

**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

BOBBI DEBOSE,)	EEOC Case No. 15D970716
Petitioner,)	FCHR Case No. 97-1298
)	DOAH Case No. 00-003426
vs.)	FCHR Order No. <u>01-007</u>
)	
COLUMBIA NORTH FLORIDA REGIONAL MEDICAL CENTER,)	
Respondent)	

**ORDER REMANDING PETITION FOR RELIEF FROM AN UNLAWFUL
EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Bobbi Debose 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 Columbia North Florida Regional Medical Center committed an unlawful employment practice on the basis of Petitioner's race (Black) and age (47) when it terminated her from her position. The allegations set forth in the complaint were investigated, and, on June 21, 2000, 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. Administrative Law Judge Ella Jane P. Davis issued a Recommended Order of Dismissal, dated October 20, 2000. The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Facts and Conclusions of Law

The Administrative Law Judge found that the Petition for Relief in this matter was not filed within the statutorily required time period (i.e., within 35 days of the determination of reasonable cause), and that the late-filing of the Petition for Relief barred Petitioner from proceeding further. Recommended Order of Dismissal, 14 and 15. Specifically, the Administrative Law Judge found that the "Notice of Determination: No Cause" in this matter was dated June 21, 2000, and was mailed to Petitioner (Recommended Order of Dismissal, 2); that the thirty-fifth day following June 21, 2000, was Wednesday, June 26, 2000 (Recommended Order of Dismissal, 6); and that the Petition for Relief was postmarked July 31, 2000 (Recommended Order of Dismissal, 7). We conclude that the Administrative Law Judge committed an error of law in concluding that the Petition for Relief was not timely filed. According to statute, if, as in the instant case, the Commission determines there is no reasonable cause to believe that an unlawful employment practice has occurred, and the complainant wants to pursue the case further, a request for administrative hearing by the complainant must be made "within 35 days of the date of determination of reasonable cause" and "[i]f the aggrieved person does not request an administrative hearing within 35 days, the claim will be barred." Section 760.11(7), Florida Statutes (1999). The Commission's rules state that, "Whenever a party has a right or is required to do some act or take some proceedings within the prescribed period after the service of notice or

other paper upon that party and such notice or paper is served by mail, 3 days shall be added to the prescribed period." Fla. Admin. Code R. 60Y-4.007(2). The Commission's rules also state, "When a document is received by mail, the date of filing shall relate back to the date of the postmark." Fla. Admin. Code R. 60Y-4.004(1). Finally, the Commission's rules also state that in computing time periods, "[t]he last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday observed by the State of Florida, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday observed by the State of Florida." Fla. Admin. Code R. 60Y-4.007(1). Applying these provisions to the facts found by the Administrative Law Judge, we conclude that since the "Notice of Determination: No Cause" was served by mail, Petitioner had 38 days from the date of the "Notice of Determination: No Cause" to request an administrative hearing. Thirty-eight days for June 21, 2000, the date of the "Notice of Determination: No Cause," is Saturday, July 29, 2000. The next day following July 29, 2000, that is neither a Saturday, Sunday nor legal holiday observed by the State of Florida, is Monday, July 31, 2000. We conclude that the Petition for Relief in this matter needed to be filed by July 31, 2000. The Petition for Relief was postmarked July 31, 2000, and since the document was received by mail the date of the filing relates back to the date of the postmark. We conclude that the Petition for Relief was timely filed on July 31, 2000. Accord, Garrepy v. Department of Environmental Protection, FCHR Order No. 99-023, August 20, 1999. Finally, we find: (1) that the Administrative Law Judge's conclusions of law we are correcting are 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 corrections are being made is that the conclusions of law as stated by the Administrative Law Judge run contrary to previous Commission decisions on the issue; and (3) that in making this correction the conclusions of law we are substituting are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1)(l), Florida Statutes (1999).

Exceptions

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

Remand

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

DONE AND ORDERED this 8th day of February, 2001
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Clareth Brooks; and
Commissioner Rita Craig; and
Commissioner Sharon Ofuani;

Filed this 8th day of February, 2001,
in Tallahassee, Florida

/s/

Azizi Coleman, Clerk
Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, FL 32399
(850) 488-7082

Copies furnished to:

Bobbi Debose
1129 Northeast 24th Street
Gainesville, FL 3264

James J. Dean, Esq.
Ricky Polston, Esq.
Polston & Dean, P.A.
106 East College Street
Suite 900, Highpoint Center
Tallahassee, FL 32302

Ella Jane P. Davis, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/
Azizi Coleman,
Clerk of the Commission
Florida Commission on Human Relations