

STATE OF FLORIDA
COMMISSION ON HUMAN RELATIONS

FILED
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DIVISION OF
ADMINISTRATIVE
HEARINGS

CASSONDRA A. DAVIS,

Petitioner,

v.

FLORIDA DEPARTMENT OF,
CORRECTIONS, BREVARD
CORRECTIONAL INSTITUTE,

Respondent.

EEOC Case No. N/A

FCHR Case No. 97-1511

DOAH Case No. 00-4876

FCHR Order No. 01-057

JBC

FINAL ORDER DISMISSING PETITION FOR
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE

Preliminary Matters

Petitioner Cassandra A. Davis filed a complaint of discrimination pursuant to the Florida Civil Rights Act of 1992, Sections 760.01 - 760.11, Florida Statutes (1995), alleging that Respondent Florida Department of Corrections, Brevard Correctional Institute, committed an unlawful employment practice on the basis of Petitioner's race (unstated in the complaint), sex (female), and retaliation, and that Respondent exhibited bias toward Petitioner.

The allegations set forth in the complaint were investigated, and, on October 30, 2000, the Executive Director issued his determination finding that there was no reasonable cause to believe that an unlawful employment practice had occurred.

Petitioner filed a Petition for Relief from an Unlawful Employment Practice and the case was transmitted to the Division of Administrative Hearings for the conduct of a formal proceeding.

An evidentiary hearing was held on March 2, 2001, in Cocoa, Florida, before Administrative Law Judge Jeff B. Clark.

Judge Clark issued a Recommended Order of dismissal, dated March 26, 2001.

The Commission panel designated below considered the record of this matter and determined the action to be taken on the Recommended Order.

Findings of Fact

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

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

Conclusions of Law

We find the Administrative Law Judge's application of the law to the facts to result in a correct disposition of the matter.

We note that the Administrative Law Judge concludes that as an element of establishing a prima facie case of discrimination a causal connection must be shown between the act complained of and the protected class. See, Recommended Order, ¶ 14.

We conclude this to be error, albeit harmless error in this instance.

The Commission has indicated that this element is actually what a Petitioner is attempting to show by establishing a prima facie case of discrimination, and that this should not, itself, be an element of the test for a prima facie case. See, Baxla v. Fleetwood Enterprises, Inc., d/b/a Fleetwood Homes of Florida, Inc., 20 F.A.L.R. 2583, at 2585 (FCHR 1998), citing Pugh v. Walt Disney World, 18 F.A.L.R. 1971, at 1972 (FCHR 1995), and Martinez v. Orange County Fleet Manager, 21 F.A.L.R. 163, at 164 (FCHR 1997).

In modifying the conclusions of law of the Administrative Law Judge as explained, supra, we find: (1) that the conclusion of law being modified is a conclusion of law over which the Commission has substantive jurisdiction, namely a conclusion of law stating what must be demonstrated to establish a prima facie case of unlawful discrimination under the Florida Civil Rights Act of 1992; (2) that the reason the modification is being made by the Commission is that the conclusion of law as stated runs contrary to previous Commission decisions on the issue; and (3) that in making this modification the conclusion of law we are substituting is as or more reasonable than the conclusion of law which has been rejected. See, Section 120.57(1)(I), Florida Statutes (1999).

With the modification indicated, we adopt the Administrative Law Judge's conclusions of law.

Exceptions

Neither party filed exceptions to the Administrative Law Judge's recommended order.

Dismissal

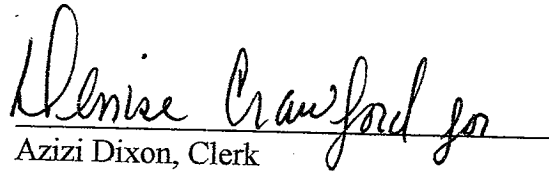
The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

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 30th day of November, 2001.
FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Roosevelt Paige, Panel Chairperson;
Commissioner Gayle Cannon; and
Commissioner Donna Elam

Filed this 30th day of NOVEMBER, 2001,
in Tallahassee, Florida.


