

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MACIA POOLE,

Petitioner,

vs.

Case No. 15-1816

WESTMINSTER VILLAGE OF  
PENSACOLA,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, this case was heard on June 1, 2015, by video teleconference at sites in Tallahassee and Pensacola, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: None

For Respondent: Brian J. Moran, Esquire  
Christopher R. Parkinson, Esquire  
Moran Kidd Lyons Johnson, P.A.  
111 North Orange Avenue, Suite 900  
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether the Petitioner, Macia Poole, was subject to an unlawful employment practice by Respondent, Westminster Village of Pensacola, on account of her sex or due to retaliation for

her opposition to an unlawful employment practice in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

On August 26, 2014, Petitioner filed a complaint of discrimination with the Florida Commission on Human Relations (FCHR) which alleged that Respondent violated section 760.10, by discriminating against her on the basis of her sex or as retaliation.

On February 24, 2015, the FCHR issued a Determination: No Cause and a Notice of Determination: No Cause, by which the FCHR determined that reasonable cause did not exist to believe that an unlawful employment practice occurred. On March 30, 2015, Petitioner filed a Petition for Relief with the FCHR. The Petition was transmitted to the Division of Administrative Hearings to conduct a final hearing.

The final hearing was scheduled for June 1, 2015, by video teleconference in Tallahassee, Florida, and Pensacola, Florida.

Petitioner failed to appear at the final hearing. After waiting for an appropriate period of time, and having received no indication that Petitioner intended to make an appearance, the final hearing was adjourned.

References to statutes are to Florida Statutes (2014) unless otherwise noted.

FINDINGS OF FACT

1. On April 3, 2015, Petitioner's Employment Complaint of Discrimination and Petition for Relief were transmitted to the Division of Administrative Hearings by the Florida Commission on Human Relations for a formal administrative hearing to be held in accordance with section 120.57, Florida Statutes.

2. On April 10, 2015, a Notice of Hearing by Video Teleconference was entered which set the final hearing for June 1, 2015, at 9:00 a.m., Central Time, (10:00 a.m., Eastern Time), at video teleconference sites in Pensacola, at the Office of the Judges of Compensation Claims, Video Teleconferencing Room, 700 South Palafox Street, Suite 305, Pensacola, Florida, and in Tallahassee, at the Division of Administrative Hearings, the DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida.

3. On May 4, 2015, one Subpoena Duces Tecum and four Subpoenas Ad Testificandum were issued at the request of Petitioner.

4. On May 14, 2015, Petitioner electronically filed her Notice of Appearance in this proceeding.

5. On May 26, 2015, Petitioner filed a Request to Reschedule Video Hearing. The Request made no allegation of an inability to attend the hearing, only that her attendance would be an "inconvenience." The Request was denied. The filing of

the Request is convincing evidence that Petitioner knew that the final hearing was scheduled to be heard in accordance with the Notice of Hearing by Video Teleconference.

6. On June 1, 2015, at the scheduled date, time, and place, the final hearing was convened. Mr. Moran, representing Respondent, Westminster Village of Pensacola, made his appearance. Petitioner did not appear. The final hearing was recessed for twenty minutes to allow Petitioner to appear.

7. During the recess, the undersigned confirmed that the Division had not received any communication from Petitioner of exigent circumstances that may have interfered with her appearance at the final hearing.

8. After twenty minutes had passed, the final hearing was re-convened. Petitioner was not in attendance. Respondent was prepared to proceed, and had its witnesses in attendance at the Pensacola video location. Mr. Moran confirmed that he had received no emails from Petitioner, that being their normal form of communication.

9. At 9:25 a.m., Central Time, (10:25 a.m., Eastern Time), the final hearing was adjourned.

10. There was no evidence presented at the final hearing in support of Petitioner's Employment Complaint of Discrimination and Petition for Relief.

CONCLUSIONS OF LAW

11. Sections 120.569 and 120.57(1), Florida Statutes, grant the Division of Administrative Hearings jurisdiction over the subject matter of this proceeding and the parties.

12. The Florida Civil Rights Act of 1992 ("FCRA"), chapter 760, Florida Statutes, prohibits discrimination in the workplace.

13. With regard to Petitioner's claim of discrimination on the basis of sex, section 760.10(1) provides, in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

14. With regard to Petitioner's claim of retaliation, section 760.10(7) provides, in pertinent part:

(7) It is an unlawful employment practice for an employer . . . to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

15. Petitioner has the burden of proving by a preponderance of the evidence that Respondent committed an unlawful employment practice. See St. Louis v. Fla. Int'l Univ., 60 So. 3d 455 (Fla. 3rd DCA 2011); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

16. Petitioner presented no direct, statistical, or circumstantial evidence of discrimination by Respondent in its personnel decisions affecting Petitioner.

17. Petitioner presented no direct, statistical, or circumstantial evidence of retaliation by Respondent against Petitioner as a result of Petitioner's opposition to acts of discrimination directed against others as a result of their race, color, religion, sex, national origin, age, handicap, or marital status, or as a result of Petitioner's participation in an investigation, proceeding, or hearing under section 760.10.

18. Because Petitioner failed to put forth sufficient evidence that Respondent had some discriminatory or retaliatory reason for its personnel decision, her petition must be dismissed.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order finding that Respondent, Westminster Village of Pensacola, did not commit an unlawful

employment practice as to Petitioner, Macia Poole, and  
dismissing the Petition for Relief filed in FCHR No. 2014-01235.

DONE AND ENTERED this 3rd day of June, 2015, in  
Tallahassee, Leon County, Florida.



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E. GARY EARLY  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of June, 2015.

COPIES FURNISHED:

Tammy Scott Barton, Agency Clerk  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399

Brian J. Moran, Esquire  
Moran Kidd Lyons Johnson, P.A.  
111 North Orange Avenue, Suite 900  
Orlando, Florida 32801  
(eServed)

Macia Deanne Poole  
Apartment 176  
6901A North 9th Avenue  
Pensacola, Florida 32504  
(eServed)

Christopher R. Parkinson, Esquire  
Moran, Kidd, Lyons, and Johnson, P.A.  
111 North Orange Avenue  
Orlando, Florida 32801  
(eServed)

Cheyenne Costilla, General Counsel  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399

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.