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IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

FILED

03 MAR 31 PM 12:2

DIVISION OF
ADMINISTRATIVE
HEARINGS

DELRAY MEDICAL CENTER,

CASE NO:

Petitioner,

vs.

MICHAEL W. HOLT,

Respondent.

03-0572

rem

PETITIONER'S PETITION FOR WRIT OF PROHIBITION

Pursuant to Rules 9.030(c)(2) and 9.100, Florida Rules of Civil Procedure ("Fla. R. Civ. P."), the petitioner, Delray Medical Center ("Delray"), hereby files this petition for writ of prohibition to prevent the respondents, the Division of Administrative Hearings ("DOAH") and Judge Robert E. Meale ("Judge Meale"), from assuming jurisdiction over the respondent, Michael Holt's ("Holt") petition for an administrative hearing. In support, Delray states as follows:

SUMMARY

On February 18, 2003, Holt petitioned for an administration hearing under the Florida Civil Rights Act ("FCRA") for alleged acts of discrimination that occurred more than five years earlier. Delray moved to dismiss the petition based on the expiration of the applicable four-year statute of limitations under the FCRA, as well as Holt's failure to otherwise timely comply with the FCRA's procedural requirements. Judge Meale denied Delray's motion to dismiss on March 26, 2003 without explanation and is proceeding on Holt's untimely petition. Because Judge Meale and the DOAH have no jurisdiction to hear an expired claim, Delray moves this Court for a Writ of Prohibition against Judge Meale and the DOAH in these proceedings.

PROCEDURAL HISTORY

Holt filed a charge of disability discrimination with the federal Equal Employment Opportunity Commission (“EEOC”) on September 10, 1997, which was then dual-filed with the Florida Commission on Human Relations (“FCHR”). *See* Charge of Discrimination, attached as Exhibit A. According to Holt’s charge, the last act of discrimination occurred on July 25, 1997. *Id.* The EEOC issued its determination in December 1999.

On December 31, 2002, three years after the EEOC issued its determination, the FCHR issued a determination adopting the EEOC’s findings. *See* December 31, 2002 Determination, attached as Exhibit B. The FCHR sent a copy of its determination to Holt’s attorney of record, Donna Ballman, at the address provided. There was no timely response filed to that determination. The FCHR then issued an “amended” determination that was identical to the original determination, except that it was sent to Holt’s attorney at a different address. *See* January 16, 2003 Determination, attached as Exhibit C.

Holt belatedly filed a petition requesting an administrative hearing under the FCRA on February 18, 2003. *See* Petition for Relief, attached as Exhibit D. Delray responded with a motion to dismiss based on the expiration of the statute of limitations applicable to Holt’s FCRA claim. *See* Motion To Dismiss, attached as Exhibit E. Judge Meale denied that motion on March 26, 2003. *See* Order, attached as Exhibit F. Accordingly, Delray seeks relief from this Court.

ARGUMENT AND ANALYSIS

Holt's authority to request an administrative hearing on his FCRA claim derives from Section 760.11(8), Florida Statutes. This provision provides that:

“In the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint under this section within 180 days of the filing of the complaint, an aggrieved person may proceed under subsection (4), as if the commission determined that there was reasonable cause.”

Section 760.11(4) provides, in turn, that:

In the event that the commission determines that there is reasonable cause to believe that a discriminatory practice has occurred in violation of the Florida Civil Rights Act of 1992, the aggrieved person may either:

(a) Bring a civil action against the person named in the complaint in any court of competent jurisdiction; or

(b) Request an administrative hearing under ss. 120.569 and 120.57.

In interpreting these exact provisions, the Florida Supreme Court, in *Joshua v. City of Gainesville*, 768 So. 2d 432 (Fla. 2000), held that the four-year statute of limitations for causes of action based on statutory liability, section 95.11(3)(f), applies to situations where the FCHR has not made a reasonable cause determination within 180 days. *Id.* at 439. The Court subsequently held in *Woodham v. Blue Cross and Blue Shield of Florida*, 829 So.2d 891 (Fla. 2002), that even where the FCHR eventually issues a determination, if that determination was made outside the 180-day period, the four-year statute of limitations still applies. *Id.* at 899.

