

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ANNE R. WEBSTER, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 99-5113  
 )  
 METROPOLITAN DADE COUNTY, CLERK )  
 OF THE COUNTY COURT, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was held in this case on November 30 and December 1-2, 2004 and February 3-4, August 24-25, and December 15, 2005, in Miami, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Anne R. Webster, pro se  
12000 Northeast 16th Avenue, B-27  
Miami, Florida 33161-6566

For Respondent: William X. Candela, Esquire  
Dade County Attorney's Office  
Stephen P. Clark Center  
111 Northwest First Street, Suite 2810  
Miami, Florida 33128

STATEMENT OF THE ISSUE

The issue for determination is whether Respondent discriminated against Petitioner on the basis of race, color,

sex, religion, presumed handicap, national origin, age, and marital status; and whether Respondent retaliated against Petitioner in violation of the Florida Civil Rights Act of 1992, as amended.

PRELIMINARY STATEMENT

Anne R. Webster filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) against the Metropolitan Dade County, Clerk of the County Court (Clerk) alleging that the Clerk discriminated against her on the basis of race, color, sex, religion, presumed handicap, national origin, age, marital status, and retaliation. On August 2, 1999, the FCHR issued a Determination of No Cause and a Notice of Determination of No Cause. By Order filed October 27, 1999, the FCHR granted Ms. Webster an extension of time to file, on or before November 12, 1999, a Petition of Relief from an Unlawful Employment Practice (Petition for Relief). Ms. Webster filed a Petition for Relief with the FCHR against the Clerk. On December 9, 1999, the FCHR referred this matter to the Division of Administrative Hearings (DOAH).

The hearing was originally scheduled for March 10, 2000. Ms. Webster requested a continuance of the hearing, to which the Clerk did not object, and the hearing was continued. The hearing was re-scheduled for May 25, 2000. On May 5, 2000, a Notice of Appearance was filed by counsel for Ms. Webster.

Subsequently, counsel for Ms. Webster requested a continuance, to which the Clerk did not object. The continuance was granted, and the hearing was re-scheduled for July 26, 2000. On July 20, 2000, Ms. Webster's counsel filed another motion for continuance, to which the Clerk did not object, and the hearing was continued. Subsequently, the hearing was re-scheduled for November 8, 2000. By Order dated November 7, 2000, the hearing was continued and this matter was placed in abeyance based on the parties' representation that they were engaging in ongoing discovery and serious settlement negotiations. After a passage of time, the parties represented that settlement was not successful and, therefore, a hearing was necessary; the hearing was scheduled for January 12, 2001. Afterwards, the parties requested a different hearing date, and the hearing date was changed to January 25, 2001.

This matter was transferred to the undersigned. The hearing scheduled for January 25, 2001, was changed to a video teleconference hearing. On January 23, 2001, Ms. Webster's counsel of record filed a request to withdraw. The request to withdraw was heard at the hearing and was orally granted. An Order dated January 26, 2001, was issued granting the request to withdraw. Additionally, on January 23, 2001, counsel for Ms. Webster requested a continuance of the hearing scheduled for January 25, 2001, to which the Clerk did not object. This

motion was also considered at the hearing. An Amended Order dated February 9, 2001, was issued granting the continuance and holding the case in abeyance to provide an opportunity for Ms. Webster to obtain new counsel or a qualified representative.

Subsequently, an order was issued directing Ms. Webster to provide a status report as to her progress in obtaining representation in this matter. Base upon her response, the case was continued in abeyance by Order dated December 18, 2001. The parties again attempted to resolve this matter without the need for a hearing but were unsuccessful. Further, Ms. Webster was unable to obtain representation and was proceeding pro se. She frequently filed pleadings requesting the undersigned to instruct her as to how to handle her case, which the undersigned could not do.

By Order dated August 22, 2002, the parties were directed to provide dates for the re-scheduling of the hearing in this matter. The hearing was re-scheduled for June 10 and 11, 2003.

Ms. Webster attempted to engage in discovery. She requested a continuance and the hearing scheduled for June 10 and 11, 2003, was continued. With the concurrence of the Clerk, as guidance for and assistance to Ms. Webster, she was provided with a copy of McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S. Ct. 1817 (1973). The length of time necessary for

the hearing increased, and the hearing was re-scheduled for March 16 through 18, 2004.

The Clerk was engaging in discovery to which Ms. Webster was not responding. During a telephone conference, the parties requested a re-scheduling of the hearing, which was granted, and the hearing was re-scheduled for April 14 through 16, 2004.

