

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2009 AUG 27 A 10: 24

RONICA TUCKER,

EEOC Case No. 425200700800

Petitioner,

FCHR Case No. 2007-01673

v.

DOAH Case No. 08-3313

CRANE AEROSPACE AND
ELECTRONICS,

FCHR Order No. 09-080

Respondent.

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

Preliminary Matters

Petitioner Ronica Tucker filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2005), alleging that Respondent Crane Aerospace and Electronics committed unlawful employment practices on the bases of Petitioner's sex (female) and race (Black) by denying Petitioner opportunity to serve as an interim manager; by not selecting Petitioner to interview for a manager position; by not allowing Petitioner to apply for an open position; by not inviting Petitioner to attend recognition events nor receive recognition for her contributions; by writing-up Petitioner for a negative statement; by giving Petitioner an unsatisfactory performance evaluation; and by assigning Petitioner more work assignments than similarly situated quality engineers.

The allegations set forth in the complaint were investigated, and, on June 9, 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 Shalimar, Florida, on November 19 through 21, 2008, before Administrative Law Judge Robert S. Cohen.

Judge Cohen issued a Recommended Order of dismissal, dated June 3, 2009.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the 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 note that the Administrative Law Judge concluded that "a verbal corrective action does not...constitute an adverse employment action." Recommended Order, ¶ 101.

In a case in which an Administrative Law Judge concluded that the evidence did not support a finding that a verbal reprimand given a Petitioner was an adverse employment action, a Commission panel noted, "While we will not disturb these conclusions as made by the Administrative Law Judge within the circumstances of the facts of this case, we do note that these types of discipline can amount to an adverse employment action. See, generally, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583 (FCHR 1998).' Warren v. Department of Revenue, FCHR Order No. 04-152 (December 7, 2004)." Dey v. City of Kissimmee, FCHR Order No. 07-055 (October 12, 2007).

We further note that the Administrative Law Judge concluded, "[a] low performance rating is not an adverse action." Recommended Order, ¶ 104.

In conclusions of law adopted by a Commission panel an Administrative Law Judge concluded, "Petitioner did experience adverse employment actions when he received two written reprimands and a negative performance appraisal." Jones v. State of Florida Department of Transportation, 21 F.A.L.R. 2513, at 2531 (FCHR 1998).

Using the language of Dey, supra, while we will not disturb these conclusions as made by the Administrative Law Judge within the circumstances of the facts of this case, we note that verbal corrective actions and negative performance appraisals can amount to adverse employment actions.

With these comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner's Exceptions To The Recommended Order," received by the Commission on June 17, 2009.

Petitioner's exceptions document excepts to findings of fact paragraph numbers 28, 29, 35, 36, 44, and conclusion of law paragraph numbers 87, 92, 98, 109.

The indicated exceptions take issue with either facts found (28, 29, 35, 87, 92, 109), facts not found (98), inferences drawn from the evidence presented (28, 29, 35, 36, 44, 92, 109) and / or credibility determinations of the Administrative Law Judge (44) [references are to Recommended Order paragraph numbers].

With regard to Petitioner's exceptions to facts found, facts not found, inferences drawn from the evidence presented and credibility determinations, 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).

Petitioner's exceptions are rejected.

Dismissal

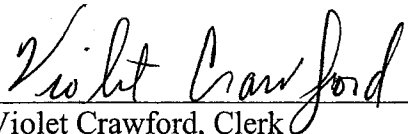
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26th day of August, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Onelia A. Fajardo

Filed this 26th day of August, 2009,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 200
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:

Ronica Tucker
c/o Bruce A. Minnick, Esq.
The Minnick Law Firm
Post Office Box 15588
Tallahassee, FL 32317-5588

Crane Aerospace and Electronics
c/o Marty Denis, Esq.
Barlow, Kobata & Denis
525 West Monroe Street, Suite 2360
Chicago, IL 60661

Robert S. Cohen, 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 26th day of August, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations