

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

SHIRLEY JACKSON,

Petitioner,

v.

DOLLAR GENERAL CORPORATION,

Respondent.

EEOC Case No. 15D200800155

2010 SEP 10 A 11:40

FCHR Case No. 2007-02613

DIVISION OF
ADMINISTRATIVE
HEARINGS

DOAH Case No. 08-2570

FCHR Order No. 10-069

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Shirley Jackson filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2007), alleging that Respondent Dollar General Corporation committed an unlawful employment practice on the basis of Petitioner's disability by denying Petitioner a reasonable accommodation and terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on April 17, 2008, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Panama City, Florida, on October 1, 2008, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated January 9, 2009.

The Commission issued an Order Remanding Petition for Relief from an Unlawful Employment Practice (FCHR Order No. 09-022) on March 6, 2009, remanding the matter to the Administrative Law Judge to re-issue the Recommended Order using the correct address for Petitioner's counsel, starting anew Petitioner's time for filing exceptions.

Pursuant to the Commission's order, Judge Cleavinger issued an Amended Recommended Order of dismissal, dated March 11, 2009.

The Commission was unaware of the issuance of the Amended Recommended Order until July 6, 2010.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Amended Recommended Order.

Findings of Fact

We find the Administrative Law Judge's findings of fact to be supported by competent substantial evidence.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Amended Recommended Order with the Division of Administrative Hearings (rather than with the Commission), in a document entitled "Petitioner's Notice of Exceptions to the Recommended Order." Respondent subsequently filed "Respondent's Response to Petitioner's Notice of Exceptions to the Recommended Order," also with the Division of Administrative Hearings (rather than with the Commission).

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2007); see, also, Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that it does not fully comply with this statutory provision.

However, it can be said, generally, that the three numbered exceptions in Petitioner's exceptions document take issue with facts found, facts not found, and / or inferences drawn by the Administrative Law Judge from the evidence presented.

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999). Accord, Bowles v. Jackson County Hospital Corporation, FCHR Order No. 05-135 (December 6, 2005).

Further, it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010).

Based on the foregoing, Petitioner's exceptions are rejected.

Dismissal

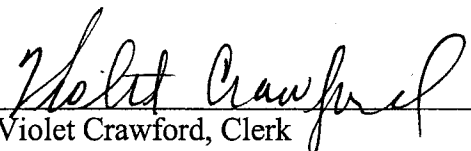
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 7th day of September, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Lizzette Gamero; and
Commissioner Watson Haynes, II

Filed this 7th day of September, 2010,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

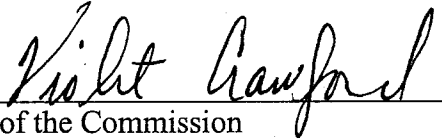
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Fisher & Phillips LLP
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Tampa, FL 33602

Diane Cleavinger, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 7th day of September, 2010.

By: 
Clerk of the Commission
Florida Commission on Human Relations