A telephone conference was held regarding the Clerk's failure to adequately respond to discovery from Ms. Webster and regarding a continuance of the hearing due to the inadequate responses. As to the continuance, the parties had been notified by the undersigned that a death had occurred in his family which prevented the hearing from going forward, and the hearing was canceled. By Order dated April 22, 2004, among other things, the Clerk was directed to sufficiently respond to the discovery and to show cause why sanctions should not be imposed.

Subsequently, Ms. Webster was filing pleadings and exhibits which were confusing as to whether she desired to re-open discovery, with the undersigned pointing-out that he was not persuaded that discovery should be re-opened, and as to whether pleadings filed by her and entitled exhibits were already admitted and could be used as evidence at hearing, representing that the Clerk already had copies of them. By Order dated August 24, 2004, among other things, Ms. Webster was directed to make a decision as to whether she wanted to re-open discovery,

which the undersigned was not persuaded should occur, the parties were advised that rulings on the admissibility of exhibits would be made at hearing, and the parties were directed to provide dates for re-scheduling the hearing. The hearing was re-scheduled for November 30 through December 2, 2004.

Prior to hearing, the Clerk had agreed to assist in making sure that certain witnesses appeared at hearing without being served with a subpoena and had agreed that subpoenas for certain witnesses would be accepted by an identified person in the Clerk's office. Confusion developed in the Clerk's office as to what was to be done regarding accepting the subpoenas, which resulted in several pleadings being filed by Ms. Webster. Also, among other things, Ms. Webster requested to have read into the hearing record, instead of testifying, certain affidavits prepared by her for her own testimony so that she would not be "mis-understood"; the Clerk objected; and this request was denied. Additionally, Ms. Webster requested that certain documents that she regarded as evidence of the Clerk's pretext to be admitted into evidence prior to hearing and before any argument by the Clerk would be permitted; the Clerk did not respond to the request; and the undersigned denied the request indicating that admissibility of documents was the decision of the undersigned not the Clerk.

The final hearing in this matter was not concluded on

December 2, 2004. The hearing was re-scheduled for February 3 and 4, 2005.

Again, the final hearing in this matter was not concluded on February 3 and 4, 2005. The hearing was re-scheduled for August 24 through 26, 2005. The undersigned issued an order regarding the appearances of witnesses on behalf of Ms. Webster. As a result of a hurricane impacting the Miami area, the hearing was not held on August 26, 2005. The hearing was re-scheduled for December 15, 2005, at which time the final hearing was completed.

At hearing, Ms. Webster testified in her own behalf, presented the testimony of 23 witnesses, and entered 120 exhibits (Petitioner's Exhibits numbered 1, 2B, 4A, 4B, 4C, 4E, 4F, 4G, 4H, 4I, 10A, 10B, 10C, 11A, 11B, 11C, 12A, 12B, 12C, 12D, 12E, 12G, 13, 15A, 15B, 15C, 15D, 15E, 15F, 15I, 15J, 15K, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 16I, 16J, 16K, 16L, 16M, 16N, 16O, 16P, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 18A, 18B, 19B, 20B, 22, 23C<sub>1</sub>, 23C<sub>2</sub>, 24A, 24B, 24C, 24D, 24E, 25A, 25B, 25C, 25D, 25E, 26A, 26B, 26C, 27A, 27B, 27C, 27D, 27F, 27H, 28, 29, 30A, 30B, 30C, 30D, 30E, 31A, 31B, 31C, 31D, 31E, 32A, 32B, 35, 44, 47A, 47B, 47C, 47D, 47E, 50, 51, 52A, 52B, 52C, 52D, 53, 54, 55, 56, 57, 73, 74, 75, 76, 77, 105, and 107) into evidence. Ms. Webster, with the consent of the Clerk, proffered the testimony of some of her witnesses. The Clerk did not call any

witnesses to testify and entered two exhibits (Respondent's Exhibits numbered 4 and 2) into evidence.

The Clerk ordered a transcript of the hearing. The following volumes, with hearing dates, were filed by the Clerk with DOAH, to which Ms. Webster filed pleadings protesting the failure of the Clerk to file these volumes: on September 27, 2005--Volumes I and II of the hearing held on November 30, 2004, and Volume III of the hearing held on December 1, 2004; and on September 28, 2005--Volume IV of the hearing held on December 1, 2004, and Volumes V and VI of the hearing held on December 2, 2004. The court reporter filed with DOAH, on September 14, 2005, two volumes of the hearing held on August 24 and 25, 2005.

