

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MICHEAL D. BRISTOL,

EEOC Case No. 15D201400354

Petitioner,

FCHR Case No. 2014-00407

v.

DOAH Case No. 14-4695

AMERICAN WATER,

FCHR Order No. 15-041

Respondent.

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

Preliminary Matters

Petitioner Micheal D. Bristol 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 American Water committed unlawful employment practices on the basis of Petitioner's disability by denying Petitioner reasonable accommodations and by terminating Petitioner from employment for attendance issues.

The allegations set forth in the complaint were investigated, and, on September 8, 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 Pensacola, Florida, on February 17, 2015, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben issued a Recommended Order of dismissal, dated April 24, 2015.

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 note that at Recommended Order, ¶ 43, the Administrative Law Judge decides the issue of "retaliation." In our view, this is not an appropriate issue to be decided by the Administrative Law Judge in this case.

While the Petition for Relief raises the issue of unlawful "retaliation," we do not see where the issue of unlawful "retaliation" was raised in the initial complaint of discrimination filed in the case. Allegations not contained in the initial complaint of discrimination may not subsequently be raised in the case. See, e.g., Olascoaga v. Crowley Marine Services, Inc., FCHR Order No. 14-020 (June 11, 2014) and Breville v. Florida Department of Economic Opportunity, FCHR Order No. 13-030 (May 1, 2013), and cases cited therein.

With this comment, 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 entitled "Petitioner's Exception to Proposed Order on Final Hearing." The document was filed with the Division of Administrative Hearings on May 11, 2015.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, Medina v. Department of Children and Families, FCHR Order No. 12-016 (April 23, 2012), St. Louis v. Florida Physician Medical Group, FCHR Order No. 11-078 (October 6, 2011), Garcia v. Heart of Florida Medical Center, FCHR Order No. 10-061 (August 10, 2010) and Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

Respondent filed a response to Petitioner's exceptions document.

Petitioner's exceptions document contains 11 numbered exceptions. These exceptions except to facts found (Exception Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11), facts not found (Exception No. 1), and inferences drawn from the evidence presented (Exception Nos. 1, 3, 4, 7, 8, 9, and 10).

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), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011) and Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014).

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), Eaves, supra, and Taylor, supra.

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 9 day of July, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Rebecca Steele; and
Commissioner Billy Whitefox Stall

Filed this 9 day of July, 2015,
in Tallahassee, Florida.

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

Copies furnished to:

Micheal D. Bristol
c/o Therese A. Felth, Esq.
McKenzie Law Firm, P.A.
905 East Hatton Street
Pensacola, FL 32503-3931

American Water
c/o Rodrick D. Holmes, Esq.
Constangy, Brooks, Smith & Prophete, LLP
1661 International Place, Suite 400
Memphis, TN 38120

R. Bruce McKibben, 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 9 day of July, 2015.

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