

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ANAYO JERRY UDENWOKE,

EEOC Case No. 15D201200407

Petitioner,

FCHR Case No. 2012-01104

v.

DOAH Case No. 12-3268

PEPSICO, INC.,

FCHR Order No. 13-043

Respondent.

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

Preliminary Matters

Petitioner Anayo Jerry Udenwoke 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 Pepsico, Inc., committed unlawful employment practices on the bases of Petitioner's race (not identified in complaint), color (Black) and National Origin (identified in complaint as African – not born in the United States) in the manner in which Petitioner's job assignments were made, by making fun of Petitioner's accent, and by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on September 27, 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 Jacksonville, Florida, on January 15, 2013, before Administrative Law Judge Lawrence P. Stevenson.

Judge Stevenson issued a Recommended Order of dismissal, dated April 2, 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

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, Gantz, et al.

v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), 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), Beach-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.

The "Preliminary Statement" of the Recommended Order indicates that Petitioner declined to identify the names of Petitioner's witnesses prior to the hearing. Petitioner sent a post-hearing letter to the Administrative Law Judge, received by the Division of Administrative Hearings on April 5, 2013, and received by the Commission on April 12, 2013, identifying the names of Petitioner's witnesses. We decline to consider this letter as an exception to the 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 19th day of June, 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 June, 2013,
in Tallahassee, Florida.

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

Copies furnished to:

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Allen, Norton & Blue, P.A.
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Tallahassee, FL 32303

Lawrence P. Stevenson, 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 June, 2013.

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