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Substantial Weight Review
March 14, 2007

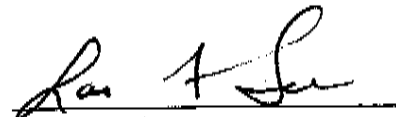
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
MIAMI DISTRICT OFFICE
ONE BISCAYNE TOWER
2 SOUTH BISCAYNE BOULEVARD, SUITE 270
MIAMI, FL 33131

RE: FCHR NO. 20-0420150
EEOC No. 15DA400080

Pursuit to Section 1601.76 of EEOC regulations, I hereby request a Substantial Weight Review of the Commission's final findings.

Commission's Final Findings dated 3/13/07 attached.

I Hereby Certify that a true copy of the foregoing has been furnished by hand delivery to Stacy Robinson at 400 W. Robinson Street, Suite S-1106 Orlando, FL 32801-1782 this 14th day of March 2007.



Laura F. Lucas,
Petitioner
P.O. Box 622101
Orlando, FL 32862
(407) 275-9221

Copies Furnished:

Cecil Howard, General Counsel
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
2007 MAR 13 P 2 20
DIVISION OF
ADMINISTRATIVE
HEARINGS

LAURA F. LUCAS,

Petitioner,

v.

DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Respondent.

EEOC Case No. 15DAA400080

FCHR Case No. 2004-20150E

DOAH Case No. 04-1570

FCHR Order No. 07-023

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

Preliminary Matters

Petitioner Laura F. Lucas filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2003), alleging that Respondent Department of Children and Family Services committed an unlawful employment practice on the basis of Petitioner's race (African-American) by failing to promote Petitioner to a position for which she had applied.

The allegations set forth in the complaint were investigated, and, on April 9, 2004, the Executive Director issued his 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 held on June 16 and August 3, 2004, in Orlando, Florida, before Administrative Law Judge Fred L. Buckine.

Due to Judge Buckine's retirement, the case was transferred to Administrative Law Judge Carolyn S. Holifield, who issued a Recommended Order of dismissal, dated December 14, 2006.

Pursuant to notice, public deliberations were held on March 8, 2007, by means of Communications Media Technology (namely, telephone) before this panel of Commissioners. The public access point for these telephonic deliberations was the Office of the Florida Commission on Human Relations, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel 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 in a document entitled, "Petitioner's Exceptions to Proposed Recommended Order." While the exceptions document was sent to the Division of Administrative Hearings rather than the Commission, it was filed with the Division of Administrative Hearings within fifteen days after the issuance of the Recommended Order, and therefore is deemed timely filed. Accord, Harris v. Lake County School District, FCHR Order No. 06-057 (June 20, 2006), Brockman v. University of Miami-Bascom Palmer Eye Institute, FCHR Order No. 05-127 (November 21, 2005), and Welch v. Department of Children and Family Services, FCHR Order No. 05-118 (October 20, 2005).

Petitioner's document contains a "Preliminary Statement," and also sets out eleven numbered paragraphs which except to findings of fact in the Recommended Order.

The "Preliminary Statement" seems to argue that Judge Buckine's recommendation should be included in the construction of the Recommended Order, apparently arguing that the recommendation as constructed "did not include Judge Buckine's hearing notes, off the record discussions and first hand knowledge of the proceedings."

The Administrative Procedure Act states, "If the administrative law judge assigned to a hearing becomes unavailable, the division shall assign another administrative law judge who shall use any existing record and receive any additional evidence or argument, if any, which the new administrative law judge finds necessary." Section 120.57(1)(a), Florida Statutes (2005).

To the extent the "Preliminary Matters" section contains an exception to how the Recommended Order was constructed without Judge Buckine's input, the exception is rejected.

Under a section entitled, "Exceptions to the Hearing Officer's Findings of Fact," Petitioner sets out eleven numbered paragraphs, each excepting to indicated "finding of fact" paragraphs in the Recommended Order.

In each instance, in our view, the finding of the Administrative Law Judge is supported by competent substantial evidence in the record.

This case presents an unusual situation in terms of the Administrative Law Judges participating in the case.

The Administrative Law Judge who conducted the hearing in this matter, Judge Fred L. Buckline, apparently retired prior to the completion of the Recommended Order. Judge Carolyn S. Holifield was then assigned to review the record and complete the Recommended Order. See Section 120.57(1)(a), Florida Statutes (2005), set out above.

