

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

DONNA EARLEY,

EEOC Case No. 15D201600317

Petitioner,

FCHR Case No. 2016-00610

v.

DOAH Case No. 16-4119

TELEFLEX, INC.,

FCHR Order No. 17-034

Respondent.

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

Preliminary Matters

Petitioner Donna Earley filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2015), alleging that Respondent Teleflex, Inc., committed unlawful employment practices on the bases of Petitioner's sex (female) and age (DOB: 7-5-55) by reducing Petitioner's sales territory, and on the basis of retaliation by terminating Petitioner for complaining that her sales territory had been reduced on the bases of her sex and age.

The allegations set forth in the complaint were investigated, and, on June 23, 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 by video teleconference at sites in Tampa and Tallahassee, Florida, on November 1, 2016, before Administrative Law Judge Elizabeth W. McArthur.

Judge McArthur issued a Recommended Order of dismissal, dated March 2, 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 note that the Administrative Law Judge found, "Although findings on the subject of damages are unnecessary in light of the above findings, even if Respondent had been found guilty of unlawful employment practices, the undersigned would have to

find that Petitioner failed to prove her actual economic damages that would have been caused by those employment practices...There was no request for a bifurcated hearing to address liability, followed by a separate evidentiary hearing on damages if needed. Thus, Petitioner had her opportunity, and failed to prove damages.” Recommended Order, ¶ 68.

With regard to Petitioner’s proof of damages, in Dillard v. International House of Pancakes, FCHR Order No. 13-040 (May 8, 2013), an employment discrimination case in which the record contained insufficient evidence to determine the amount of back pay owed Petitioner, a Commission Panel stated the following: “In a case in which the Administrative Law Judge stated in the Recommended Order, ‘No recommendation is made as to affirmative relief as insufficient evidence was introduced to do the calculations in support of such relief,’ a Commission Panel remanded the case to the Administrative Law Judge ‘to conduct proceedings necessary to determine the amount of back pay, with interest, attorney’s fees, costs, and if no position exists into which Petitioner can be promoted, front pay, to which Petitioner is entitled.’ DeLeon v. Department of Health and Rehabilitative Services, 19 F.A.L.R. 4493, at 4495, 4496, and 4513 (FCHR 1996). Accord, Shuler v. The Pantry, Inc., FCHR Order No. 12-021 (May 16, 2012) and Ostrum v. A Unique Floor of the Gulf Coast I, FCHR Order No. 10-067 (September 7, 2010). But, cf., Davies v. Laidlaw Education Services, FCHR Order No. 04-143 (November 4, 2004), a termination case, in which the Recommended Order in DOAH Case No. 03-4666 indicates, ‘No evidence of economic damages suffered by Petitioner was presented,’ and the Commission’s order did not remand the case for determination of those damages, but instead ordered Respondent (1) to cease and desist from discriminating further; (2) to re-employ Petitioner; and (3) to promote Petitioner.” Based on the foregoing, the Commission Panel in Dillard remanded the case to the Administrative Law Judge for further proceedings to determine amounts owed Petitioner.

Likewise, we conclude that, if Respondent had been found to have committed an unlawful employment practice, this matter would be remanded to the Administrative Law Judge for such further proceedings as would be necessary to determine the damages owed Petitioner. Accord, Anduze, et al. v. Fund Waterford Lakes, LLC, FCHR Order No 16-057 (November 17, 2016).

With this comment, 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 Recommended Order, in a document entitled, "Petitioner's Exception to Recommended Order," received by the Commission on or about March 15, 2017.

Respondent filed a response to Petitioner's exceptions in a document entitled, "Response to Petitioner's Exceptions to the Recommended Order," received by the Commission on or about March 24, 2017.

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.

Nevertheless, it can be said, generally, that Petitioner excepts to facts found, facts not found and inferences drawn from the evidence presented.

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.

Petitioner's exceptions are rejected.

Dismissal

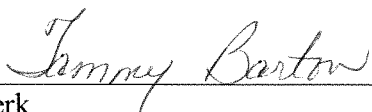
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 25 day of May, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam; and
Commissioner Jay Pichard

Filed this 25 day of May, 2017,
in Tallahassee, Florida.



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Elizabeth W. McArthur, 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 25 day of May, 2017.

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