In this case, Holt dual-filed his charge of disability discrimination with the EEOC and FCHR on September 10, 1997. The FCHR did not issue any determination until December 31, 2002, more

than five years later and well outside the 180-day time period. Accordingly, the four-year statute of limitations period applies to Holt's FCRA claim.

Because the latest act of discrimination alleged by Holt occurred on July 25, 1997- - almost five-and-a-half years before he filed his petition- - Holt's claims are outside the statute of limitations, and the DOAH has no jurisdiction over Holt's petition. Judge Meale and the DOAH, however, have refused to dismiss the petition. This Court should therefore compel them to do so through a Writ of Prohibition. See *State of Florida, Department of Revenue v. Stafford*, 646 So. 2d 803, 807 (Fla. 4th DCA 1994) (granting a writ of prohibition where lower court exceeded its jurisdiction by failing to dismiss an action that was barred by the statute of limitations); *Walker v. Garrison*, 610 So. 2d 716, 718 (Fla. 4th DCA 1992) (same); *Florida East Coast Railway Co. v. State of Florida Land Water Adjudicatory Commission*, 464 So. 2d 1361, 1362 (Fla. 3d DCA 1985) (granting writ of prohibition against the Florida Land and Water Adjudicatory Commission and the DOAH because the agencies lacked jurisdiction over an untimely filed appeal); *Hillsborough County Environmental Protection Commission v. Williams*, 426 So. 2d 1285, 1287 (Fla. 2d DCA 1983) (granting petitioner's writ of prohibition against the DOAH because the agency exceeded its jurisdiction).

In addition, Holt's petition for an administrative hearing was not timely filed after the FCHR finally issued its determination. Judge Meale and the DOAH therefore lack jurisdiction over the petition on that basis as well.

Specifically, Section 760.11(4), Florida Statutes permits an aggrieved person to request an administrative hearing "within **35 days** of the date of determination of reasonable cause." (Emphasis supplied.) The FCHR issued its determination on December 31, 2002 and sent it to Holt's counsel

of record. Holt, however, did not file his petition until February 18, 2003 - - 49 days after the determination was issued.

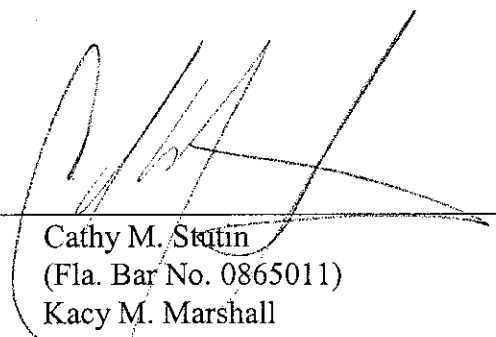
The fact that the FCHR issued an "amended" determination on January 16, 2003 does not render Holt's petition timely. The only difference between the initial determination and the amended determination is the address for the complainant. Holt however, who was represented by counsel, had the obligation to notify the FCHR of any change in his contact information. His failure to do so does not toll the period in which to file his petition, and Judge Meale and the DOAH are therefore without jurisdiction to hear it.

CONCLUSION

For the reasons stated, Delray respectfully requests that the Court grant its petition for a writ of prohibition and quash the Order denying Delray's Motion to Dismiss Holt's petition.

Date: March 27, 2003

FISHER & PHILLIPS LLP
450 East Las Olas Boulevard
Suite 800
Fort Lauderdale, Florida 33301
Telephone: (954) 525-4800
Facsimile: (954) 525-8739

By: 

Cathy M. Stutin
(Fla. Bar No. 0865011)
Kacy M. Marshall
(Fla. Bar No. 0499684)