By an Amended Order to Show Cause dated December 9, 2005, the Clerk was directed to show cause why sanctions should not be imposed for failing to file the volumes of the transcript for the hearing held on February 3 and 4, 2005. At the hearing on December 15, 2005, the Clerk persuaded the undersigned that good cause existed not to impose sanctions for the failure to file the volumes of the transcript. Three volumes for the hearing held on February 3 and 4, 2005 were filed on December 23, 2005. The Clerk filed with DOAH, on January 24, 2006, the one volume of the transcript of the hearing held on December 15, 2005. All of the volumes of the transcript had now been filed with DOAH.

At the request of the parties, the time for filing post-



hearing submissions was set for more than ten days following the filing of the transcript. The Transcript, consisting of 12 volumes, was filed on September 14, 27, 28, and December 23, 2005, and January 24, 2006. Ms. Webster filed her post-hearing submission prior to the conclusion of the hearing, and, therefore, she was permitted to file an amended post-hearing submission. The Clerk requested an extension of time to file its post-hearing submission; the request was granted, and the post-hearing submission was accepted. Subsequently, Ms. Webster requested to file an amendment to her post-hearing submission, to which the Clerk did not file a response; the request was granted, and the amendment was accepted. The Recommended Order was further delayed by the undersigned's surgery.

The parties' post-hearing submissions were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Ms. Webster is a female, Caucasian, who prefers to be referred to as "a White Anglo," and a Quaker of German descent. She was born on September 7, 1943. At the time of the hearing, she was married. She is a member of the protected class as it relates to discrimination.

2. At all times material hereto, the Clerk was an employer as defined by the Florida Civil Rights Act of 1992, as amended.

3. Ms. Webster has a Bachelor of Business Administration

and a Master of Business Administration. She was a certified public accountant (CPA) but voluntarily relinquished her Florida CPA license to the Board of Accountancy in October 2003.

4. Ms. Webster had been an employee with Metropolitan Dade County since February 21, 1978. She was employed with the Clerk as an Accountant II in the Comptroller's Division since 1982. Adolphus James was the supervisor of her accounting unit and to whom she reported.

5. Mr. James' supervisor was Margaret Enciso, the Deputy Comptroller. Ms. Enciso reported to Martha Alcazar, the Comptroller.

6. Ms. Alcazar reported to Ricky Schechtman, the Director of the Office of Administrative Services. Ms. Schechtman had the authority to terminate employees under her supervision.

7. Ms. Webster's unit was comprised of employees who were majority Hispanic descent. In the unit, she saw herself as a "minority White Anglo American woman of Quaker religious customs." She saw the Hispanic workers as shutting her out by speaking Spanish.

#### Dismissal

8. On August 10, 2005, Ms. Webster was issued a Disciplinary Action Report (DAR) by her supervisor, Mr. James. Mr. James was recommending her dismissal from employment with the Clerk, as her performance was unacceptable and in direct

violation of personnel rules. In the DAR, Ms. Webster was charged with "violating the County's Personnel Rules, Chapter VIII, Section 7: Paragraph: A, B, D and S," which were indicated as follows:

(A) That the employee is incompetent or inefficient in the performance of his [sic] duty.

(B) That the employee has been offensive in his [sic] conduct toward his [sic] fellow employees, wards of the County or public.

(D) That the employee has violated any lawful or official regulation or order, or failed to obey any lawful and reasonable direction given him/her by a supervisor, when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in lower morale in the organization or result in loss, inconvenience or injury to the County service or to the public.

(S) That the employee is antagonistic towards superiors and fellow employees, criticizing orders, rules and policies, and whose conduct interferes with the proper cooperation of employee and impairs the efficiency of the County service.

9. Mr. James attached to the DAR specific facts and instances. Some of the facts and instances included the following:

(a) Non-Performance: Ms. Webster failed to complete assigned reconciliations--after she returned from a medical leave of absence from February to mid-June, in a memo from

Mr. James, dated June 19, 1995, Ms. Webster was given until July 14, 1995, to complete reconciliations of some general ledger accounts for May 1995; the reconciliations for May 1995 were not completed as directed; and two months of reconciliations were not completed as requested and they had to be assigned to other personnel.

(b) Insubordination--Ms. Webster "exhibited" gross insubordination toward Mr. James, on August 4, 1995, when she failed to meet with him after he repeatedly directed her to meet with him before she left for the day (the meeting was re-scheduled). Further, this instance was not the only instance where she failed to follow directives of Mr. James--"When he asks you [Ms. Webster] to refrain from certain behavior or when he explains your duties, you frequently directly ignore what he tells you and proceed to do only what you wish to do."