Azizi Dixon, Clerk
Commission on Human Relations
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Tallahassee, FL 32303-4149
(850) 488-7082

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2601 Blair Stone Road
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Jeff B. Clark, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CASSONDRA A. DAVIS,)
)
 Petitioner,)
)
 vs.) Case No. 00-4876
)
 FLORIDA DEPARTMENT OF)
 CORRECTIONS, BREVARD)
 CORRECTIONAL INSTITUTE,)
)
 Respondent.)
)
 _____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly-designated Administrative Law Judge, Jeff B. Clark, held a formal hearing in this case on March 2, 2001, in Cocoa, Florida.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Gary L. Grant, Esquire
Department of Corrections
2601 Blainstone Road
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner, Cassondra Davis, suffered an adverse employment action as a result of unlawful discrimination.

PRELIMINARY STATEMENT

Petitioner, Cassondra Davis, filed a Charge of Discrimination with the Florida Commission on Human Relations (FCHR) against Respondent, Department of Corrections, on April 7, 1997, alleging that the Department had discriminated against her because of her race and sex and, also, retaliated against her and exhibited bias. The last date of alleged discrimination was April 10, 1996.

Petitioner alleged that Respondent had harmed her by virtue of a white officer reporting an incident to her supervisor to gain favor and to retaliate against her. She also alleged that she reported an incident against a white male officer but was told that nothing could be done unless she filed a sexual harassment complaint. Lastly, she alleged that she was made to unload a shotgun after a white female officer had made an attempt to unload the weapon. She did not indicate the dates that the alleged discriminatory acts occurred.

The allegations of discrimination were investigated by FCHR, and on October 30, 2000, the Commission issued its Determination, finding "no cause."

Subsequent to FCHR's finding of no cause, Petitioner timely filed her Petition for Relief on November 27, 2000, wherein she altered the allegations of discrimination contained in her original complaint. She now alleged that she was forced into

medical retirement by the Department of Corrections, that she was placed in a special assignment from July 1990 to March 1995, and that Respondent discriminated against her by forcing her to file a harassment complaint against another officer and by not timely transferring the officer.

On December 20, 2000, Respondent filed its Answer and Affirmative Defenses for the Petition for Relief, wherein it denied all allegations and noted that portions of Petitioner's complaint were time-barred.

The cause was set for hearing on February 5, 2001, in Cocoa, Florida. Petitioner, however, filed an unopposed motion to continue the hearing on January 9, 2001. The motion was granted and the parties were asked to confer and provide the Administrative Law Judge with mutually agreeable dates for a new hearing date. The Administrative Law Judge was notified that March 2, 2001, was agreeable to all parties, and due notice was provided that the hearing was rescheduled for that date. At some point prior to March 2, 2001, Petitioner apparently moved from Poinciana, Florida, to Honolulu, Hawaii. No notice of this address change was filed with the Division of Administrative Hearings.

Nevertheless, counsel for Respondent made the Division of Administrative Hearings aware of Petitioner's move. Subsequently, the Administrative Law Judge's office contacted

Petitioner and discussed with her the ability to file a motion for telephonic appearance should she so desire. Petitioner filed no such motion, instead filed a Petition to the Court (received by the Division of Administrative Hearings on March 1, 2001) wherein she appears to suggest that this tribunal issue a judgment based solely on the pleadings. She stated that it was a hardship for her to continue and that the Administrative Law Judge should rule based on previous filings. She concluded her petition with a statement indicating that if the Administrative Law Judge did not award her medical costs and debt relief, she would have to withdraw her petition.

As the March 1, 2001, Petition to the Court did not appear to be an unequivocal withdrawal of her complaint and no motion for continuance, telephonic appearance, or other relief was filed by Petitioner, it was determined that the hearing set for March 2, 2001, would go forward.

On March 2, 2001, the hearing commenced at 9:00 a.m., in Cocoa, Florida. There was no appearance by Petitioner. Counsel for Respondent advised the Administrative Law Judge that Petitioner had informed him that she would not be flying back to Florida for the hearing.

Respondent presented one witness and offered three exhibits, which were received into evidence. No transcript was prepared. Respondent submitted a Proposed Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing, the following findings of facts are made.

1. Petitioner, Cassondra Davis, is a female African-American.

2. At all times material, Petitioner was employed by Respondent, Department of Corrections, at Brevard Correctional Institution (Department).

3. Petitioner's last day of actual work at the Department was April 10, 1996. Susan Blais, Personnel Manager at Brevard Correction Institution during the relevant time frame, testified that because of medical problems, Petitioner was unable to return to work after April 10, 1996, until her physician released her to return to work.