Attorneys for Petitioner

CERTIFICATE OF SERVICE

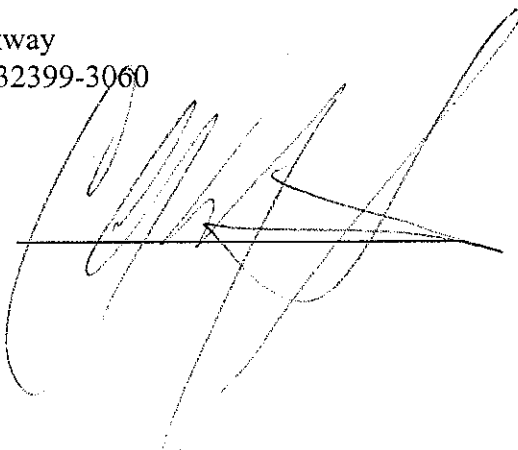
I hereby certify that on this date I caused a true and correct copy of the foregoing
PETITIONER'S PETITION FOR WRIT OF PROHIBITION to be served on the following
individual(s) by depositing same in the United States Mail, First Class, postage prepaid:

Michael W. Holt
699 Coventry Street
Boca Raton, Florida 33487

Judge Robert E. Meale
Division of Administrative Hearings
DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Sharyn L. Smith, Chief Judge
Division of Administrative Hearings
DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Dated: March 28, 2003

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the person certifying the service.

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.

☐ FEPA
☒ EEOC

150974568

Palm Beach County Office of Equal Opportunity and EEOC
Florida Commission on Human Relations

NAME (Indicate Mr., Ms., Mrs.)
Mr. Michael Holt

97 SEP 23 AM 10:11 TELEPHONE (Include Area Code)
(561) 368-4297

STREET ADDRESS CITY, STATE AND ZIP CODE DATE OF BIRTH
395 N.E. 28 Terrace, Boca Raton, FL 33431

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME NUMBER OF EMPLOYEES, MEMBERS TELEPHONE (Include Area Code)
Tenet Healthcare Corporation 500+ (561) 498-4440

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
5352 Linton Blvd., Delray Beach, FL 33484 Palm Bch.

NAME TELEPHONE NUMBER (Include Area Code)
Delray Medical Center (561) 498-4440

STREET ADDRESS CITY, STATE AND ZIP CODE COUNTY
5352 Linton Blvd., Delray Beach, FL 33484 Palm Bch.

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))
☐ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☐ AGE ☒ DISABILITY ☐ OTHER (Specify)
DATE DISCRIMINATION TOOK PLACE
EARLIEST 6/26/97 LATEST 7/25/97
☒ CONTINUING ACTION

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s))

I am a CRT Technician - Special Diagnostics who was employed by Delray Medical Center, a subsidiary of Tenet South Florida Health System, which is owned by Tenet Healthcare Corporation, until July 25, 1997. On August 8, 1996, I was injured in an accident. I have a permanent disability, namely, a fused elbow which causes me to have limited forearm rotation. I was denied light duty. I attempted to return to work beginning June 26, 1997. I was told the hospital had already made plans for me, and that I had to obtain a medical release. I obtained a release with the limitation of forearm rotation. I was then informed that I owed back medical insurance premiums of \$1426.25, and that this must be paid back immediately. I was then told that the position I had held was filled, although it was open for a year. It has, in fact, not been filled. I was offered a job as an EKG technician at half my previous salary, which I turned down. On July 28, 1997, I was sent a letter stating that I had voluntarily resigned as of July 25, 1997, which I did not. They said I owed back insurance premiums and could not get COBRA unless I paid them. I could not afford that much money because I had no job, so I lost my insurance. I have also lost my disability coverage.

I believe that I have been discriminated against due to my disability or perceived disability (limited forearm rotation) in violation of the Americans with Disabilities Act, Title VII, and state, county and federal laws.

☒ I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary for State and Local Requirements)

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

SIGNATURE OF COMPLAINANT

9/10/97

X Michael W. Holt

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(Day, month, and year)

Date Charging Party (Signature)

EEOC FORM 6 (Rev. 06/92)

EXHIBIT

FILE COPY

"A"



Jeb Bush
Governor

State of Florida

Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

2009 Apalachee Parkway • Suite 100 • Tallahassee, Florida 32301-4857
(850) 488-7082
Web Site <http://fchr.state.fl.us>



Rita Barreto Craig
Chair

Derick Daniel
Executive Director

DOA 12-31-02
DOA 12-31-02

FCHR CASE NO.: 980047
EEOC CASE NO.: 150974568

Michael Holt
c/o Donna N. Ballman
13899 Biscayne Boulevard, Suite 154
North Miami Beach, Florida 33181