In a situation in which the Administrative Law Judge who conducted the formal administrative hearing was not the same Administrative Law Judge who wrote the Recommended Order, a Commission panel stated the following: "We note that, in this case, the Hearing Officer who issued the Corrected Recommended Order is not the same Hearing Officer who conducted the formal administrative proceeding. [citation omitted]. In a situation similar to this, it has been stated that the agency 'has more liberty...to modify or reject the findings of fact of [the Hearing Officer] than in the usual case where the recommended order is entered by the hearing officer who presided at the final hearing.' Jones Management Corporation v. Department of Environmental Protection, 16 F.A.L.R. 1315, at 1319 (DEP 1994). This is because the Hearing Officer who prepared the Recommended Order did not see or hear the witnesses who testified, or have the benefit of observing their demeanor, general emphasis, gestures, and other nonverbal communication. Id., at 1318 and 1319. Consequently, since the Hearing Officer who wrote the Corrected Recommended Order, in the instant case, would be in no better position to review the record and make findings of fact and conclusions of law than the Commission, the Commission will hereby decide the case by a de novo review of the record." Jacobs v. Florida Department of the Lottery, 20 F.A.L.R. 360, at 361 (FCHR 1996).

In the Jacobs case, the Commission panel indicated that based on its de novo review of the record, it adopted the Administrative Law Judge's findings of fact and conclusions of law, and dismissed the Petition for Relief. Jacobs, at 361 and 362.

Likewise, we have adopted the Administrative Law Judge's findings of fact and conclusions of law as set out in the Recommended Order, and, therefore, Petitioner's eleven paragraph exceptions to the findings of fact are rejected. Accord, Hjortsberg v. Great Bay Distributors, Inc., FCHR Order No. 06-086 (September 11, 2006)

Dismissal

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

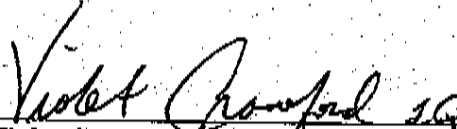
The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right

to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 12th day of MARCH, 2007.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Anice R. Prosser, Panel Chairperson;
Commissioner Shahruckh S. Dhanji; and
Commissioner Keith Roberts

Filed this 12th day of MARCH, 2007,
in Tallahassee, Florida.


Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-708

NOTICE TO COMPLAINANT / PETITIONER

As your complaint was filed under Title VII of the Civil Rights Act of 1964, which is enforced by the U.S. Equal Employment Opportunity Commission (EEOC), you have the right to request EEOC to review this Commission's final agency action. To secure a "substantial weight review" by EEOC, you must request it in writing within 15 days of your receipt of this Order. Send your request to Miami District Office (EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

Laura F. Lucas
Post Office Box 622101
Orlando, FL 32862

FCHR Order No. 07-023
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Department of Children and Family Services
c/o Stacy Robinson, Esq.
400 West Robinson Street, Suite S-1106
Orlando, FL 32801-1782

Carolyn S. Holifield, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

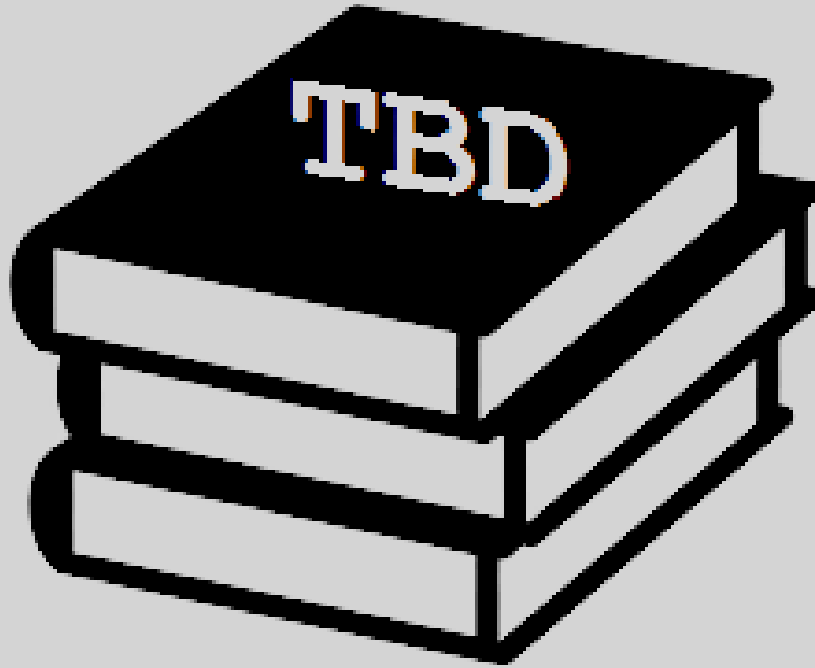
I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above
listed addressees this 12th day of MARCH, 2007.

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

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