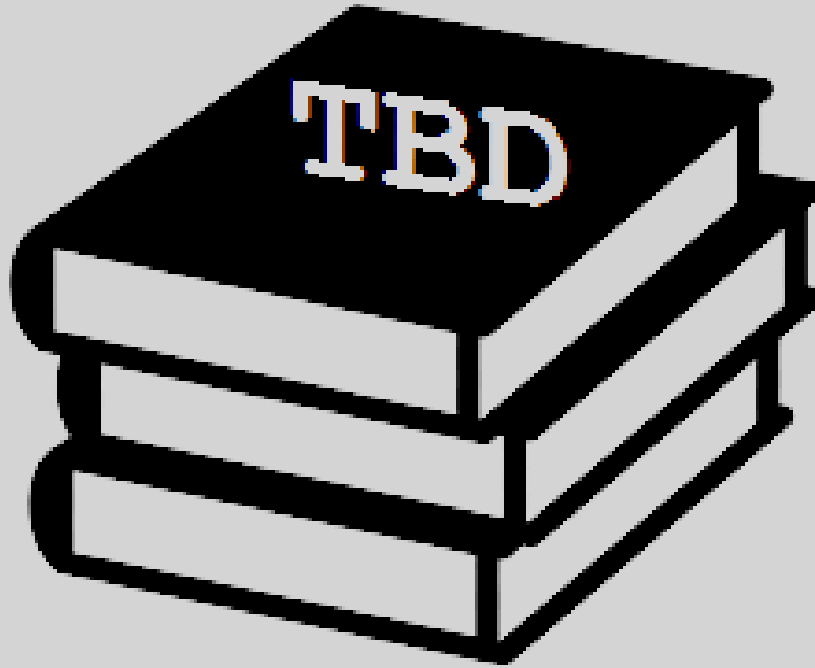


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STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

2000 JUN 30 P 2 36
FILED
ADMINISTRATIVE HEARINGS
DIVISION

EARLENE JOHNSON,

EEOC Case No. N/A

Petitioner,

FCHR Case No. 98-0469

v.

DOAH Case No. 99-3871

CHAUTAUQUA OFFICE OF
PSYCHOTHERAPY AND EVALUATION,

FCHR Order No. 00-023

Respondent.

WRP-1105

ORDER REMANDING REQUEST FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Earlene Johnson filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1995), alleging that Respondent Chautauqua Office of Psychotherapy and Evaluation committed an unlawful employment practice on the basis of Petitioner's race (Black) and retaliation when it terminated Petitioner from employment.

Petitioner requested an administrative hearing 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 Larry J. Sartin issued a Recommended Order of Dismissal, dated May 24, 2000.

Pursuant to notice, public deliberations were held on October 26, 2000, 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 Recommended Order of Dismissal.

Conclusions of Law

The Administrative Law Judge concluded that the Charge of Discrimination was not filed in this matter until after 365 days from the alleged incidents of discrimination, and therefore, was barred. Recommended Order of Dismissal, ¶ 16.

The Florida Civil Rights Act of 1992 states, "Any person aggrieved by a violation of [the Act] may file a complaint with the commission within 365 days of the alleged violation..." Section 760.11(1), Florida Statutes (1999).

We note that while the Charge of Discrimination transmitted to the Division of Administrative Hearings in this case does reflect that Petitioner signed the complaint on May 4, 1998 (indicating a date of discrimination of December 4, 1996), the documents used to transmit the case from the Commission to the Division of Administrative Hearings reflect a different date for the filing. The transmittal memo reflects that the Charge of Discrimination was filed with the Commission on November 10, 1997, within 365 days of the alleged discriminatory act. See Filing.

Based on the foregoing, we conclude that the Administrative Law Judge's finding that, "It is clear...that no Charge of Discrimination was filed by [Petitioner] with the Commission until more than 365 days after the alleged act of discrimination, December 4, 1996" (Recommended Order of Dismissal, ¶ 13), is not supported by competent substantial evidence, and find that the record reflects that the complaint in this matter was timely filed.

The Administrative Law Judge also concluded that the request for administrative hearing was not timely filed because it was not filed within 35 days of the initial 180-day period following the filing of the complaint. Recommended Order of Dismissal, ¶ 17 through ¶ 24.

The Administrative Law Judge concluded that Petitioner had 35 days from the completion of the initial 180-day period following the filing of the complaint in which to file a request for administrative hearing (Recommended Order of Dismissal, ¶ 21), and that since Petitioner's request for administrative hearing was not filed within this time period Petitioner's administrative action was barred. Recommended Order of Dismissal, ¶ 22.

In so concluding, the Administrative Law Judge relied on, inter alia, the decision in Milano v. Moldmaster, 703 So. 2d 1093 (Fla. 4th DCA 1997). Recommended Order of Dismissal, ¶ 23 and ¶ 24.

We conclude that the Administrative Law Judge's conclusion that Petitioner's request for administrative hearing is untimely 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 (1999).

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 (1999).

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 (1999).

With regard to administrative proceedings, the Act states, "An administrative hearing pursuant to (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 (1999).

In interpreting these statute sections a Commission panel stated, "...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)." Wilson v. Scotty's, Inc., FCHR Order No. 98-032 (FCHR 1998).

We note that the Milano decision, supra, cited by the Administrative Law Judge, holds that the one-year limitation for filing a civil suit begins to run at the expiration of the 180-day period in which the Commission is to make a reasonable cause determination. See Milano, at 1094.

The Commission panel in Wilson, supra, specifically rejected the contention that Milano, supra, was controlling of the issue presented in the case before it relating to the time frame for filing a request for administrative hearing. See Order.

Based on the foregoing, and since no determination has been issued in the instant case, we conclude that Petitioner's request for administrative hearing is timely and, as indicated, above, that the Administrative Law Judge committed an error of law in concluding that the request for administrative hearing is untimely.

Finally, we find: (1) that the Administrative Law Judge's conclusion of law we are correcting is within the substantive jurisdiction of the Florida Commission on Human Relations, namely the interpretation of the time period for filing a request for administrative relief under the Florida Civil Rights Act of 1992; (2) the reason the correction is being made is that the conclusion of law as stated by the Administrative Law Judge runs contrary to previous Commission action on the issue; and (3) that in making this correction the conclusion of law we are substituting is as or more reasonable than the conclusion which has been rejected. See, Section 120.57(1)(1), Florida Statutes (1999).

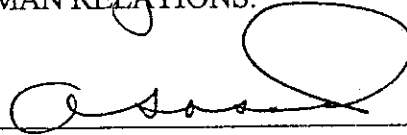
Exceptions

Neither party filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

Remand

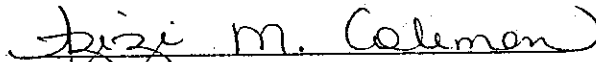
The Request for Administrative Hearing and Complaint of Discrimination are hereby REMANDED to the Administrative Law Judge for further proceedings consistent with this Order.

DONE AND ORDERED this 9 day of January, 2000.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Aristides Sosa,
Panel Chairperson;
Commissioner George Farrell; and
Commissioner Roosevelt Paige

Filed this 9 day of January, 2000,
in Tallahassee, Florida



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