COMPLAINANT

Delray Medical Center
c/o Jannis L. Greene, Director Human Resources
[REDACTED]
Tenet South Florida Healthsystem
5352 Linton Boulevard
Delray Beach, Florida 33484

RESPONDENT

DETERMINATION: CAUSE

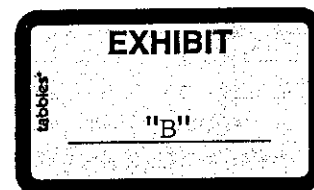
The Florida Commission on Human Relations ("Commission") has reviewed your case that was initially investigated by the EEOC. Granting substantial weight to the decision of the EEOC, the Commission hereby issues, this *Determination: Cause*.

Pursuant to Section 760.11(4), Florida Statutes, you may file a civil action in a state court in Florida within 1 year from the date of this notice, provided such time is within 4 years from the date the alleged harm was committed, or you may, pursuant to Section 760.11(7), Florida Statutes, request an administrative hearing in the Division of Administrative Hearings by completing and sending to the Commission, the enclosed Petition for Relief form within 35 days of the date of this notice.

FOR THE COMMISSION ON HUMAN RELATIONS:

DA
Derick Daniel
Derick Daniel
Executive Director

12-31-02
Date



COMMISSIONERS

Roosevelt Paige, Vice Chair
Orange Park

Leonie Hermantini
Miami

Billy Whitefox Scall
Panama City

Gayle Cannon
Lake City

Keith A. Roberts
Dania Beach

Mario Valle
Naples

John Corbett
West Palm Beach

Gilbert M. Singer
Tampa

Donna Elam
Thonotosassa

Alecia Shutes
Tallahassee

P. C. Wu
Pensacola

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing DETERMINATION: CAUSE was filed at Tallahassee, Florida and served upon the above-named addressees on this 31st day of December, 2002.
By U.S. Mail

BY: Melissa Miller for
Clerk of the Commission



Jeb Bush
Governor

State of Florida

Florida Commission on Human Relations

An Equal Opportunity Employer • Affirmative Action Employer

2009 Apalachee Parkway • Suite 100 • Tallahassee, Florida 32301-4857
(850) 488-7022
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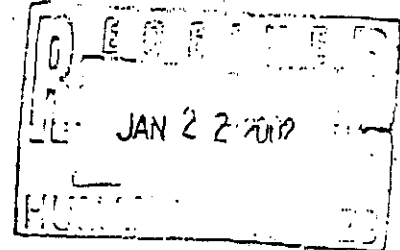
Rita Barreto Craig
Chair

Derick Daniel
Executive Director

FCHR CASE NO.: 980047
EEOC CASE NO.: 150974568

Michael Holt
c/o Donna N. Ballman
4801 South University Drive, Suite 301027
Ft. Lauderdale, Florida 33328-3844

COMPLAINANT



Delray Medical Center
c/o Jannis L. Greene, Director Human Resources
Delray Medical Center
Tenet South Florida Healthsystem
5352 Linton Boulevard
Delray Beach, Florida 33484

RESPONDENT

AMENDED DETERMINATION: CAUSE

The Florida Commission on Human Relations ("Commission") has reviewed your case that was initially investigated by the EEOC. Granting substantial weight to the decision of the EEOC, the Commission hereby issues, this **Determination: Cause**.

Pursuant to Section 760.11(4), Florida Statutes, you may file a civil action in a state court in Florida within 1 year from the date of this notice, provided such time is within 4 years from the date the alleged harm was committed, or you may, pursuant to Section 760.11(7), Florida Statutes, request an administrative hearing in the Division of Administrative Hearings by completing and sending to the Commission, the enclosed Petition for Relief form within 35 days of the date of this notice.