(c) Disruptive Behavior--Ms. Webster exhibited disruptive behavior constantly. In particular, on August 7, 1995, she indicated to a co-worker, Julio Lucio-O'Farrill, who is Hispanic, that his constant working on his computer was disturbing her. Mr. Lucio-O'Farrill spoke with Mr. James who instructed Ms. Webster not to interfere with the co-worker doing his work. Later, Ms. Webster asked another co-worker, Devon Marrett, who is African-American, whether he knew anyone "like him [Mr. Marrett]" who could "take care of" Mr. Lucio-O'Farrill.

Mr. Marrett inquired what Ms. Webster meant by her remarks, and she responded, "a big, black and ferocious man from Liberty City." On other occasions, Ms. Webster has requested information, which has nothing to do with her duties and responsibilities, from workers outside her unit, and the workers felt that she was being disruptive in preventing them from doing what they were required to do. Further, on other occasions, Ms. Webster has approached workers, who were engaged in a conversation, and demanded to know what they were discussing and demanded to join in the conversation.

10. Mr. James also attached to the DAR, the Metro-Dade Personnel Department Essential Job Functions Form; his memorandum to Ms. Webster, dated June 19, 1995, regarding "Work Assignments; the aforementioned reconciliations; and a memorandum from Mr. James to Ms. Webster, dated July 24, 1994, regarding "Work assignments and Performance."

11. At hearing, as to the reconciliations, the evidence demonstrated that the expectation for Ms. Webster to complete the reconciliations was appropriate and warranted and that she failed to complete them.

12. At hearing, as to insubordination, the evidence demonstrated that Mr. James gave reasonable directives, that the directives were lawful, and that Ms. Webster failed to comply with the directives.

13. Further, at hearing, as to Ms. Webster's disruptive behavior, the evidence demonstrated that her attitude towards Mr. Lucio-O'Farrill was that he was a Hispanic who believed that women should be controlled by men but that she, being a "White Anglo" woman was not going to allow him to control her; and that he wanted her to be as a "wife" to him, but she was not going to do that. The evidence further demonstrates that her attitude towards him caused disruption in the workplace.

14. As to Mr. Marrett, the evidence demonstrates that he was offended by Ms. Webster's remark to him, and that he believed that Ms. Webster was inquiring of him as to whether he knew of an African-American who would harm Mr. Lucio-O'Farrill.

15. Both Messrs. Lucio-O'Farrill and Marrett were extremely concerned with Ms. Webster's behavior. Mr. Lucio-O'Farrill was so concerned that he called the police, and a police report was filed.

16. At hearing, Mr. James testified that he was very concerned with Ms. Webster's behavior, that he had done what he could do for her, and that he had to consider the well-being of his staff and the office, as well as her behavior. The undersigned finds his testimony credible.

17. On August 16, 1995, Ms. Schechtman met with Ms. Webster to provide Ms. Webster an opportunity to address the allegations set forth in the DAR. Ms. Webster was unable to

verbally communicate her response and, therefore, Ms. Schechtman permitted Ms. Webster to submit her response in writing; which she did on or about August 18, 1995 and which consisted of several pages. Having considered the DAR and Ms. Webster's response, Ms. Schechtman decided to terminate Ms. Webster. By letter dated August 22, 1995, Ms. Schechtman notified Ms. Webster of her termination and, among other things, her rights to appeal.

#### Suspension

18. Prior to her termination, on February 13, 1995, Ms. Webster was suspended for six days (February 13 through 20, 1995) by the Clerk based upon a DAR dated February 3, 1995.

19. On February 3, 1995, Mr. James issued a DAR against Ms. Webster. Mr. James was recommending her suspension from employment with the Clerk. In the DAR, Ms. Webster was charged with violating the "County's Personnel Rules, Chapter VIII, Section 7: Paragraph D" as follows:

That the employee has violated any lawful or official regulation or order, or failed to obey any lawful and reasonable direction given him/her by a supervisor, when such violation or failure to obey amounts to insubordination or serious breach of discipline which may reasonably be expected to result in lower morale in the organization or result in loss, inconvenience or injury to the County service or to the public.

20. Mr. James attached to the DAR specific facts and

instances. Some of the facts and instances included the following:

(a) Recent Absences--Ms. Webster had unplanned absences over the past two months which resulted in inconveniences to management and co-workers in that they had to perform her work requirements which were her responsibility; and indicates with specific instances of absences, beginning with December 8, 1994 through January 27, 1995, for which a leave of absence was granted, with some of the leave being granted for her inability to "focus" on her work, "accomplish work objectives," lack of job performance, "unusual and disruptive behavior" in the office, and to prepare to attend the fitness for duty physical examination (FFDPE).

