

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DALE STEVEN THARP,

EEOC Case No. 450201302271

Petitioner,

FCHR Case No. 2013-01407

v.

DOAH Case No. 13-4136

LOCKHEED MARTIN,

FCHR Order No. 14-005

Respondent.

**ORDER REMANDING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

This matter is before the Commission for consideration of the “Amended Order Closing File and Relinquishing Jurisdiction,” dated January 3, 2014, issued in the above-styled matter by Administrative Law Judge Diane Cleavinger.

Findings of Fact and Conclusions of Law

While dismissal of this action for lack of jurisdiction may be the ultimate disposition of the case, we conclude that such an action is premature, and remand the matter to the Administrative Law Judge for further proceedings.

On December 2, 2013, Judge Cleavinger issued an “Order to Show Cause” which stated: “After a review of the file it does not appear that the Division of Administrative Hearings has jurisdiction in this matter. The Petitioner does not reside in Florida. The Respondent’s corporate headquarters are not located in Florida. Further, none of the actions complained about appear to have occurred in Florida.” The “Order to Show Cause” directs that “...the parties shall, no later than 5:00 p.m. ET, on December 20, 2013, provide a statement in writing setting forth facts sufficient to demonstrate DOAH’s jurisdiction in this matter.”

On December 16, 2013, Petitioner responded with a letter to Judge Cleavinger, and on December 20, 2013, Respondent responded by filing “Respondent’s Motion to Dismiss the Petition for Relief for Lack of Jurisdiction.”

The “Amended Order Closing File and Relinquishing Jurisdiction” again restates the three issues set out above, raised in the “Order to Show Cause,” and states, “While Petitioner’s response to the Order to Show Cause showed some training for Petitioner’s job assignment occurred in Florida, that training was not related to the allegations of discrimination involved in this action. Moreover, such a temporary assignment does not create a nexus to Florida that would give rise to Florida jurisdiction over a permanent job assignment outside of Florida.”

Therefore, Judge Cleavinger concluded that the Division of Administrative Hearings “does not have jurisdiction in this matter under either chapter 760 or 120, Florida Statutes...”

It would seem to us that whether jurisdiction exists in this case is a dispute of material fact that needs to be litigated.

We agree with the Administrative Law Judge that some “nexus” to Florida must exist to create jurisdiction. We note that the original charge of discrimination is brought against Lockheed Martin of Melbourne, Florida. We are concerned that this issue was not fully litigated.

In concluding that no jurisdiction exists, the Administrative Law Judge relies on Petitioner’s response to the “Order to Show Cause.” In our view, the concerns set out in the “Order to Show Cause” are not dispositive of the issue of jurisdiction. First, there is no requirement that a person bringing an action under the Florida Civil Rights Act of 1992 be a “resident” of Florida. See Section 760.10(1)(a), Florida Statutes (2012), which prohibits discrimination against “individuals,” and does not limit protection to residents of the state of Florida; see also, Potasek v. Florida State University, DOAH Case No. 93-7083, FCHR Case No. 93-3992 (FCHR Order No. 95-013, April 17, 1995), a case brought under the Human Rights Act of 1977, in which a resident of Princeton, New Jersey, brought a discrimination action against the university for failing to hire her for a position for which she had applied. Second, there is no requirement in the Florida Civil Rights Act of 1992 that an employer’s headquarters be located in Florida in order for its employees to be protected by the statute. See Section 760.02(6) and (7), Florida Statutes (2012), read collectively to determine the definition of a covered “employer.” Finally, in some instances, the protections of the Florida Civil Rights Act of 1992 can be applied to actions that have occurred outside the state of Florida, even to permanent assignments outside the state of Florida. See Parry v. Outback Steakhouse of Florida, Inc., 2006 WL 2919018 (M.D. Fla. 2006) and Cartwright v. Florida Department of Revenue, DOAH Case No. 06-2131, FCHR Case No. 2005-02800 (FCHR Order No. 07-018, March 16, 2007).

We conclude that Petitioner has not had the opportunity to establish the employment relationship between Petitioner and Lockheed Martin of Melbourne, Florida. While the “Order to Show Cause” directs Petitioner to provide a written statement setting forth facts sufficient to demonstrate DOAH’s jurisdiction, and the Administrative Law Judge found Petitioner’s response to be insufficient, the “Order to Show Cause” identifies, and the “Amended Order Closing File and Relinquishing Jurisdiction” relies on, criteria that are not actually dispositive of whether jurisdiction exists.

We conclude the matter should be remanded to the Administrative Law Judge for further proceedings on the issue of jurisdiction and on the Petition for Relief if jurisdiction is found to exist.

Exceptions

Neither party filed exceptions to the Administrative Law Judge’s “Amended 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 26th day of March, 2014.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario M. Valle, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Michael Keller

Filed this 26th day of March, 2014,
in Tallahassee, Florida.

/s/
Violet Crawford, Clerk
Commission on Human Relations
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Diane Cleavinger, 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 26th day of March, 2014.

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