

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARKEITH DANIELS,

EEOC Case No. 15D201400077

Petitioner,

FCHR Case No. 2013-02010

v.

DOAH Case No. 14-2527

FRANKLIN CORRECTIONAL
INSTITUTION,

FCHR Order No. 15-004

Respondent.

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

Preliminary Matters

Petitioner Markeith Daniels filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2013), alleging that Respondent Franklin Correctional Institution committed unlawful employment practices on the basis of Petitioner's race (African-American) by subjecting Petitioner to more severe discipline and a hostile work environment, and by terminating Petitioner from employment on the basis of his race and on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on April 21, 2014, 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 Tallahassee, Florida, on July 22, 2014, and October 6, 2014, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated November 26, 2014.

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, Coleman v. Daytona Beach, Ocean Center Parking Garage, FCHR Order No. 14-034 (September 10, 2014), Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), and Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008).

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.

The Administrative Law Judge concluded that to establish a prima facie case of retaliation-based discrimination Petitioner must show: (1) that he was engaged in a statutorily-protected expression or conduct; (2) that he suffered an adverse employment action; and (3) that there is some causal connection between the two events. Recommended Order, ¶ 98. The Administrative Law Judge concluded that Petitioner failed to establish that he was engaged in any protected activity, thereby failing to establish the first element of the test. Recommended Order, ¶ 101. The Administrative Law Judge went on to conclude that even if, arguendo, Petitioner had established the first element of the test, Petitioner failed to meet the third element of the test. Recommended Order, ¶ 102. Then, in seeming contradiction to this latter conclusion, the Administrative Law Judge analyzed the facts of the case to determine whether the third element of the prima facie test had been met and concluded "...there was a causal connection between the alleged protected activity and the adverse employment action. Having proven all three elements, Petitioner established a prima facie case of discrimination in retaliation." Recommended Order, ¶ 107 and 108. This apparent contradiction is not dispositive of the case given that the Administrative Law Judge initially concluded that Petitioner had not engaged in a protected activity and conducted the subsequent analysis only assuming "arguendo" that Petitioner had engaged in a protected activity. In addition, despite the apparent contradiction, the Administrative Law Judge concluded that even if a prima facie case of discrimination had been established Petitioner failed to establish that the legitimate nondiscriminatory reasons presented by Respondent for disciplining Petitioner were a pretext for unlawful discrimination. Recommended Order, ¶ 113.

With these comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document received by the Commission on or about December 11, 2014.

The document indicates that it presents seven exceptions to the Recommended Order, as follows: Exception I – Hostile Work Environment Claim; Exception II – Pretext; Exception III – Causal Connection; Exception IV – Housing Log and Observation Checklist; Exception V – Notebook Incident; Exception VI – Racial Discrimination; and Exception VII – Investigator Erika McFarland-Williams.

In each instance, the exceptions presented take issue with facts found, facts not found and inferences drawn from the evidence presented.

In the absence of a transcript of the proceeding before the Administrative Law Judge, the Commission is bound by the facts found in the Recommended Order, since there is no way for the Commission to determine the extent to which the facts found are supported by the testimony presented. See, e.g., Gainey v. Winn Dixie Stores, Inc., FCHR Order No. 07-054 (October 12, 2007), Herring v. Department of Corrections, FCHR Order No. 12-004 (February 21, 2012) and Holloman v. Lee Wesley Restaurants, d/b/a Burger King, FCHR Order No. 14-041 (October 9, 2014).

With regard to findings of fact set out in Recommended Orders, the Administrative Procedure Act states, “The agency may not reject or modify the findings of fact unless the agency first determines from a review *of the entire record*, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law [emphasis added].” Section 120.57(1)(l), Florida Statutes (2014). As indicated, above, 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., supra. Accord, Hall, supra, Jones v. Suwannee County School Board, FCHR Order No. 06-088 (September 11, 2006), Johnson v. Tree of Life, Inc., FCHR Order No 05-087 (July 12, 2005), Coleman, supra, and Gantz, supra.

Further, 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).

In addition, it has been stated, “The ultimate question of the existence of discrimination is a question of fact.” Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205, at 1209 (Fla. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010) and Eaves, supra.

With regard to Exception III – Causal Connection, we refer to our comments in the Conclusions of Law section of this Order.

Based on the foregoing, Petitioner's exceptions are rejected.

Dismissal

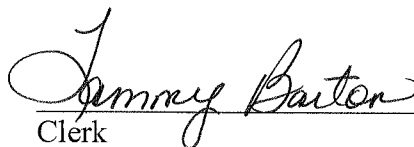
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 12 day of February, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Michael Keller, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner Donna Elam

Filed this 12 day of February, 2015,
in Tallahassee, Florida.



Clerk

Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Markeith Daniels
c/o Cortney Hodgen, Esq.
925 East Magnolia Drive, Suite B-2
Tallahassee, FL 32301

Franklin Correctional Institution
c/o Kambria Anderson, Esq.
c/o Sena Bailes, Esq.
c/o Todd Studley, Esq.
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, FL 32399-2500

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 12 day of February, 2015.

By: Sammy Barton
Clerk of the Commission
Florida Commission on Human Relations