

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

MATTHEW P. MATHEWS,

EEOC Case No. 15D202000814

Petitioner,

FCHR Case No. 202024568

v.

DOAH Case No. 20-4767

LENNOX NATIONAL ACCOUNT SERVICES,

FCHR Order No. 21-074

Respondent.

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

Preliminary Matters

On April 8, 2020, Petitioner Matthew Mathews filed an Employment Complaint of Discrimination, pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2019), alleging that Respondent Lennox National Account Services, committed an unlawful employment practice against Petitioner on the bases of disability and retaliation.

The allegations set forth in the complaint were investigated, and, on October 5, 2020, the Executive Director issued a determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

On October 25, 2020, 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 scheduled for January 11, 2021, but the hearing was continued.

An evidentiary hearing was held by video before Administrative Law Judge James H. Peterson, III, on March 15 and 16, 2021, via Zoom.

Judge Peterson issued a Recommended Order of dismissal, dated June 22, 2021.

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, on July 6, 2021. Respondent filed a response to Petitioner's exceptions on July 16, 2021.

Petitioner provided an explanation of why he generally excepts to the inferences drawn from the evidence presented as set out in the Recommended Order and to the Administrative Law Judge's finding that no unlawful employment practices occurred in this matter.

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 (2021); 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 the Petitioner's exceptions document suggests that it does not comply with this statutory provision because it does not clearly identify the disputed portion of the recommended order, does not clearly identify the legal basis for each exception, and does not include appropriate and specific citations to the record. Though the Petitioner seems to attempt to make reference to the record, (i.e., when he disagrees with the Administrative Law Judge's factual findings on page 19, paragraph 66 of the Recommended Order), it is not possible in all instances to determine to where in the record he is referencing.

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, supra.

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. 1st DCA 1991). Accord, Coley v. Bay County Board of County Commissioners, FCHR Order No. 10-027 (March 17, 2010) and Eaves, supra.

Petitioner's exceptions are rejected.

Dismissal

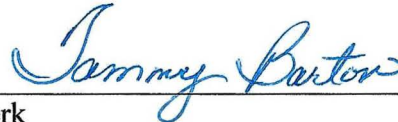
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 18 day of November, 2021.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;
Commissioner Mario Garza; and
Commissioner Larry Hart

Filed this 18 day of November, 2021,
in Tallahassee, Florida.



Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
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Copies furnished to:

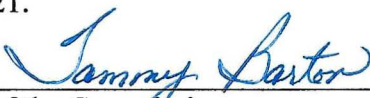
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James H. Peterson, III, Administrative Law Judge, DOAH

Sarah Stewart, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 18 day of September, 2021.

By: 
Clerk of the Commission
Florida Commission on Human Relations