

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ANNE BOLAND,

Petitioner,

v.

DIVISION OF EMERGENCY
MANAGEMENT,

Respondent.

MICHAEL YOUNGER,

Petitioner,

v.

DIVISION OF EMERGENCY
MANAGEMENT,

Respondent.

EEOC Case No. NONE

FCHR Case No. 2011-01065

DOAH Case No. 11-5198

FCHR Order No. 12-018

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DOAH Case No. 11-5199

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

Preliminary Matters

Petitioner Anne Boland 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 Division of Emergency Management committed an unlawful employment practice on the bases Petitioner's sex (female) and marital status (separated) by constructively discharging Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on September 7, 2011, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner Michael Younger filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, 760.01 - 760.11, Florida Statutes (2009), alleging that Respondent Division of Emergency Management committed an unlawful employment practice on the bases of Petitioner's sex (male) and marital status (separated) by constructively discharging Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on September 8, 2011, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioners filed Petitions for Relief and the cases were transmitted to the Division of Administrative Hearings for the conduct of formal proceedings.

The Division of Administrative Hearings consolidated the cases for the purposes of final hearing and the issuance of a Recommended Order.

An evidentiary hearing was held in Tallahassee, Florida, on December 12 and 13, 2011, before Administrative Law Judge E. Gary Early.

Judge Early issued a Recommended Order of dismissal, dated January 26, 2012.

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 "Agency's Exceptions to Recommended Order and Supporting Legal Arguments," received by the Commission on February 10, 2012.

The document excepts to the Administrative Law Judge's finding / conclusion that the Petitioners were constructively discharged, as set out in footnote 3 of the Recommended Order, contending that this finding / conclusion is not supported by competent substantial evidence.

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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011).

In our view, the testimony presented at pages 53 through 55 and 67 through 70 of Volume 1 of the transcript of the proceedings for December 12, 2011, supports the excepted-to finding / conclusion.

Respondent’s exceptions are rejected.

Dismissal

The Petitions for Relief and Complaints 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 23rd day of April, 2012.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Michael Keller

Filed this 23rd day of April, 2012,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
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E. Gary Early, 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 23rd day of April, 2012.

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