

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

CHRISTINE N. MONKHOUSE,

EEOC Case No. 15D201600448

Petitioner,

FCHR Case No. 2016-00813

v.

DOAH Case No. 16-6583

DAVITA HEALTHCARE PARTNERS,  
INC.,

FCHR Order No. 17-057

Respondent.

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

Preliminary Matters

Petitioner Christine M. Monkhouse 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 Davita Healthcare Partners, Inc., committed an unlawful employment practice on the basis of Petitioner's race (African American) by issuing a final written warning to Petitioner for a mistake she had made.

The allegations set forth in the complaint were investigated, and, on October 5, 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 Deland, Florida, on February 22, 2017, and by telephone conference at sites in Deland and Tallahassee, Florida, on March 15, 2017, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated May 16, 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 in determining that Petitioner failed to establish a prima facie case of discrimination the Administrative Law Judge found and concluded that the final written warning issued to Petitioner did not amount to an "adverse employment action," even though it warns, "Failure to comply with the stated expectations may be grounds for continued disciplinary action up to and including termination of employment." Recommended Order, ¶ 68 through ¶ 71, and Respondent's Exhibit 13.

We will not disturb this conclusion of the Administrative Law Judge given the further conclusions that, even if a prima facie case of discrimination had been established, Respondent articulated a legitimate nondiscriminatory reason for issuing the final written warning, and there was no showing that this reason was a pretext for discrimination. Recommended Order, ¶ 77 and ¶ 78.

However, we note that the Commission has concluded that written warnings can be "adverse employment actions." See McNeil v. HealthPort Technologies, FCHR Order No. 12-026 (June 27, 2012), and cases cited therein, indicating that verbal reprimands, written reprimands, verbal counselings, written warnings and negative performance appraisals can amount to "adverse employment actions." See, also, Robinson v. Gulf Coast Health Care, FCHR Order No. 15-009 (March 12, 2015).

With this comment, 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 3 day of August, 2017.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rebecca Steele, Panel Chairperson;  
Commissioner Derick Daniel; and  
Commissioner Sandra Turner

Filed this 3 day of August, 2017,  
in Tallahassee, Florida.



Clerk  
Commission on Human Relations  
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Suzanne Van Wyk, 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 3 day of August, 2017.

By:   
Clerk of the Commission  
Florida Commission on Human Relations