

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DAVE HARVEY,

EEOC Case No. 15D201500152

Petitioner,

FCHR Case No. 2015-00146

v.

DOAH Case No. 15-3941

MEALS ON WHEELS, ETC., INC.,

FCHR Order No. 16-005

Respondent.

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

Preliminary Matters

Petitioner Dave Harvey filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2014), alleging that Respondent Meals On Wheels, Etc., Inc., committed unlawful employment practices on the bases of Petitioner's race (Black) and disability, and on the basis of retaliation, by subjecting Petitioner to a hostile work environment, by giving Petitioner false and defaming performance reviews, and by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on June 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 Orlando and Tallahassee, Florida, on October 15, 2015, before Administrative Law Judge D. R. Alexander.

Judge Alexander issued a Recommended Order of dismissal, dated November 24, 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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the

Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Coleman v. Daytona Beach, Ocean Center Parking Garage, FCHR Order No. 14-034 (September 10, 2014), Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), and Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008).

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 note that in determining whether Petitioner was disabled within the meaning of the law, the Administrative Law Judge concluded, "An impairment's minor interference in major life activities does not qualify as a disability. An impairment's impact must be permanent and long-term. If an impairment is readily corrected by medication or other measures such as a diet, it is not an impairment that substantially limits a major life activity [citations omitted]." Recommended Order, ¶ 25. Ultimately, the Administrative Law Judge concluded that Petitioner was not disabled within the meaning of the law. *Id.*

We note that the federal regulations state, "An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." 29 CFR § 1630.2(j)(1)(ii), (vi), and (vii).

Nevertheless, we note that even if the Administrative Law Judge found that a prima facie case of disability discrimination had been established, Petitioner's claim would still fail given the Administrative Law Judge's conclusion that "[e]ven if a prima facie case were made, there is evidence to show that Petitioner's termination was due solely to his violating an established work rule." Recommended Order, ¶ 23.

With these corrections and comments, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

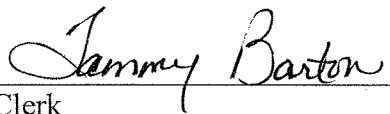
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 17 day of February, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Tony Jenkins; and
Commissioner Jay Pichard

Filed this 17 day of February, 2016,
in Tallahassee, Florida.


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D. R. Alexander, 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 17 day of February, 2016.

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