

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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

MICHAEL JEFFRIES,

EEOC Case No. 15D200900169

Petitioner,

FCHR Case No. 2009-00415

v.

DOAH Case No. 09-3100

FLORIDA HIGHWAY PATROL,

FCHR Order No. 10-021

Respondent.

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

Preliminary Matters

Petitioner Michael Jeffries 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 30, 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 Lauderdale Lakes and Tallahassee, Florida, on October 2 and 21, 2009, before Administrative Law Judge Eleanor M. Hunter.

Judge Hunter issued a Recommended Order of dismissal, dated December 8, 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 December 23, 2009.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely-filed, and, consequently, 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 7, 8, 11, 12, 15, and 25.

In addition, Petitioner takes issue that certain facts were not found, specifically: (1) that Respondent had no policy requiring Petitioner to notify it as to his medical condition and treatment and Petitioner has committed no crime; (2) that Respondent exhibited animosity toward Petitioner; (3) that Respondent obtained Petitioner's medical information in an unlawful manner; and (4) that Petitioner had been wrongfully stigmatized by Respondent.

Petitioner's exceptions to Recommended Order paragraph numbers 7, 8, 11 and 12, simply identify the facts contained therein as "misleading."

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 to Recommended Order, paragraph numbers 7, 8, 11, and 12, are rejected.

Petitioner's exceptions to Recommended Order, paragraph numbers 15 and 25, take issue with the Administrative Law Judge's finding that Petitioner failed to prove he was terminated because he had a disability.

With regard to these exceptions, we note the role of the Administrative Law Judge set out above, Barr, supra, and also 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).

Petitioner's exceptions to Recommended Order, paragraph numbers 15 and 25, are rejected.

With regard to Petitioner's exceptions to the above-listed "facts not found," 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 numbers 23 and 25).

Petitioner's exceptions regarding facts not found 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 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:

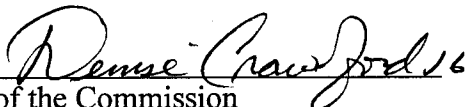
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Eleanor M. Hunter, Administrative Law Judge, DOAH

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