



200301 TBD.F
'AGENCY FINAL ORDERS'

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200301 TBD.F 001
'AGENCY FINAL ORDERS'

CAPTION: *Pedraza v. International Brotherhood*

CITATION: 200301 TBD.F 001

ORDER NO: 02-087

DATE: 1/2/2003

STATE: FL

99-1636 (FCHR)

CASE NO:

02-000238 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
								<input checked="" type="checkbox"/>		

FILENAME: 02-087.pdf

PAGES: 3

RESULT: Final (dismissed)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

MANUEL PEDRAZA,	)	EEOC Case No. 15D990229
Petitioner,	)	FCHR Case No. 99-1636
	)	DOAH Case No. 02-000238
vs.	)	FCHR Order No. 02-087
)	
INTERNATIONAL BROTHERHOOD LOCAL 2088,)	
Respondent)	

**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 June 21, 2002, by Administrative Law Judge Daniel M. Kilbride.

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's Amended Motion to Dismiss. The Administrative Law Judge found that a "Determination: No Cause" was issued by the Commission and mailed to Petitioner on November 19, 2001, and that Petitioner was notified that a Petition for Relief must be filed within 35 days of the date of the determination or his claim would be barred. The Administrative Law Judge further found that Petitioner filed a Petition for Relief on December 28, 2001. The Administrative Law Judge concluded that Petitioner had until December 24, 2001, to timely file his Petition for Relief. The Administrative Law Judge recommended the Commission dismiss the Petition for Relief. We note 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 Uniform Rules state, "In computing any period of time allowed by this chapter, by order of a presiding officer, or by any applicable statute, the day of the act from which the period of time begins to run shall not be included...Except as provided in Rule 28-106.217, five day shall be added to the time limits when service has been made by U.S. Mail. One business day shall be added when service is made by overnight courier. No additional time shall be added if service is made by hand, facsimile telephone transmission, or other electronic transmission or when the period of time begins pursuant to a type of notice described in Rule 28-106.111 [dealing with notice for point of entry into proceedings]." Fla. Admin. Code R. 28-106.103. As prior cases of the Commission have pointed out, the date of determination has been interpreted by the Commission to be the date the Commission constructively determined the Petitioner had notice of the Executive Director's decision, three days (by Commission rule) after the mailing of the determination notice by the Commission. See, e.g., Debose v. Columbia North Florida Regional Medical Center, FCHR Order No. 01-007, February 8, 2001, and Garrepy v. Department of Environmental Protection, FCHR Order No. 99-023, August 20, 1999. Under the Uniform Rule cited, *supra*, this date

would become five days after mailing. The Uniform Rule dealing with "notice of point of entry into proceedings...", a situation in which no additional time is to be added to the time to take action (Fla Admin. Code R. 28-106.111, cited in Fla. Admin. Code R. 28-106.103, supra), relies on receipt of written notice, recognizes that specific laws may provide differently than the 21-day period to act cited therein, and would clearly support the Commission's interpretation that a five-day period should be added to the 35-day time period to file a Petition for Relief, when the Commission's determination is served by mail. Applying this to the instant case, and noting that the Administrative Law Judge found that the determination was mailed to Petitioner on November 19, 2001, that 35 days from that date is December 24, 2001, and that the Petition for Relief was filed with the Commission on December 28, 2001, we conclude that the Petition for Relief was timely filed since it was received by the Commission within 5 days of December 24, 2001. In making this correction to the conclusions of law of the Administrative Law Judge, we find: (1) that the Administrative Law Judge's conclusions of law being corrected 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) that 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 this correction the conclusions of law being substituted are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1)(l), Florida Statutes (2001). We conclude this matter should be remanded to the Administrative Law Judge for further proceedings on the Petition for Relief.

Exceptions

A filing by Respondent in this matter suggests that at some point in time, following the issuance of the Recommended Order of Dismissal, Petitioner filed a document entitled, "Request from the Agency to Make Exceptions, and Reject, or Modify Recommended Orders Dated," or something to that effect. This filing by Petitioner is not contained in the Commission's file. On September 19, 2002, the Commission, through counsel, sent a letter to the parties requesting that they stipulate to a copy of this document and file it with the Commission. As of the date of this Order, neither party has responded to the Commission's request. We conclude that neither party filed exceptions to the Administrative Law Judge's Recommended Order of Dismissal.

