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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

LISA COSBY,

Petitioner,

vs.

Case No. 22-2238

CIRCLE K STORES, INC.,

Respondent.

RECOMMENDED ORDER OF DISMISSAL

On September 9, 2022, the undersigned, *sua sponte*, issued an Order to Show Cause, ordering Petitioner, Lisa Cosby, to show cause, in writing, within 10 days of the date of the Order, why the undersigned should not recommend that this matter be dismissed for lack of jurisdiction, and providing Respondent, Circle K Stores, Inc., an opportunity to respond within the same period of time. On September 19, 2022, Respondent filed a Response to Order to Show Cause; to date, Petitioner has not responded.

I. Background

Based on the record currently before the undersigned, Ms. Cosby filed an Employment Complaint of Discrimination (Complaint) with the Florida Commission on Human Relations (FCHR), alleging that Respondent, her employer, discriminated against her based on a disability or handicap, and that Respondent retaliated against her, in violation of the Florida Civil Rights Act (FCRA). *See* Ch. 760, Fla. Stat. (2020).

In the box titled “Discrimination Statement,” Petitioner’s Complaint states:

The Complainant (CP) was terminated because of her perceived/regarded disability. CP was injured on the job on 11/17/2020. Respondent required her to complete an accident report and seek medical treatment. Based on the treatment, she was given work restrictions and could not return to work with these restrictions. The worker’s compensation carrier then denied the claim and stopped paying for treatment on or about 12/01/2020. Within two weeks of that, on or around 12/14/2020, CP was

terminated. Respondent did not provide a reason for her termination. However, her termination was during the period that she had work restrictions. CP was noted as non-rehire.

On the face of Petitioner's Complaint, in the box titled "Date Most Recent Discrimination Took Place," the Petitioner wrote "December 14, 2020." The Complaint reflects that Petitioner signed the Complaint on December 23, 2021, and further reflects a file stamp from FCHR indicating receipt on December 27, 2021.

On June 24, 2022, FCHR issued a No Reasonable Cause Determination, finding that there was no reasonable cause to believe that an unlawful practice occurred. On July 28, 2022, Ms. Cosby filed a Petition for Relief (Petition), contesting FCHR's determination of no reasonable cause. The Petition raises, for the first time, alleged violations of Florida's Workers Compensation Retaliation Statute. See § 440.205, Fla. Stat.

II. Analysis

Section 760.11(1), Florida Statutes (2020), provides, in pertinent part:

(1) Any person aggrieved by a violation of ss. 760.01 – 760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint-labor management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation ... On the same day the complaint is filed with the commission, the commission shall clearly stamp on the face of the complaint the date the complaint was filed with the commission ... If the date the complaint is filed is clearly stamped on the face of the complaint, that date is the date of filing.

"As a prerequisite to bringing a civil action based upon an alleged violation of the FCRA, the claimant is required to file a complaint with the FCHR within 365 days of the alleged violation." *Woodham v. Blue Cross & Blue Shield of Fla., Inc.*, 829 So. 2d 891, 894 (Fla. 2002).

Federal courts have similarly held that an employee who alleges that their employer violated the FCRA must file a complaint with FCHR within 365 days of the alleged violation. See *Weaver v. Fla. Power & Light*, 1996 WL 479117, at *8, 10 (S.D. Fla. July 16, 1996) (construing section 760.11(1) and holding that "Claims

based on acts which took place more than 365 days before the filing of the FCHR charge are time barred.”); *Santandreu v. Miami-Dade Cnty.*, 2011 WL 13136161, at *13 (S.D. Fla. Aug. 1, 2011 (finding that the claims “occurred over 365 days before the administrative charge was filed making the claims untimely and barred by the statute of limitations”).

According to her Complaint, Ms. Cosby alleges that Respondent’s FCRA violations started on November 17, 2020 (the date she reported a workplace injury), and continued until Respondent terminated Ms. Cosby on December 14, 2020. However, she filed her Complaint on December 27, 2021—which, according to section 760.11(1), is the date of filing because of the clear file stamp from FCHR. Ms. Cosby filed her Complaint 378 days after the alleged violation, which is more than 365 days after any alleged violation in her Complaint. Even if Petitioner were to contend that she signed and filed the Complaint on December 23, 2021, her Complaint still falls more than 365 days (374 days, to be precise) after any alleged violation.¹ Thus, pursuant to section 760.11(1), Ms. Cosby’s Complaint is time-barred and her Petition should be dismissed.

III. Conclusion

Based on the foregoing, the undersigned hereby RECOMMENDS that the Florida Commission on Human Relations issue an Order dismissing Ms. Cosby’s Petition for Relief.

The final hearing in this matter, currently noticed for October 11, 2022, is hereby CANCELLED.

DONE AND ORDERED this 26th day of September, 2022, in Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
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¹ To the extent Ms. Cosby may contend her Petition also contains allegations related to a workers’ compensation claim under section 440.25 Florida Statutes, such claims were not raised in her Complaint and were outside of the purview of FCHR’s investigation, and thus the undersigned lacks jurisdiction to consider them.

COPIES FURNISHED:

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