

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MARIE L. HENRY,

EEOC Case No. 15D201500576

Petitioner,

FCHR Case No. 2015-01146

v.

DOAH Case Nos. 16-4412
16-0981

THE FLORIDA BAR,

FCHR Order No. 17-088

Respondent.

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

Preliminary Matters

Petitioner Marie L. Henry 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 The Florida Bar committed an unlawful employment practice on the bases of Petitioner's race (Black), sex (female), age (DOB: 11-20-59), and disability, and on the basis of retaliation, by suspending Petitioner's license to practice law.

The allegations set forth in the complaint were investigated, and, on January 13, 2016, the Executive Director issued a "Determination: No Jurisdiction," finding that Section 760.10(5), Florida Statutes, did not apply to Petitioner because Petitioner had already obtained a license to practice law and there was no apparent other basis for jurisdiction to rest with the Commission.

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.

The matter was assigned to Administrative Law Judge Linzie F. Bogan.

Judge Bogan issued an Order Closing File and Relinquishing Jurisdiction, dated April 1, 2016, indicating that there was no existence of a dispute of material fact as to matters related to whether the Commission has jurisdiction to consider Petitioner's claims of unlawful discrimination.

On June 23, 2016, a Commission Panel issued an Order Remanding Complaint of Discrimination to Commission's Office of Employment Investigations for Investigation (FCHR Order No. 16-036), concluding that the Commission did have jurisdiction to investigate the merits of Petitioner's claim.

The allegations set forth in the complaint were investigated, and, on July 18, 2016, 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 Orlando, Florida, on March 28 and 29, 2017, before Administrative Law Judge J. Bruce Culpepper.

Judge Culpepper issued a Recommended Order of dismissal, dated August 11, 2017.

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 the Conclusions of Law set out in Recommended Order, ¶ 69 through ¶ 80, reach the ultimate conclusion that the Commission lacks jurisdiction over Petitioner's complaint.

A Commission Panel issuing an earlier order in this case has already determined that the Commission does have jurisdiction over this matter. See, Order Remanding Complaint of Discrimination to Commission's Office of Employment Investigations for Investigation, FCHR Order No. 16-036 (June 23, 2016), and the discussion of this issue set out therein.

We reject the Administrative Law Judge's ultimate conclusion that the Commission does not have jurisdiction over this matter.

In modifying this conclusion of law of the Administrative Law Judge, we conclude: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion of law stating the jurisdiction of the Commission in cases brought pursuant to the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusion of law as stated runs contrary to a previous Commission decision issued in the instant case; and (3) that in making this modification the conclusion of law being substituted is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(1), Florida Statutes (2017).

We further note that the Administrative Law Judge recommended the Commission issue a final order dismissing the Petition for Relief "for lack of jurisdiction" or,

alternatively, issue a final order concluding that Respondent did not commit discrimination or retaliation against Petitioner.

We decline to dismiss the Petition for Relief “for lack of jurisdiction,” but adopt the Administrative Law Judge’s recommendation that the matter be dismissed on the basis that Respondent did not commit discrimination or retaliation against Petitioner.

With the above correction and 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 DOAH’s Recommended Order,” received by the Commission on August 28, 2017.

The exceptions document contains 86 numbered paragraphs.

The following numbered paragraphs of the exceptions document, in our view, are not exceptions to the Recommended Order: 1, 2, 3, 4, 11, 13, 14, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 31, 32, 34, 35, 38, 39, 42, 43, 44, 45, 46, 47, 48, 49, 52, 53, 54, 58, 62, 63, 64, 71, 72, 73 and 85.

The following numbered paragraphs of the exceptions document take issue with inferences drawn by the Administrative Law Judge from the evidence presented: 5, 6, 7, 8, 9, 10, 12, 15, 18, 30, 33, 36, 37, 40, 41, 56, 57, 59, 60, 61, 65, 66, 67, 68, 69, 70, 76, 77, 78, 79, 80, 81, 82, 83, 84, and 86.

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 above-indicated exceptions are rejected.

The following numbered paragraphs of the exceptions document deal with the issue of whether the Commission has jurisdiction over this matter: 25, 50, 51, 55, 74 and 75.

We have dealt with this issue in the Conclusions of Law section of this Order, supra.

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 2 day of November, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Jay Pichard

Filed this 2 day of November, 2017,
in Tallahassee, Florida.



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

Copies furnished to:

Marie L. Henry
Post Office Box 953521
Lake Mary, FL 32795

The Florida Bar
c/o Kevin D. Johnson, Esq.
c/o Bridget E. McNamee, Esq.
Johnson Jackson LLC
100 North Tampa Street, Ste. 2310
Tampa, FL 33602

J. Bruce Culpepper, 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 2 day of November, 2017.

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