

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

GERALD L. BETTS,

Petitioner,

v.

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.

EEOC Case No. 15D200900028

FCHR Case No. 2008-02981

DOAH Case No. 09-2392

FCHR Order No. 10-007

FILED
2010 FEB 17 A 10:39
DIVISION OF
ADMINISTRATIVE
HEARINGS

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

Preliminary Matters

Petitioner Gerald L. Betts 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 Seminole County School Board committed unlawful employment practices by failing to accommodate Petitioner's handicap and by retaliating against Petitioner for requesting such accommodation.

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 Sanford, Florida, on August 27, 2009, before Administrative Law Judge William F. Quattlebaum.

Judge Quattlebaum issued a Recommended Order of dismissal, dated November 20, 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 "Notice of Exceptions," received by the Commission on or about December 4, 2009.

Petitioner's exceptions document is in the form of a letter to the Clerk of the Commission.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2007); see, also, Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that it does not comply with this statutory provision in all regards.

Nevertheless, it can be said that the document excepts to the Administrative Law Judge's conclusion that Petitioner was not disabled nor regarded as disabled by Respondent (See Recommended Order, paragraph 40).

We note that, at least in part because of this conclusion, the Administrative Law Judge concluded that Petitioner failed to establish a prima facie case of disability discrimination (Recommended Order, paragraph 44). We also note that the Administrative Law Judge concluded that even if a prima facie case of disability discrimination had been established, Respondent articulated a legitimate nondiscriminatory reason for terminating Petitioner from employment (Recommended Order, paragraph 47), and further concluded that there was no showing that this reason was a pretext for disability discrimination (Recommended Order, paragraph 48).

Consequently, even if the Administrative Law Judge had concluded Petitioner to be disabled or regarded as disabled by Respondent, the Administrative Law Judge further concluded that the ultimate result of the case is still that no unlawful employment practice occurred.

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 16th day of February, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Billy Whitefox Stall, Panel Chairperson;
Commissioner Lizzette Gamero; and
Commissioner Patty Ball Thomas

Filed this 16th day of February, 2010,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
209 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:

Gerald L. Betts
427 Sheoah Boulevard, Apartment 35
Winter Springs, FL 32708

Seminole County School Board
c/o Robert J. Sniffen, Esq.
Sniffen and Spellman, P.A.
211 East Call Street
Tallahassee, FL 32301

Seminole County School Board
c/o Serita D. Beamon, Esq.
Legal Service Department
400 East Lake Mary Boulevard
Sanford, FL 32773-7127

William F. Quattlebaum, 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 16th day of February, 2010.

By: Kristen Crawford
Clerk of the Commission
Florida Commission on Human Relations

427 Sheoah Blvd Apt 35
Winter Springs, FL 32708
407-327-8977
407-736-3900

Gerald L. Betts

Fax

To: Denise Crawford **From:** Gerald L Betts

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~~850-205-3004~~
488-5291

Pages: 1

Phone: 850-205-1996 **Date:** Dec 4,2009

Re: Notice of Exceptions **cc:** Robert Sniffen

Notes: Case Number 09-2392 2008-02981, 15D200900028

Notice of Exceptions
Florida Commissions on Human Relations
Denise Crawford

DOAH Case No 09-2392
Robert J. Sniffen Esquire

Dear Mrs. Crawford

My name is Gerald Betts; I had a DOAH hearing on August 27th, 2009. I am a former employee of the Seminole county school board. For 2 years I worked as a temp worker as a custodian at Indian Trails Middle School, A part-time position became available and I was offered the position. At the time I had a full time job at Westinghouse Electric, Co, and (Bought out by Siemens AG). They knew about my position and asked me if I was interested in the job, I said I would accept the job if I only worked the evening shift. As a condition of my employment I was told I would only be assigned to work that shift. I accepted the position under those conditions. With this witness I can prove that subsection 760.10 Florida Statutes 2008 that I do have terms of conditions or privilege of employment as stated on page 9 number 30-A.

I also have papers from Dr Shah the school boards worker compensation Doctor that states that I do have a 3% disability and that my loss of my since of smell and taste was caused by the chemical DMQ. Page 11 number 38 states that an individual is unable to perform a major life activity that the average person in the general population can perform. This is ruled a disability. The long term loss of my since to smell, and taste does fall under this ruling. I also have a witness that said the chemical DMQ was used in the school until the 2009 school year. Dr Shah also states in his letter that the chemical DMQ did cause my condition, and under the disabilities act of 2009 this type of life altering condition is considered a disability. I also settled a workers compensation claim with the school board that I was injured by the chemical DMQ. I also received a letter from the school board attorney Michael L Peterson stating that if I file a claim against the Spartan chemical company which makes the product DMQ that under Florida Statute 440.39 that I must notifies them of such actions. At the time of my hearing my witnesses never appeared, and I never had them subpoenaed, and I didn't really understand the exhibits. I have documents, and witness that will testify in my behalf. I pray that you will reconsider the final order of this hearing.

Gerald L Betts