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STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

DONALD A. GARREPY,

Petitioner,

v.

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Respondent.

EEOC Case No. 15D950818

FCHR Case No. 95-0752

DOAH Case No. 98-5090

FCHR Order No. 99-022

FILED  
JUL 30 2 39

ORDER REMANDING PETITION FOR RELIEF  
FROM AN UNLAWFUL EMPLOYMENT PRACTICE

DMK-cus

Preliminary Matters

Petitioner Donald A. Garrepy filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1993), alleging that Respondent Department of Environmental Protection, committed an unlawful employment practice within the meaning of the Florida Civil Rights Act of 1992 on the basis of Petitioner's age (53) and sex (male) when it denied Petitioner promotion.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice and the Commission transmitted the case to the Division of Administrative Hearings for the conduct of a formal proceeding.

Prior to the conduct of a formal proceeding, Administrative Law Judge Daniel M. Kilbride issued a Recommended Order of Dismissal, dated April 9, 1999.

Pursuant to notice, public deliberations were held July 29, 1999, 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, 325 John Knox Road, Building F, Suite 240, Tallahassee, Florida, 32303-4149. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief and Recommended Order of Dismissal.

Conclusions of Law

The Administrative Law Judge found that the Commission failed to make a reasonable cause determination in this matter, and three and one-half years after first filing his Complaint, Petitioner requested a formal administrative hearing. Recommended Order, ¶ 13.

The Administrative Law Judge concluded that Petitioner's request for an administrative hearing was untimely.

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We conclude that this is an error of law, and as ordered, *infra*, that the case should be remanded to the Administrative Law Judge for further proceedings.

The Florida Civil Rights Act of 1992 (Act) states, "In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause." Section 760.11(8), Florida Statutes (1997).

The referred-to subsection (4) states, "In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either: (a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or (b) Request an administrative hearing under ss. 120.569 and 120.57." Section 760.11(4), Florida Statutes (1997).

With regard to civil suits, the Act states, "A civil action brought under this section shall be commenced no later than 1 year after the date of determination of reasonable cause by the commission." Section 760.11(5), Florida Statutes (1997).

With regard to administrative proceedings, the Act states, "An administrative hearing pursuant to paragraph (4)(b) must be requested no later than 35 days after the date of determination of reasonable cause by the commission." Section 760.11(6), Florida Statutes (1997).

The Administrative Law Judge concluded that Petitioner's request for an administrative hearing was due to be filed no later than 35 days from the ending of the 180-day time period following the filing of the complaint. Recommended Order, ¶ 15. In so doing, the Administrative Law Judge relied on the decision in Milano v. Moldmaster, Inc., 703 So. 2d 1093 (Fla. 4th DCA 1997), in which the court held that, in a case in which the Commission had not yet reached a determination of whether there was reasonable cause, the one-year limitation for filing a civil action began to run at the expiration of the 180-day period in which the Commission was to make a reasonable cause determination, and that a civil action filed later than one year following this 180-day period was untimely.

We reject, in accord with a Commission panel's order in Wilson v. Scotty's, Inc., FCHR Order No. 98-032 (FCHR 1998), the contention that the Milano decision, *supra*, is controlling of the issues presented in the instant case.

The Commission panel in Wilson, *supra*, noted:

"The Milano decision, *supra*, deals with the time frame for filing a civil suit in court, while the instant case deals with the time frame for requesting an administrative hearing.

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In our view, it is clear that while the Act presumes that aggrieved individuals would be allowed to file civil actions in court only if the Commission's investigation reached a 'cause' determination, the Act also presumes that individuals would be allowed to request administrative hearings following the Commission's investigation regardless of whether a 'cause' or 'no cause' determination was reached by the Commission. See 760.11(4), Florida Statutes (1997), regarding the filing of an administrative action if a 'cause' determination is reached, and Section 760.11(7), Florida Statutes (1997), regarding the filing of an administrative action if a 'no cause' determination is reached.

Since the request for administrative hearing is open to all complainants upon the issuance of a determination by the Commission (in contrast to the civil action which is available once a determination has been issued only to those complainants who have received a 'cause' determination) we conclude that the plain meaning of the cited statutory provisions is that a complainant may request an administrative hearing at any time after the conclusion of the initial 180-day period following the filing of the complaint and no later than 35 days after the date of a determination by the Commission (or simply no later than 35 days after the date of determination, if the Commission's investigation is completed within 180 days of the filing of the complaint).

