

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ELLETON R. COLLINS,)
)
 Petitioner,)
)
 vs.) Case No. 08-1518
)
 DEPARTMENT OF BUSINESS AND)
 PROFESSIONAL REGULATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER OF DISMISSAL

On July 24, 2008, a hearing was held in Tallahassee, Florida, pursuant to the authority set forth in Sections 120.569 and 120.57(1), Florida Statutes (2007). The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: No appearance

For Respondent: J. Yvette Pressley, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2201

STATEMENT OF THE ISSUE

Whether Respondent has committed an unlawful employment practice in violation of Chapter 760, Florida Statutes, and if so, what remedy should be ordered?

PRELIMINARY STATEMENT

Because of the procedural nature of the findings in this case, the statements normally contained in the Preliminary Statement are reflected in the Findings of Fact below.

FINDINGS OF FACT

1. This case came before the Division of Administrative Hearings based upon the filing of a complaint alleging employment discrimination filed with the Florida Commission on Human Relations (The Commission). The Commission transmitted the complaint on March 27, 2008, for the assignment of an administrative law judge.

2. The case was originally assigned to Administrative Law Judge Diane Cleavinger, and the matter was set for hearing to be held June 3, 2008. On May 21, 2008, Respondent filed a Motion to Continue based upon the unavailability of a key witness. The motion alleged that Petitioner had been contacted, but "prefers to state whether he has any objection to this motion in writing."

3. On May 28, 2008, Judge Cleavinger granted the Motion to Continue and rescheduled the hearing for July 24, 2008. On June 3, 2008, Petitioner wrote a letter requesting to be heard on the request for continuance. Because his correspondence did not indicate that counsel for Respondent had been served, a Notice of Ex Parte Communication was filed. On June 12, 2008, a pre-hearing conference was conducted by telephone, and on July 14,

2008, Petitioner filed a Request for Recusal, which was granted July 16, 2008.

4. The case was reassigned to the undersigned and on July 24, 2008, the case proceeded to hearing as previously scheduled. At the outset of the hearing, counsel for the Department made an appearance. However, Petitioner was not present in the hearing room.

5. At the request of the administrative law judge, a representative for the Department checked the Division lobby to see whether Petitioner was present. A recess was taken to afford Petitioner an opportunity to appear.

6. During the recess, the clerk's office was consulted to confirm that staff had received no contact from Petitioner indicating he was on his way to the hearing.

7. After a twenty-five minute recess, the hearing was reconvened. Petitioner did not appear.

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 (2007).

9. Petitioner has the burden of demonstrating that he was the subject of an unlawful act of employment discrimination. Antel v. Department of Professional Regulation, 522 So. 2d 1056 (Fla. 5th DCA 1988); Florida Department of Transportation v.

J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health & Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

10. In light of Petitioner's failure to appear, he has failed to meet his burden in this proceeding.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered dismissing Petitioner's complaint of unlawful discrimination.

DONE AND ENTERED this 30th day of July, 2008, in Tallahassee, Leon County, Florida.



LISA SHEARER NELSON
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 30th day of July, 2008.

COPIES FURNISHED:

J. Yvette Pressley, Esquire
Department of Business and
Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-2202

Elleton R. Collins, Jr.
4768 Woodville Highway, No. 412
Tallahassee, Florida 32305

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

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

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.