

**STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS**

<b>JERRY MCCOY,</b>	)	EEOC Case No. 15D940689
<b>Petitioner,</b>	)	FCHR Case No. 94-7108
	)	DOAH Case No. 96-003596
<b>vs.</b>	)	FCHR Order No. 01-046
	)	
<b>FLORIDA ROCK AND TANK LINES, INC.,</b>	)	
<b>Respondent</b>	)	

**FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN UNLAWFUL  
EMPLOYMENT PRACTICE**

Preliminary Matters

Petitioner Jerry McCoy 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 Florida Rock & Tank Lines, Inc., committed an unlawful employment practice on the basis of Petitioner's race (Black) when it terminated Petitioner from his position. The allegations set forth in the complaint were investigated, and, on May 16, 1996, the Executive Director issued his determination finding that there was 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 in Tallahassee, Florida, on July 10 through 14, 2000, before Administrative Law Judge Diane Cleavinger. Judge Cleavinger issued a Recommended Order of dismissal, dated November 9, 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. We note that the Administrative Law Judge's findings of fact as set out in Recommended Order, 88, seem to conclude that any damages for lost earnings and benefits to which the Petitioner would be entitled if an unlawful employment practice had been found to have occurred would be offset by any unemployment compensation benefits received by Petitioner. Commission panels have held that unemployment compensation benefits are not to be offset from back pay awards owed Petitioner. See, Swenson-Davis v. Orlando Partners, Inc., d/b/a Quality Hotel Orlando Airport, et al., 16 F.A.L.R. 792, at 793 (FCHR 1993), and Larson v. Dracut Corporation, Kings Inn Restaurant, et al., 13 F.A.L.R. 1988, at 1989 and 1991 (FCHR 1990). We clarify/correct this conclusion. In so doing, 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 determination of entitlement to 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)(l), Florida Statutes (1999). Finally, we conclude it is unnecessary for us to adopt the specific conclusion of the Administrative Law Judge that Petitioner has not established a prima facie case of discrimination (Recommended Order, 93), since the Administrative Law Judge set forth conclusions deciding the case as if a prima facie case of discrimination had been established (Recommended Order, 94, et seq.). 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.

#### 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.

DONE AND ORDERED this 2nd day of October, 2001  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam; and  
Commissioner Gayle Cannon; and  
Commissioner Roosevelt Paige;

Filed this 2nd day of October, 2001,  
in Tallahassee, Florida

/s/

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

Copies furnished to:

Harriet W. Williams, Esq.  
J. Steven Carter, Esq.  
Henry, Buchanan, Hudson,

Suber & Carter, P.A.  
P.O. Box 1049  
Tallahassee, FL 3230

Davison F. Dunlap, Jr., Esq.  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
Post Office Drawer 190  
Tallahassee, FL 32302-0

John P. McAdams, Esq.  
Carlton, Fields, Ward, Emmanuel,  
Smith & Cutler, P.A.  
Post Office Box 3239  
Tampa, FL 33601

Diane Cleavinger, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

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