

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DEBRA L. PORTER,

Petitioner,

v.

DOCTORS' MEMORIAL HOSPITAL,

Respondent.

2010 JAN 14 A 10:36

EEOC Case No. 15D200800542

DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2008-01600

DOAH Case No. 08-6113

FCHR Order No. 10-005

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

Preliminary Matters

Petitioner Debra L. Porter 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 Doctors' Memorial Hospital committed an unlawful employment practice on the basis of Petitioner's disability by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on November 12, 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 July 20, 2009, before Administrative Law Judge Ella Jane P. Davis.

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

Exceptions

Petitioner filed exceptions to the Recommended Order in a document entitled "Petitioner's Written Exceptions to the Recommended Order of the ALJ," received by the Commission on November 13, 2009.

Petitioner's exceptions document contains three exceptions to the Recommended Order.

The first excepts to Recommended Order, paragraph 60, in which the Administrative Law Judge concluded that a prima facie case of discrimination had not been established. We note that the Administrative Law Judge further concluded that even if a prima facie case of discrimination had been established, discrimination was not ultimately proved to have occurred (Recommended Order, paragraph 61). Therefore, this exception is not dispositive of the case.

This exception is rejected.

The second excepts to a factual finding of the Administrative Law Judge in Recommended Order, paragraph 61, based on the evidence presented and the Administrative Law Judge's view of the evidence.

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).

Noting that we have found the facts to be supported by competent substantial evidence, this exception is rejected.

The third excepts to Recommended Order, paragraph 62, in which the Administrative Law Judge concludes that even if discrimination had occurred "Petitioner probably would be entitled to no award beyond job reinstatement..." We note that the Administrative Law Judge found that discrimination did not occur, and we have adopted the findings of fact and conclusions of law leading to that determination.

This exception is not dispositive of the case, and is 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 13th day of January, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Watson Haynes, II; and
Commissioner Mario M. Valle

Filed this 13th day of January, 2010,
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:

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c/o Mark Schellhause, Esq.
Akerman Senterfitt
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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 13th day of January, 2010.

By: 
Clerk of the Commission
Florida Commission on Human Relations