FOR THE COMMISSION ON HUMAN RELATIONS:

Derick Daniel
Executive Director

1-16-03
Date



COMMISSIONERS

Roosevelt Paige, Vice Chair
Orlando Park

Gayle Cannon
Lake City

John Corbett
West Palm Beach

Danna Elum
Thonotosassa

Leonie Hermantia
Miami

Keith A. Roberts
Dania Beach

Gilbert M. Singer
Tampa

Aletta Shutes
Tallahassee

Billy Whitefox Stall
Panama City

Mario Valle
Naples

P. C. Wu
Pensacola

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing DETERMINATION: CAUSE was filed at Tallahassee, Florida and served upon the above-named addressees on this 16th day of January, 20 103.
By U.S. Mail J

BY: Melissa Miller for
Clerk of the Commission 7

FLORIDA COMMISSION ON HUMAN RELATIONS

RECEIVED
FLORIDA COMMISSION ON
HUMAN RELATIONS
2003 FEB 18 PM 3:31

Michael Wallace Holt

PETITIONER

FCHR No. 980047

Delray Medical Center

Tenet South Florida Health System

Dr. JANNIS L. Greene, Director Human Resources

RESPONDENT

PETITION FOR RELIEF

Petitioner files this Petition for Relief from an Unlawful Employment Practice and says:

1. PETITIONER'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: Michael Wallace Holt

Street or P.O. Box 569 Coventry St.

City, State, Zip Boca Raton FL 33487

Area Code & Phone Number (561) 988-7226

2. RESPONDENT'S NAME, ADDRESS AND TELEPHONE NUMBER ARE AS FOLLOWS:

Name: Delray Medical Center

Street or P.O. Box 5351 Linton Boulevard

City, State, Zip Delray Beach FL 33484

Area Code & Phone Number (561) 498-4400

EXHIBIT

"D"

PETITION FOR RELIEF

Page Two

3. RESPONDENT HAS VIOLATED THE FLORIDA CIVIL RIGHTS ACT OF 1992, AS AMENDED, IN THE MANNER SPECIFICALLY DESCRIBED BELOW:

Petitioner was discriminated against due to my disability or perceived disability in violation of the Americans with Disabilities Act, Title VII and state, county and federal laws from 6/26/97 to 7/25/97

4. THE DISPUTED ISSUES OF MATERIAL FACT, IF ANY, ARE AS LISTED BELOW:

Petitioner was denied reinstatement because of his disability. Evidence obtained during the EEOC investigation establishes this. EEOC charge #150974568

5. THE ULTIMATE FACTS ALLEGED & ENTITLEMENT TO RELIEF ARE AS LISTED BELOW:

Substantial weight was granted to the decision of the EEOC by FC.H.R. case #980047. Petitioner seeks relief for his damages in the amount of \$28,500.00, attached is Petitioner's AFFIDAVIT Sworn 9/2/97. Petitioner will be able to provide his EEOC file and all supporting data

WHEREFORE, Petitioner prays that the Florida Commission on Human Relations enter its order prohibiting the unlawful employment practice and granting such affirmative relief as may be just and equitable in this cause.

Michael Wallace Holt 2/18/03
PETITIONER

State of Florida)

County of Palm Beach)

AFFIDAVIT OF MICHAEL HOLT

Before me the undersigned authority did personally appear Michael Holt, who was duly sworn, and said:

1. I am a CRT Technician - Special Diagnostics who was employed by Delray Medical Center, a subsidiary of Tenet South Florida HealthSystem, which is owned by Tenet Healthcare Corporation.

2. On August 8, 1996, I was injured in an accident. I have a permanent disability, namely, a fused elbow which causes me to have limited forearm rotation.

3. I asked the hospital for light duty several times while I was on medical leave of absence and was told that I could not have it unless I had a worker's compensation injury, because only in worker's compensation did they have to pay a disabled person's salary. However, I was told that I could come back to work whenever I was ready.

4. On June 20, 1997, I informed Terry Hoehn that I would soon be ready to return from my medical leave of absence to full duty. He said, "That's good Mike, because we have already made plans for you when you return to work." I asked, "What kind of plans?" He said, "Good ones. You will like them." He then asked if my respiratory license was active. I said it was, and he said "good" and told me to keep him informed.

5. On June 23, 1997, I called Human Resources to find out what paper work was needed to return to work.

6. On June 24, 1997, I spoke with Gail Levitt, benefits coordinator in Human Resources. She informed me that when a medical release was obtained from my doctor I should contact her. She also advised me that a new director for Special Diagnostics had recently been hired. I told her I would be seeing my doctor, Dr. Meadows, on June 26, 1997.

