

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

JANET J. LEWIS,

EEOC Case No. 15D201400452

Petitioner,

FCHR Case No. 2014-00937

v.

DOAH Case No. 14-6127

ROYAL AMERICAN MANAGEMENT,
INC.,

FCHR Order No. 16-028

Respondent.

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

Preliminary Matters

Petitioner Janet J. Lewis 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 Royal American Management, Inc., committed unlawful employment practices on the bases of Petitioner's race (white) and age (DOB: 11-16-58) by fraudulently altering Petitioner's annual evaluation, denying Petitioner a raise and terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on November 19, 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 December 15 and 16, 2015, and on January 12, 2016, before Administrative Law Judge E. Gary Early.

Judge Early issued a Recommended Order of dismissal, dated March 16, 2016.

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

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Petitioner, Janet Lewis', Exceptions to the Recommended Order".

Respondent filed a response to Petitioner's exceptions entitled, "Respondent's Reply to Petitioner's Exceptions to Recommended Order".

A review of Petitioner's exceptions document suggests that Petitioner filed 19 numbered exceptions, as well as unnumbered exceptions to the conclusions of law.

Exceptions numbered 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19 and the exceptions to the conclusions of law other than the exception to the Administrative Law Judge's ruling that the criminal history of Debra Sutton was inadmissible all except to inferences drawn by the Administrative Law Judge from the evidence presented.

Exception 12 excepts to a credibility determination of the Administrative Law Judge.

The Administrative Procedure Act establishes the extent to which the Commission can modify or reject a finding of fact or conclusion of law contained in a Recommended Order. It states, "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction... Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify 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 upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(I), Florida Statutes (2015).

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.

These exceptions are rejected.

Exception 1 excepts to the statement in the Preliminary Statement of the Recommended Order that the No Cause determination issued by the Commission in this matter was issued on November 19, 2014. Petitioner argues that Petitioner did not receive the No Cause determination until November 21, 2014, and, therefore, that should be the date it should be considered issued. The date on the Determination and Notice of Determination, November 19, 2014, speaks for itself.

This exception is rejected.

Exception 13 excepts to the Administrative Law Judge’s statements in Recommended Order paragraphs 44, 55, and 58, suggesting that Sheena Reeves testified at the hearing. Respondent, in its response to Petitioner’s exceptions notes that Petitioner introduced the deposition of Sheena Reeves into evidence. While we agree that Sheena Reeves did not testify at the hearing, we do not see the references made by the Administrative Law Judge to her testimony as altering the ultimate outcome of the case.

This exception is rejected.

Finally, Exception 15, as well as Exceptions 2, 3, 4, and 11, except to the Administrative Law Judge’s finding that the occupancy reports submitted into evidence were “business records”. In addition, an exception to the conclusions of law excepts to the determination by the Administrative Law Judge that Debra Sutton’s criminal history was inadmissible. The Commission, as the agency charged with reviewing the Recommended Order, does not have substantive jurisdiction to review “admissibility of evidence” determinations of the Administrative Law Judge. See, Barfield v. Department of Health, Board of Dentistry, 805 So. 2d 1008 (1st DCA 2001).

These 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 June, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Sandra Turner

Filed this 9 day of June, 2016,
in Tallahassee, Florida.


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E. Gary Early, 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 June, 2016.

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