

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PHILIP N. PORTER,

EEOC Case No. 15D201600720

Petitioner,

FCHR Case No. 2016-00720

v.

DOAH Case No. 16-5775

FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES,

FCHR Order No. 17-014

Respondent.

**ORDER REMANDING COMPLAINT OF DISCRIMINATION
TO COMMISSION'S OFFICE OF EMPLOYMENT INVESTIGATIONS**

Preliminary Matters

Petitioner Philip N. Porter 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 Florida Department of Children and Families committed an unlawful employment practice on the basis of Petitioner's age (DOB: 5-4-48) by failing to hire Petitioner for a Protective Investigator position for which Petitioner had applied.

The allegations set forth in the complaint were investigated, and, on August 16, 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.

The matter was assigned to Administrative Law Judge Yolonda Y. Green.

Judge Green issued an Order Closing File and Relinquishing Jurisdiction, dated November 30, 2016, relinquishing jurisdiction to the Commission without prejudice "so the Commission may investigate Petitioner's complaint filed on February 24, 2016."

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Order Closing File and Relinquishing Jurisdiction.

Findings of Fact and Conclusions of Law

The Order Closing File and Relinquishing Jurisdiction states, "On February 24, 2016, Petitioner filed his complaint with the Commission. According to the complaint, on June 18, 2015, Petitioner submitted an electronic application for a Protective Investigator position, which was identified as position number 60020229-511995328.

Petitioner further alleged in his complaint that he was not hired for the position due to his age despite being the most qualified applicant for the position.”

The Order Closing File and Relinquishing Jurisdiction further states, “On November 22, 2016, Respondent took the deposition of Petitioner. During the deposition, Petitioner discovered that the Commission investigated and issued its determination of ‘no reasonable cause’ based on an application for employment and interview related to Child Protective Investigator – position number 60056103-51212942. The initial complaint did not raise any allegations regarding the Child Protective Investigator position.”

The Administrative Law Judge concluded, “Based on the foregoing, it appears the Commission did not investigate Petitioner’s February 24, 2016, complaint regarding the Protective Investigator position.”

Being mindful that the Division of Administrative Hearings does not have jurisdiction over claims not contained in the initial complaint, the Administrative Law Judge relinquished jurisdiction of the matter to the Commission to investigate the claim made in the Petitioner’s February 24, 2016, complaint.

Whether the Commission’s investigation included the allegations regarding the Protective Investigator position contained in Petitioner’s February 24, 2016, complaint can only be determined by a review of the Commission’s investigative file for the case. That file is not part of the record currently before this Commission panel in DOAH Case No. 16-5775.

Therefore, we conclude the matter should be remanded to the Commission’s Office of Employment Investigations to conduct whatever steps are necessary for the Executive Director to re-issue a determination in this matter that encompasses Petitioner’s allegations concerning the Protective Investigator position number 60020229-511995328.

Exceptions

Neither of the parties filed exceptions to the Administrative Law Judge’s Order Closing File and Relinquishing Jurisdiction.

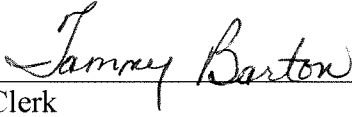
Remand

The complaint of discrimination is hereby REMANDED to the Commission’s Office of Employment Investigations to conduct whatever steps are necessary for the Executive Director to re-issue a determination in this matter that encompasses Petitioner’s allegations concerning the Protective Investigator position number 60020229-511995328. Accord, generally, Henry v. The Florida Bar, FCHR Order No. 16-036 (June 23, 2016) and DeLeo v. Properties of the Villages, Inc., FCHR Order No. 09-093 (October 1, 2009).

DONE AND ORDERED this 9 day of February, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

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

Filed this 9 day of February, 2017,
in Tallahassee, Florida.


Clerk
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Yolonda Y. Green, 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 9 day of February, 2017.

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