

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

NOU M. WALL,

EEOC Case No. 15D201800018

Petitioner,

FCHR Case No. 2017-02336

v.

DOAH Case No. 18-4091

GORDON FOOD SERVICES,

FCHR Order No. 19-036

Respondent.

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

Preliminary Matters

Petitioner Nou M. Wall filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2018), alleging that Respondent Gordon Food Services committed an unlawful employment practice on the basis of Petitioner's race, sex, and age by disciplining Petitioner and subjecting her to a hostile work environment.

The allegations set forth in the complaint were investigated, and, on July 6, 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 in Tampa, Florida, on December 17, 2018, before Administrative Law Judge Hetal Desai.

Judge Desai issued a Recommended Order of dismissal, dated February 27, 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

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order, received by the Commission on February 27, 2019.

The Administrative Procedure Act states that, "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 (2018); 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).

In her exceptions, Petitioner simply states:

"Petitioner is requesting the following exception: Removing the entire "RECOMMENDATION" section, located at the bottom of page 30 and continues to the following Page 31. Petitioner requests this Honorable Commission to outline its own Recommendation after thorough review of the Judge's endnotes on Pages 31 and 32 of said Recommended Order"

Petitioner's exceptions did not comport to the requirements for exceptions in that they did not include appropriate and specific citations to the record. Therefore, it is not possible to issue an explicit ruling on these portions of the exceptions document.

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. 1<sup>st</sup> 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

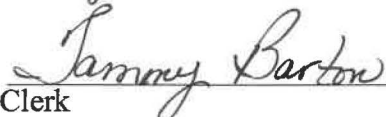
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice. The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk 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 28 day of May, 2019.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Tony Jenkins, Panel Chairperson;  
Commissioner Donna Elam; and  
Commissioner Rebecca Steele

Filed this 28 day of May 2019, in  
Tallahassee, Florida.

  
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Commission on Human Relations  
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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  
addresses this 28 day of May, 2019.

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