

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2010 MAR 19 A 11:39
DIVISION OF ADMINISTRATIVE HEARINGS

E. MORRIS COLEY,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2009-00885

v.

DOAH Case No. 09-3830

BAY COUNTY BOARD OF COUNTY
COMMISSIONERS,

FCHR Order No. 10-027

Respondent.

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

Preliminary Matters

Petitioner E. Morris Coley 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 Bay County Board of County Commissioners committed unlawful employment practices by failing to accommodate Petitioner's disability and by terminating Petitioner's employment. (The complaint form also contains checks in the boxes of "race" and "retaliation" as alleged bases of discrimination, but no particulars regarding these are provided in the body of the complaint. Further, the disability / handicap box is not checked.)

The allegations set forth in the complaint were investigated, and, on June 15, 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 Pensacola and Panama City, Florida, on September 29, 2009, before Administrative Law Judge Diane Cleavinger.

Judge Cleavinger issued a Recommended Order of dismissal, dated December 31, 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 Recommended Order." Respondent filed a response to these exceptions in a document entitled "Respondent's Response in Opposition to Petitioner's Exceptions to Recommended Order." Both documents and the arguments contained therein were considered by the Commission in determining its ruling on Petitioner's exceptions.

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).

Further, 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 excepts to the finding in Recommended Order, paragraph 7, that Respondent reasonably accommodated Petitioner and to the finding in Recommended Order, paragraph 28, that Respondent did not discriminate against Petitioner on the basis of handicap.

Petitioner excepts to Recommended Order, paragraph 8, in that the Administrative Law Judge failed to make a finding of fact thought appropriate by Petitioner.

Petitioner excepts to Recommended Order, paragraph 15, in that Petitioner appears to take issue with an inference drawn by the Administrative Law Judge from the evidence presented.

Petitioner excepts to Recommended Order, paragraphs 20, 21, and 34, in which the Administrative Law Judge finds Petitioner did not lose pay and benefits when he was transferred to the Solid Waste Attendant position, arguing that Petitioner did lose seniority benefits and status in the transfer. In our view, the Administrative Law Judge appears to acknowledge this in the findings in Recommended Order, paragraph 21.

Petitioner excepts to Recommended Order, paragraphs 23 and 24, in that Petitioner appears to take issue with inferences drawn by the Administrative Law Judge from the evidence presented.

Petitioner excepts to Recommended Order, paragraph 11, in that Petitioner appears to take issue with facts found from the testimony presented.

Petitioner excepts to Recommended Order, paragraphs, 7, 18, and 32, arguing that no interactive deliberative process took place prior to Respondent placing Petitioner in the Solid Waste Attendant position. In our view, there are findings on this issue made by the Administrative Law Judge at Recommended Order, paragraphs 19 and 20.

Petitioner excepts to Recommended Order, paragraph 33, in that Petitioner appears to take issue with facts found from the testimony presented.

Petitioner excepts to Recommended Order, paragraph 37, in that Petitioner appears to take issue with inferences drawn by the Administrative Law Judge from the evidence presented.

Petitioner excepts to Recommended Order, paragraphs 38 and 39, in that Petitioner takes issue with the Administrative Law Judge's conclusion that Petitioner did not prove that he was not accommodated.

Given the role of the Administrative Law Judge set out, above, and noting that we have found the facts contained in the Recommended Order to be supported by competent substantial evidence, Petitioner's exceptions are rejected.

Dismissal

This Order disposes of all motions pending before the Commission.

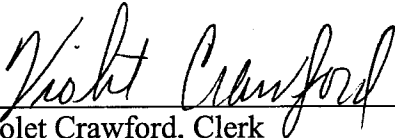
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 17th day of March, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Anice R. Prosser; and
Commissioner Mario M. Valle

Filed this 17th day of March, 2010,
in Tallahassee, Florida.



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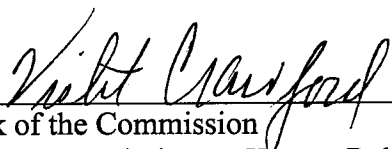
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Diane Cleavinger, Administrative Law Judge, DOAH

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 17th day of March, 2010.

By: 

Clerk of the Commission
Florida Commission on Human Relations