

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

PEGGY F. WESLEY,

EEOC Case No. 15D201600874

Petitioner,

FCHR Case No. 2016-01889

v.

DOAH Case No. 18-2066

SAINT LUCIE COUNTY SHERIFF'S,
OFFICE,

FCHR Order No. 19-063

Respondent.

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

Preliminary Matters

Petitioner Peggy F. Wesley 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, Saint Lucie County Sheriff's Office, committed an unlawful employment practice on the basis of Petitioner's disability and on the basis of retaliation for having engaged in a protected activity.

The allegations set forth in the complaint were investigated, and, on March 16, 2018, 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 before Administrative Law Judge June C. McKinney in Port St. Lucie, Florida, on November 30, 2018, and February 11 and 12, 2019, and by video teleconferencing in Fort Pierce and Tallahassee, Florida, on May 28, 2019.

Judge McKinney issued a Recommended Order, dated August 30, 2019, recommending that the Commission dismiss the Petition for Relief.

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

The Florida Civil Rights Act of 1992 prohibits discrimination on the bases of race, color, religion, sex, pregnancy, national origin, age, handicap, and marital status. Section 760.10, Florida Statutes (2019). Also, “[i]t is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.” Section 760.10(7), Florida Statutes (2019). And furthermore, the Commission has no enforcement responsibility, under the Florida Civil Rights Act of 1992, for the Family Medical Leave Act (FMLA). Thus, we disagree with the conclusion of law that the Administrative Law Judge had jurisdiction to decide Petitioner’s claims of FMLA retaliation, and that the Commission, consequently, has jurisdiction to do the same. In addition, we disagree with the Administrative Law Judge’s assertion that taking leave under the FMLA is a protected activity under section 760.10(7), Florida Statutes.

Based on the foregoing, we reject the Administrative Law Judge’s conclusions of law set out at Recommended Order, ¶ 81, ¶ 96, ¶ 99, ¶101, and ¶ 102. In correcting these conclusions of law we conclude: (1) that the conclusions of law being modified/rejected are conclusions of law over which the Commission has substantive jurisdiction; (2) that the reason the corrections are being made by the Commission is that the conclusions of law as stated apply statutory provisions not related to this case; and (3) that in making these modifications/rejections the conclusions of law being substituted are as or more reasonable than the conclusions of law which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2019).

We adopt the Administrative Law Judge’s conclusions of law set out at Recommended Order, ¶ 80, ¶ 82 through ¶ 95, ¶ 97, ¶ 98, ¶ 100, and ¶ 103.

Exceptions

Respondent filed exceptions to the Administrative Law Judge’s Recommended Order in a document, “Respondent’s Exceptions to Recommended Order,” filed with the Division of Administrative Hearings on September 12, 2019.

While the exceptions document was filed with the Division of Administrative Hearings instead of the Commission, the document was timely filed, and the Commission will consider the document even though it was filed in the wrong forum. Accord, generally, *Bristol v. American Water*, FCHR Order No. 15-041 (July 9, 2015), *Medina v. Department of Children and Families*, FCHR Order No. 12-016 (April 23, 2012), *St Louis v. Florida Physician Medical Group*, FCHR Order No. 11-078 (October 6, 2011), *Garcia v. Heart of Florida Medical Center*, FCHR Order No. 10-061 (August 10, 2010)

and Lane v. Terry Laboratories, Inc., FCHR Order No. 08-022 (April 14, 2008), and cases cited therein.

The exceptions document takes issue with the Administrative Law Judge's conclusion that she had jurisdiction to decide Petitioner's claims of FMLA retaliation, and that the Commission, consequently, has jurisdiction to decide the claims too.

We have dealt with this issue in the Conclusions of Law section of this Order, above.

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 12 day of November, 2019.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;
Commissioner Donna Elam (not present and did not participate); and
Commissioner Rebecca Steele

Filed this 12 day of November, 2019,
in Tallahassee, Florida.



Clerk

Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

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Copies furnished to:

Peggy Wesley
[address of record]

Saint Lucie County Sheriff's Office
c/o R.W. Evans
Allen Norton & Blue, PA
906 N. Monroe Street
Tallahassee, FL 32303

June C. McKinney, 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 12 day of November, 2019.

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