



200309 TBD.F
'AGENCY FINAL ORDERS'

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200309 TBD.F 001
'AGENCY FINAL ORDERS'

CAPTION: *Indish-Militello v. Pinellas Suncoast Transit Authority*

CITATION: 200309 TBD.F 001

ORDER NO: 03-005

DATE: 2/26/2003

STATE: FL

CASE NO: 1995-J843 (FCHR)

01-002512 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 01002512 Agency Final Order.PDF

PAGES: 3

RESULT: Final (awarded)



10-25-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
03 FEB 28 PM 2:24

DIVISION OF
ADMINISTRATIVE
HEARINGS

SUSAN INDISH-MILITELLO,

AD

EEOC Case No. NON

Petitioner,

FCHR Case No. 95-J843

v.

DOAH Case No. 01-2512

CSH-Clos

PINELLAS SUNCOAST TRANSIT
AUTHORITY,

FCHR Order No. 03-005

Respondent.

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

On July 10, 1995, Petitioner filed a complaint of discrimination pursuant to Florida Civil Rights Act of 1992 ("FRCA"), Sections 760.01-760.11, Florida Statutes (2001), (and an amended complaint on July 16, 1999, adding a violation of the Americans with Disabilities Act ("ADA")) alleging that the Respondent committed an unlawful employment practice by failing to accommodate Petitioner for her disability and subsequently terminating her. The Commission failed to provide a determination within 180 days and the Petitioner filed a Request for Formal Administrative hearing on May 9, 2001. Respondent filed a Motion to Dismiss for failure to request an administrative hearing within four years of the date of the last act of discrimination. A telephonic hearing was conducted on September 26, 2001 and the ALJ recommended dismissal on January 17, 2002. The Commission rejected the recommendation and remanded the case for further proceedings. See FCHR Order # 02-016. A formal evidentiary hearing was conducted in Largo, Florida, on September 18, 2002, before Administrative Law Judge Carolyn S. Holifield.

Judge Holifield issued a Recommended Order of Dismissal dated October 25, 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 Holifield's recommended order states that the Petitioner has failed to establish a prima facie case of discrimination. Recommended Order, ¶ 37. To present a prima facie case of employment discrimination based on a disability or handicap under the FCRA, Petitioner must show that she: (1) is a person with a handicap or disability recognized under the Act; (2) is qualified for the position apart from her handicap or disability; and (3) that she was terminated from her position solely based on her handicap or disability. Smith v. Avatar Properties, Inc., 714 So2d 1103, at 1106 (Fla. 5th DCA 1998). The ALJ found that she neither proved that she had a disability or handicap meeting the standards of FRCA nor that she was terminated solely

based on her alleged disability or handicap. Recommended Order ¶ 40-44. Further, even if she had met her initial burden, Respondent demonstrated that it had legitimate, non-discriminatory reasons for terminating Petitioner's employment. Recommended Order ¶ 45-46. We adopt the Administrative Law Judge's findings as to the fact that the Petitioner failed to carry her burden of proof and that the Respondent demonstrated legitimate, non-discriminatory reasons for terminating Petitioner's employment.

Although the ALJ found on the merits of the case after holding an evidentiary hearing, she continues to assert that the claim was time-barred. Recommended Order; Conclusions of Law ¶ 24-32. 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); albeit a harmless error since the ALJ proceeded to hold a formal evidentiary hearing and make recommendations on the merits. 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).

The ALJ correctly analyzed the second threshold issue raised by the Respondent; that of collateral estoppel. Recommended Order ¶ 33-36.

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 26th day of February, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Roosevelt Paige, Panel Chairperson
Commissioner John Corbett
Commissioner Aletta Shutes

Filed this 26th day of FEBRUARY, 2003
in Tallahassee, Florida.

Violet Crawford

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Carolyn S. Holifield, 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 26th day of FEBRUARY, 2003.

