

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SCOTT A. ROBERTS,

2010 JUN 25 A 11: 29

EEOC Case No. 510200902612

Petitioner,

DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2009-01372

v.

DOAH Case No. 09-4131

CITY OF APOPKA, FLORIDA,

FCHR Order No. 10-054

Respondent.

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

Preliminary Matters

Petitioner Scott A. Roberts 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 City of Apopka, Florida, committed an unlawful employment practice on the basis of Petitioner's disability by declining to re-hire Petitioner to the position of Engineer-Paramedic.

The allegations set forth in the complaint were investigated, and, on June 26, 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 Apopka, Florida, on February 3, 2010, before Administrative Law Judge Jeff B. Clark.

Judge Clark issued a Recommended Order of dismissal, dated April 20, 2010.

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 Administrative Law Judge's Recommended Order in a document entitled "Amended Exceptions to Recommended Order Dated April 20, 2010," received by the Commission on April 30, 2010. The document contains 11 numbered exceptions. We note that two of the exceptions are numbered "5," and two are numbered "7."

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). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010).

Exception 1 does not except to the Recommended Order, but rather expresses concern over whether certain documents have been included in the record. In response to this exception we note that the proposed recommended orders and statements of the case of both Petitioner and Respondent are part of the record of this matter. We further note that the Recommended Order does not reflect that Petitioner's exhibits Q1-24 and R were admitted into evidence.

Exception 2 expresses concern over the Administrative Law Judge's handling of the causes of action before the Administrative Law Judge for decision. As noted in the Statement of the Issues section of the Recommended Order, the issue before the Administrative Law Judge was whether an unlawful employment practice occurred under the Florida Civil Rights Act of 1992.

This exception is rejected.

Exception 3 purports to except to the findings of fact set out at Recommended Order, ¶ 4, but actually states no exception to the findings.

This exception is rejected.

Exception 4 purports to except to the findings of fact set out at Recommended Order, ¶ 5, that “Dr. Portnoy determined that Petitioner ‘was not qualified to be a firefighter for the City of Apopka.’” Instead, the exception appears to take issue with the validity of Dr. Portnoy’s determination.

This exception is rejected.

The first exception 5 purports to except to the findings of fact set out at Recommended Order, ¶ 6, but actually contains legal argument rather than excepting to the facts contained therein.

This exception is rejected.

The second exception 5 purports to except to findings of fact set out at Recommended Order, ¶ 7, but actually contains legal argument rather than excepting to the facts contained therein.

This exception is rejected.

Exception 6 takes issue with facts found and inferences drawn by the Administrative Law Judge from the evidence presented set out at Recommended Order, ¶ 8.

This exception is rejected, given the role of the Administrative Law Judge set out in Barr, supra.

The first exception 7 purports to except to the finding of fact set out at Recommended Order, ¶ 9, but actually supports the finding contained therein.

This exception is rejected.

The second exception 7 purports to except to conclusions of law set out at Recommended Order, ¶ 12 through ¶ 15. These paragraphs contain a statement of part of the law applicable to the case, but Petitioner’s exception seems to take issue with the subsequent application of the law by the Administrative Law Judge. We see no errors of law in Recommended Order, ¶ 12 through ¶ 15.

This exception is rejected.

Exception 8 purports to except to conclusions of law set out at Recommended Order, ¶ 16 through ¶ 20. These paragraphs contain a statement of part of the law applicable to the case, but Petitioner’s exception seems to take issue with the subsequent application of the law by the Administrative Law Judge. We see no errors of law in Recommended Order, ¶ 16 through ¶ 20.

This exception is rejected.

Exception 9 appears to take issue with the Administrative Law Judge’s conclusion that Petitioner failed to establish one of the elements of a prima facie case, that Petitioner was qualified to do the job in question. Even if this exception was granted, the outcome of the case would not change, given the Administrative Law Judge’s conclusion that Respondent demonstrated a legitimate, nondiscriminatory reason for not hiring Petitioner. Recommended Order, ¶ 21.

This exception is rejected.

Dismissal

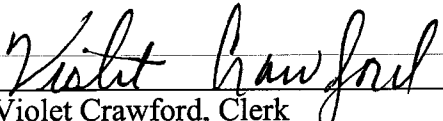
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 24th day of June, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Joanna Cunningham; and
Commissioner Mario M. Valle

Filed this 24th day of June, 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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Post Office Box 536636
Orlando, FL 32853-6636

Jeff B. Clark, 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 24th day of June, 2010.

By: *Violet Crawford*
Clerk of the Commission
Florida Commission on Human Relations