4. Petitioner never presented a medical return-to-work release. Instead, she utilized her entitlement to Family Medical Leave Act leave. Once this leave was exhausted, rather than terminate Petitioner, the Department wrote to her physician, Dr. F. F. Matuk, on September 16, 1996, requesting a diagnosis of Davis' condition, as well as an opinion as to whether she could perform the duties of a correctional officer as outlined in a job description enclosed with the request for opinion. (Respondent's Exhibit 1)

5. Dr. Matuk responded to the Department by letter dated September 20, 1996, stating that Petitioner had several work restrictions, including no weight manipulation over 20 to 30 pounds, avoidance of driving over 30 to 40 minutes, avoidance of neck extension, and allowances for extended periods of rest. He did not believe that Petitioner was able to perform the duties of a correctional officer but stated that she would most likely be able to perform a sedentary desk job. (Respondent's Exhibit 2)

6. Susan Blais testified that no such desk jobs were available at that time.

7. Petitioner submitted a letter of resignation to the Department in July 1997, wherein she attributed the resignation to medical reasons. (Respondent's Exhibit 3)

CONCLUSIONS OF LAW

8. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this cause pursuant to Section 120.57(1), Florida Statutes.

9. Under the provisions of Section 760.10, Florida Statutes, it is an unlawful employment practice for an employer:

(1)(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.

10. The Florida Commission on Human Relations and the Florida courts have determined that federal discrimination law should be used as guidance when construing provisions of Section 760.10, Florida Statutes. See Brand v. Florida Power Corporation, 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

11. The Supreme Court of the United States established in McDonnell-Douglass Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), the analysis to be used in cases alleging discrimination under Title VII and which are persuasive in cases such as the one at bar. This analysis was reiterated and refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

12. Pursuant to this analysis, Petitioner has the burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. If a prima facie case is established, Respondent must articulate some legitimate, non-discriminatory reason for the action taken against Petitioner. Once this non-discriminatory reason is offered by Respondent, the burden then shifts back to Petitioner to

demonstrate that the offered reason is merely a pretext for discrimination. As the Supreme Court stated in Hicks, before finding discrimination: "[T]he fact finder must believe the plaintiff's explanation of intentional discrimination." 509 U.S. at 519.

13. In Hicks, the Court stressed that even if the fact finder does not believe the proffered reason given by the employer, the burden remains with the plaintiff to demonstrate a discriminatory motive for the adverse employment action.

14. In order to establish a prima facie case, Petitioner must establish that:

- (a) She is a member of a protected group;
- (b) She is qualified for the position;
- (b) She was subject to an adverse employment decision;
- (d) She was treated less favorably than similarly-situated persons outside the protected class; and
- (e) There is a causal connection between (a) and (c).

Canino v. EEOC, 707 F.2d 468, (11th Cir. 1983); Smith v. Georgia, 684 F.2d 729, (11th Cir. 1982); Lee v. Russell County Board of Education, 684 F.2d 769, (11th Cir. 1982), appeal after remand, 744 F.2d 768, (11th Cir. 1984).

15. Here, as Petitioner failed to appear at the hearing, she was necessarily unable to establish any of the requisite elements for a prima facie case. For that reason alone, her

case should be dismissed. Nevertheless, a brief analysis of her claim is set forth below.

16. First, it is important to identify what, if any, adverse employment actions Respondent is alleging. Such actions do not encompass each and every minute aspect of one's employment; rather, an adverse employment action should be viewed as an "ultimate" employment decision. Courts have generally determined that these "ultimate" decisions are limited to hiring, firing, granting leave, discharging, promoting, and compensating employees. Mattern v. Eastman Kodak Company, 104 F.3d 702 (5th Cir. 1997); Landgraf v. USI Film Products, 968 F.2d 427 (5th Cir. 1992).

17. Here, Petitioner alleges that she was put into a special assignment from July 1990-1995. As this alleged discriminatory act occurred prior to April 7, 1996, the claim is not timely filed. In any event, Petitioner presented no evidence indicating that such an assignment occurred, that it constituted an adverse employment action, or that the action was taken because of her race, sex, or any other characteristic. Nor was there any evidence that the assignment was the result of any impermissible retaliation.

18. Petitioner also alleged that the Department allowed a co-worker to continue at work after he harassed her. She alleges that she was forced to file a complaint against the

officer and that the Department did not timely transfer the alleged harasser. Because she did not appear at the hearing, Petitioner necessarily presented no evidence that any such harassment ever occurred, that the Department discriminated against her in any manner in its handling of the alleged situation, or that any adverse employment action ever occurred. It should also be noted that this claim too would be untimely in that it relates to events that allegedly occurred in 1995. Lastly, it is noted that Petitioner voluntarily has resigned from the Department, so it is apparent that the issue would now be moot.