(b) Unusual and Disruptive Behavior--specific instances and dates were indicated, beginning December 5, 1994 through January 30, 1995, in which Ms. Webster, among other things, was attempting to train an employee who was not under her supervision and she (Ms. Webster) became upset when it was brought to her (Ms. Webster's) attention; was going through the office listening to conversations, including management conversations, and being uncooperative and critical of co-workers; continued to complain about not having sufficient work space and about the work environment even after she was advised by her supervisor to concentrate on her work; repeatedly



mentioned that group problems existed at work, which were related to ethnic backgrounds; refused to follow her supervisor's directives and exhibited behavior which was disruptive to the work environment; was continually counseled to work on past-due work but walked around the office, talking about ham operators; caused an employee concern due to what he described as a glazed look in her eyes; and was making strange and nonsensical telephone calls to other employees.

(c) Lack of Job Performance and Inability to Met [sic] Work Objectives--failure to meet required job requirements and related work objectives, with specificity; failure to be responsive to counseling and to show improvement; and, on occasion, been insubordinate when queried regarding status of past due work.

21. Mr. James also attached a "Facts" section in which he indicated, among other things, the following: that a meeting was held on January 17, 1995, with Martha Alcazar, Acting Comptroller, Ms. Webster, and himself regarding a FFDPE scheduled for January 19, 1995, as a result of Ms. Webster's recent absences, disruptive behavior and lack of performance on the job; that the FFDPE was re-scheduled at a later date, January 26, 1995, at Ms. Webster's request; that Ms. Alcazar requested Ms. Webster to come into her (Ms. Alcazar's) office on January 20, 1995, to complete the paperwork for the FFDPE but

that Ms. Webster failed to do so; that Ms. Webster failed to attend the FFDPE on January 26, 1995; and that she (Ms. Webster) was previously informed that her failure to comply with the directive may result in disciplinary action up to and including dismissal.

22. Furthermore, Mr. James recommended that Ms. Webster be suspended without pay until she complied with all the requirements of a FFDPE; that she be required to participate in the Employee Assistance Program (EAP), which had been beneficial to her in the past, before returning to and during work; that management be provided monthly status reports from Ms. Webster's doctor and/or professional counselor; and that her failure to comply with the recommendations result in disciplinary action up to and including dismissal.

23. At hearing, Mr. James testified that Ms. Webster's behavior gave him more concern than anything else in that it was unusual for her and her work pattern and that he wanted to help her, as much as he could, with her behavior and retain her position. The undersigned finds his testimony credible.

24. By letter dated February 13, 1995, the Clerk notified Ms. Webster that she was suspended without pay until she submitted to a FFDPE and complied with the recommendations associated therewith and that it was recommended that she

participate in the EAP, with monthly status reports provided to management from her doctor or professional counselor. He further advised her that she had two weeks to comply, and, if she did not, disciplinary action would result up to and including dismissal.

25. A letter dated February 3, 1995, was also sent to Ms. Webster by Martha Alcazar, the Acting Comptroller. Ms. Alcazar indicated, among other things, that a meeting was held on January 17, 1995, with Mr. James, Ms. Webster, and herself regarding a FFDPE scheduled for January 19, 1995, as a result of Ms. Webster's recent absences, disruptive behavior and lack of performance on the job; that Ms. Webster was informed at the meeting that failure to comply with the directive may result in disciplinary action; that Ms. Webster requested a re-scheduling of the FFDPE for January 26, 1995; that Ms. Webster failed to appear for the FFDPE; that, as a result of Ms. Webster's failure to appear, she failed to comply with a direct order; and that her disciplinary action session was scheduled for February 9, 1995, specifying the particular violation.

26. By letter dated February 14, 1995, Ms. Webster was notified by the Clerk that, among other things, her examination was scheduled for February 21, 1995. He further advised her

that her failure to comply would result in disciplinary action up to and including dismissal.

27. By letter dated February 22, 1995, the Clerk notified Ms. Webster that, among other things, her psychological evaluation was scheduled for February 28, 1995. Again, he further advised her that her failure to comply would result in disciplinary action up to and including dismissal.