Since no determination has been issued in the instant case, we conclude Petitioner's request for administrative hearing is timely." Wilson v. Scotty's, Inc., FCHR Order No. 98-032 (FCHR 1998).

We likewise conclude that since no determination has been issued in the instant case, Petitioner's Petition for Relief/ request for administrative hearing is timely.

#### Exceptions

Petitioner filed "Petitioner's Exceptions to Recommended Order of Dismissal," containing 20 numbered exceptions, most of which contain subparts.

Exception 13 notes that the Administrative Law Judge indicated that the decision in Milano, supra, held that "the 35-day limitation on requesting an administrative hearing begins to run at the expiration of the 180-day period in which the Commission was to make a reasonable cause determination," and points out that this is error. We note that the decision in Milano, supra, did not deal with requests for administrative hearings, and agree that this statement of the Administrative Law Judge is error.

We accept Exception 13.

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Exception 16 takes issue with the Administrative Law Judge's statement that two other district courts have followed the reasoning in Milano, supra, and that it is, therefore, binding in the instant case. The exception also notes that the Commission has indicated that the decision in Milano, supra, does not apply to the issue of timeliness of a request for administrative hearing. We agree that the Milano decision, supra, is not applicable to the issue of the timeliness of a request for an administrative hearing.

We accept Exception 16.

The second paragraph of Exception 20 notes that the Commission has rejected the contention that the Milano decision, supra, applies to the issue of timeliness of a request for an administrative hearing and requests that the same contention be rejected in the instant case.


We accept the second paragraph of Exception 20.

In our view neither the acceptance or denial of the remaining exceptions (including subparts, if any) would impact the outcome of this matter, and we, therefore, reject the remaining exceptions.

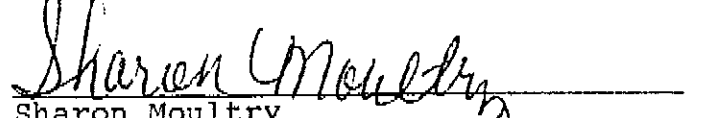
Remand

This matter is hereby REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief consistent with this Order.

DONE AND ORDERED this 20<sup>th</sup> day of August, 1999.  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

  
\_\_\_\_\_  
Commissioner Whitfield Jenkins,  
Panel Chairperson;  
Commissioner Sharon Ofuani; and  
Commissioner Aristides Sosa

Filed this 20<sup>th</sup> day of August, 1999,  
in Tallahassee, Florida.

  
\_\_\_\_\_  
Sharon Moultry  
Clerk, Commission on Human Relations  
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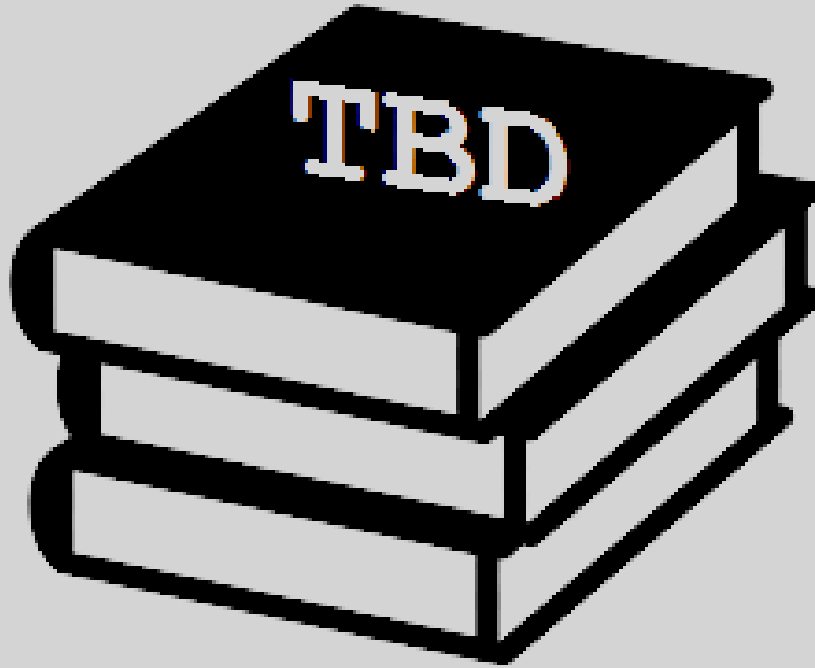
Daniel M. Kilbride, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

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