

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DEBORAH ALEXANDER, 2011 APR 14 P 12:32 EEOC Case No. 15D201000132

Petitioner,

DIVISION OF
ADMINISTRATIVE
HEARINGS

FCHR Case No. 2010-00412

v.

DOAH Case No. 10-6215

HEALTH CENTRAL HOSPITAL,

FCHR Order No. 11-035

Respondent.

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

Preliminary Matters

Petitioner Deborah Alexander 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 Health Central Hospital committed unlawful employment practices: (1) by failing to accommodate Petitioner's alleged disability; and (2) based on Petitioner's age (DOB: 1-10-61), by failing to appoint Petitioner to positions for which she had applied.

The allegations set forth in the complaint were investigated, and, on June 16, 2010, 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 Orlando and Tallahassee, Florida, on December 9, 2010, before Administrative Law Judge Claude B. Arrington.

Judge Arrington issued a Recommended Order of dismissal, dated February 1, 2011.

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

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Respondent's Exceptions to Recommended Order," received by the Commission on February 16, 2011.

Respondent excepts to the conclusions of law set out at Recommended Order paragraphs 44 and 45 in which the Administrative Law Judge rejects Respondent's request that it be awarded attorney's fees and costs pursuant to Section 120.595, Florida Statutes.

The Administrative Procedure Act indicates that an agency issuing a final order may reject or modify conclusions of law over which the agency has substantive jurisdiction. Section 120.57(1)(l), Florida Statutes (2009).

In addition, the Administrative Procedure Act indicates that the awarding of attorney's fees and costs pursuant to Section 120.595, Florida Statutes, is within the purview of the Administrative Law Judge. See Section 120.595(1)(b) through (d), Florida Statutes (2009).

A Commission panel has concluded that the Commission does not have "final order" authority over an award of attorney's fees and costs pursuant to Section 120.595(1), Florida Statutes. See Assante v. Windsor Place at Berkshire (Lakes), FCHR Order No. 08-083 (November 24, 2008), citing G.E.L. Corporation v. Department of Environmental Protection, et al., 875 So. 2d 1257 (5th DCA 2004), supporting the position that an agency is powerless to correct possible errors made by an Administrative Law Judge in the awarding of attorney's fees pursuant to Section 120.595(1), Florida Statutes, because entitlement to such an award is not a conclusion of law within the substantive jurisdiction of the agency.

Based on the foregoing, Respondent's exceptions are rejected.

Dismissal

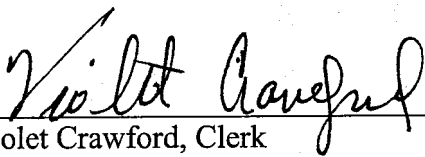
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 13th day of April, 2011.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Elena Flom; and
Commissioner Billy Whitefox Stall

Filed this 13th day of April, 2011,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
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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Winter Park, FL 32789

Claude B. Arrington, 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 13th day of April, 2011.

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