

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JULIE MCDANIEL,

Petitioner,

vs.

Case No. 15-0956

FORWARD AIR, INC.,

Respondent.

_____ /

RECOMMENDED ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division) heard this case by video teleconference on July 9, 2015, at sites in Orlando and Tallahassee, Florida.

APPEARANCES

For Petitioner: Julie Ole McDaniel, pro se
Unit 142
7508 Toscana Boulevard
Orlando, Florida 32819

For Respondent: John D. Buchanan, Jr., Esquire
Henry, Buchanan, Hudson, Suber,
and Carter, P.A.
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Tallahassee, Florida 32302

Robert Best Buchanan, Esquire
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Suite 300
1900 Southeast 18th Avenue
Ocala, Florida 34471

Michael Hance, General Counsel
Forward Air Corporation
Post Office Box 1058
Greenville, Tennessee 37744

STATEMENT OF THE ISSUE

Did the Respondent, Forward Air, Inc. (Forward Air), discriminate against Petitioner, Julie McDaniel, on account of her race?

PRELIMINARY STATEMENT

Ms. McDaniel filed a complaint with the Florida Commission on Human Relations (Commission) asserting that Forward Air terminated her because of her race. Forward Air denied the claim. Forward Air asserted that it eliminated Ms. McDaniel's position, along with several similar positions, as part of a company-wide restructuring. The Commission determined there was no cause to conclude that Forward Air discriminated against Ms. McDaniel. Ms. McDaniel filed a Petition for Relief with the Commission alleging discrimination on account of race. The Commission referred the matter to the Division for conduct of a hearing.

After two continuances, on May 18, 2015, the case was scheduled for hearing to be held July 9, 2015. At 8:04 a.m. on July 9, 2015, Ms. McDaniel filed an Emergency Motion to Reschedule. The ground advanced for rescheduling was Ms. McDaniel's inability to serve subpoenas on two employees of

Forward Air. The undersigned heard the motion at the start of the hearing, which was delayed due to Ms. McDaniel's late arrival. Ms. McDaniel did not obtain the subpoenas or seek to have them served until July 1, 2015. She advised that they were returned as unable to serve on July 6, 2015. Forward Air's counsel were present at the Tallahassee and Orlando locations. The General Counsel for Forward Air traveled from Tennessee to attend. Forward Air's witnesses were also in attendance at the Orlando location. They traveled from out of state to attend. The undersigned denied the Motion to Reschedule.

Ms. McDaniel offered Exhibits 1 and 2. Exhibit 1 was a video recording of an iPhone being used to place a call with someone working through a phone answering system with it. Exhibit 2 was a spreadsheet. There was no testimony about how either exhibit was created or what they purported to show. Forward Air objected to both exhibits. The objections were sustained. The exhibits were not admitted. The Clerk should keep the proposed exhibits with the record in case the denial of admission becomes an issue in subsequent proceedings.

Ms. McDaniel did not offer testimony from any witnesses. She also declined to testify.

Forward Air did not offer testimony or exhibits. The time period during which the parties could submit proposed recommended orders was extended to 20 days. Forward Air timely filed a

proposed recommended order. Ms. McDaniel did not submit a proposed recommended order.

FINDINGS OF FACT

There is no evidence. Therefore there can be no findings of fact.

CONCLUSIONS OF LAW

1. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties. §§ 120.569 and 120.57(1), Fla. Stat. (2015).

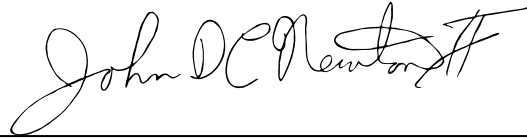
2. Ms. McDaniel must prove her claim that Forward Air discriminated against her by a preponderance of the evidence. Dep't of Banking & Fin. v. Osborne Stern & Co., Inc., 670 So. 2d 932 (Fla. 1996); City of Hollywood v. Hogan, 986 So. 2d 634, 642 (Fla. 4th DCA 2008), reh. denied, City of Hollywood v. Hogan, Case No. 4D07 392 (Fla. Dist. Ct. App. 4th Dist. Aug. 21, 2008).

3. Ms. McDaniel did not prove her claim of discrimination.

RECOMMENDATION

Based on the foregoing, it is RECOMMENDED that the Florida Commission on Human Relations deny Julie McDaniel's Petition for Relief.

DONE AND ENTERED this 9th day of October, 2015, in
Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 9th day of October, 2015.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.