28. By letter dated March 10, 1995, the Clerk clarified his letter dated February 13, 1995, regarding the results of her disciplinary action hearing. He advised her, among other things, that the dates of her suspension were February 13 through 20, 1995, a six-day suspension, and that beginning February 21, 1995, she was placed on administrative leave, pending the results of the physical and psychological examinations.

29. By letter dated March 23, 1995, Ms. Alcazar notified Ms. Webster, among other things, that her (Ms. Webster's) doctor indicated that she (Ms. Webster) should return to treatment with her (Ms. Webster's) physicians who should provide the Clerk with progress reports and her recommendations concerning ability to return to work and that, based on the progress reports, Ms. Webster would be contacted regarding the terms and conditions of her returning to work.

30. In letters from a psychologist and a psychiatrist,

dated April 12 and 19, 1995, respectively, both recommend that Ms. Webster be permitted to return to work. Neither the psychologist nor the psychiatrist was performing the FFDPE.

31. By letter dated May 9, 1995, Mr. James notified Ms. Webster, among other things, that her FFDPE was scheduled for May 12, 1995.

32. The physician who performed the FFDPE recommended on May 12, 1995, that Ms. Webster be returned to her previous duties.

#### Appeal of Suspension and Dismissal

33. Ms. Webster appealed her six-day suspension and dismissal. By agreement of the parties, the cases were heard by a Hearing Examiner of the American Arbitration Association in a two-day hearing. The Hearing Examiner rendered his decision on March 1, 1996, with findings of fact and conclusions, and recommended sustaining the six-day suspension and dismissal of Ms. Webster.

34. The Hearing Examiner's findings included a finding that Ms. Webster's response to the six-day suspension and dismissal did not refute the contentions of the Clerk and "to a great degree" address issues that were either "not relevant to the personnel actions" or "unrelated" to them. The undersigned concurs in the Hearing Examiner's findings.

35. The Hearing Examiner's further findings included a

finding that Ms. Webster's conduct constituted insubordination and that the testimony supports the violations in the DAR relating to the termination.

36. The evidence in the instant matter also demonstrates that Ms. Webster engaged in insubordination and committed the violations indicated in the DAR regarding her termination.

37. As conclusions, the Hearing Examiner included, among other things, a conclusion that the Clerk, as Ms. Webster's employer, had a responsibility to and did assist Ms. Webster in resolving the behavior that she was exhibiting; that Ms. Webster was clearly and repeatedly provided with warnings by her supervisor as to the consequences of the failure of her non-compliance with work standards and assigned work, but she still failed to comply; that her failure to comply adversely affected the work of the other employees in her unit; that her conduct and verbal statements towards her African American and Hispanic co-workers conveyed an attitude of intolerance and prejudice; and that she was provided ample opportunity to change her behavior but she failed to do so.

38. The evidence presented in the instant matter demonstrates and supports the conclusions expressed by the Hearing Examiner.

39. On March 20, 1996, the County Manager, Armando Vidal, P.E., having reviewed the record of the Hearing Examiner, upheld

the six-day suspension and dismissal of Ms. Webster.

Retaliation

40. Ms. Webster filed a discrimination complaint with the Clerk's Affirmative Action Office (AAO) alleging that the DAR of August 10, 1995, (the dismissal) was in retaliation for her having filed a formal discrimination complaint with the Clerk's AAO on July 13, 1995. The complaint was against "management in general for employment actions taken and not taken against her and the manner in which her co-workers interact with her." The complaint related to behaviors of co-workers as perceived by Ms. Webster and her reaction based on her perception; the exhibited pattern of dominance by men over women; differential treatment with her than men because upper management suggested that she be placed on two medical leave of absences and a FFDPE be performed; a violation of Title I of the ADA when a vacancy occurred for the Deputy Controller position in that she was not considered due to her not applying because she was on medical leave; women in lower positions than men and performing equal work but not receiving equal remuneration; and the DAR of August 10, 1995.

41. The complaint was investigated by AAO's Senior Affirmative Action Specialist, Carmen Dieguez, for which a report, dated August 21, 1995, of the investigation was prepared. In the process of preparing the report, Ms. Dieguez

attended the hearing on the DAR of August 10, 1995, as an observer. In essence, Ms. Dieguez found Ms. Webster's formal discrimination complaint with the AAO to be meritless and concluded, among other things, the following:

After having discussed the complainant's actions with her and management which precipitated the DAR and which are specifically addressed in said document and having attended the DAR hearing on August 16, 1995 as an observer, I conclude that Webster's superiors have not retaliated against her as, [sic] she alleges. The incidents described in the DAR of non-performance, insubordination and disruptive behavior appear to have been of concern to management even before Webster filed her complaint of discrimination. And, it is management's responsibility to discipline employees for what appear to be job-related reasons. . . . It is, therefore, concluded that the DAR presented to Webster is not intended to retaliate or otherwise discriminate against her.

