

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

TYSHOAN WILCOX,

EEOC Case No. 510201200168

Petitioner,

FCHR Case No. 2012-00697

v.

DOAH Case No. 12-2302

COASTAL HEALTHCARE,

FCHR Order No. 13-008

Respondent.

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

Preliminary Matters

Petitioner Tyshoan Wilcox 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 Coastal Healthcare committed unlawful employment practices by unlawfully retaliating against Petitioner.

The allegations set forth in the complaint were investigated, and, on June 8, 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 by video teleconference at sites in Daytona Beach and Tallahassee, Florida, on September 19, 2012, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated November 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

After receiving an extension of time to file, Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Recommended Order," received by the Commission on December 7, 2012. After receiving an extension of time to file, Respondent filed a response to Petitioner's exceptions in a document entitled, "Respondent's Response in Opposition to Petitioner's Exceptions to Recommended Order," received by the Commission on December 19, 2012.

Petitioner's exceptions document contains 77 numbered paragraphs, the first 46 of which are simply a restatement of paragraphs contained in the Recommended Order. Petitioner's exceptions document contains two major exceptions. First, the document excepts to the Administrative Law Judge's conclusion that Petitioner did not establish a prima facie case of unlawful retaliation. Second, the document excepts to the Administrative Law Judge's conclusion that Respondent established a legitimate nondiscriminatory reason for suspending Petitioner.

With regard to the second exception, Petitioner's document takes issue with facts found and inferences drawn from the evidence presented.

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).

Petitioner's second exception is rejected.

With regard to the first exception, since we have declined to overturn the Administrative Law Judge's conclusion that Respondent established a legitimate nondiscriminatory reason for suspending Petitioner, it is unnecessary to determine whether the Administrative Law Judge committed error in concluding that Petitioner did not establish a prima facie case of retaliation. Even if a prima facie case of retaliation had been established, the Administrative Law Judge concluded that Respondent

established a legitimate nondiscriminatory reason for suspending Petitioner and there was no showing that this reason was a pretext for unlawful retaliation. Recommended Order, ¶ 57 through ¶ 59.

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 6th day of February, 2013.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Onelia Fajardo-Garcia; and
Commissioner James Johns

Filed this 6th day of February, 2013,
in Tallahassee, Florida.

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

Copies furnished to:

Tyshoan Wilcox
c/o David W. Glasser, Esq.
Law Office of David W. Glasser
116 Orange Avenue
Daytona Beach, FL 32114

FCHR Order No. 13-008
Page 4

Coastal Healthcare
c/o David Patrick Steffen, Esq.
Constangy, Brooks & Smith, LLP
100 North Tampa Street, Ste. 3350
Tampa, FL 33601-1840

Suzanne Van Wyk, 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 6th day of February, 2013.

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