

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KEITH A. GALLOWAY,

EEOC Case No. 15D201100120

Petitioner,

FCHR Case No. 2011-00240

v.

DOAH Case No. 11-4558

G-FORCE / WACKENHUT CORP.,

FCHR Order No. 13-053

Respondent.

**FINAL ORDER AWARDING AFFIRMATIVE RELIEF
FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Keith A. Galloway filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2010), alleging that Respondent, G4S Secure Solutions, f/k/a The Wackenhut Corporation, committed an unlawful employment practice on the basis of Petitioner's handicap by failing to provide Petitioner a reasonable accommodation for his disability in the job assignment given to Petitioner.

The allegations set forth in the complaint were investigated, and, on June 27, 2011, the Executive Director issued a determination finding that there was 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 on June 28 and 29, 2012, in Pensacola, Florida, before Administrative Law Judge James H. Peterson, III.

Judge Peterson issued a Recommended Order, dated November 30, 2012, recommending that the Commission find that an unlawful employment practice occurred and recommending affirmative relief.

The Commission issued an "Interlocutory Order Awarding Affirmative Relief from an Unlawful Employment Practice and Remanding Case to Administrative Law Judge for Issuance of Recommended Order Regarding Amounts of Attorney's Fees and Costs Owed Petitioner and Regarding Petitioner's Entitlement to Recover Incurred Medical Expenses," FCHR Order No. 13-010, dated February 6, 2013.

Judge Peterson issued a "Recommended Order After Remand," dated May 22, 2013, recommending the Commission issue a final order awarding the relief set out in paragraphs (1) and (2) of the "Affirmative Relief and Remand" section of its previously

issued FCHR Order No. 13-010, but denying recovery for attorney's fees, costs, and medical expenses incurred.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order After Remand.

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 note that in footnote 3 of the Recommended Order After Remand the Administrative Law Judge again concludes, as was concluded in the Recommended Order issued in this matter, that relief for claims of "medical expenses" should not be available in this administrative proceeding.

We again adopt by reference the position taken by the Commission on this issue as it is set out in the "Conclusions of Law" section of FCHR Order No. 13-010, issued previously in this matter.

With this comment, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Upon receiving an extension of time to file exceptions to the Administrative Law Judge's Recommended Order After Remand, Petitioner filed "Petitioner's Exceptions to Recommended Order After Remand," received by the Commission on June 14, 2013. Respondent subsequently filed "Respondent's Response to Petitioner's Exceptions to Recommended Order After Remand," received by the Commission on June 24, 2013.

Petitioner's exceptions document excepts to the Administrative Law Judge's conclusion that Petitioner, who is represented by a "qualified representative" licensed to practice law in Alabama but not Florida, is not entitled to an award of attorney's fees. Petitioner also excepts to the Administrative Law Judge's conclusion that the evidence submitted by Petitioner is insufficient to show a causal connection between Petitioner's injuries for which he claims medical expenses and Respondent's discrimination.

With regard to attorney's fees, fees for non-attorney qualified representatives are not allowed if the statute under which fees are sought does not specifically provide for them. See State of Florida, Department of Insurance v. Florida Bankers Association, et al., 764 So. 2d 660 (Fla. 1st DCA 2000).

With regard to Petitioner's claim for medical expenses, it cannot be said that the Administrative Law Judge's findings with regard to this issue are not supported by competent substantial evidence.

Petitioner's exceptions are rejected.

Affirmative Relief

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we adopt the recommendations of the Administrative Law Judge for the disposition of the issues before him leading to the issuance of the "Recommended Order After Remand."

We note that Respondent has already been ordered by FCHR Order No. 13-010:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner; and

(2) to pay Petitioner \$4,595.61 in back pay through the date of the Recommended Order (November 30, 2012), plus \$180.22 per month thereafter through the date of FCHR Order No. 13-010 (February 6, 2013), with interest accruing on the total amount at the applicable statutory rate upon the date of FCHR Order No. 13-010, as recommended by the Administrative Law Judge.

We also note that through our adoption of the Administrative Law Judge's recommendations in the "Recommended Order After Remand," it is concluded Petitioner has not proved entitlement to recovery for attorney's fees, costs, or medical expenses.

Respondent is hereby ORDERED:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner;

(2) to pay Petitioner \$4,994.67 in back pay (\$4,595.61 through November 30, 2012, plus \$180.22 for December 2012, plus \$218.84 for January 1 through February 6, 2013); and

(3) to pay Petitioner interest on the back pay award in the amount of \$403.18 (an Appendix to this order sets out how this amount has been computed).

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 19th day of August, 2013.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia Fajardo-Garcia; and
Commissioner Michell Long

Filed this 19th day of August, 2013,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

APPENDIX – Interest Computation

<u>year</u>				<u>annual interest</u>
2010			adj. int. rate using 6% base	
	\$450.55	x	.0102 [.06 x .17 of a year]	= \$4.60
2011	12mos. x \$180.22		2010	
	\$2,162.64	+	\$450.55 = \$2613.19 x .057*	= \$148.95
2012	12mos. x \$180.22		2010/2011	
	\$2,162.64	+	\$2,613.19 = \$4,775.83 x .0475	= \$226.85
2013	1mo. + .21/mo. @ \$180.22/mo.		2010/2011/2012	
	\$218.84	+	\$4,775.83 = \$4,994.67 x (.0475 x .096 of a year)	= <u>\$22.78</u>
Total Interest				\$403.18

* 9mos. @ .06, 3mos @ .0475 = .057 [.75 x .06 = .045; .25 x .0475 = .012; .045 + .012 = .057]

Copies furnished to:

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James H. Peterson, III, 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 19th day of August, 2013.

By: _____/s/_____
Clerk of the Commission
Florida Commission on Human Relations