Remand

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

DONE AND ORDERED this 2nd day of January, 2003
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer; and
Commissioner John Corbett; and
Commissioner Rita Craig;

Filed this 2nd day of January, 2003,
in Tallahassee, Florida

/s/

Violet Crawford, Clerk
Commission on Human Relations
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International Brotherhood, Local 2088
c/o Tobe Lev, Esq.
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P.O. Box 2231
Orlando, FL 32802

Daniel M. Kilbride, 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 addresses this 2nd day of January, 2003.

By: /s/

Violet Crawford,
Clerk of the Commission
Florida Commission on Human Relations

200301 TBD.F 002
'AGENCY FINAL ORDERS'

CAPTION: *Rollins v. Volusia County*

CITATION: 200301 TBD.F 002

ORDER NO: 02-102

DATE: 1/2/2003

STATE: FL

CASE NO: 21-90833H (FCHR)
02-001411 (DOAH)

CASE TYPE: Housing Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
		<input checked="" type="checkbox"/>								

FILENAME: 02001411 ATAFO.PDF

PAGES: 3

RESULT: Final (dismissed)



10-2-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

AT

FILED
03 JAN -3 AM 9:11
UNIVERSITY OF
ADMINISTRATIVE
HEARINGS
EJD-CWS

RUTH ROLLINS,

HUD Case No. 04-01-12578

Petitioner,

FCHR Case No. 21-90833H

v.

DOAH Case No. 02-1411

JAMES L. WHITAKER AND
COUNTY OF VOLUSIA
COMMUNITY SERVICE GROUP,

FCHR Order No. 02-102

Respondents.

**FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM A DISCRIMINATORY HOUSING PRACTICE**

Preliminary Matters

Petitioner Ruth Rollins filed a housing discrimination complaint pursuant to the Fair Housing Act, Sections 760.20 - 760.37, Florida Statutes (1999), alleging that Respondents James L. Whitaker and County of Volusia Community Service Group committed a discriminatory housing practice on the basis of Petitioner's alleged disability (unspecified) and age (unspecified) by denying Petitioner a home rehabilitation / repair loan for which she had applied.

The allegations set forth in the complaint were investigated, and, on March 19, 2002, the Commission issued its determination finding that there was no reasonable cause to believe that a discriminatory housing practice occurred.

Petitioner filed a Petition for Relief from a Discriminatory Housing 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 Deland, Florida, on August 13, 2002, before Administrative Law Judge Ella Jane P. Davis.

Judge Davis issued a Recommended Order of dismissal, dated October 2, 2002.

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

A transcript of the proceeding before the Administrative Law Judge was not filed with the Commission.

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

None of the parties filed exceptions to the Administrative Law Judge's Recommended Order.

Dismissal

The Petition for Relief and Housing Discrimination Complaint 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 2nd day of JANUARY, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Rita Craig, Panel Chairperson;
Commissioner John Corbett; and
Commissioner Gilbert M. Singer

Filed this 2nd day of JANUARY, 2003,
in Tallahassee, Florida.



Violet Crawford, Clerk
Commission on Human Relations
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(850) 488-7082

Copies furnished to:

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Daytona Beach, FL 32114

James L. Whitaker and County of Volusia Community Service Group
c/o Randell H. Rowe, Esq.
County of Volusia
123 West Indiana Avenue
Deland, FL 32720-4613

Ella Jane P. Davis, Administrative Law Judge

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 2ND day of JANUARY, 2003.

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

200301 TBD.F 003
'AGENCY FINAL ORDERS'

CAPTION: *Pupo v. Marino Technologies*

CITATION: 200301 TBD.F 003

ORDER NO: 02-099

DATE: 1/2/2003

STATE: FL

CASE NO: 21-02595 (FCHR)
02-002525 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
		<input checked="" type="checkbox"/>								

FILENAME: 02002525010303i01112558.pdf

PAGES: 3

RESULT: Final (dismissed)



STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
03 JAN -3 AM 9:12
DIVISION OF
ADMINISTRATIVE
HEARINGS

BERALIA P. PUPO,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 21-02595

v.

FSR DOAH Case No. 02-2525 *closed*

MARINO TECHNOLOGIES, INC.,

FCHR Order No. 02-099

Respondent.

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

On August 27, 2001, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice by failing to accommodate Petitioner for her disability and subsequently laying her off. The allegations set forth in the complaint were investigated and on May 14, 2002, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held by video teleconference in Miami and Tallahassee, Florida, on October 15, 2002, before Administrative Law Judge Florence Snyder Rivas.

Judge Rivas issued a Recommended Order of Dismissal dated October 15, 2002.

