

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

SHERRI M. AKERS,

Petitioner,

v.

DEPARTMENT OF CORRECTIONS,

Respondent.

EEOC Case No. 15D200900029

FCHR Case No. 2008-02853

DOAH Case No. 09-1969

FCHR Order No. 10-015

FILED  
2009 MAR -1 P 12:27  
DIVISION OF ADMINISTRATIVE HEARINGS

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

Preliminary Matters

Petitioner Sherri M. Akers 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 Department of Corrections committed unlawful employment practices on the basis of Petitioner's sex (female / sexual harassment) and on the basis of retaliation. Specifically, Petitioner alleged that she had been sexually harassed, and retaliated against for complaining about the alleged harassment.

The allegations set forth in the complaint were investigated, and, on March 25, 2009, 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 Punta Gorda, Florida, on October 29, 2009, before Administrative Law Judge Daniel M. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated December 1, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human

Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008), Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

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 appears to have decided this case as a sex discrimination and retaliation case, rather than a sexual harassment case, even though sexual harassment appears to have been alleged as an unlawful employment practice in both the Complaint of Discrimination and Petition for Relief. Nevertheless, the conclusions of law set out at Recommended Order, paragraphs 38 and 39, suggest a finding / conclusion by the Administrative Law Judge that no sexual harassment occurred for which Respondent could legally be held liable.

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

#### Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

#### Dismissal

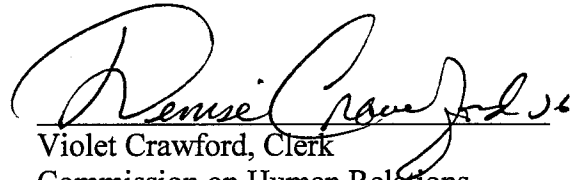
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26 day of FEBRUARY, 2010.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;  
Commissioner Onelia A. Fajardo; and  
Commissioner Watson Haynes, II

Filed this 26 day of FEBRUARY, 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:

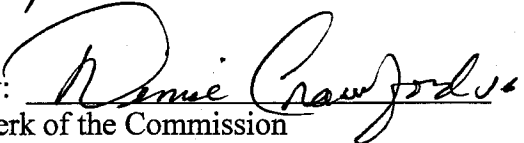
Sherri M. Akers  
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Davie, FL 33314

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c/o Scott Shevenell, Esq.  
2601 Blair Stone Road  
Tallahassee, FL 32399-2500

Daniel M. Kilbride, 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 26 day of FEBRUARY, 2010.

By:   
Clerk of the Commission  
Florida Commission on Human Relations