STATE OF FLORIDA COMMISSION ON HUMAN RELATIONS

SIMON ROWLAND.

2011 JUN 29 A 11: 04

EEOC Case No. 15D201000492

Petitioner,

MIVISION OF ADMINISTRATIVE

FCHR Case No. 2010-01859

v.

HEARINGS

DOAH Case No. 11-0562

WINN DIXIE.

FCHR Order No. 11-054

Respondent.

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Simon Rowland filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2009), alleging that Respondent Winn Dixie committed an unlawful employment practice on the basis of Petitioner's disability by discharging Petitioner and refusing to allow Petitioner to return to work after Petitioner's return from medical leave.

The allegations set forth in the complaint were investigated, and, on January 6, 2011, 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 Winter Haven, Florida, on April 7, 2011, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben issued a Recommended Order of dismissal, dated April 19, 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

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, Mack v. Agency for Persons with Disabilities, FCHR Order No. 11-026 (March 17, 2011), Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008), BeachFCHR Order No. 11-054 Page 2

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

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

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, <u>Florida Statutes</u>, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND	ORDERED this	28 th	_ day of	June	, 2011.
FOR THE FI	ORIDA COMMI	ISSION	I ON HUM	IAN RELAT	IONS:

Commissioner Mario M. Valle, Panel Chairperson; Commissioner Lizzette Romano; and Commissioner Darcell Streeter

Filed this	28 th	_ day of	June	, 2011,
in Tallahas	ssee, Fl	orida.		

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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:

Simon Rowland 5936 Silver Fox Drive Winter Haven, FL 33884

Winn Dixie c/o Cherie L. Silberman, Esq. Costangy, Brooks & Smith, LLP 100 North Tampa Street, Suite 3350 Post Office Box 1840 Tampa, FL 33601-1840

R. Bruce McKibben, 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 <u>28th</u> day of <u>June</u>, 2011.

Clerk of the Commission

Florida Commission on Human Relations