

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PATRICIA M. FOX,

EEOC Case No. 15D201400423

Petitioner,

FCHR Case No. 2014-00534

v.

DOAH Case No. 14-5351

ORANGE COUNTY SCHOOL BOARD,

FCHR Order No. 15-034

Respondent.

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

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated April 8, 2015, issued in the above-styled matter by Administrative Law Judge Linzie F. Bogan.

Preliminary Matters

Judge Bogan's Order Closing File and Relinquishing Jurisdiction states, "This cause is before the undersigned on Respondent's Renewed Motion for Reconsideration/Rehearing (Motion). Respondent contends that a dispute of material fact does not exist with respect to Petitioner's allegations and requests that jurisdiction be relinquished to the Florida Commission on Human Relations. Petitioner did not file a response to the Motion. The undersigned being fully advised of the premises, it is, therefore, ORDERED that: 1. Respondent (sic) Motion is GRANTED..."

Findings of Fact and Conclusions of Law

The Order Closing File and Relinquishing Jurisdiction is unclear as to the reasoning behind the granting of Respondent's Motion. Specifically, it is unclear whether the Administrative Law Judge granted the Motion because Petitioner did not file a response to the Motion or because the Administrative Law Judge accepted the arguments contained in the Motion.

With regard to Petitioner's failure to file a response to the Motion, we note that the applicable rule makes the filing of a response to a motion permissive, but not obligatory, and contains no statement of any adverse effect resulting from not filing a response to a motion. See Fla. Admin. Code R. 28-106.204(1) and Florida Commission on Human Relations o/b/o Bahiyyih Watson v. Viering, FCHR Order No. 10-070 (September 7, 2010).

With regard to Respondent's contention that no issue of material fact exists, we note that it is appropriate for the Division of Administrative Hearings to relinquish jurisdiction of a case to a referring agency if no issue of material fact exists. See, Section 120.57(1)(i), Florida Statutes (2014). However, in discrimination cases 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, Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014), Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order No. 11-029 (March 17, 2011), and Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010). Therefore, it is very difficult to conclude in a case such as the instant case, prior to hearing, that no issue of material fact exists.

Reading the Petition for Relief in conjunction with the Complaint, we conclude that at the very least Petitioner's allegations in the Complaint and under "Questions 3 and 5" of the Petition for Relief suggest an issue of material fact exists as to whether the assignment of classes in August of 2013 amounted to unlawful disparate treatment discrimination on the basis of Petitioner's sex and age, as well as the existence of an issue of material fact as to whether Petitioner was unlawfully constructively discharged.

While it may be argued that a change in job assignment is not an adverse employment action, whether it is or not is a matter of fact under the circumstances of each case and, in our view, Petitioner should be given the opportunity to prove her allegations.

For the above reasons, including the uncertainty as to the Administrative Law Judge's reason for granting Respondent's Motion, we believe the matter should be remanded 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 10 day of June, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Tony Jenkins; and
Commissioner Rebecca Steele

Filed this 10 day of June, 2015,
in Tallahassee, Florida.


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

Copies furnished to:

Patricia M. Fox
c/o Michelle Stile, Esq.
Stile Law Firm, PLLC
2514 East Jackson Street
Orlando, FL 32803

Orange County School Board
c/o John C. Palmerini, Esq.
Orange County Public Schools
445 West Amelia Street
Orlando, FL 32801

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 10 day of June, 2015.

By: 
Clerk of the Commission
Florida Commission on Human Relations