

5-6-04

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
04 SEP 23 PM 1:32

ESTHER KAY GIBBS,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 22-02529

v.

AT

DOAH Case No. 03-4678

RSC

MARION COUNTY,

FCHR Order No. 04-117

CWS

Respondent.

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

Preliminary Matters

Petitioner Esther Kay Gibbs filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (2001), alleging that Respondent Marion County committed unlawful employment practices on the bases of Petitioner's sex (female), age (DOB: 1-31-56), religion (Unitarian Universalist), and disability (found by the Administrative Law Judge to be scleroderma), and on the basis of retaliation, in circumstances surrounding Petitioner's separation from employment with Respondent.

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 Ocala, Florida, on February 12, 2004, before Administrative Law Judge Robert S. Cohen.

Judge Cohen issued a Recommended Order of dismissal, dated May 6, 2004.

Pursuant to notice, public deliberations were held on August 31, 2004, 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, 2009 Apalachee Parkway, Suite 100, Tallahassee, Florida, 32301. At these deliberations, the Commission panel determined the action to be taken on the Petition for Relief.

At these deliberations, during the consideration of "preliminary matters / motions," the Commission panel denied Petitioner's request to allow Barry M. Shalinsky to serve as Petitioner's qualified representative.

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 adopt the Administrative Law Judge's conclusions of law.

Exceptions

Petitioner filed exceptions to the Administrative Law Judge's Recommended Order in a document entitled, "Exceptions to Proposed Order." The document outlines Petitioner's exceptions in numbered paragraphs which correspond to paragraph numbers in the Recommended Order.

Petitioner's exceptions either take issue with the inferences drawn from the evidence presented (see paragraph numbers 7, 8, 13, 14, 17, 21, 25, 35, 37, 40, 41, 42, 43, 46, 47, 48, 50, 51, 52, 53, 54, 63, 64, 66, 67, 68, 72, and 73) or do not seem to necessarily "except" to the Recommended Order, but rather provide additional explanation to the indicated paragraph (see paragraph numbers 11, 12, 18, 19, 20, 26, 29, 39, 44, 45, 49, and 58).

The Commission has stated, "It is well settled that it is the Administrative Law Judge's function 'to consider all of the evidence presented and reach ultimate conclusions of fact based on competent substantial evidence by resolving conflicts, judging the credibility of witnesses and drawing permissible inferences therefrom. If the evidence presented supports two inconsistent findings, it is the Administrative Law Judge's role to decide between them.' Beckton v. Department of Children and Family Services, 21 F.A.L.R. 1735, at 1736 (FCHR 1998), citing Maggio v. Martin Marietta Aerospace, 9 F.A.L.R. 2168, at 2171 (FCHR 1986)." Barr v. Columbia Ocala Regional Medical Center, 22 F.A.L.R. 1729, at 1730 (FCHR 1999).

Based on the foregoing, Petitioner's exceptions are rejected.

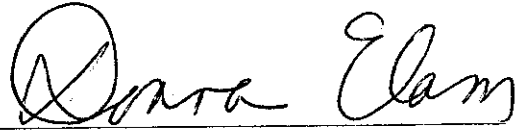
Dismissal

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 22nd day of September, 2004.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:



Commissioner Donna Elam,
Panel Chairperson;
Commissioner Roosevelt Paige; and
Commissioner Gilbert M. Singer

Filed this 22nd day of September, 2004,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, FL 32301
(850) 488-7082

Copies furnished to:

Esther Kay Gibbs
3415 Northeast 17th Terrace
Ocala, FL 34479

Marion County
c/o Sharon Attas-Kaplan, Esq.
Fisher & Phillips, LLP
450 East Las Olas Boulevard
Suite 800
Fort Lauderdale, FL 33301

FCHR Order No. 04-117
Page 4

Robert S. Cohen, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 22nd day of September, 2004.

By: Kathleen Crawford
Clerk of the Commission
Florida Commission on Human Relations