42. On August 25, 1995, the Director of AAO, Marcia Saunders, issued a report to the Clerk on Ms. Webster's formal complaint of discrimination filed with the Clerk's AAO. The report included Ms. Dieguez's report. Ms. Saunders concurred with Ms. Dieguez that Ms. Webster's complaint was meritless. Ms. Saunders stated, among other things, in her report the following:

I have reviewed her [Ms. Dieguez's] report and the conclusions drawn therein of the seven allegations which were made. You will find that none have been found to be substantiated. To the contrary, there has



been corroboration that she [Ms. Webster] instead, whether consciously or unconsciously, harassed her fellow-workers about diversity issues i.e. their 'group behavior patterns and communication styles' to the point that some individuals found her behavior to be offensive and intrusive. Webster's preoccupation with making assumptions about race/ethnic/cultural and her own religious differences may be somewhat misguided. . . .

Webster also alleged that an August 10th D.A.R. she received was in retaliation because of filing this formal discrimination complaint. Dieguez attended the D.A.R. hearing as an observer to ensure the issues presented were not in regard to, nor appeared to be precipitated by this complaint. She [Ms. Dieguez] affirms that the issues addressed in the hearing were not retaliatory but a progressive process related to Webster's performance, insubordination and disruptive behavior. Discrimination statutes do not preclude an employer from exercising its right and responsibility to discipline an employee in accordance with lawful personnel rules and procedures.

43. The evidence in the instant matter demonstrates that the retaliation purported by Ms. Webster is meritless. The undersigned concurs in the conclusion reached by the Clerk's AAO.

44. At the hearing in the instant matter, Ms. Webster insisted, among other things, that her being a White Anglo Quaker caused communication and attitude problems between her and the Clerk's employees. She testified that the majority of the Clerk's employees were Hispanic and wanted her to act as a

Hispanic woman as it concerned relations with Hispanic men, i.e., to act as their "wife"; and that they failed to understand her behavior, such as her shyness, low tone in talking, and the lowering of her head when she spoke. But, the evidence demonstrated that Ms. Webster, among other things, tried to force her ways upon them and acted irrationally when the employees would not conform to what she wanted. Further, the evidence at the instant hearing demonstrates that Ms. Webster stereotyped her fellow employees and made prejudiced remarks about them. Ms. Webster is correct that ethnic differences can cause communication problems but one cannot force someone to conform to one's way in order to communicate.

45. At hearing, no evidence was presented demonstrating that similarly situated employees were treated differently.

46. Ms. Webster presented evidence as to her financial situation since her termination.

47. Ms. Webster presented evidence as to costs that she incurred associated with the hearing in the instant matter.

#### CONCLUSIONS OF LAW

48. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto, pursuant to Sections 760.11 and 120.569, Florida Statutes (2006), and Subsection 120.57(1), Florida Statutes (2006).

49. Section 760.10, Florida Statutes (1995), provides in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.

\* \* \*

(7) It is an unlawful employment practice for an employer . . . to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

50. A three-step burden and order of presentation of proof have been established for unlawful employment practices.

McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 688 (1973); Aramburu v. The Boeing Company, 112 F.3d 1398, 1403 (10th Cir. 1999). The initial burden is

upon Ms. Webster to establish a prima facie case of discrimination. McDonnell Douglas, at 802; Aramburu, at 1403. Ms. Webster establishes a prima facie case of discrimination by showing: (1) that she belongs to a protected group; (2) that she was subjected to an adverse employment action; and (3) that her employer treated similarly situated employees outside the protected group differently or more favorably. McDonnell Douglas, supra; Holifield v. Reno, 115 F.3d 1555 (11th Cir. 1997); Aramburu, supra. See Kendrick v. Penske Transportation Services, 220 F.3d 1220 (10th Cir. 2000) (similarly situated employees need not be outside the protected group).

51. Once Ms. Webster establishes a prima facie case, a presumption of unlawful discrimination is created. McDonnell Douglas, at 802; Aramburu, at 1403. The burden shifts then to the Clerk to show a legitimate, nondiscriminatory reason for its action. McDonnell Douglas, at 802; Aramburu, at 1403. If the Clerk carries this burden, Ms. Webster must then prove by a preponderance of the evidence that the reason offered by the Clerk is not its true reason, but only a pretext for discrimination. McDonnell Douglas, at 804; Aramburu, at 1403.

