

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PETER R. GARCIA,

2010 AUG 11 A 11: 07

EEOC Case No. NONE

Petitioner,

DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2009-01521

v.

DOAH Case No. 09-5888

HEART OF FLORIDA MEDICAL
CENTER,

FCHR Order No. 10-061

Respondent.

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

Preliminary Matters

Petitioner Peter R. Garcia 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 Heart of Florida Medical Center committed unlawful employment practices on the basis of Petitioner's disability by failing to accommodate Petitioner's disability and by suspending Petitioner.

The allegations set forth in the complaint were investigated, and, on September 30, 2009, the Executive Director issued his "Determination: No Jurisdiction," finding that the Commission lacked jurisdiction over the allegations of the complaint.

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 Orlando, Florida, on April 16, 2010, before Administrative Law Judge Susan B. Harrell, on the issue of whether the Commission had jurisdiction over Petitioner's claims of discrimination.

Judge Harrell issued a Recommended Order of dismissal, dated May 21, 2010, recommending that the Commission issue a final order dismissing the Petition for Relief for lack of jurisdiction.

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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the

Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008), Beach-Gutierrez v. Bay Medical Center, FCHR Order No. 05-011 (January 19, 2005), and Waaser v. Streit's Motorsports, FCHR Order No. 04-157 (November 30, 2004).

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 "Petitioner's Exceptions to the Recommend (sic) Order." The document was filed with the Division of Administrative Hearings on June 3, 2010.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and 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.

While Petitioner's exceptions document takes issue with arguments attributed to Respondent by Petitioner, the document's exception to the Recommended Order appears to be an exception to the Administrative Law Judge's conclusion of law that "[Petitioner's] contention that the granting of hospital privileges is covered by subsection 760.10(5), Florida Statutes, is incorrect." Recommended Order, ¶ 9.

We have adopted the Administrative Law Judge's conclusions of law, above, and agree with the Administrative Law Judge's statement as to the application of Section 760.10(5), Florida Statutes, to the facts of this case. See Recommended Order, ¶ 8, ¶ 9, ¶ 10, and ¶ 11.

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 10th day of August, 2010.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Michael G. Keller (dissenting)

Filed this 10th day of August, 2010,
in Tallahassee, Florida.



Violet Crawford, Clerk
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Susan B. Harrell, 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 10th day of August, 2010.

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