

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RODERICK E. BILLUPS,

EEOC Case No. 15D201500003

Petitioner,

FCHR Case No. 2014-01582

v.

DOAH Case No. 15-0609

EMERALD COAST UTILITIES
AUTHORITY,

FCHR Order No. 15-055

Respondent.

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

Preliminary Matters

Petitioner Roderick E. Billups 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 Emerald Coast Utilities Authority committed unlawful employment practices on the basis of Petitioner's disability and on the basis of retaliation by denying Petitioner reasonable accommodations and by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on January 9, 2015, 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 in Pensacola and Tallahassee, Florida, on May 15, 2015, before Administrative Law Judge E. Gary Early. Judge Early issued a Recommended Order of dismissal, dated June 19, 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 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, "Notice of the Petitioner's Exceptions and Objections to the Administrative Law Judge's Recommended Conclusions of Law." The document purports to have been filed with the Division of Administrative Hearings and the Florida Commission on Human Relations, on July 2, 2015.

Petitioner's exceptions document contains two objections to Recommended Order, ¶ 64, relating to factual findings and inferences drawn from the evidence presented related to the time frame allowed Petitioner to provide information about his ability to return to work.

Petitioner's exceptions document contains an exception to Recommended Order, ¶ 65, relating to findings made based on inferences drawn from the evidence presented as to whether Petitioner requested "indefinite" leave.

Petitioner's exceptions document contains objections to Recommended Order, ¶ 67 and ¶ 69, which Petitioner seems to interpret as requiring Petitioner to provide a "definitive date" when he could return to work to be considered a "qualified individual," but which, in our view, are not necessarily interpreted that way. The Administrative Law Judge, in our view, focuses on Petitioner's inability to perform the "essential functions" of his position in determining whether Petitioner was a "qualified individual." See Recommended Order, ¶ 69.

In sum, while the indicated exceptions and objections relate to Conclusion of Law paragraphs in the Recommended Order, they actually take issue with facts found and inferences drawn from the evidence presented.

Finally, Petitioner's exceptions document contains eight numbered paragraphs, numbered one through nine, with the number five omitted, which collectively represent to set out material undisputed facts that were omitted by the Administrative Law Judge.

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 21 day of August, 2015.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Jay Pichard

Filed this 21 day of August, 2015,
in Tallahassee, Florida.

Tammy Barton
Clerk
Commission on Human Relations
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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 21 day of August, 2015.

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