, Inc., is one of the companies Petitioner alleges is interrelated with Tallahassee Contractors. However, no evidence was presented to show what position Ms. Fletcher holds with either company.

7. No competent evidence was presented to show that Tallahassee Contractors had fifteen or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year. While Petitioner indicated her belief that more than fifteen employees existed, and felt that Tallahassee Contractors was affiliated with other companies, she admitted she did not know the nature of the business or how it operated. Her knowledge was limited to her job duties, i.e., driving a truck.

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

9. In order for the Florida Commission on Human Relations to have jurisdiction over Petitioner's complaint, Petitioner must demonstrate that Respondent is an employer as defined in Section 760.02(7), Florida Statutes. That is, Petitioner must show that Respondent employs "15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year." Fender v. Clinch County, 2008 U.S. LEXIS 2978, *5 (M.D. Ga. 2008); Lyes v. City of Riviera Beach, 166 F.3d 1332, 1334 (11th Cir. 1999). Petitioner has failed to meet this burden.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be entered dismissing Petitioner's Petition for Relief.

DONE AND ENTERED this 20th day of May 2008, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of May, 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.