52. However, at all times, the ultimate burden of persuasion that the Clerk intentionally discriminated against her remains with Ms. Webster. Texas Department of

Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

53. Applying the prima facie standards, the evidence demonstrates that Ms. Webster has satisfied the first two prongs but failed to satisfy the third prong of the test. She has demonstrated that she belongs to the protected class (race, color, sex, religion, national origin, age, and marital status) and that she was subjected to an adverse employment action (dismissal). However, she failed to demonstrate that the Clerk treated similarly situated employees, whether inside or outside the protected group, differently or more favorably. Holifield, supra at 1562; McGuinness v. Lincoln Hall, 263 F.3d 49, 53, 54 (2d Cir. 1997); Shuway v. United Parcel Service, Inc., 118 F.3d 60, 64 (2d Cir. 1997); Anderson v. WBMG-42, 253 F.3d 561, 565 (11th Cir. 2001); Kendrick, supra.

54. Assuming Ms. Webster had established a prima facie case, the Clerk has demonstrated a legitimate, nondiscriminatory reason for its employment action of terminating her. The Clerk demonstrated that she failed to complete assigned and required reconciliations, which were her responsibility, even after she was directed to do so; that she committed gross insubordination; and that she engaged in constant disruptive behavior at the workplace. All valid reasons for termination according to the County's Personnel Rules.

55. Further, Ms. Webster failed to demonstrate that the Clerk's reasons for terminating her were not the true reason, but a pretext for discrimination.

#### Handicap

56. A prima facie case of discrimination under the Americans with Disabilities Act (ADA) is established by showing that Ms. Webster "(1) had, or was perceived to have, a "disability"; (2) was a "qualified" individual; and (3) was discriminated against because of her disability. (citation omitted) The ADA defines "disability" as "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment." [citation omitted] Curruthers v. BSA Advertising, 357 F.3d 1213, 1215 (11th Cir. 2004) (citation omitted).

57. Ms. Webster is "regarded" as disabled "if her employer perceives her as having an ADA-qualifying disability, even if there is no factual basis for that perception. [citation omitted]. As with actual impairments, however, the perceived impairment must be one that, if real, would limit substantially a major life activity of the individual. [citations omitted]." Id. at 1216. A person is also "regarded" as being disabled by meeting one of three conditions: "(1) has a physical impairment that does not substantially limit major life activities but is

treated by an employer as constituting such a limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment; or (3) has no physical or mental impairment but is treated by an employer as having such an impairment. [citation omitted] Rosbach v. City of Miami, 371 F.3d 1354, 1359, 1360 (11th Cir. 2004). In order to prevail under this theory, the person "must show two things: (1) that the perceived disability involves a major life activity; and (2) that the perceived disability is 'substantially limiting' and significant. [citation omitted]." Id. at 1360.

58. Ms. Webster failed to demonstrate a prima facie case of discrimination under the ADA. The evidence was insufficient to demonstrate that she suffered from an ADA disability. Furthermore, she failed to demonstrate that the perceived disability (mental impairment) involved a major life activity and that the perceived disability was substantially limiting and significant.

59. Furthermore, as previously indicated, Ms. Webster failed to demonstrate that the Clerk's reasons for terminating her were not the true reason, but a pretext for discrimination.

#### Retaliation

60. Ms. Webster failed to demonstrate that she was

retaliated against through her dismissal for filing a discrimination claim against the Clerk with the Clerk's AAO.

61. The evidence demonstrates that Ms. Webster was terminated for legitimate non-discriminatory reasons.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing the discrimination complaint of Anne R. Webster against Metropolitan Dade County, Clerk of the County Court.

DONE AND ENTERED this 28th day of July, 2006, in Tallahassee, Leon County, Florida.



---

ERROL H. POWELL  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675 SUNCOM 278-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of July, 2006.



COPIES FURNISHED:

Anne R. Webster  
12000 Northeast 16th Avenue, B-27  
Miami, Florida 33161-6566

William X. Candela, Esquire  
Dade County Attorney's Office  
Stephen P. Clark Center  
111 Northwest First Street, Suite 2810  
Miami, Florida 33128

Denise Crawford, Agency Clerk  
Florida Commission on Human Relations  
325 John Knox Road  
Building F, Suite 240  
Tallahassee, Florida 32303-4149

Cecil Howard, General Counsel  
Florida Commission on Human Relations  
2009 Apalachee Parkway  
Suite 100  
Tallahassee, Florida 32301

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.