

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

KEVIN CRUZ,

Petitioner,

vs.

Case No. 22-0437

AMAZON,

Respondent.

RECOMMENDED ORDER

This case came before Administrative Law Judge (“ALJ”) Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing by Zoom conference on May 25, 2022.

APPEARANCES

For Petitioner: Kevin Cruz, pro se
121 Southwest 4th Avenue
Hallandale, Florida 33009

For Respondent: James W. Seegers, Esquire
Baker & Hostetler, LLP
200 South Orange Avenue, Suite 2300
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether the Florida Commission on Human Relations (“FCHR”) correctly determined that it lacked jurisdiction to investigate Petitioner, Kevin Cruz’s (“Petitioner”), Employment Complaint of Discrimination (“Complaint”) because he was not an employee of Respondent, Amazon (“Respondent”), on the date of the alleged adverse action.

PRELIMINARY STATEMENT

On July 21, 2021, Petitioner filed a Complaint with FCHR alleging that Respondent discriminated against him because of his race and disability. On January 28, 2022, FCHR notified the parties that it lacked jurisdiction to investigate Petitioner's Complaint. Dissatisfied with FCHR's decision, Petitioner timely filed a Petition for Relief with FCHR on February 9, 2022. On February 10, 2022, FCHR referred the matter to DOAH to assign an ALJ to conduct the final hearing.

On March 1, 2022, the undersigned entered an Order setting the final hearing for May 16, 2022, by Zoom conference. On April 19, 2022, Respondent filed a motion for a brief continuance of the final hearing, which Petitioner opposed. On April 21, 2022, the undersigned entered an Order granting the motion, resetting the final hearing for May 25, 2022. The final hearing was held on May 25, 2022, with both parties present. At the hearing, Petitioner testified on his own behalf. Petitioner's Exhibits 1 through 11 were received into evidence. Respondent presented the testimony of Anyea Debose. Respondent's Exhibits 1 through 15 were received into evidence.

The one-volume final hearing Transcript was filed at DOAH on July 14, 2022. The parties timely filed proposed recommended orders, which were given consideration in the preparation of this Recommended Order. Unless otherwise indicated, all statutory references are to the 2020 version of the Florida Statutes.

FINDINGS OF FACT

1. In March 2020, Petitioner was an employee of Respondent at its MIA-5 facility, located in Doral, Florida. At that time, Anyea Debose was employed by Respondent as the Senior HR Business Partner. As the Senior HR Business Partner, Ms. Debose handled a variety of employee matters,

including conducting investigations of employee-alleged violations of Respondent's policies. Ms. Debose's territory included the MIA-5 facility.

2. Respondent has a zero-tolerance drug and alcohol policy, which prohibits employees from smoking marijuana at Respondent's facilities.

3. In late March 2020, Ms. Debose received a report that Petitioner was observed smoking marijuana while on duty, and on Amazon property, at the MIA-5 facility. As a result of the report, Ms. Debose commenced an investigation of Petitioner. The same day Ms. Debose notified Petitioner of the allegation, Petitioner requested, and was granted, COVID-19 related leave until July 1, 2020.

4. Respondent also has a zero-tolerance discrimination and harassment policy.

5. While Petitioner was on leave, Ms. Debose received multiple racist emails from Petitioner using the "N" word.

6. As a result of Petitioner's repeated use of the "N" word in the emails, Ms. Debose expanded her investigation of Petitioner to include a violation of Respondent's zero-tolerance discrimination and harassment policy.

7. On July 1, 2020, the date Petitioner's leave expired, Ms. Debose contacted Petitioner by e-mail, to continue her investigation into Petitioner's alleged misconduct involving smoking marijuana while at work on Respondent's property and the repeated racist emails he sent to her.

8. Petitioner responded to Ms. Debose by email, asserting that his leave was not scheduled to end while continuing his repeated use of the "N" word.

9. Ms. Debose had no reason to believe that the emails received from Petitioner were not sent by Petitioner. Petitioner's assertion that his email had been hacked, and that he did not send the racist emails, is rejected as unpersuasive and is not credible. The testimony of Ms. Debose that the emails were received from Petitioner is more persuasive and credited over the testimony of Petitioner, which was unpersuasive and is not credited. In

reaching this conclusion, the undersigned had the distinct opportunity to observe the witnesses when testifying and their demeanor.

10. In any event, Ms. Debose closed her investigation based on the evidence received, concluding that Petitioner violated Respondent's zero-tolerance drug and alcohol and zero-tolerance harassment and discrimination policies. Each of these policies require termination for the first offense. Accordingly, Petitioner was terminated from Respondent, effective July 8, 2020, and was not eligible for rehire.

11. On March 24, 2021, more than eight months after his termination, Petitioner returned to Respondent's MIA-5 facility. Respondent contacted the police, who arrived at the facility and issued Petitioner a trespass warning. In his Complaint, Petitioner alleged Respondent discriminated against him, based on his race and disability, for contacting the police in response to showing up at Respondent's MIA-5 facility on March 24, 2021. Petitioner's Complaint filed with FCHR on July 21, 2021, alleging race and disability discrimination, is based solely upon his alleged mistreatment by Respondent at the MIA-5 facility on March 24, 2021.

12. In an effort to demonstrate that FCHR had jurisdiction to investigate his Complaint, Petitioner asserts that his employment was reinstated on March 17, 2021. However, Petitioner's testimony is rejected as unpersuasive and is not credible. The testimony of Ms. Debose that Petitioner was never reinstated after his termination, and that he was not eligible for rehire, is more persuasive and credited over the testimony of Petitioner, which was unpersuasive and is not credited. In reaching this conclusion, the undersigned had the distinct opportunity to observe the witnesses when testifying and their demeanor.

CONCLUSIONS OF LAW

13. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569, 120.57(1), and 760.11 Florida Statutes.

14. The Florida Civil Rights Act of 1992 (“FCRA”), chapter 760, prohibits discrimination in the workplace. Among other things, the FCRA makes it unlawful for an employer:

To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.

§ 760.10(1)(a), Fla. Stat.

15. Turning to the instant case, Petitioner’s Complaint is premised on a discrete act of alleged discrimination occurring on March 24, 2021, more than eight months after his termination.

16. In an effort to demonstrate that FCHR had jurisdiction to investigate his Complaint, Petitioner argues that he was reinstated by Respondent on March 17, 2021, and therefore, he was an employee of Respondent on March 24, 2021. As detailed above, Petitioner was never reinstated. Petitioner cites no legal authority which would authorize FCHR to investigate his Complaint of post-employment discrimination under the particular facts of this case.

17. In sum, Petitioner failed to establish at the final hearing that he was employed by Respondent at the time of the alleged conduct by Respondent at its MIA-5 facility on March 24, 2021. To the contrary, the persuasive and credible evidence presented at hearing demonstrates that Petitioner was terminated from employment by Respondent more than eight months earlier on July 8, 2020, that he was not eligible for rehire, and that he was never reinstated. Accordingly, FCHR correctly determined that it lacked jurisdiction to investigate Petitioner’s Complaint.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 1st day of August, 2022, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
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this 1st day of August, 2022.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

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.