

**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

AUDREY RANDOLPH,)	EEOC Case No. NONE
Petitioner,)	FCHR Case No. 98-3306
)	DOAH Case No. 02-000287
vs.)	FCHR Order No. 04-082
)	
DIVISION OF ADMINISTRATIVE HEARINGS,)	
Respondent)	

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

Preliminary Matters

Petitioner, AUDREY RANDOLPH, filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes, alleging that the Respondent, FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS, committed an unlawful employment practice by terminating her due to her race (black), religion, disability, marital status and in retaliation. The allegations set forth in the complaint were investigated and, on October 10, 2001, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief on November 15, 2001. The Administration Commission appointed a special Administrative Law Judge, William W. Large, who conducted a formal evidentiary hearing on Monday and Tuesday, September 22 and 23, 2003, in Tallahassee, Florida.

Judge Large issued a Recommended Order of Dismissal dated December 2, 2003.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Petitioner's Motion for Inclusion of All [proposed] Recommended Orders

The Petitioner filed a Motion on June 7, 2004, to include all recommended orders, including Proposed Recommended Orders by the Parties, in the record for the non-evidentiary hearing to be held on June 17, 2004. At the beginning of the hearing, the Commission Panel took up the motion and heard oral arguments from each party. The motion was denied based on a finding the proposed recommended orders do not assist the Commission's review of the Recommended Order of an Administrative Law Judge. The Recommended Order is to be "reviewed in light of competent substantial evidence in the record, exceptions and responses to exceptions, and the applicable law, not against any of the proposed recommended orders." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729 (FCHR 1999). In accord, Rathkamp et al. v. Department of Community Affairs, 21 F.A.L.R. 1902, at 1904 (DCA 1998).

Findings of Facts and Conclusions of Law

The Commission's file contains a transcript of the proceeding before the Administrative Law Judge as well as selected exhibits offered and entered into evidence at the proceeding. With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in *Spradlin vs. Washington Mutual Bank, d/b/a Great Western*. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 2001), citations from the quoted statement omitted.

The ALJ found that the Petitioner was a black female employed by the Division under probationary status as a proofreader. He made further findings relating to poor attendance history; excessive personal phone use; lack of initiative; and disruptive and rude behavior. He also made findings that she never informed her her supervisor of any disability, nor requested any accommodation for any alleged disability or religious reason. He specifically found that Petitioner was terminated on September 30, 1997, due to her chronic tardiness, excessive telephone usage, and general failure to demonstrate initiative.

The ALJ then concluded that the Petitioner failed to establish her prima facie case for racial discrimination based on disparate treatment; specifically, "completely failed to produce any evidence that an employee outside of Petitioner's classification (black) was similarly situated and treated more favorably" The ALJ also concluded that the Petitioner failed to establish her prima facie case for discrimination based on her religion; specifically, "because she did not present any evidence that the decision-maker knew of her religion" The ALJ further concluded that the Petitioner failed to establish her prima facie case for discrimination based on her marital status; specifically, "the evidence presented plainly demonstrates that Petitioner failed to establish that she performed her duties in a satisfactory manner" which was the second element of establishing a prima facie case of discrimination due to marital status. The ALJ further concluded that the Petitioner failed to establish her prima facie case for discrimination based on her alleged disability; specifically, "Petitioner brought forth no credible evidence that tends to establish that she had an impairment that limited one of her major life activities" The ALJ finally concluded that the Petitioner failed to establish her prima facie case for discrimination based on retaliation. Specifically, "Petitioner has failed to bring forth any credible evidence demonstrating that her termination was related to any statutorily protected conduct"

He then proceeded to further conclude that, even if a prima facie cases had been made under any basis, the Respondent had articulated legitimate, nondiscriminatory reasons for her termination and that the Petitioner failed to produce competent evidence that the reasons advanced by the Respondent were pre-textual.

We adopt the Administrative Law Judge's findings of fact and conclusions of law.

Exceptions

Both Petitioner and Respondent filed exceptions to the Administrative Law Judge's Recommended Order. Petitioner's second exception was similar to the exception provided by the Respondent in which they both point out that the Recommended Order opening paragraph stated that the case was begun by a complaint filed "on or about November 18, 1998" rather than the correct date of September 29, 1998. An "amended" (typed) complaint was filed on November 18, 1998. Her other exceptions were contained in a fifteen page document entitled "Exceptions."

Her first exception (item 1) raises the issue of timeliness of the Recommended Order (more than 30 days from filing of transcripts) and suggests that "it can not be used." Although Uniform Rule 28-106.216, F.A.C., provides for the entry of a Recommended Order "within 30 days after the hearing or receipt of the hearing transcript, whichever is later," the statute is quiet as to this time. Section 120.569(2)(l), FS, does provide a time period of 90 days in which an agency is to render its final order. In a case involving the Commission on that statutory time period,

the 1st DCA stated, “[T]he rule is firmly established, however, that reversal of final administrative orders, which are not rendered in compliance with the provisions of Section 120.59(1), FS, is required only if the fairness of the proceedings or the correctness of the action taken is found to have been impaired by virtue of the statute's violation,” citing Department of Transportation v. Courtelis Co., 436 So.2d 92 (Fla. 1983). School Board of Leon County v. Weaver, 556 So.2d 443 (1st DCA 1990) at 446. Similar logic would hold here.

As noted above her second exception was similar to Respondent’s only exception.

Her third, fourth, fifth, seventh, ninth and eleventh and twelfth exceptions reorder and reweigh the facts in order to support her views but fail to point out anywhere the lack of competent and substantial evidence supporting the ALJ’s findings of fact.

Her sixth exception alleges bias and a failure of due process; however, provides no credible evidence supporting such a conclusion.

Her eighth exception attacks one of her co-workers and is not supported by any credible evidence.

Her tenth exception seems to have no bearing on the case.

Based on the foregoing, Respondent’s exception and Petitioner’s exception # 2 are accepted and Petitioner’s other exceptions are not accepted.

Dismissal

The Request 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 2nd day of July, 2004
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Dominique B. Saliba; and
Commissioner Billy W. Stall; and
Commissioner Gayle Cannon;

Filed this 2nd day of July, 2004,
in Tallahassee, Florida

/s/

Violet Crawford, Clerk
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William W. Large, Administrative Law Judge, DOAH

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By: /s/
Violet Crawford,
Clerk of the Commission
Florida Commission on Human Relations