19. What is then left is the crux of Petitioner's complaint--her belief that she was forced into medical retirement by the Department of Corrections. Although she does not articulate it as such, it must be presumed that she is alleging constructive discharge (given her resignation, without this assumption, there would be no adverse employment action). When claiming constructive discharge, however, Petitioner must demonstrate that the employer intentionally rendered the working conditions so intolerable that the employee was compelled to quit involuntarily. See Buckley v. Hospital Corporation of America, Inc., 758 F.2d 1525, 1530 (11th Cir. 1985). The trier of fact must be persuaded that the working conditions were so difficult or unpleasant that a "reasonable person in the

employee's shoes would have felt compelled to resign."

Garner v. Wal-Mart Stores, Inc., 807 F.2d 1536, 1539 (11th Cir. 1987). Here, because of her non-appearance, Petitioner necessarily failed to meet this burden.

20. The only evidence submitted at hearing regarding Petitioner's separation from the Department was that she resigned. Moreover, the unrebutted evidence is that, because of injuries, Petitioner was unable to perform the duties of a correctional officer at the time of her resignation. After Petitioner had exhausted her leave under the Family Medical Leave Act, the Department wrote to her physician seeking an opinion as to whether she could perform her duties. Dr. Matuk stated that she could not perform such duties. Credible evidence was also presented indicating that no clerical positions were available at that time. Nevertheless, the Department at no time took any adverse employment actions against Petitioner.

21. Instead, on or about July 20, 1997, Petitioner submitted a resignation letter. In that letter, she indicated that the resignation was for medical reasons. As there has been no evidence that the resignation was in any manner coerced or improperly induced, this claim too must fail.

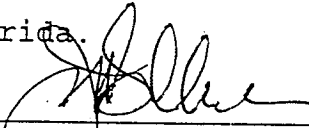
22. In summary, Petitioner's position that she suffered adverse employment actions as a result of discrimination is not supported by any evidence.

RECOMMENDATION

Based upon 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 Petition for Relief.

DONE AND ENTERED this 26 day of March, 2001, in Tallahassee, Leon County, Florida.



JEFF B. CLARK
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of March, 2001.

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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.

ATTN: MR. NAME WASHINGTON

CHARGE OF DISCRIMINATION

ENTER CHARGE NUMBER

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

FEPA 97-1511
 EEOC

FLHR 971511 Florida Commission on Human Rights and EEOC.
(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.) Cassandra A. Davis HOME TELEPHONE NO. (Include Area Code) (407) 455-9725
STREET ADDRESS 180 Bounty St. #106 CITY, STATE AND ZIP CODE MERRITT ISLAND, FL 32953 COUNTY BREVARD

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 BREVARD Correctional Institution NO. OF EMPLOYEES/MEMBERS GENERAL TELEPHONE NUMBER (Include Area Code) (407) 634-6027
STREET ADDRESS P.O. Box 340 Sharpes, FL. CITY, STATE AND ZIP CODE 32959

NAME James J. Hopper + Supervisors at BCI TELEPHONE NUMBER (Include Area Code) (407) 455-3936
STREET ADDRESS P.O. Box 340, Sharpes, FT. 32959 CITY, STATE AND ZIP CODE 32959

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))
 RACE COLOR SEX RELIGION NATIONAL ORIGIN
 AGE RETALIATION OTHER (Specify) BIAS

DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) 04/10/96

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

I... A white male officer reported an incident to my supervisor to gain favor and retaliation against me. The supervisor sent me home, telling me to report to personnel. When I reported to personnel they advised me that I could not return to work until I brought a doctor's release stating I was fit to work.

I previously reported an incident on a white male officer to my supervisor. I was accused of refusing to work, sent home, and advised that nothing would be done about the situation unless I filed a sexual harassment complaint against the officer.

I was made to unload a shotgun after another white female officer had made an attempt to unload the weapon and chambered a round instead. I was told by the supervisor that I hurt the white female officers' feelings, by saying, "I didn't chamber the round, she did."