7. On June 26, 1997, I obtained a note releasing me with the restriction of limited forearm rotation. I went directly from my doctor's office to Human Resources to see Gail Levitt. I gave her the release and she gave me a copy of the current job postings dated June 25, 1997. We determined that my old job, a "CRTT" position for days, was available. She had me fill out a "Transfer Request" form and said she would give it to the new director of Special Diagnostics, Madeline Nario along with my

medical release. She then informed me that I owed back medical insurance premiums. I was shocked, because I had never been informed of this before. She told me I owed \$1426.25 and that the company expected payment in full within four paychecks. She said no exceptions were made.

8. On Friday, June 27, 1997, I called the new director and spoke to her about having my paperwork completed to return to work. She told me she had just started the job and asked me to give her a chance to sort out things. She told me to call her back on Monday. I called back on Monday, and her assistant gave me an appointment to see the director on July 10, 1997.

9. On July 10, 1997, I arrived for my scheduled appointment. The director looked at my medical release and tried to read it out loud. She was having trouble reading it, so I told her that my left elbow was fused and that I had limited forearm rotation but I had good strength and range of motion in my shoulder to compensate. She said, "I see." Terry Hoehn then came into the office and the director asked how much "critical care" experience I had. I told her, "not that much" because I was usually assigned to work on the medical surgical floor. I told her that the acuity of care there was almost identical to the units and also mentioned that I had a very good job record and prior experience in many phases of respiratory care. I also mentioned that I had passed all my competencies, clinical and written, for the CRTT position, that I had been ACLS certified, and was certified in EKG interpretation. I asked if she had my personnel file or had reviewed it, and she said she had not. I told her that I had been told I would be given a preference in returning to my old position. She stated that was not her understanding, and that she would get back to me.

10. On July 16, 1997, I had tried to call the director on July 14 and July 15, and receiving no response, went to her office. She told me that the CRTT positions had already been filled. I was surprised because, as of the July 9 postings, the positions were still open, and the same job had been posted from July 15, 1996 through July 9, 1997. She mentioned that I could possibly be employed as an EKG technician full time but she was uncertain as to how much she could pay me. I asked her if I could work as a respiratory therapist part-time. She said it was possible but there were no guarantees as to the hours I could work. She said she would have to take the matter up with Janice Green, Director of Human Resources.

11. On July 16, 1997, at approximately 5:00 p.m., I was called at home by the director and informed that Janice Green said that I could only be paid \$6.70/hour as an EKG technician. I told her I could not accept that position because my previous base pay was \$12.03 per hour. I told her that I was still interested in part-time work as a respiratory therapist, and would take the EKG position if I could work some hours as a respiratory therapist. She told me Janice Green said I could not. This had been done in the past for other employees, which is why I had asked. I told her I would still be interested in part-time respiratory therapist work. She did not reply.

12. On July 18, 1997, I went to the department to give the director and Terry Hoehn a current copy of my license and repeated my availability to work part-time. They said nothing.

13. On July 28, 1997, I was sent a letter by the hospital stating that I had voluntarily resigned as of July 25, 1997. The letter also stated that I owed back money for my insurance benefits totalling \$. I called Frank Ramirez at Corporate Benefits and he admitted that the amount had been miscalculated.

14. On July 30, 1997, Frank Ramirez called to say that he was looking at my situation and that some mistakes had been made in handling my insurance benefits. I asked him if the long term disability rate was miscalculated, and he said it was. He said there would be no interruption in my benefits while the confusion was being cleared up. I told him I had elected COBRA coverage and sent in my first month's premium. He said there would be no discontinuation of coverage.

15. As a result of Tener's misrepresentations to me that I would be able to come back to work if I obtained a medical release, I have lost my disability coverage and am completely unemployed.

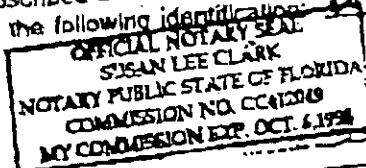
16. Another disabled employee was told to get a medical release to come back to work, and when she did she was told that no job was available, and that she was now off disability benefits, and that she owed back health insurance money, and that her COBRA benefits were cut off. Her name is Dale Maloney, and she has also filed with EEOC. A copy of her affidavit is attached.

