

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PATRICK QUERCIOLO,

EEOC Case No. 15D201500734

Petitioner,

FCHR Case No. 2015-01481

v.

DOAH Case No. 16-6585

FLORIDA DEPARTMENT OF CORRECTIONS,

FCHR Order No. 17-054

Respondent.

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

Preliminary Matters

Petitioner Patrick Quercioli filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2016), alleging that Respondent Florida Department of Corrections committed unlawful employment practices on the basis of Petitioner's disability by denying Petitioner a reasonable accommodation, harassing Petitioner, and terminating Petitioner from employment. Petitioner also alleged that his termination was the result of Respondent's unlawful retaliation.

The allegations set forth in the complaint were investigated, and, on October 5, 2016, the Executive Director issued a determination finding that there was reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from Discriminatory Employment Practices, and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held in Ocala, Florida, on March 23, 2017, before Administrative Law Judge R. Bruce McKibben.

Judge McKibben 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

In Florida, “[I]t is an unlawful employment practice for an employer: To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.” Section 760.10, Florida Statutes (2016). Being patterned after Title VII of the Civil Rights Act of 1964, as amended, and related statutes, courts construe the Florida Civil Rights Act of 1992 in conformity with the Americans with Disabilities Act (ADA). Byrd v. BT Foods, Inc., 26 So. 3d 600 (Fla. 4th DCA 2009).

In a disability discrimination case alleging an employer’s failure to provide reasonable accommodation, Petitioner must prove that he is a qualified individual with a disability. See Billups v. Emerald Coast Utilities Authority, Recommended Order, ¶ 50 through ¶ 60, in DOAH Case No. 15-0609 (June 19, 2015), adopted by the Commission in FCHR Order No. 15-055 (August 21, 2015).

Disability, as defined by the ADA, “means, with respect to an individual---(A) a physical or mental impairment that substantially limits one or more major life activities of such individual.” 42 U.S.C. § 12102. “Major life activities,” according to the ADA, “include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.” Id.

The Administrative Law Judge found Complainant to have a disability. Recommended Order, ¶ 37.

A qualified individual, as defined by the ADA, “means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.” 42 U.S.C. § 12111(8).

The Administrative Law Judge found that Petitioner had counseling sessions with his therapist, Mrs. Robinson. See Recommended Order, ¶ 9. The Administrative Law Judge also found that Mrs. Robinson contacted Respondent on March 13, 2015, regarding Petitioner’s disability and work status. See Id. at ¶ 11. Further, the Administrative Law judge found that Mrs. Robinson replied to Respondent’s letter and questionnaire of June 16, 2015, “regarding whether Petitioner could work as a Correctional Officer Sergeant.” Id. at ¶ 13.

The Administrative Law Judge found that Petitioner’s attorney submitted a letter to Respondent dated June 26, 2015 that “requested accommodations that might make it possible for Petitioner to perform one or more jobs at Lowell.” Id. at ¶ 18. Respondent replied to the request and Petitioner’s attorney responded to Respondent. Id.

We conclude that Respondent engaged in an interactive process with Petitioner’s therapist and attorney to determine whether he was a qualified individual.

The Administrative Law Judge found that the Petitioner “did not prove that he could do the essential functions of his job.” Recommended Order, ¶ 41. As a result, Petitioner was not a qualified individual. See Billups, Recommended Order, ¶ 69.

The Administrative Law Judge found that following the predetermination conference, Complainant was discharged on August 4, 2015. See Recommended Order, ¶ 1.

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 Exceptions to Recommended Order."

Petitioner's exceptions document contains seven numbered exceptions.

The Administrative Procedure Act establishes the extent to which the Commission can modify or reject a finding of fact or conclusion of law contained in a Recommended Order. It states, "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and the interpretation of administrative rules over which it has substantive jurisdiction... Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law." Section 120.57(1)(l), Florida Statutes (2016).

Petitioner's exception number 1 argues that the Administrative Law Judge erred in his application of the law to the facts.

Petitioner's exception number 1 is rejected (discussed in Conclusions of Law).

Petitioner's exceptions numbered 2, 3, 5, 6, and 7 except to inferences drawn from the evidence presented and / or credibility determinations made by the Administrative Law Judge.

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 exceptions numbered 2, 3, 5, 6, and 7 are rejected.

Petitioner’s exception number 4 argues, in part, that the Administrative Law Judge’s finding that prior to Respondent’s letter of June 16, 2015 to Petitioner’s therapist, Mrs. Robinson (Petitioner’s Exhibit 5, incorrectly identified as Exhibit 3), “Mrs. Robinson had previously, in response to a Medical Certification request from FCHR, listed a few alternative jobs that Petitioner may be able to do...”

Petitioner’s exception number 4 is accepted only insofar as it relates to the chronology of events related to FCHR’s Medical Certification form. Specifically, the Medical Certification was subsequent to, not prior to, Respondent’s letter of June 16, 2015. The remainder of the exception is rejected as it excepts to inferences drawn from the evidence presented and/or credibility determinations made by the Administrative Law Judge.

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
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

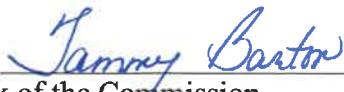
Patrick Quercioli
c/o H. Richard Bisbee, Esq.
H. Richard Bisbee, P.A.
1882 Capital Circle Northeast, Suite 206
Tallahassee, Florida 32308

Florida Department of Corrections
c/o M. Lilja Dandelake, Esq.
Assistant General Counsel
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

R. Bruce McKibben, Administrative Law Judge, DOAH

Stanley Gorsica, 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