

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

ELAINE WILLIAMS,

EEOC Case No. 15D201900598

Petitioner,

FCHR Case No. 2019-18837

v.

DOAH Case No. 20-1764

TALLAHASSEE MEMORIAL
HEALTHCARE, INC.,

FCHR Order No. 20-011

Respondent.

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

Preliminary Matters

Petitioner Elaine Williams 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, Tallahassee Memorial Healthcare, Inc., committed unlawful employment practices by subjecting her to retaliation, disparate treatment, and harassment based on Petitioner's race (Black), age, sex (female), and disability following an injury she suffered at work.

The allegations set forth in the complaint were investigated, and, on March 4, 2020, 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 Zoom conference on August 18, 2020, before Administrative Law Judge Suzanne Van Wyk.

Judge Van Wyk issued a Recommended Order of dismissal, dated September 9, 2020.

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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission. In the absence of a transcript of the proceeding before the

Administrative Law Judge, the Recommended Order is the only evidence for the Commission to consider. See National Industries, Inc. v. Commission on Human Relations, et al., 527 So. 2d 894, at 897, 898 (Fla. 5th DCA 1988). Accord, Coleman v. Daytona Beach, Ocean Center Parking Garage, FCHR Order No. 14-034 (September 10, 2014), Gantz, et al. v. Zion's Hope, Inc., d/b/a Holy Land Experience, FCHR Order No. 11-048 (June 6, 2011), and Hall v. Villages of West Oaks HOA, FCHR Order No. 08-007 (January 14, 2008).

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 of dismissal. The Administrative Procedure Act states, "The agency shall allow each party 15 days in which to submit written exceptions to the recommended order." Section 120.57(1)(k), Florida Statutes (2020). The Recommended Order, itself, advises the parties, "All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case." See Recommended Order, page 9. The Florida Administrative Code section dealing with the filing of exceptions to Recommended Orders, specifically with regard to the computation of time for filing documents, states, "In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday." Fla. Admin. Code R. 28-106.103.

The date of the Recommended Order is September 9, 2020. Fifteen days from that date is Thursday, September 24, 2020. Petitioner's exceptions were received by the Commission, via electronic mail, on Saturday, September 26, 2020 (day 17 from the date of the Recommended Order). Petitioner's exceptions are untimely. Accord, Barbagallo v. Ocean Park Condominium Association, FCHR Order No. 11-060 (July 13, 2011) in which a Commission Panel concluded that an exceptions document filed one day late was untimely. Thus, we will not rule on Petitioner's exceptions.

Lastly, even if it was assumed that Petitioner's exceptions were timely filed, 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 (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 it does not comply with this statutory provision, and, therefore, Petitioner’s exceptions are rejected.

Dismissal

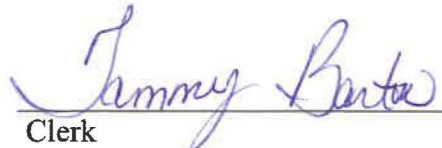
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 30 day of November, 2020.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Mario Garza, Panel Chairperson;
Commissioner Larry Hart; and
Commissioner Jay Pichard

Filed this 30 day of November, 2020,
in Tallahassee, Florida.



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

Copies furnished to:

Elaine Williams
411 Earline Hobbs Road
Quincy, FL 32351

Tallahassee Memorial Healthcare, Inc.
c/o Gerald D. Bryant, Esq. and
Stephanie Clark, Esq.
Pennington, P.A.
215 South Monroe Street, Suite 200
Tallahassee, Florida 32301

Suzanne Van Wyk, 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 30 day of November, 2020.

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