

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

MAXITO FRANCOIS,

EEOC Case No. 510200802108

Petitioner,

FCHR Case No. 2008-02052

v.

DOAH Case No. 08-4874

MIAMI-DADE COUNTY, FLORIDA,

FCHR Order No. 09-050

Respondent.

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

Preliminary Matters

Petitioner Maxito Francois 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 Miami-Dade County Florida committed an unlawful employment practice on the bases of Petitioner's race (Black) and National Origin (Haitian) by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated by the Equal Employment Opportunity Commission.

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 by video teleconference at sites in Tallahassee and Miami, Florida, on January 23, 2009, before Administrative Law Judge Claude B. Arrington.

Judge Arrington issued a Recommended Order of dismissal, dated March 17, 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 Administrative Law Judge's Recommended Order in a document entitled "Petitioner's Exceptions to Recommended Order." This document was filed on March 26, 2009, with the Division of Administrative Hearings. While the exceptions document was sent to the Division of Administrative Hearings rather than the Commission, it was filed with the Division of Administrative Hearings within fifteen days after the issuance of the Recommended Order, and therefore is deemed timely filed. Accord, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), Lucas v. Department of Children and Family Services, FCHR Order No. 07-023 (March 12, 2007), Harris v. Lake County School District, FCHR Order No. 06-057 (June 20, 2006), Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

Petitioner excepts that paragraph 4 of the Recommended Order indicates that Petitioner was an employee of Respondent, seemingly taking issue with the lack of such a finding being inferred from the facts stated in paragraph 4. Petitioner excepts to paragraph 16 of the Recommended Order, seemingly taking issue with the relevance (or lack thereof) given evidence presented involving another individual other than Petitioner. Finally, Petitioner appears to except to the extent of credibility given by the Administrative Law Judge to the actions of Mr. Breaux in reporting Petitioner's inattentiveness while on duty, as set out in endnote 5 of the Recommended Order.

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

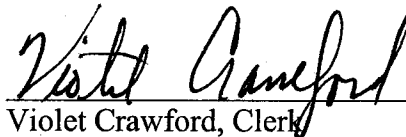
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 3rd day of June, 2009.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia A. Fajardo; and
Commissioner Anice R. Prosser

Filed this 3rd day of June, 2009,
in Tallahassee, Florida.



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Claude B. Arrington, 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 3rd day of June, 2009.

By:


Clerk of the Commission

Florida Commission on Human Relations