

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

JAMES WALKER,

EEOC Case No. 15D201700836

Petitioner,

FCHR Case No. 2017-01614

v.

DOAH Case No. 18-2764

SUPERIOR CONSTRUCTION COMPANY
SOUTHEAST, LLC,

FCHR Order No. 19-022

Respondent.

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

Preliminary Matters

Petitioner James Walker filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2017), alleging that Respondent Superior Construction Company Southeast, LLC committed an unlawful employment practice on the basis of Petitioner's disability by terminating Petitioner from employment.

The allegations set forth in the complaint were investigated, and, on April 19, 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 by video teleconference at sites in Jacksonville and Tallahassee, Florida, on October 29, 2018, before Administrative Law Judge Hetal Desai.

Judge Desai issued an amended Recommended Order of dismissal, dated January 7, 2019.

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

On January 22, 2019, Petitioner filed exceptions to the Administrative Law Judge's amended Recommended Order in a document entitled "Petitioner's Exceptions to Recommended Order." This exception takes issue with the Administrative Law Judge's findings of fact. Petitioner disputes paragraph 11 of the Recommended Order which states that Petitioner did not report his injury to Respondent. Petitioner states that he reported his injury. Petitioner also disputes paragraphs 12 through 14 of the Recommended Order which state that Petitioner was given positions as a flagger and a roller operator to accommodate his disability. Petitioner states that he was assigned these positions for other reasons and that they did not comply with his doctor's orders. Petitioner disputes paragraphs 18 through 20 of the Recommended Order because he asserts that he was able to perform his job and he did not resign. Petitioner disputes paragraph 22 of the Recommended Order and states that Respondent's "work notes" are not credible. Petitioner disputes paragraphs 23 of the Recommended Order and states that he stated he resigned from Respondent's company, on subsequent job applications, because he felt he would not be hired if he stated that he was terminated. Petitioner disputes paragraph 24 of the Recommended Order which questions his credibility and the circumstances surrounding his filing for disability insurance benefits. Petitioner states that when he filed for disability insurance he was unable to find employment which caused him to be without medical care. Petitioner claimed that this caused his health to deteriorate to the point where he could no longer work. We note that we have the Administrative Law Judge's findings of fact and conclusions of law. Petitioner's exceptions are rejected.

On January 23, 2019, Respondent filed an exception, to the Administrative Law Judge's Recommended Order, with the Department of Administrative Hearings in a document entitled "Respondent's Exceptions to the Amended Recommended Final Order." Respondent disputes paragraph 6 of the Recommended Order which states that the parties stipulated to the fact that Petitioner suffers from a disability. While the parties may not have stipulated to this fact, the testimony from witnesses on both sides indicates that both parties regarded Petitioner as having a disability. Furthermore, this exception is untimely. Respondent's exception is rejected.

Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

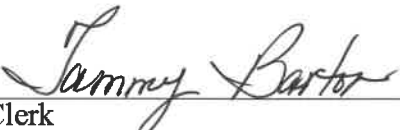
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 26 day of March, 2019.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Latanya Peterson, Panel Chairperson;
Commissioner Donna Elam (not present and did not participate); and
Commissioner Jay Pichard

Filed this 26 day of March 2019, in
Tallahassee, Florida.


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COPIES FURNISHED:

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Hetal Desai, Administrative Law Judge

Radhika Puri, Legal Advisor Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 26 day of March, 2019.

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