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 and Conclusions of Law

Judge Rivas's order states that Petitioner failed to appear at a formal hearing that she requested under Section 120.57(1), Florida Statutes. Diligent search and inquiry was made to discover the current whereabouts of Petitioner; however, she could not be located. Her husband (who was to have interpreted for her) was found and he said that the Petitioner was claiming to have engaged an attorney. The file reflected no appearance of counsel on behalf of the Petitioner and the statement by the husband was the first knowledge the ALJ had of such a representation. Respondent moved to dismiss on the grounds that Petitioner, who has the burden of proof and the burden of going forward with the evidence, had voluntarily abandoned her request for any relief at issue in the proceeding by not appearing at the hearing and had, thereby, withdrawn her request.

With regard to the steps necessary for establishing that an unlawful employment practice has occurred, it has been stated, "The initial burden is upon Petitioner to establish a prima facie case of discrimination. Once Petitioner established a prima facie case, a presumption of

unlawful discrimination is created. The burden then shifts to Respondent to show a legitimate, nondiscriminatory reason for its action. If Respondent carries this burden, Petitioner then must prove by a preponderance of the evidence that the reason offered by the Respondent is not its true reason, but only a pretext for discrimination." See conclusions of law adopted by a Commission panel in Spratlin vs. Washington Mutual Bank, d/b/a Great Western. 23 F.A.L.R. 3359, at 3364, 3365 (FCHR 201), citations from the quoted statement omitted

We adopt the Administrative Law Judge's finding as to the fact that the Petitioner did not pursue the complaint and further conclude the Petitioner has failed to carry her burden of proof.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal


The Request 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 2nd day of JANUARY, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Rita B. Craig, Chairperson
Commissioner John Corbett
Commissioner Gilbert M. Singer

Filed this 2nd day of JANUARY, 2003
in Tallahassee, Florida.


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

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

Copies furnished to:

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Julie R. Waas, Esquire
JACKSON LEWIS LLP
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Florence Snyder Rivas, Administrative Law Judge (DOAH)

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 2nd day of January, 2003.

BY: Violet Crawford
Clerk of the Commission
Florida Commission on Human Relations

200301 TBD.F 004
'AGENCY FINAL ORDERS'

CAPTION: *Ambroise v. O'Donnell's Corporation*

CITATION: 200301 TBD.F 004

ORDER NO: 02-100

DATE: 1/2/2003

STATE: FL

CASE NO: 21-03151 (FCHR)

02-002762 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
						<input checked="" type="checkbox"/>				

FILENAME: 02-100.pdf

PAGES: 4

RESULT: Remand (continue litigation)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

HIMROD AMBROISE,	)	EEOC Case No. NONE
Petitioner,	)	FCHR Case No. 21-03151
	)	DOAH Case No. 02-002762
vs.	)	FCHR Order No. <u>02-100</u>
)	
O'DONNELL'S CORPORATION,)	
Respondent)	

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

Preliminary Matters

On August 16, 2001, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice when he was unfairly terminated because of his race. The allegations set forth in the complaint were investigated and on May 8, 2002, the Executive Director issued his determination that there was no reasonable cause to believe that a discriminatory act occurred. The Petitioner filed a Petition for Relief which was received by the Commission on July 9, 2002 (mailed to prior address of the Commission on June 13, 2002). A telephonic hearing was held on Respondent's motion to dismiss on August 23, 2002, at which the parties were afforded an opportunity to present argument on the motion. Judge T. Kent Wetherell, II, issued a Recommended Order of Dismissal dated September 5, 2002. 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

The Administrative Law Judge found that the Petitioner filed his complaint on August 16, 2001, with the Commission at its address: 325 John Knox Road, Suite 240, Building F, Tallahassee, FL 32399. The Executive Director of the Commission determined there was no reasonable cause to believe that an unlawful employment practice had occurred on May 8, 2002. The notice of determination and the determination were mailed by US Mail that same date and was received by the Petitioner four or five days later, on or about May 13, 2002. The address for the Commission on the notice was 2001 Apalachee Parkway, Suite 100, Tallahassee, FL 32301. Enclosed was a Petition for Relief form which the Petitioner filled out and mailed to the Commission. The Petition was consistent with the charge of discrimination. The Petition was post-marked in Orlando on June 13, 2002. Despite the Commission's new address being printed at the top of the Notice, Petitioner mailed the Petition to the Commission at its old address on John Knox Road. The Petition was not received by the Commission until July 9, 2002, due to the forwarding process of the US Postal Service that took 26 days to deliver from date of mailing. We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

