

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

GERALD JEANDRON,

Petitioner,

FCHR Case No. 2017-00622

v.

DOAH Case No. 17-6424

WALT DISNEY WORLD,

FCHR Order No. 18-028

Respondent.

**ORDER REMANDING CASE TO ADMINISTRATIVE LAW JUDGE
FOR FURTHER PROCEEDINGS ON PETITION FOR RELIEF**

This matter is before the Commission for consideration of the Order Closing File and Relinquishing Jurisdiction, dated March 15, 2018, issued in the above-styled matter by Administrative Law Judge Lawrence P. Stevenson.

Findings of Fact and Conclusions of Law

Judge Stevenson's Order reflects that Petitioner filed a "Request for Voluntary Dismissal," asking that the case be closed "without prejudice" to his ability to pursue the matter at a later date. Judge Stevenson's Order also reflects that Respondent filed a response to Petitioner's request, agreeing to the dismissal, but requesting that the case be dismissed "with prejudice."

Judge Stevenson concluded that a Petitioner has the right to dismiss an action at any time by notice of voluntary dismissal, without leave of court.

Judge Stevenson's Order also states, "A voluntary dismissal is presumed to be without prejudice unless the notice states otherwise. However, Petitioner should be aware that his notice effectively divests the Division of Administrative Hearings of jurisdiction in this matter. Any right that he has to refile and pursue this matter further will be in the hands of the Florida Commission on Human Relations, to which jurisdiction is relinquished."

The statement that a voluntary dismissal is presumed to be without prejudice unless the notice states otherwise is not consistent with the Commission's rules.

Fla. Admin. Code R. 60Y-5.008(7) states, "Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the administrative law judge, Panel of Commissioners or Commission (i) by serving, or during hearing by stating on the record, a notice of dismissal at any time before the issuance of a recommended order or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. *The dismissal operates with prejudice with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.* [emphasis added]."

It is clear from the Order currently before the Commission, and from Petitioner's "Request for Voluntary Dismissal," that Petitioner is requesting that the case be dismissed "without prejudice." It is clear from the Commission's rule, cited above, that any voluntary dismissal of the Petition for Relief at this point in the proceeding operates "with prejudice" with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.

Since Petitioner specifically requested dismissal of the case "without prejudice," and since such a dismissal is not available to Petitioner, we conclude the matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's Order Closing File and Relinquishing Jurisdiction.


Remand

The Petition for Relief and Complaint of Discrimination are REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief, as indicated above.

DONE AND ORDERED this 17 day of May, 2018.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Latanya Peterson; and
Commissioner Gilbert M. Singer

Filed this 17 day of May, 2018,
in Tallahassee, Florida.



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Lawrence P. Stevenson, 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 May, 2018.

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