

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

TAMMY M. FORD,

Petitioner,

v.

MOLD-EX RUBBER COMPANY,

Respondent.

EEOC Case No. 15D970522

FCHR Case No. 96-1611

DOAH Case No. 00-2309

FCHR Order No. 01-014

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DIVISION OF
ADMINISTRATIVE
HEARINGS
JFH

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Tammy M. Ford 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 Mold-Ex Rubber Company committed an unlawful employment practice on the basis of Petitioner's sex (sexual harassment).

The allegations set forth in the complaint were investigated, and, on April 12, 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.

An evidentiary hearing was held by video teleconference, on September 28, 2000, before Administrative Law Judge Suzanne F. Hood.

Judge Hood issued a Recommended Order of dismissal, dated November 30, 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 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.

The Administrative Law Judge concluded that the charge of discrimination was not timely filed. Recommended Order, ¶ 16.

Given the other conclusions of law applied by the Administrative Law Judge leading to the disposition of the matter, we find it unnecessary to adopt this conclusion of law.

The Administrative Law Judge also concluded that since Petitioner's Petition for Relief was filed more than four years after the alleged violation, "Petitioner's Petition for Relief should be dismissed for lack of jurisdiction under Section 760.11(1), Florida Statutes, and Joshua v. City of Gainesville, 786 So. 2d 432 (Fla. 2000) (where FCHR fails to make a determination of cause within 180 days after the filing of a charge of discrimination, the petitioner has four years from the date of the alleged discriminatory action to file a claim in state court)." Recommended Order, ¶ 16.

We reject this conclusion of law as incorrect.

We note that the Administrative Law Judge found that the Petition for Relief in this matter was filed within 35 days of the issuance of the no reasonable cause determination. Recommended Order, Preliminary Statement.

A Commission panel has stated, "...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).

Joshua, supra, overturned lower appellate courts that had concluded that if the Commission had not yet issued a "reasonable cause" determination within 180 days of the filing of the complaint, the complainant had to file its law suit within one year of this initial 180-day period or be barred from doing so later. In so doing, the Court held that in cases in which a "reasonable cause" determination had not been issued by the Commission the four-year statute of limitation for causes of action based on statutory liability applied, not a limitation of 180 days plus 1-year from complaint-filing.

We note that Joshua dealt with the time frame for filing a civil action in court, as opposed to the time frame to request an administrative hearing, the issue presented in this case, and conclude that nothing in the Joshua decision requires deviation from the Commission's position set out in Wilson, supra.

Based on the foregoing, and since the Petition for Relief in this matter was filed within 35 days of the issuance of the no reasonable cause determination, 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 Petition for Relief is untimely. Accord,

Prentice v. North American Realty Corp., d/b/a North American Acquisition Corp., FCHR Order No. 00-021.

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).

With these corrections/clarifications, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

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

Dismissal

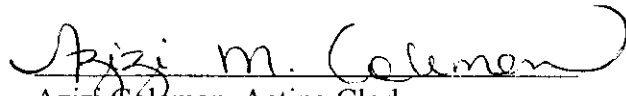
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 19 day of March, 2001.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Sharon Ofuani, Panel Chairperson;
Commissioner Juan Montes; and
Commissioner Aristides Sosa

Filed this 19 day of March, 2001,
in Tallahassee, Florida.



Azizi Coleman, Acting Clerk
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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.

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Suzanne F. Hood, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel