

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

KALISHA EAGLE,

EEOC Case No. 510201404771

Petitioner,

FCHR Case No. 2015-00762

v.

DOAH Case No. 15-5381

ALACHUA COUNTY BOARD OF COUNTY
COMMISSIONERS,

FCHR Order No. 16-058

Respondent.

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

Preliminary Matters

Petitioner Kalisha Eagle 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 Alachua County Board of County Commissioners committed unlawful employment practices on the basis of Petitioner's sex (female) in the job assignments given and opportunities not provided Petitioner, by removing equipment from Petitioner's use, and on the basis of retaliation by issuing a counseling memo to Petitioner after Petitioner complained about the alleged discrimination that was occurring.

The allegations set forth in the complaint were investigated, and, on August 20, 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 in Gainesville, Florida, on December 4 and 21, 2015, and on January 28, February 23, March 17 and May 18, 2016, before Administrative Law Judge Garnett W. Chisenhall.

Judge Chisenhall issued an Amended Recommended Order of dismissal, dated August 26, 2016.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Amended 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 Amended Recommended Order with the Division of Administrative Hearings on or about September 13, 2016.

With regard to exceptions to Recommended Orders, the Administrative Procedure Act states, "The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record." Section 120.57(1)(k), Florida Statutes (2016); see, also, Taylor v. Universal Studios, FCHR Order No. 14-007 (March 26, 2014), McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012) and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007).

A review of Petitioner's exceptions document suggests that it does not comply with this statutory provision.

It can be said, generally, that Petitioner excepts to the Administrative Law Judge's finding that no unlawful employment practice occurred in this matter.

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, *supra*.

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.

It is also unclear whether Petitioner served Respondent with the exceptions document as there is no such indication on the document. See Fla. Admin. Code R. 28-106.104(4) requiring a party filing a document to serve all other parties with the document and include a certificate of such service on the document.

Petitioner's exceptions are rejected.

Dismissal

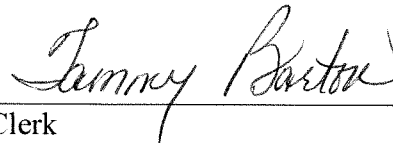
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Gilbert M. Singer

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



Clerk
Commission on Human Relations
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Garnett W. Chisenhall, 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 November, 2016.

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