

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

HASSAN HABIBI,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2016-01277

v.

DOAH Case No. 17-0018

AUTO CLUB GROUP,

FCHR Order No. 17-063

Respondent.

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

Preliminary Matters

Petitioner Hassan Habibi 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 Auto Club Group committed unlawful employment practices on the bases of Petitioner's race (Asian), national origin (Pakistani) and religion (Muslim) by harassing Petitioner resulting in his constructive discharge. Petitioner also alleged that Respondent's conduct amounted to unlawful retaliation.

The allegations set forth in the complaint were investigated, and, on December 6, 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 Orlando and Tallahassee, Florida, on March 23, 2017, before Administrative Law Judge J. Bruce Culpepper.

Judge Culpepper issued a Recommended Order of dismissal, dated May 31, 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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order, received by the Commission on or about June 14, 2017.

There is no indication on the exceptions document that it was provided to Respondent as is required by Fla. Admin. Code R. 28-106.104(4) and Fla. Admin. Code R. 28-106.110. However, the Commission published the document to the Respondent, and placed the document in the record of this case through the issuance of a notice of ex parte communication, emailed to the parties on June 28, 2017.

Respondent filed a response to Petitioner's exceptions.

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 fully comply with this statutory provision.

It can be said, generally, that Petitioner excepts to inferences drawn from the evidence presented and raises an issue related to discovery in the case that is wholly unrelated to the Recommended Order.

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 17 day of August, 2017.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam, Panel Chairperson;
Commissioner Latanya Peterson; and
Commissioner Jay Pichard

Filed this 17 day of August, 2017,
in Tallahassee, Florida.


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J. Bruce Culpepper, 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 17 day of August, 2017.

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