

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2010 FEB 17 A 10:34
DIVISION OF
ADMINISTRATIVE
HEARINGS

MICHAEL OLACIREGUI,

EEOC Case No. 15D200900168

Petitioner,

FCHR Case No. 2009-00412

v.

DOAH Case No. 09-2963

FLORIDA HIGHWAY PATROL,

FCHR Order No. 10-010

Respondent.

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

Preliminary Matters

Petitioner Michael Olaciregui 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 Florida Highway Patrol 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 April 22, 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 by video teleconference at sites in West Palm Beach and Tallahassee, Florida, on September 15, 2009, before Administrative Law Judge June C. McKinney.

Judge McKinney issued a Recommended Order of dismissal, dated November 23, 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 Exceptions to Proposed Findings of Facts & Conclusion of Law," received by the Division of Administrative Hearings on or about December 8, 2009.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, and there may be an issue as to the timeliness of the filing, in an abundance of caution, the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

Petitioner's exceptions document takes issue with Recommended Order paragraph numbers 3, 5, 11, 12, and 24 through 32.

Petitioner's exceptions to Recommended Order paragraph numbers 3, 5, 11 and 12, take issue with the facts found and / or inferences drawn by the Administrative Law Judge from the evidence presented.

Petitioner's exceptions to Recommended Order paragraph numbers 24 through 32 take issue with the Administrative Law Judge's conclusion that Petitioner did not establish that he was disabled, and with the Administrative Law Judge's ultimate finding that Petitioner was not discriminated against on the basis of his disability.

We with regard to the Administrative Law Judge's conclusion that "Petitioner failed to prove that he suffers from a disability within the meaning of both Acts" (Recommended Order, paragraph 29), we note that the Administrative Law Judge concluded that even if Petitioner had established that he was disabled, Petitioner still failed to establish that he was discharged because of a disability (Recommended Order, paragraph 31).

With regard to Petitioner's exception to the ultimate finding that Petitioner was not discriminated against on the basis of disability, we note that it has been stated, "The ultimate question of the existence of discrimination is a question of fact." Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991).

Further, 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 contained in the Recommended Order to be supported by competent substantial evidence, Petitioner’s exceptions to Recommended Order paragraphs 3, 5, 11, 12, and 24 through 32, 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 (dissenting); and
Commissioner Patty Ball Thomas

Filed this 16th 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:

Michael Olaciregui
c/o Cathleen Scott, Esq.
Cathleen Scott, P.A.
Jupiter Gardens
250 South Central Boulevard, Suite 104-A
Jupiter, FL 33458

Florida Highway Patrol
c/o Sandra Coulter, Esq.
Neil Kirkman Building
2900 Apalachee Parkway, A432
Tallahassee, FL 32399-0504

June C. McKinney, 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: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations