

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

LABRENTAE B. CLAYBRONE,

EEOC Case No. 15D201500578

Petitioner,

FCHR Case No. 2015-01186

v.

DOAH Case No. 16-4118

DAVID COSTA ENTERPRISES,
INC., d/b/a McDONALD'S,

FCHR Order No. 17-005

Respondent.

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

Preliminary Matters

Petitioner Labrentae B. Claybrone 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 David Costa Enterprises, Inc., d/b/a McDonald's, committed unlawful employment practices on the basis of Petitioner's sex (male) by subjecting Petitioner to harassing comments.

The allegations set forth in the complaint were investigated, and, on June 15, 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 Destin, Florida, on September 20, 2016, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben issued a Recommended Order of dismissal, dated October 21, 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.

In concluding that Petitioner failed to establish a prima facie case of discrimination, the Administrative Law Judge indicated that Petitioner "does not establish that he is a member of a protected class." Recommended Order, ¶ 20. However, the Administrative Law Judge specifically found Petitioner to be "male." Recommended Order, ¶ 1.

Therefore, Petitioner is a member of a protected class.

The Petition for Relief contains allegations that Petitioner was subjected to an unlawful hostile work environment based on his sex, but the Administrative Law Judge did not address this issue in Conclusions of Law contained in the Recommended Order.

"A hostile work environment claim is established upon proof that the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter conditions of the victim's employment and create an abusive working environment... In order to establish a prima facie case under the hostile work environment theory, Petitioner must show: (1) that [Petitioner] belongs to a protected group; (2) that [Petitioner] has been subject to unwelcome harassment; (3) that the harassment must have been based on a protected characteristic of the employee...; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) that the employer is responsible for such environment under a theory of vicarious or of direct liability." See Armentrout v. Florida Department of Corrections, conclusions of law set out in the Recommended Order of DOAH Case No. 14-2617 (April 29, 2015), adopted by the Commission in FCHR Order No. 15-043 (July 9, 2015).

We conclude that the facts found by the Administrative Law Judge do not support a conclusion that what occurred was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment.

With these 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 5 day of January, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Jay Pichard; and
Commissioner Sandra Turner

Filed this 5 day of January, 2017,
in Tallahassee, Florida.

Tammy Barton
Clerk
Commission on Human Relations
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R. Bruce McKibben, 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 5 day of January, 2017.

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