BY: Violet Crawford

Clerk of the Commission
Florida Commission on Human Relations

200309 TBD.F 002
'AGENCY FINAL ORDERS'

CAPTION: *Stubbs v. DOT*

CITATION: 200309 TBD.F 002

ORDER NO: 03-007

DATE: 2/26/2003

STATE: FL

CASE NO: 21-00232 (FCHR)
02-001437 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 03-007.pdf

PAGES: 3

RESULT: Final (dismissed)



**STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS**

GREGORY L. STUBBS,)	EEOC Case No. NONE
Petitioner,)	FCHR Case No. 21-00232
)	DOAH Case No. 02-001437
vs.)	FCHR Order No. 03-007
)	
DEPARTMENT OF TRANSPORTATION,)	
Respondent)	

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

Preliminary Matters

On December 26, 2000, 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 in terminating him and further for demoting him and lowering his rate of pay as a result of an alleged disability and in retaliation for a prior complaint to the EEOC. The allegations set forth in the complaint were investigated and on February 19, 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 in Jacksonville, Florida, on June 20, 2002, before Administrative Law Judge P. Michael Ruff. Judge Ruff issued a Recommended Order of Dismissal dated October 3, 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 Commission's file contains a transcript of the proceeding before the Administrative Law Judge. The Administrative Law Judge found that the Petitioner was an employee of the Respondent Department who worked as a maintenance yard Welder for five and one-half years and, in 1993, suffered a back injury on the job, resulting in chronic pain. He further found that the Petitioner applied for, and accepted, a position as a weight inspector on January 28, 1997, with resulted in a demotion and a 5% cut in pay. The position, as weight inspector, did not involve any heavy lifting, loading or physically demanding tasks. It did however involve a need to be timely in reporting for work since inspectors, except for training periods for new inspectors, worked alone and their absence causes the facility to be closed. Clear departmental policy required prior notification before any tardiness or failure to report for work. The ALJ further found numerous instances of Petitioner's failure to report to work, either on time or at all, and failure to notify appropriate authorities. The ALJ noted progressive measures of counseling and discipline, ultimately resulting in termination. See, Recommended Order, 6-15. The ALJ specifically found that these actions were not a result of his alleged disability nor his prior complaint to the EEOC about his pay. We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

The ALJ concluded that the Petitioner failed to make a prima facie case and further found that the Respondent did not articulate a legitimate nondiscriminatory reason for terminating the Petitioner. Specifically, the ALJ did not find any evidence that the alleged disability met the legal test that he was substantially limited in any major life activity, nor did the Department regard him as so limited. In fact, the Department provided him a job in which his back injury would not be aggravated and his failing to report to work and failing to advise his supervisor of his need to be absent had no causal relationship to either his alleged disability or his prior complaint about pay. We adopt the Administrative Law Judge's conclusions of law.

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 26th day of February, 2003
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Aletta Shutes; and
Commissioner John Corbett; and
Commissioner Roosevelt Paige;

Filed this 26th day of February, 2003,
in Tallahassee, Florida

/s/

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P. Michael Ruff, 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 26th day of February, 2003.

By: /s/

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

200309 TBD.F 003
'AGENCY FINAL ORDERS'

CAPTION: *Fails v. City of Clermont*

CITATION: 200309 TBD.F 003

ORDER NO: 03-011

DATE: 2/26/2003

STATE: FL

CASE NO: 2200114 (FCHR)

02-001902 (DOAH)

CASE TYPE: Employment Discrimination

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

FILENAME: 02001902 ATAFO.PDF

PAGES: 3

RESULT: Final (dismissed)



10-11-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
03 FEB 28 PM 2:24
DIVISION OF
ADMINISTRATIVE
HEARINGS

NORRIS L. FAILS

AT

EEOC Case No. NONE

Petitioner,

FCHR Case No. 2200114

v.

DOAH Case No. 02-1902

SFD-005

CITY OF CLERMONT,

FCHR Order No. 03-011

Respondent.

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

On December 12, 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 in terminating him because of his race (black). The allegations set forth in the complaint were investigated and on May 2, 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 in Tavares, Florida, on July 16, 2002, before Administrative Law Judge Stephen F. Dean.

Judge Dean issued a Recommended Order of Dismissal dated October 11, 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 Commission's file contains a transcript of the proceeding before the Administrative Law Judge.

The Administrative Law Judge found that the Petitioner was employed as a police officer by the Respondent. He also found that the City Personnel Policies and Standards Governing Police Officers had a clear rule prohibiting policy officers from associating with "undesirables, including convicted felons."

The ALJ found several instances of Petitioner's failure to follow this rule. The ALJ noted that the Petitioner had been counseled on three separate occasions (twice in July and once in November, 2001), and in December was in a car owned by the felon against whom he had been counseled, and with another felon who was the subject of a "be on the lookout for" notice which had been posted on his agency bulletin boards since October, 2001. The person was also arrested for "driving under the influence." These factors ultimately resulted in Petitioner's termination. See, Recommended Order, ¶ 5-9.