2/12/03 I am no longer represented by this, or any attorney
17. My attorney is Donna M. Ballman, P.A., 13899 Biscayne Blvd., Suite 154, N. Miami Beach, FL 33181. Her telephone number is (305) 947-9479. All contacts should be made through her.

18. I believe that I have been discriminated against due to my disability (fused elbow and limited forearm rotation) or perceived disability in violation of the Americans with Disabilities Act.

FURTHER AFFIANT SAYETH NAUGHT.

SWORN TO and subscribed before me this 2 day of August, 1997. Affiant is personally known to me/ X produced the following identification:



My commission expires: Oct 6 1998

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MICHAEL W. HOLT,

DOAH Case No. 03-0572

FCHR Charge No. 98-0047

Petitioner,

vs.

DELRAY MEDICAL CENTER,

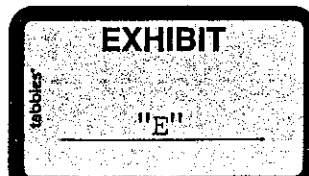
Respondent.

RESPONDENT'S MOTION TO DISMISS

Pursuant to §28-106.204(2), Fla. Admin. Code, the respondent, Delray Medical Center ("Delray"), moves to dismiss the petition for an administrative hearing filed by Michael Holt ("Holt"). In support, Delray states as follows:

Holt filed a charge of disability discrimination with the EEOC on September 10, 1997, which was then dual-filed with the FCHR. According to his charge, the last act of discrimination occurred on July 25, 1997. Holt, however, did not file a petition requesting an administrative hearing on his claim until February 18, 2003 - - more than five years later. Because the statute of limitations has expired on Holt's claim, his petition must be dismissed as untimely.

In *Joshua v. City of Gainesville*, 768 So. 2d 432 (Fla. 2000), the Florida Supreme Court held that a four-year statute of limitations applies to claims under Chapter 760, Florida Statutes whenever the FCHR fails to make a cause determination within 180 days of the filing of the complaint. *Id.* at 433. That is true whether or not the FCHR eventually issues



a determination outside the 180-day period. *Woodham v. Blue Cross and Blue Shield of Florida*, 829 So. 2d 891, 899 (Fla. 2002).

As the Court explained, where the FCHR has failed to make a determination within 180 days of the complaint, a complainant may proceed under 760.11(4) as if the Commission had issued a cause determination. *Id.* Any such action, however, is subject to the four-year limitation period under section 95.11(3)(f), Florida Statutes. *Id.* In this case, the latest act of alleged discrimination was almost five-and-a-half years before Holt filed his petition. Holt's petition is therefore outside the statute of limitations and must be dismissed.

Moreover, even if Holt's claim were within the statute of limitations, his petition for an administrative hearing is still untimely. Section 760.11(4), Florida Statutes permits an aggrieved person to request an administrative hearing; however, "such request must be made within 35 days of the date of determination of reasonable cause" (emphasis supplied). The FCHR issued its cause determination in connection with this matter on December 31, 2002. Holt, however, did not file his petition until February 18, 2003 - - 49 days after the determination was issued. Holt's petition is therefore untimely.

The fact that the Commission issued an amended determination on January 16, 2003, does not render Holt's petition timely. The only difference between the initial determination and the amended determination is Holt's address. Holt, however, has the obligation to notify the Commission of a change in address. His failure to do so does not toll the period in which to file his petition.

Wherefore, Delray respectfully requests that Holt's petition for an administrative hearing be dismissed.

Date: March 14, 2003

FISHER & PHILLIPS LLP
Suite 800
450 E. Las Olas Boulevard
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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused a true and correct copy of the foregoing
RESPONDENT'S MOTION TO DISMISS be served on the following individual(s) by
depositing same in the United States Mail, First Class, postage prepaid:

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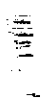
Dated: March 14, 2003

MICHAEL W. HOLT,
Petitioner,
vs.
DELRAY MEDICAL CENTER,
Respondent.

DONE AND ORDERED this 26th day of March, 2003, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of March, 2003.



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