The Administrative Law Judge (ALJ) points out that the Commission has interpreted the the statutory provision governing the filing of a Petition for Relief ((§ 760.11(7), Florida Statutes (2001)) which requires that "any such request must be made within 35 days of the date of determination of reasonable cause." It has construed the "date of determination" to be upon receipt of the notice by the Petitioner which is considered to be three days after mailing under Rule 60Y-4.007, Florida Administrative Code. It has also construed that "made" means "filing" which under Rule 60Y-4.004 is considered to be the date of postmark if sent by US Mail. See Debose v. Columbia North Florida Regional Medical Center, FCHR Case No. 97-1298 (Order of Remand in DOAH Case No. 00-3426, dated February 8, 2001), writ of prohibition denied, 793 So2d 931 (Fla. 1st DCA 2001) (table). Accord, Carther v. I-Drive GC, Inc., FCHR Case No. 98-228 (Order of Remand in DOAH Case No. 01-2408, dated April 17, 2002) and Troy Perry v. Speedway America, LLC, d/b/a/ Starvin Marvin' (Order of Remand in DOAH Case No. 02-1624, dated September 12, 2002) (both citing Debose). The ALJ further concluded that the above cited Rules of the Commission were in direct conflict with the Uniform Rules of Administrative Procedure which were effective beginning July 1, 1998. The ALJ indicated that the Commission Rules were adopted in 1978 and have apparently not been amended since; nor have they been provided an exception from the Uniform Rules by the Administration Commission as provided by § 120.54 (5)(a) 3., Florida Statutes (2001). He concludes that, as a result, the Uniform Rules prevail; particularly, Rule 28-106.103, 28-106.104 and 28-106.111, Florida Administrative Code. See Department of Corrections v. Saulter, 742 So2d 368, at 369-70 (Fla. 1st DCA 1999); Gaston v. Department of Revenue, 742 So2d 517, at 521-522 (Fla. 1st DCA 1999). And cf. Crawford v. Department of Children & Families, 785 So2d 505, (Fla. 3rd DCA 2000), (certifying conflict with Saulter, but only on issue of whether an agency's procedural rule is superceded even if Uniform Rules do not address the substance of the agency rule), rev. dismissed, 761 So2d 328 (Fla. 2000). In applying the Uniform Rules, the ALJ concluded that the five day mailing period provided in Rule 28-106.103, Florida Administrative Code, did not apply; however, Rule 28-106.104 defining "filing" as the date of actual receipt by the agency clerk during normal business hours did apply. Assuming, arguendo, the ALJ was correct in using the Uniform Rules, he, nonetheless, committed an error when he concluded that the five day mailing period did not apply. As prior cases of the Commission pointed out, the date of determination has been interpreted by the Commission to be the date the Commission constructively determined the Complainant had notice of the Executive Director's decision or three days after mailing his determination notice. Under the Uniform Rule, this date would become five days after mailing. Uniform Rule 28-106.111, .F.A.C., relies upon receipt of written notice, recognizes that specific laws may provide differently than its 21 day period, and would clearly support the Commission's interpretation that a five day mailing period should be included. The ALJ correctly concluded that the 35-day filing period provided by § 760.11(7), Florida Statutes (2001) is not jurisdictional and is subject to equitable tolling. See Irwin v. Department of Veterans Affairs, 498 U.S. 89, at 92-93 (1980) (filing period in federal law counterpart to Chapter 760 is not jurisdictional); Donald v. Winn-Dixie Stores, Inc., 19 F.A.L.R. 4357, at 4371 (FCHR 1995) and Clark v. Department of Corrections, 8 F.A.L.R. 679, at 680-681 (FCHR 1985). He also noted the fact that the Petitioner mailed the Petition to the Commission's old address rather than its new address might constitute excusable neglect, cf. Electric Engineering Company, Inc. v. General Electric Canada, Inc., 610 So2d 51, at 52 (Fla. 3rd DCA 1992). The Commission agrees that it does constitute excusable neglect and the additional time required for the US Postal Service to deliver the Petition was not within the control of the Petitioner. As indicated above, the ALJ erred in concluding that the Petition was untimely when it was mailed on the thirty-sixth day after the date of determination as signed on the notice without providing for the five-day mailing period. The Petition was mailed on the thirty-first day following the date of determination as computed by the Commission and would have arrived within the thirty-five day period except for the fact that the Petition was mailed to the old address. It should be also noted that the statute under which this action is being considered is remedial and requires a liberal construction to preserve and promote access to the remedy intended by the Legislature. Green v. Burger King Corp., 728 So2d 369, 317 (Fla. 3rd DCA 1999). We conclude that the Petition for Relief in this matter was timely filed. In making this correction to the conclusions of law of the Administrative Law Judge, we find: (1) that the Administrative Law Judge's conclusions of law being corrected 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) that 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 this correction the conclusions of law being substituted are as or more reasonable than the conclusions which have been rejected. See, Section 120.57(1) (l), Florida Statutes (2001).

