

6-29-01

FILED

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

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Linda Schwartz

AP

DIVISION OF
ADMINISTRATIVE
HEARINGS

Petitioner,

EEOC Case No: 15D970314

FCHR Case No: 96-1776

DOAH Case No: 99-4043

FCHR Order No: 02-019

Closeal
EJD

v.

Guy M. Tunnell,
Bay County Sheriff's Office.

Respondent.

FINAL ORDER DISMISSING PETITION FOR RELIEF FROM AN
UNLAWFUL EMPLOYMENT PRACTICE

This case is back from a remand to the Division of Administrative Hearings by the Florida Commission on Human Relations. The reason the case was remanded was that the Commission held that Petitioner could make a claim under the Florida Civil Rights Act of 1992, embodied in Fla. Stat. Chapt. 760, since Deputy Sheriff's should be treated as employees under the statute. The Division of Administrative Hearings held a hearing, and a Recommended Order dated June 29, 2001, was entered recommending that the Petitioner's claim be denied. The original claims were on the bases age, gender, retaliation and hostile work environment.

Petitioner's attorney claimed that she had filed timely Exceptions to the Recommended Order, and Respondent's attorney filed a motion to strike the exceptions as untimely and improperly served when he finally did get them. Petitioner's attorney has informed the Commission that she does not intend to respond to the motion to strike. Therefore, Respondent's motion to strike should be and hereby is granted.

A transcript was filed but no timely exceptions were found in the Commission file. The Judge's Recommended Order contained lengthy discussions in the scope of the Charge of Discrimination and related matters, but she proceeded to decide the case based upon the factual matters alleged in the Charge of Discrimination. The Judge's Conclusions of Law, particularly in Paragraphs 105, 106, and 107, are rejected as applied to the facts of this case and are not precedent for the decision of future cases, since all of the provisions on the filing of complaints and amendments to complaints under Chapt. 760 are not discussed, and particularly in view of the extensive Charge of Discrimination filed by the Petitioner. Essentially The Judge decided the case on all of the factual issues raised by Petitioner, and this decision is supported by competent substantial evidence. On the issue of lost wages the Conclusions of Law are not necessary to this decision and are disregarded since Petitioner has not shown a sufficient factual bases for relief on the issues involving liability on all matters raised in the Charge of Discrimination and in the Petition for Relief.

To a large extent the Judge decided this case on the issues involving the credibility of the witnesses. This is permissible and it cannot be said that there is a lack of competent substantial evidence to support the factual conclusions of the Judge.

Dismissal

The Petition for Relief is hereby dismissed for the reasons indicated.

Each party is advised of their right to petition the Florida District Court of Appeal for judicial review of this Final Agency Order. Such Notice of Appeal must be filed within 30 days of the date that this order is filed with the Clerk of the Commission. See Section 120.68, Florida Statutes, and the Florida Rules of Appellate Procedure, Rule 9.110, for the complete requirements and rules on the right to appeal, and the applicable procedure.

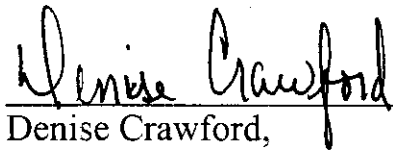
DONE AND ORDERED THIS 17th **DAY OF** April,

2002, FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commission Rita Craig, Panel Chairperson
Commissioner Billy Whitefox Stall
Commissioner Juan Montes

Filed this 17th day of April, 2002,

in Tallahassee, Florida.



Denise Crawford,
Clerk of the Commission
Florida Commission On Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082, Ext. 1032

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 the Miami District Office EEOC), One Biscayne Tower, 2 South Biscayne Blvd., Suite 2700, 27th Floor, Miami, FL 33131.

Copies furnished to:

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Miles A. Lance, Legal Advisor for the Commission Panel

Ella Jane P. Davis, Administrative Law Judge