

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

LINDA CATTANACH,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2014-00567

v.

DOAH Case No. 14-6130

FLORIDA DEPARTMENT OF ELDER
AFFAIRS,

FCHR Order No. 15-072

Respondent.

**INTERLOCUTORY ORDER FINDING THAT AN UNLAWFUL EMPLOYMENT
PRACTICE OCCURRED AND REMANDING CASE TO ADMINISTRATIVE
LAW JUDGE TO DETERMINE AWARD OF ATTORNEY'S FEES AND COSTS
TO PETITIONER**

Preliminary Matters

Petitioner Linda Cattanach 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 Florida Department of Elder Affairs committed unlawful employment practices on the basis of Petitioner's sex (female) by subjecting Petitioner to sexual harassment, and on the basis of retaliation for complaining about the sexual harassment by altering the terms and conditions of Petitioner's employment and by terminating Petitioner.

The allegations set forth in the complaint were investigated, and, on October 14, 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 by video teleconference at sites Gainesville and Tallahassee, Florida, on March 31, 2015, and in-person in Tallahassee, Florida, on May 11, 2015, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order finding that an unlawful employment practice occurred, dated October 5, 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, with the following clarification.

We note that the Administrative Law Judge found, "...Petitioner met her burden to establish a prima facie case of discrimination by retaliation in the removal of her worktable by Mr. Keels. Respondent offered no legitimate non-discriminatory reason for this adverse action." Recommended Order, ¶ 153. The Administrative Law Judge recommended that the Commission "...issue a final order finding that Respondent, Florida Department of Elder Affairs, did commit an unlawful employment practice as to Petitioner, Linda Cattanach, and prohibiting the practice. However, under the specific facts of the case, the undersigned recommends no affirmative relief from the effects of the practice." Recommended Order, Recommendation.

Section 760.11(7), Florida Statutes (2015) states, "In an action or proceeding under this subsection, the commission, in its discretion, may allow the prevailing party a reasonable attorney's fee as part of the costs."

In a case in which an Administrative Law Judge made no monetary award as a remedy for the discrimination found, the Respondent argued that Petitioner was not a "prevailing party" entitled to an award of fees. In awarding Petitioner its attorney's fees and costs, the Commission Panel stated, "We do not agree that Petitioner is not a prevailing party. This order finds that an unlawful employment practice occurred and directs Respondent to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner. See Section 760.11(6), Florida Statutes (2009) directing that when an unlawful employment practice has occurred an order be issued prohibiting the practice." McIntosh v. Dollar General, FCHR Order No. 10-047 (May 25, 2010).

We conclude the matter should be remanded to the Administrative Law Judge for the issuance of a Supplemental Recommended Order as to the amounts of attorney's fees and costs owed Petitioner by Respondent.

With this clarification, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Respondent filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Written Exceptions to Recommended Order," received by

the Commission on October 20, 2015.

The document contains 6 numbered exceptions.

Exception 1 takes exception to the inference drawn from the evidence presented that Respondent was aware that Petitioner had complained to the Inspector General about alleged sexual harassment in the workplace. Exception 2 takes exception to the inference drawn from the evidence presented and conclusion that the taking of Petitioner's work table was an adverse employment action. Exception 3 takes issue with the inference drawn from the evidence presented and conclusion that Petitioner established an objectively reasonable belief for her sexual harassment claim. Exception 4 simply indicates that in Respondent's view there is no need for conclusions of law relating to the issue of "pretext" because in Respondent's view a prima facie case of retaliation-based discrimination was not established by Petitioner. Exception 5 takes issue with the inferences drawn from the evidence presented that Respondent offered no legitimate nondiscriminatory reason for removing Petitioner's work table. Exception 6 argues that a defense applied in sexual harassment cases should also be applied to retaliation cases, and that the Administrative Law Judge failed to carry out this analysis in this case.

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.

Respondent's exceptions are rejected.

Order and Remand

Through our adoption of the Administrative Law Judge's findings of fact and conclusions of law, as set out above, we find that unlawful discrimination occurred in this matter in the manner found by the Administrative Law Judge. In addition, we conclude the case should be remanded to the Administrative Law Judge for determination of the amounts of attorney's fees and costs owed Petitioner. See McIntosh, supra.

Respondent is hereby ORDERED:

(1) to cease and desist from discriminating further in the manner it has been found to have unlawfully discriminated against Petitioner; and

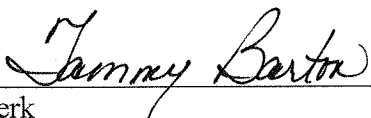
(2) to pay Petitioner the amounts of attorney's fees and costs that have been reasonably incurred in this matter by Petitioner.

This matter is REMANDED to the Administrative Law Judge for further proceedings to determine the amounts of attorney's fees and costs owed Petitioner, and the issuance of a Supplemental Recommended Order as to those amounts.

DONE AND ORDERED this 16 day of December, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Derick Daniel; and
Commissioner J. Jeff Graber

Filed this 16 day of December, 2015,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
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Copies furnished to:

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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 16 day of December, 2015.

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