Exceptions

Neither party filed any exceptions to the Recommended Order.

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. 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 (2001), and in the Florida Rules of Appellate Procedure 9.110.

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 2nd day of January, 2003
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer; and
Commissioner John Corbett; and
Commissioner Rita Craig;

Filed this 2nd day of January, 2003,
in Tallahassee, Florida

/s/

Violet Crawford, Clerk
Commission on Human Relations
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OSSINSKY & CATHCART, P.A.
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Winter Park, FL 32789

T. Kent Wetherell, II, Administrative Law Judge, DOAH

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addresses this 2nd day of January, 2003.

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

200301 TBD.F 005
'AGENCY FINAL ORDERS'

CAPTION: *Miller v. Leesburg Regional Medical Center*

CITATION: 200301 TBD.F 005

ORDER NO: 02-101

DATE: 1/2/2003

STATE: FL

99-1480 (FCHR)

CASE NO:

02-003468 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
		<input checked="" type="checkbox"/>								

FILENAME: 02-101.pdf

PAGES: 3

RESULT: Remand (continue litigation)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

PATRICIA M. MILLER,	)	EEOC Case No. 150981133
Petitioner,	)	FCHR Case No. 99-1480
	)	DOAH Case No. 02-003468
vs.	)	FCHR Order No. <u>02-101</u>
)	
LEESBURG REGIONAL MEDICAL CENTER,)	
Respondent)	

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

Preliminary Matters

On December 23, 1997, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992, Sections 760.01-760.11, Florida Statutes (2001), alleging that the Respondent committed an unlawful employment practice by terminating her because of her disability and also creating a hostile work environment. The allegations set forth in the complaint were investigated and on August 13, 2002, the Executive Director issued a "Right to Sue" notice reflecting that the EEOC conducted the investigation and made a determination that it was unable to conclude that a discriminatory act occurred. The Petitioner filed a Petition for Relief on August 26, 2002. Administrative Law Judge Don W. Davis issued a Recommended Order of Dismissal dated October 17, 2002. The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Facts and Conclusions of Law

Since there was no hearing and the Administrative Law Judge based his Recommended Order on the Respondent's motion to dismiss filed October 11, 2002, and the Petitioner's responses to the motion, there is no transcript. The ALJ concluded that the Petition for Relief was filed more than four years after the last possible discriminatory action by Respondent and was, therefore, was not initiated as required within four years of the offending action. See Dixon v. Sprint-Florida, Inc., 787 So2d 968 (Fla. 5th DCA 2001); and Joshua v. City of Gainesville, 768 So2d432 (Fla. 2000). We have not applied the holding enunciated in Joshua v. City of Gainesville, 768 So.2d 432 (Fla. 2000) to administrative review of the actions of the Commission, nor its partner, the federal Equal Employment Opportunity Commission (EEOC). The statute sets forth the time period for her to Request for Relief in an administrative proceeding with which she has complied. The complainant is due her day in court as an appropriate continuation of the administrative action she first began in a timely way on December 23, 1997. See Tammy M. Ford v. Mold-Ex Rubber Company, 23 F.A.L.R. 1586, at 1587 (FCHR 2001). We conclude that the Administrative Law Judge committed an error of law in concluding that the Petitioner's Petition for Relief was barred by Section 95.11(3)(f), Florida Statutes (2001). 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 Complaint of Discrimination under the Florida Civil Rights Act of 1992;
- 2.the reason the corrections are 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 this correction 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 (2001).

Exceptions

Exceptions were filed by the Petitioner in the form of a letter dated October 22, 2002. Those exceptions are noted be the Commission but are not necessary to the ruling made in this matter; were not noted as being served on the Respondent; and are, therefore, stricken.

Remand

The Petition for Relief and Complain of Discrimination are hereby REMANDED to the Administrative Law Judge for further proceedings consistent with this Order.

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 2nd day of January, 2003
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer; and
Commissioner John Corbett; and
Commissioner Rita Craig;

Filed this 2nd day of January, 2003,
in Tallahassee, Florida

/s/

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

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Don W. Davis, Administrative Law Judge, DOAH

Jim Tait, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addresses this 2nd day of January, 2003.

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

APPENDIX



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