

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

CARYL ZOOK,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2014-01526

v.

DOAH Case No. 15-5538

BENADA ALUMINUM FLORIDA, INC.,

FCHR Order No. 16-018

Respondent.

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

Preliminary Matters

Petitioner Caryl Zook 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 Benada Aluminum Florida, Inc., committed an unlawful employment practice on the bases of Petitioner's age (DOB: 12-15-54) and disability and on the basis of retaliation by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on August 26, 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 Ft. Lauderdale, Florida, on December 7, 2015, before Administrative Law Judge Robert L. Kilbride.

Judge Kilbride issued a Recommended Order of dismissal, dated January 27, 2016.

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 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... The impairment's impact must be permanent, and the employer must know of the impairment." Recommended Order, ¶ 48.

However, 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, the Administrative Law Judge also concluded, "There was scant, if any, evidence from Petitioner to describe what her disability was or how it affected her ability to work or otherwise how it impaired her work or major activities of her life." Recommended Order, ¶ 49.

With these comments, 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, "Petitioner's Exceptions to Recommended Order," received by the Commission on or about February 11, 2016.

Respondent subsequently filed a document entitled, "Respondent's Response to Petitioner's Exceptions to Recommended Order."

A review of Petitioner's exceptions document suggests that Petitioner excepts to the following Recommended Order paragraph numbers, as well as to the Statement of Issues and Recommendation sections of the Recommended Order: 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, and 66.

In each instance, Petitioner appears to except to facts found, facts not found, inferences drawn from the evidence presented, credibility determinations made by the Administrative Law Judge, and / or is presenting argument or discussion about the indicated Recommended Order paragraph.

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

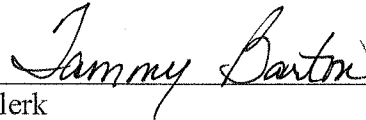
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 7 day of April, 2016.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;
Commissioner Tony Jenkins; and
Commissioner Jay Pichard

Filed this 7 day of April, 2016,
in Tallahassee, Florida.



Clerk

Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

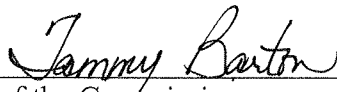
Caryl Zook
5425 43rd Street
Vero Beach, FL 32967

Benada Aluminum Florida, Inc.
c/o Grissel Seijo, Esq.
Littler Mendelson, P.C.
Wells Fargo Center
333 SE 2nd Avenue, Ste. 2700
Miami, FL 33131

Robert L. Kilbride, 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 7 day of April, 2016.

By: 
Clerk of the Commission
Florida Commission on Human Relations