

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

RACHEL HOFER,

EEOC No. 15D202100873

Petitioner,

FCHR No. 2022-30700

v.

DOAH No. 22-1149

FLORIDA DEPARTMENT OF
CORRECTIONS,

FCHR Order No. 22-090

Respondent.

**FINAL ORDER DISMISSING PETITION FOR RELIEF
FROM A DISCRIMINATORY EMPLOYMENT PRACTICE**

Preliminary Matters

On September 8, 2021, Rachel Hofer, Petitioner, filed an employment discrimination complaint pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2021), alleging that Florida Department of Corrections, Respondent, committed unlawful discriminatory employment practices against Petitioner on the basis of retaliation.

The allegations set forth in the complaint were investigated, and, on March 2, 2022, the Executive Director issued a determination finding that there was no reasonable cause to find that a discriminatory employment practice had occurred.

On April 4, 2022, Petitioner filed a Petition for Relief from a Discriminatory Employment Practice, and on April 14, 2022, the case was transmitted to the Division of Administrative Hearings for the conduct of an evidentiary hearing.

A final evidentiary hearing took place on June 30, 2022, before Administrative Law Judge G.W. Chisenhall, via Zoom teleconference.

On July 20, 2022, Judge Chisenhall issued a Recommended Order recommending a dismissal of the Petition for Relief.

The Commission panel designated below has 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. The Administrative Procedure Act states, "The agency may not reject or modify the findings of fact unless the agency first determines from a review *of the entire record*, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did

not comply with the essential requirements of law [emphasis added].” Section 120.57(1)(l), Florida Statutes (2021).

As indicated, no transcript of the proceeding before the Administrative Law Judge was filed with the Commission. Therefore, the Recommended Order is the only evidence for the Commission to consider. See, Jones v. Suwannee County School Board, FCHR Order No. 06-088 (September 11, 2006), Johnson v. Tree of Life, Inc., FCHR Order No 05-087 (July 12, 2005).

Accordingly, 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.

Accordingly, we adopt the Administrative Law Judge’s conclusions of law.

Exceptions

On or about July 29, 2022, Petitioner submitted to the Commission a document titled “Notes on Recommended Order and Exceptions”. Said document was accompanied by several attachments. In addition to said document, on July 30, 2022, Petitioner submitted a photograph of a membership card. There are seventeen of Petitioner’s exceptions. Exception #2 essentially asserts the Administrative Law Judge was without power to hold the hearing and also asserts the hearing was invalid. The remainder of Petitioner’s exceptions, including Exception #1 that alludes to jurisdictional issues, contain Petitioner’s opinions or explanations relating to witnesses who appeared at the hearing, the Administrative Law Judge’s manner of conducting the hearing, the factual findings of the Administrative Law Judge, the evidence considered by the Administrative Law Judge, and the inferences drawn from the evidence by the Administrative Law Judge. Several of the exceptions contain claims that the Administrative Judge did not consider various arguments and items or points of evidence. Only four of the seventeen exceptions identify the disputed portion of the Recommended Order by page number or paragraph.

As indicated above, 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. Also, 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) and Eaves v. IMT-LB Central Florida Portfolio, LLC, FCHR Order

No. 11-029 (March 17, 2011).

Finally, 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 (2022); 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, 2020, and Bartolone v. Best Western Hotels, FCHR Order No. 07-045 (August 24, 2007). Aside from the three exceptions referenced above, Petitioner’s document did not identify the disputed portion of the Recommended Order by page number or paragraph. Because no transcript was ordered, none of the exceptions identified the legal basis for the exceptions with appropriate and specific citations to the record.

It should also be noted that with regard to Exceptions # 1 and #2, under Chapter 120, Florida Statutes (2022), the Administrative Law Judge is empowered to preside over the hearing relating to the present matter and submit an order containing findings of fact, conclusions of law, and recommended disposition relating to said matter.

For the reasons stated, the Petitioner’s exceptions are rejected.

Dismissal

The Petition for Relief and Employment Discrimination Complaint 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 Sept., 2022.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Darrick McGhee, Panel Chairperson;
Commissioner Libby Farmer; and
Commissioner Jay Pichard

Filed this 28 day of Sept., 2022, in Tallahassee, Florida

Jamoy Barton
Clerk
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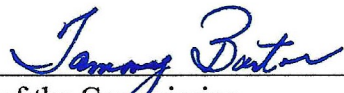
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G.W. Chisenhall, Administrative Law Judge, DOAH

John Scotese, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 28 day of Sept., 2022.

By: 
Clerk of the Commission
Florida Commission on Human Relations