

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

2009 OCT 28 A 10:45

MELVIN WILLIAMS,

Petitioner,

v.

CONSULATE HEALTHCARE OF
TALLAHASSEE,

Respondent.

EEOC Case No. 15D200800490

FCHR Case No. 2008-01272

DOAH Case No. 08-4554

FCHR Order No. 09-097

DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Melvin Williams 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 Consulate Healthcare of Tallahassee committed unlawful employment practices on the basis of Petitioner's race (African American) by accusing Petitioner of not caring for patients and terminating Petitioner from employment for sleeping on the job.

The allegations set forth in the complaint were investigated, and, on July 30, 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 Tallahassee, Florida, on May 5, 2009, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated July 31, 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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Recommended Order in a 34-page document, received by the Commission on August 14, 2009. This document was treated by the Commission as an ex parte communication and was published and provided to Respondent in a Notice of Ex Parte Communication, issued by the Commission on September 4, 2009.

Petitioner's exceptions document contains exceptions to Recommended Order paragraph numbers 8, 9 and 19, and contains eight numbered paragraphs containing argument as to why the Commission should "re-examine the case."

Petitioner's exceptions to Recommended Order paragraphs 8, 9 and 19, appear to take issue with inferences drawn by the Administrative Law Judge from the evidence presented. The eight numbered paragraphs containing argument as to why the Commission should re-examine the case do not really except to the Recommended Order but rather presents Petitioner's view of how the case should be decided by the Commission.

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.

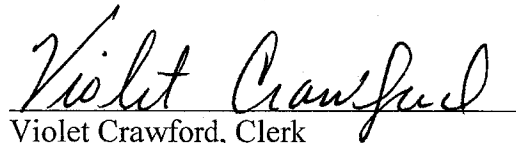
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

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 October, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Lizzette Gamero; and
Commissioner Billy Whitefox Stall

Filed this 26th day of October, 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:

Melvin Williams
Post Office Box 364
Lloyd, FL 32337

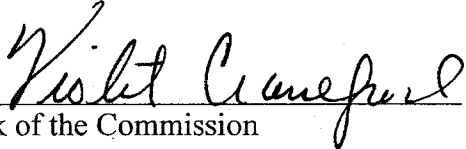
FCHR Order No. 09-097
Page 4

Consulate Healthcare of Tallahassee
c/o Ryan Scott Callen, Esq.
Foley & Lardner LLP
106 East College Avenue
Tallahassee, FL 32301

Ella Jane P. Davis, 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 October, 2009.

By: 
Clerk of the Commission
Florida Commission on Human Relations