

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

GEORGIE BREVILLE,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2011-02551

v.

DOAH Case No. 13-1642

FLORIDA DEPARTMENT OF ECONOMIC
OPPORTUNITY,

FCHR Order No. 13-071

Respondent.

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

Preliminary Matters

Petitioner Georgie Breville filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2010), alleging that Respondent Florida Department of Economic Opportunity committed unlawful employment practices on the bases of Petitioner's National Origin (not specified in complaint), race (not specified in complaint), and age (DOB: 2-16-47) by assigning Petitioner a larger workload, by denying Petitioner training, by giving Petitioner negative evaluations and by harassing Petitioner. Petitioner also alleges that she was unlawfully terminated in retaliation for complaining about the alleged harassment she was receiving.

The allegations set forth in the complaint were investigated, and, on November 21, 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.

The case was assigned to Administrative Law Judge Suzanne Van Wyk, who, on February 6, 2013, issued an "Order on Respondent's Motion to Relinquish Jurisdiction," in which jurisdiction was relinquished to the Commission because Petitioner's unlawful termination claim was untimely (this case was given DOAH Case No. 13-0027).

The Commission issued an "Order Remanding Case to Administrative Law Judge for Further Proceedings on Petition for Relief from an Unlawful Employment Practice," dated May 1, 2013 (FCHR Order No. 13-030), in which the Commission agreed with the finding that Petitioner's unlawful termination claim was untimely, but concluded that the record as it existed did not contain filings / evidence from which to conclude that none of the allegations set out in the complaint were timely.

On remand, (the case was assigned DOAH Case No. 13-1642) an evidentiary hearing was held by video teleconference at sites in Gainesville and Tallahassee, Florida, on July 25, 2013, before Judge Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated September 26, 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.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Exceptions to the Recommended Order were initially due to be filed with the Commission by October 11, 2013. On October 10, 2013, Petitioner filed a motion for an extension of time to file exceptions until October 15, 2013. This motion was granted. On October 15, 2013, Petitioner filed a motion for an additional day extension to file exceptions, until October 16, 2013. On October 15, 2013, Petitioner filed a "draft" of Petitioner's exceptions. On October 16, 2013, Petitioner filed a final version of Petitioner's exceptions. On October 17, 2013, Petitioner filed a motion for oral argument on Petitioner's exceptions. On October 23, 2013, Respondent filed "Respondent's Objection to Petitioner's Request for Oral Argument and Response to Petitioner's Exceptions to the Recommended Order." On October 30, 2013, Petitioner's motion for oral argument on Petitioner's exceptions was denied.

We will review the final version of Petitioner's exceptions filed on October 16, 2013.

Petitioner's exceptions document contains 68 numbered paragraphs. Paragraphs one through four are introductory material, and paragraph 68 is a conclusion.

Paragraphs five through 36 except to the Recommended Order on the basis that the proceedings on which the findings of fact are based did not comply with the essential requirements of law. Paragraph eight appears to take issue with the manner in which a previous case was handled (DOAH Case No. 11-3130). The issue of whether error occurred in that case is not an issue properly before the Commission in this case. The

remaining paragraphs in this grouping appear to take issue with the Administrative Law Judge's ruling on Petitioner's motion to compel discovery. We note that a hearing on Petitioner's motion to compel discovery was conducted by the Administrative Law Judge. No record of that hearing other than the Administrative Law Judge's "Order Denying Motion to Compel," dated July 24, 2013, is in the record before the Commission. We decline to disturb the Administrative Law Judge's rulings on discovery issues.

The exceptions raised in paragraphs five through 36 of Petitioner's exceptions document are rejected.

Paragraphs 37 through 58 argue that findings of fact contained in the Recommended Order are not supported by competent, substantial evidence. Specifically, the document excepts to findings of fact in Recommended Order paragraphs 1, 10, 13, 14, 15, 16, 17, 19, 22, 23, 24, 25, 26, 27, 28, 29, 35, 37, 38, 39, 40, 41, and 42. In order for acts of discrimination to be actionable in this case they must have occurred between September 29, 2010, and October 1, 2010. See Recommended Order, ¶ 39. The Administrative Law Judge found that "Petitioner introduced no credible evidence of any discrete act of discrimination on the relevant dates." *Id.* With regard to the allegation of hostile work environment, the Administrative Law Judge concluded that no acts contributing to a hostile work environment occurred during the filing period. See Recommended Order, ¶ 41. In our view, it cannot be said that this inference is not supported by the record. 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). Finally, we note that Petitioner takes exception to the lack of findings regarding her allegations of disability discrimination. While the Petition for Relief contains allegations of disability discrimination, no such allegations are made in the complaint of discrimination. As indicated in the Commission's order remanding this case to the Administrative Law Judge for further proceedings, the Petition for Relief may not contain allegations not initially contained in the complaint of discrimination (See FCHR Order No. 13-030, May 1, 2013).

The exceptions raised in paragraphs 37 through 58 of Petitioner's exceptions document are rejected.

Paragraphs 59 through 61 except to the Administrative Law Judge's failure to address Petitioner's legal argument about the timeliness of Petitioner's complaint. We

note that the Commission has already found that Petitioner's complaint was untimely as to the allegation of unlawful termination (FCHR Order No. 13-030, May 1, 2013). With regard to the timeliness of other allegations see our discussion of exceptions paragraphs 37 through 58, above.

The exceptions raised in paragraphs 59 through 61 are rejected.

Paragraphs 62 through 67 argue that the Administrative Law Judge erroneously applied "hostile environment" legal theory. As indicated above, we conclude that the Administrative Law Judge's application of the law to the facts results in a correct disposition of the matter, including the conclusions of law relating to hostile work environment set out at Recommended Order paragraphs 36, 40 and 41.

The exceptions raised in paragraphs 62 through 67 are rejected.

Dismissal

This Order disposes of all motions pending before the Commission.

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 18th day of December, 2013.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Michell Long; and
Commissioner Gilbert M. Singer

Filed this 18th day of December, 2013,
in Tallahassee, Florida.

_____/s/_____
Violet Crawford, Clerk
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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 18th day of December, 2013.

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