

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

DAYNA R. PREVOST,

EEOC Case No. 15D201200485

Petitioner,

FCHR Case No. 2012-01669

v.

DOAH Case No. 12-3964

FLORIDA DEPARTMENT OF CHILDREN  
AND FAMILIES,

FCHR Order No. 13-028

Respondent.

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**ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE  
FOR FURTHER PROCEEDINGS ON PETITION FOR RELIEF**

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated January 9, 2013, issued in the above-styled matter by Administrative Law Judge Linzie F. Bogan.

Findings of Fact and Conclusions of Law

The Order before the Commission reflects that the matter had come before the Administrative Law Judge on “Respondent’s Motion for a Recommended Order of Dismissal.”

The Order before the Commission notes that “Respondent contends that the doctrines of collateral estoppel and res judicata bar the Florida Commission on Human Relations (FCHR), and concomitantly the Division of Administrative Hearings (DOAH), from considering the Petition for Relief filed herein by Petitioner, Dayna R. Prevost. According to Respondent, the matters alleged herein by Petitioner were previously addressed on the merits by the Public Employees Relations Commission (PERC).” The Order before the Commission further states, “In the instant matter, Petitioner alleges that Respondent ‘in violation of the Americans with Disabilities Act (as Amended) and the Florida Civil Rights Act of 1992, as amended . . . refused to provide a reasonable accommodation.’ These are the same allegations made by Petitioner in the matter adjudicated by PERC.” The Order before the Commission states, “The doctrine of collateral estoppel precludes DOAH from revisiting issues that were litigated before PERC,” and that “[i]nasmuch as the issues in the instant proceeding are the same as those adjudicated by PERC . . . [j]urisdiction is relinquished to FCHR for final disposition, with the recommendation that the instant matter be dismissed for lack of jurisdiction.”

The Commission has stated, “The principles of res judicata and collateral estoppel hold that final judgments conclusively resolve the rights among the parties, thus barring further action on the same subject matter. In Florida, all administrative orders and decisions are subject to the doctrine of res judicata. The doctrine applies when a prior and present proceeding involve the

same parties, causes of action, objects of suit, and qualities in the person for or against whom the claim is made. If the above conditions are met, the doctrine will bar a second proceeding, even if based on matters that were not, but could have been raised in the first proceeding. Although not identical, collateral estoppel forecloses relitigation of an identical issue when that issue has been actually litigated, was a critical and necessary part of the judgment in the previous action, and the party against whom the earlier decision was asserted had a full and fair opportunity to litigate the issue in the earlier proceeding. Florida courts have recognized that the doctrines of res judicata and collateral estoppel are inapplicable when two separate and distinct governmental units independently considered similar factual allegations, but for different purposes.” Smith v. City of Jacksonville, Jacksonville Correctional Institute, FCHR Order No. 92-023 (June 3, 1992).

Further, in conclusions of law adopted by a Commission Panel, it has been stated, “...collateral estoppel, as applied in administrative proceedings, does not preclude re-determination of an issue determined by one agency, but sought to be re-litigated before a different agency, where the two agencies are performing different functions.” See Recommended Order in McCabe v. Woodland Towers, DOAH Case No. 98-3082 (April 5, 1999), the conclusions of law in which were adopted by a Commission Panel in FCHR Order No. 02-015 (April 17, 2002).

Applying this to the instant case, the Hearing Officer’s Recommended Order in the case at PERC, describes the matter before PERC as follows: “The Department of Children and Families (Agency) dismissed Dayna R. Prevost for allegedly being unable to perform her assigned duties because of Post-Traumatic Stress Disorder (PTSD). On October 4, 2012, Prevost appealed to [PERC] contending that the Agency lacked cause for discipline.” See Hearing Officer’s Recommended Order attached to Respondent’s Motion for a Recommended Order of Dismissal.

It would seem to us that Petitioner’s allegations that Respondent refused to provide a reasonable accommodation are being used for different purposes in the matter before PERC than in the matter before FCHR. In the matter before PERC the allegations are being used as an affirmative defense to the termination of Petitioner, whereas in the instant matter the allegations are themselves an affirmative allegation of unlawful discrimination under the Florida Civil Rights Act of 1992.

In addition, the Florida Civil Rights Act of 1992 provides that if an unlawful employment practice is found to have occurred, Petitioner is entitled to an order “prohibiting the practice,” an order that, in our view, PERC has no authority to issue. See Section 760.11(7), Florida Statutes (2012).

We acknowledge that Commission Panels have adopted conclusions of law which have found matters before the Commission precluded on the grounds of collateral estoppel, based on proceedings that have occurred at PERC. See, e.g., Wright v. Department of Highway Safety and Motor Vehicles, 17 F.A.L.R. 3058, at 3064 (FCHR 1994) and Downer v. Department of Corrections, 23 F.A.L.R. 4364, at 4371 (FCHR 2001).

Nevertheless, based on the pronouncements in Smith, supra, and McCabe, supra, we conclude, as described above, that neither res judicata nor collateral estoppel preclude the matter currently before the Commission, and conclude that the appropriate action for the Commission to

take with regard to the Order before it is to remand the matter to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Order Closing File and Relinquishing Jurisdiction.

Remand

The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief consistent with this Order.

DONE AND ORDERED this 4th day of April, 2013.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner James Johns; and  
Commissioner Michael Keller

Filed this 4th day of April, 2013,  
in Tallahassee, Florida.

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Violet Crawford, Clerk  
Commission on Human Relations  
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Copies furnished to:

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Linzie F. Bogan, 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 4th day of April, 2013.

By: \_\_\_\_\_  
Clerk of the Commission  
Florida Commission on Human Relations