

**STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS**

<b>EUGENE HICKS,</b>	)	EEOC Case No. 15D995981
<b>Petitioner,</b>	)	FCHR Case No. 98-1042
	)	DOAH Case No. 02-001410
<b>vs.</b>	)	FCHR Order No. 02-067
	)	
<b>TREASURE SERVICE/METRO DADE TRANSIT AND RON JONES,</b>	)	
<b>Respondent</b>	)	

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

Preliminary Matters

This matter is before the Commission for consideration of the Recommended Order of Dismissal issued in the above-styled matter, on May 15, 2002, by Administrative Law Judge Patricia Hart Malono. The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order of Dismissal.

Findings of Facts and Conclusions of Law

The Recommended Order of Dismissal indicates that the cause had come before the Administrative Law Judge on Respondent Miami-Dade County's Motion to Dismiss Petition in which it was requested that Petitioner's Petition for Relief be dismissed because it was filed outside the 35-day period following the date of the "Determination: No Cause." The Administrative Law Judge found that a "Determination: No Cause" was issued by the Commission on February 19, 2002, and that Petitioner's Petition for Relief was filed on April 2, 2002, "41 days from the date the [Commission] provided [Petitioner] notice that it had entered its 'Determination: No Cause.'" The Administrative Law Judge noted that Section 760.11(7), Florida Statutes (2001), indicates that after the issuance of a "no cause" determination by the Commission a Petitioner may request an administrative hearing, but that "any such request 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." The Administrative Law Judge recommended the Commission dismiss the Petition for Relief. A review of the Commission's file in this matter shows that it contains an envelope in which the Petition for Relief was filed with the Commission, postmarked March 23, 2002. The envelope is addressed to the Commission at its old address, which likely explains the amount of time between the postmark date and the date the Petition for Relief is stamped received by the Commission. A copy of the face of this envelope is attached as "Exhibit A" and incorporated by reference herein. (We note that it does not appear that this envelope, or a copy thereof, was provided the Division of Administrative Hearings when the Commission transmitted the Petition for Relief to the Division of Administrative Hearings.) The Commission's rules with regard to "filings" reflect that, "When a document is received by mail, the date of the filing shall relate back to the date of the postmark." Fla. Admin. Code R. 60Y-4.004(1). We conclude, therefore, that the Petition for Relief in this matter was timely filed, since March 23, 2002 (the postmark date of the Petition for Relief) is 32 days after

February 19, 2002 (the date of the Determination: No Cause issued by the Commission), and that this matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

Subsequent to the issuance of the Recommended Order of Dismissal, Petitioner filed a document entitled, "Notice of Right to Submit Exception," which was directed to the Administrative Law Judge and served on the Commission's Clerk and General Counsel. In this document, Petitioner argues that the Petition for Relief was timely filed. We note that this document was not directed to the Commission and that there is no indication on the document that it was served on Respondent. Given our conclusions set out, above, we find it unnecessary to deal with this document as a formal "exception." See, generally, *Coleus v. Walt Disney World*, FCHR Order No. 02-029 (FCHR 2002), in which a Commission panel did not consider a document filed by a Petitioner to be a formal exception where there was no indication the document was served on Respondent, and a transcript of the final hearing before the Administrative Law Judge which gave rise to the Recommended Order in question was not provided the Commission.

Remand

This matter is hereby REMANDED to the Administrative Law Judge for further proceedings on the Petition for Relief.

Dismissal

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 the 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 5th day of November, 2002  
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Donna Elam; and  
Commissioner Gayle Cannon; and  
Commissioner PC Wu;

Filed this 5th day of November, 2002,  
in Tallahassee, Florida

/s/

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Violet Crawford, Clerk  
Commission on Human Relations  
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Patricia M. Hart, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

By: /s/  
Violet Crawford,  
Clerk of the Commission  
Florida Commission on Human Relations