

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

SHEKITA HILL,

EEOC Case No. 511201200281

Petitioner,

FCHR Case No. 2012-00364

v.

DOAH Case No. 12-0886

GOGA BAP CORPORATION, d/b/a
SUBWAY STORE NO. 13268,

FCHR Order No. 13-023

Respondent.

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

Preliminary Matters

Petitioner Shekita Hill filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2011), alleging that Respondent Goga Bap Corporation, d/b/a Subway Store No. 13268, committed unlawful employment practices on the basis of retaliation for Petitioner having filed an earlier discrimination complaint by reducing the number of hours Petitioner was assigned to work and by providing false information that disqualified Petitioner from receiving government assistance.

The allegations set forth in the complaint were investigated, and, on February 28, 2012, the Executive Director issued a 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 Lakeland, Florida, on October 24, 2012, before Administrative Law Judge Thomas P. Crapps.

Judge Crapps issued a Recommended Order of dismissal, dated January 7, 2013.

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.

The Administrative Law Judge concluded, "The facts show that [Respondent] did not have more than 15 employees in the 20 or more calendar weeks for the Subway franchise where [Petitioner] worked... Thus, [Petitioner] has failed to bring forward evidence showing that jurisdiction exists under the FCRA." Recommended Order, ¶ 13.

We note that whether a Respondent has the requisite number of employees to be governed by the Florida Civil Rights Act of 1992 is not a jurisdictional issue, but rather is an element of Petitioner's claim for relief, which, in the instant case, the Administrative Law Judge appears to conclude that Petitioner failed to prove, as indicated above. See Prince v. Blanton Plumbing / Douglas Blanton, FCHR Order No. 13-007 (February 6, 2013), citing Kaplan v. Lappin and the Palm Beach Pops, Inc., 2010 U.S. Dist. LEXIS 73004 (S.D. Fla. 2010).

With this comment, 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, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 11th day of March, 2013.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 11th day of March, 2013,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
Commission on Human Relations
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Tallahassee, FL 32301
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Copies furnished to:

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Goga Bap Corporation, d/b/a
Subway Store No. 13268
c/o Matthew D. Westerman, Esq.
Blalock Walters, P.A.
802 11th Street West
Bradenton, FL 34205

Thomas P. Crapps, 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 11th day of March, 2013.

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