

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

WILLIE SCOTT,

EEOC Case No. 15D201901022

Petitioner,

FCHR Case No. 2019-19813

v.

DOAH Case No. 20-2272

CIRCLE K STATIONS,

FCHR Order No. 20-014

Respondent.

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

Preliminary Matters

Petitioner Willie Scott filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2019), alleging that Respondent, Circle K Stations, committed an unlawful employment practice by subjecting him to a layoff on the bases of age, race, and disability.

The allegations set forth in the complaint were investigated, and, on April 20, 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 convened by Zoom conference on September 15, 2020, by Administrative Law Judge Robert J. Telfer III. Petitioner did not appear at the hearing.

Judge Telfer issued a Recommended Order of Dismissal, dated September 18, 2020, 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 and Conclusions of Law

Judge Telfer's Recommended Order of Dismissal reflects that Petitioner failed to appear at the scheduled administrative hearing in the case. Judge Telfer's order concludes that by failing to appear, Petitioner "failed to meet his burden of proof." The Recommended Order recommends that the Commission issue a final order dismissing Petitioner's Petition for Relief. Commission panels have concluded that when a Petitioner fails to appear at the scheduled administrative hearing in their case, they fail to meet their burden of proof, and the Petition for Relief should be dismissed. See, e.g., Sushkova v. Marco Destin, Inc., FCHR Order No. 17-083 (November 2,

2017), Santana v. Charter Communications, Inc., FCHR Order No. 17-067 (August 23, 2017), Jacome v. Victoria's Secret, LLC, FCHR Order No. 16-030 (June 9, 2016), Wade v. District School Board of Putnam County, FCHR Order No. 15-008 (February 12, 2015), Demons v. Emerald Grande, LLC, FCHR Order No. 14-033 (September 10, 2014), Bullard v. Lowry Group Properties, Inc., et al., FCHR Order No. 13-011 (February 26, 2013), Goldenberg v. Department of Corrections, FCHR Order No. 12-051 (September 17, 2012), Dotson v. Department of Financial Services, FCHR Order No. 11-034 (April 13, 2011), Patterson v. Panama City Housing Authority, FCHR Order No. 11-001 (January 13, 2011), Crump v. The Majestic Tower at Bal Harbour, FCHR Order No. 10-072 (September 21, 2010), Bermudez v. Lake County Housing Authority, FCHR Order No. 10-041 (April 27, 2010), Cowden v. Difulio, et al., FCHR Order No. 09-115 (December 14, 2009), Scott v. Two Men and a Truck, FCHR Order No. 09-009 (January 27, 2009), Enzor v. Sandco, Inc., FCHR Order No. 08-048 (July 29, 2008), Rodriguez v. Center Point Health and Rehab, FCHR Order No. 08-001 (January 14, 2008), West v. Sembler Corporation, d/b/a Bay Walk, FCHR Order No. 07-037 (June 15, 2007), Martinez v. KJC Enterprises, d/b/a Plantation Island Resort, FCHR Order No. 07-028 (April 20, 2007), Chaney, et al. v. Robert Buckner & Associates, FCHR Order No. 06-092 (November 13, 2006), and Prek v. Workforce Central Florida, FCHR Order No. 06-079 (September 18, 2006).

We adopt the Administrative Law Judge's finding as to the nonappearance of Petitioner and conclude that Petitioner has failed to carry his burden of proof.

Exceptions

The Recommended Order of Dismissal was issued on September 18, 2020. Petitioner claims in a fax to Judge Telfer dated September 28, 2020, that he faxed a "rebuttal" to Judge Telfer on September 15, 2020 (the date of the hearing). Petitioner, in his fax dated September 28, 2020, included a copy of the document and a "Rebuttal Statement." In addition, Petitioner describes the information as "new evidence," and requests either that it be considered by Judge Telfer or that the Division of Administrative Hearings schedule another hearing.

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 documents suggest that they do not comply with this statutory provision.

Thus, based on the foregoing, even if it was assumed that Petitioner's fax and other documents constitute exceptions to the Recommended Order of Dismissal, Petitioner's exceptions are rejected. Respondent did not file Exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

Dismissal

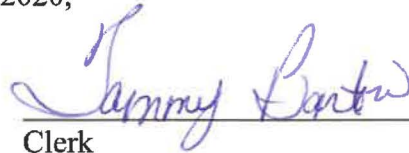
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 of 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:


Willie Scott
Post Office Box 867
Hastings, FL 32145

Circle K Stations
c/o Brian L. Hayden, Esq.
Jackson Lewis PC
501 Riverside Avenue, Suite 902
Jacksonville, FL 32202

Robert J. Telfer III, 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: 
Clerk of the Commission
Florida Commission on Human Relations