

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

CHERYL MASK-BROCKMAN,

Petitioner,

v.

FLORIDA STATE UNIVERSITY,

Respondent.

EEOC Case No. 15D200900349

FCHR Case No. 2009-00534

DOAH Case No. 09-4005

FCHR Order No. 10-023

FILED  
2009 MAR 19 A 11:39  
DIVISION OF  
ADMINISTRATIVE  
HEARINGS

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

Preliminary Matters

Petitioner Cheryl Mask-Brockman 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 State University committed unlawful employment practices on the basis of Petitioner's disability by discriminating against Petitioner and by creating a hostile work environment resulting in Petitioner's constructive discharge.

The allegations set forth in the complaint were investigated, and, on June 24, 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 Tallahassee, Florida, on October 21, 2009, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of dismissal, dated December 22, 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.

With regard to the Administrative Law Judge's conclusion of law that "[a]ny determination of a disability must take into account any remedial measures, such as medication or surgery that correct the impairment" (Recommended Order, paragraph 26), we note that the effective date of the ADA Amendments Act of 2008, containing language to the contrary, is January 1, 2009, and that all alleged discriminatory acts in the instant case took place before that date and that, therefore, that Act is not applicable to the events of this case. Accord, Lytes v. D.C. Water and Sewer Authority, 572 F.3<sup>rd</sup> 936 (C.A.D.C. 2009). Consequently, the indicated conclusion of law is correct as it applies to this case.

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

### Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in two documents received by the Commission on December 29, 2009 and December 31, 2009, respectively. The earlier-filed document is identified as "an exception," and the later-filed document is entitled, "New Proposal."

There is no indication on these documents that they were provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the documents to the Respondent, and placed the documents in the record of this case, through the issuance of a Notice of Ex Parte Communications, mailed to the parties on January 28, 2010.

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 documents suggest that they do not comply with this statutory provision in all regards.

Nevertheless, it can be said that the documents take issue with facts found, facts not found, and inferences drawn from the evidence presented, as well as take issue with the Administrative Law Judge's ultimate finding that no unlawful discrimination occurred in this case.

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

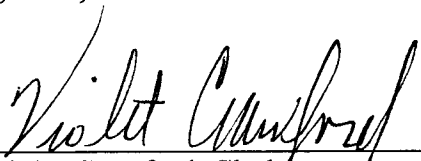
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 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.

  
\_\_\_\_\_  
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:

Cheryl Mask-Brockman  
536 West 5<sup>th</sup> Avenue  
Tallahassee, FL 32303

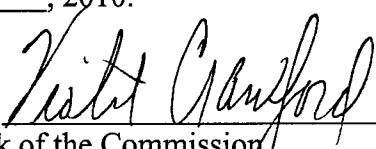
Florida State University  
c/o Brian F. McGrail, Esq.  
424 Westcott Building  
222 South Copeland Street  
Tallahassee, FL 32306

Suzanne F. Hood, 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