The ALJ further found that the Petitioner's allegations about being treated differently from other white officers similarly situated not credible. The ALJ reviewed three such incidents presented by the Petitioner. See, Recommended Order ¶ 10-14.

We adopt the Administrative Law Judge's findings of fact.

Conclusions of Law

The ALJ concluded that the Respondent articulated a legitimate nondiscriminatory reason for terminating the Petitioner. Specifically, the ALJ found that the termination was for good cause and that the Petitioner had failed to carry his burden to show that the Respondent's actions were racially based or pretextual. See, Recommended Order, ¶ 20-23.

We adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal

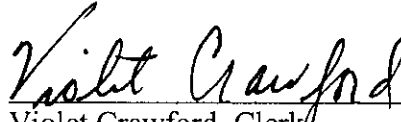
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26th day of FEBRUARY, 2003.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Roosevelt Paige, Panel Chairperson
Commissioner John Corbett
Commissioner Aletta Shutes

Filed this 26th day of FEBRUARY, 2003
in Tallahassee, Florida.


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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 26th day of February, 2003.

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

200309 TBD.F 004
'AGENCY FINAL ORDERS'

CAPTION: *Khan v. Jackson Trading*

CITATION: 200309 TBD.F 004

ORDER NO: 03-008

DATE: 2/26/2003

STATE: FL

CASE NO: 21-03358 (FCHR)

02-002729 (DOAH)

CASE TYPE: Employment Discrimination

age	col	dis	fam	mar	nat	rac	rel	ret	sex	unk
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FILENAME: 02002729 ATAFO.PDF

PAGES: 3

RESULT: Final (dismissed)



10-25-02

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
03 FEB 28 PH 2:24
DIVISION
ADMINISTRATIVE
HEARINGS

WAIJHA KAHN,

EEOC Case No. NONE

Petitioner,

FCHR Case No. 21-03358

v.

DOAH Case No. 02-2729

DM-665

GOLD & SILVER RESERVE, INC.
d/b/a JACKSON TRADING COMPANY

FCHR Order No. 03-008

AT

Respondent.

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

On September 7, 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 sexually harassing the Petitioner and retaliating against her by terminating her employment for her complaint and refusal to comply. The allegations set forth in the complaint were investigated and on June 4, 2002, the Executive Director issued his determination that the Commission had no jurisdiction over the issue since the Respondent did not employ 15 or more persons for 20 or more weeks during the year of the complaint nor the preceding year. The Petitioner filed a Petition for Relief and was granted a formal evidentiary hearing that was held in Titusville, Florida, on September 9, 2002, before Administrative Law Judge Daniel Manry.

Judge Manry issued a Recommended Order of Dismissal dated October 25, 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

Petitioner has the burden of proof to show by a preponderance of the evidence that Respondent was an employer for the purposes of Section 760.02(7). Singletary v Photo Plus, Inc., FCHR Order No. 02-039 (FCHR 2002), 2002 WL 569479 (Fla DOAH). The ALJ found that Petitioner presented no evidence, other than her testimony and one other witness, that Respondent had 15 or more employees during 20 weeks in the years 1999 and 2000. She also orally argued that there were affiliated companies with employees but showed failed to provide any evidence of relationship by stock ownership or common operating control. Respondent presented uncontroverted evidence that it employed five individuals during 1999. Respondent also presented evidence that it employed 15 individuals for only 7 weeks during 2000.

We adopt the Administrative Law Judge's conclusion that the Petitioner has failed to carry her burden of proof.

Exceptions

Neither party filed any exceptions to the Recommended Order.

Dismissal

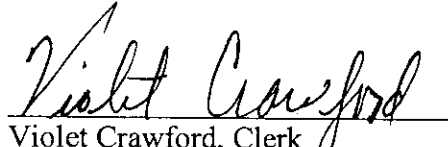
The Request for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 26th day of February, 2002.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS

Commissioner Roosevelt Paige, Panel Chairperson
Commissioner John Corbett
Commissioner Aletta Shutes

Filed this 26th day of February, 2003
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Daniel Manry, 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 26th day of February, 2003.

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

APPENDIX



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