

**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

TERRY B. HILLMAN,)	EEOC Case No. 15D970931
Petitioner,)	FCHR Case No. 97-S145
)	DOAH Case No. 00-002654
vs.)	FCHR Order No. 01-025
)	
CHEM-POLYMER CORPORATION,)	
Respondent)	

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

Preliminary Matters

Petitioner Terry B. Hillman 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 Chem-Polymer Corporation committed an unlawful employment practice on the basis of Petitioner's age when it terminated Petitioner from his position. 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 William F. Quattlebaum issued a Recommended Order of Dismissal, dated August 25, 2000. Pursuant to notice, public deliberations were held on April 19, 2001, 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.

Conclusions of Law

The Administrative Law Judge found that Petitioner filed a complaint with the Commission on September 12, 1997; that the Commission issued a "Notice of Determination: No Cause," on April 12, 2000; and that Petitioner filed a Petition for Relief on May 22, 2000. Recommended Order of Dismissal, pages 1, 2 and 3. The Administrative Law Judge concluded that the Petitioner needed to file his request for administrative hearing (i.e., Petition for Relief) no later than 35 days following the completion of the 180-day period following the filing of the complaint, or no later than April 15, 1998, and that, therefore, the Petition for Relief was untimely. Recommended Order of Dismissal, page 2. We conclude that the Administrative Law Judge's conclusion that Petitioner's Petition for Relief from an Unlawful Employment Practice is untimely on this basis is an error of law. 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); accord, *Garrepy v. Department of Environmental Protection*, FCHR Order No. 99-022 (FCHR 1999), *Finn v. City of Holly Hill*, FCHR Order No. 00-012 (FCHR 2000), *Major v. Branch Properties, Inc.*, FCHR Order No. 00-011 (FCHR 2000), *Johnson v. Chautauqua Office of Psychotherapy and Evaluation*, FCHR Order No. 00-023 (FCHR 2000), and *Prentice v. North American Realty Corp., d/b/a North American Acquisition Corp.*, FCHR Order No. 00-021 (FCHR 2000); see, also, *Beyers v. Aero Corporation, d/b/a Timco-Lake City*, 23 F.A.L.R. 1369 (FCHR 2000).

Based on the foregoing, we conclude that the Administrative Law Judge committed an error of law in concluding that the Petition for Relief from an Unlawful Employment Practice is untimely on the basis indicated.

The Administrative Law Judge further concluded that: the Commission issued a "Notice of Determination: No Cause" on April 12, 2000; that this document indicated that failure to request an administrative hearing within 35 days would result in entry of a Notice of Dismissal; that this 35-day period expired on May 17, 2000; that the Petition for Relief in this matter was filed on May 22, 2000; and that, therefore, for this reason also, the Petition for Relief was untimely. Recommended Order of Dismissal, pages 2, 3, and 4.

We conclude that the Administrative Law Judge's conclusion that Petitioner's Petition for Relief from an Unlawful Employment Practice is untimely on this basis is an error of law.

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 the 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 a prescribed period after the service of a 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).

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 (see Filing), Petitioner had 38 days from the date of the "Notice of Determination: No Cause" to request an administrative hearing.

Thirty-eight days from April 12, 2000, the date of the "Notice of Determination: No Cause," is Saturday, May 20, 2000. The next day following May 20, 2000, that is neither a Saturday, Sunday nor legal holiday observed by the State of Florida, is Monday, May 22, 2000, the date on which the Petition for Relief is stamped received by the Commission.

We conclude that the Petition for Relief in this matter was timely filed. Accord, Garrepy v. Department of Environmental Protection, FCHR Order No. 99-023, (FCHR 1999) and Debose v. Columbia North Florida Regional Medical Center, FCHR Order No. 01-007 (FCHR 2001).

Because we have found the Petition for Relief from an Unlawful Employment Practice to be timely, we conclude this matter should be remanded to the Administrative Law Judge for further proceedings on said Petition. 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 correction is 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 these corrections 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

The Commission's file contains a letter dated September 10, 2000, and received from Petitioner on September 18, 2000, which arguably could be considered an "exception" to the Recommended Order of Dismissal. Since there is no indication that this document was served by Petitioner on Respondent, and the document suggests no course of action be taken by the Commission different than we have decided to take sua sponte as set out in the Conclusions of Law section of this Order, we reject Petitioner's letter as an exception to the Recommended Order of Dismissal.

Remand

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

DONE AND ORDERED this 19th day of April, 2001
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner George Farrell; and
Commissioner Rita Craig; and
Commissioner Roosevelt Paige;

Filed this 23rd day of May, 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:

Terry B. Hillman
2048 Laurel Lane
North Fort Myers, FL 3391

Patricia A. Black, Esq.
1415 Dean Street, Suite 101
Ft. Myers, FL 33901

Robert E. Tardif, Jr., Esq.
Duncan & Tardif, P.A.
1601 Jackson Street, Suite 101
Post Office Box 249
Fort Myers, FL 33902-0249

William F. Quattlebaum, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

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