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NOTARY PUBLIC
Notary Public
No. 00457017
[] Clerical

I also want this charge filed with the EEOC.
I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - (When necessary to meet 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

Cassandra A. Davis

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year) 7th of April 1997

FLORIDA COMMISSION ON HUMAN RELATIONS

Ms. Cassondra A. Davis
PETITIONER

FCHR No. 97-1511

Florida Dept. of Corrections Brevard Correctional Institute
RESPONDENT
c/o Ms Mirian Deadwiley, Employee Relations Section Supervisor
2601 Blairstone Road, Tallahassee, Florida 32399-2500

PETITION FOR RELIEF

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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: Cassondra A. Davis
Street or P.O.Box c/o 1009 Cannes Drive
City, State, Zip Poinciana, Florida 34759-3818
Area Code & Phone Number (407) 518-6295

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

Name: Florida Department of Corrections, Brevard Correctional Institute
Street or P.O.Box c/o Ms Marian Deadwiley, Employee Relations Section Supervisor
City, State, Zip 2601 Blairstone Road, Tallahassee, Florida 32399-2500
Area Code & Phone Number (_____) _____

PETITION FOR RELIEF

Page Two

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

(SEE ATTACHMENTS)

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

(SEE ATTACHMENTS)

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

(SEE ATTACHMENTS)

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.


PETITIONER

FCHR NO. 97-1511

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

- A. Respondent forced petitioner into medical retirement in November 1996, refusing to acknowledge that petitioner was disabled due to incidents and accidents that occurred in the line of duty.
1. Petitioner was forced to do firearms re-qualification on October 17 and 18, and again the first week of November against medical advise. (see training records and letter from Dr. Mixco dated October 18, 1994).
 2. When Petitioner attempted firearms re-qualification, and failed, Respondent plotted to terminate the Petitioner. (see letter for conference dated November 1994).
 3. As a result of doing firearms requalification, Petitioner suffered additional injury, and Respondent was neglectful by not sending Petitioner for medical treatment at the time of injury. It was discrimination and neglect by the Respondent in not offering sedimentary work, saying that no positions were available. (see position posting form personnel from November 1994 to March 1995). The Respondent was at fault for Petioners injury, by ignoring the doctor's medical advice.
- B. Respondent put the petitioner in a special assignment, which was to be temporary, however the special assignment lasted from July 1990 through March 1995.
1. Petitioner was not allowed to do any security duties, and the only training offered and received was the required 40 hours. Training for instructors were offered to white male sargents and female sargents and officers who where married to lts., sgts, and captains. The instructor training was never posted.
 2. Respondent was upset because I was not allowed to do my regular C.O. duties and I was confined to secretarial assignment. Respondent retaliated against Petitioner when not allow equal opportunity for security duties and aquring work experience and knowledge.
 3. Petitioner's carpal tunnel injury was a result of the temporary special assignment. Respondent discrimated against the Petitioner by not putting or offering another position until the injury was corrected, however a position was created fo Officer Mary Ellen Micheli when she failed to pass a portion of her CTI course, which she had to wait six months to retake the test.

FCHR NO. 97-1511

- C. Respondent discriminated by allowing Officer William Parker to at work after harassing Petitioner. Respondent force Petitioner to file a complaint against Officer Parker (see complaint dated October 3, 1995)., conference was held on October 16, 1995 where Officer Parker was to be transferred to another shift/unit within the institution: However Officer Parker was not transferred until November 30, 1995.
1. Respondent discriminated against the Petitioner when Officer Parker was not transferred, causing the Petitioner to undergo hospitalization and mental health counseling. Respondent did not have Officer Parker not return to work because of his harassment of Petitioner on October 3, 1995, which occurred during work hours and we were both on duty, It was harassment when Petitioner was the one sent home, and accused of refusing to work, by Captain M. Richardson.
 2. Petitioner was forced to file a harassment complaint against Officer Parker, before either of our positions were changed, it was told to the Petitioner that if I did not file a complaint I would have to continue to work with Officer Parker, even though I felt he was a danger to co-workers and himself. Respondent acted with neglect, and bias stating that they could not force Officer Parker to seek help. Officer Parker committed suicide on December 16, 1995.
 3. Petitioner was dating Officer James Harper, and on January 24, 1996 they were at a private residence, off duty and involved in a disagreement. In retaliation because of our disagreement Officer Harper reported to Captain Richardson the Petitioner would not be in to work on January 27, 1996. It was discrimination and retaliation by the Respondent when Captain Richardson sent me home from work, and Petitioner was not allowed to come back to work until obtaining a doctors release. Petitioner could not work from January 27, 1996 through February 27, 1996. A clear discrimination and harassment of the Petitioner, when looking at the case of Petitioner and Officer W. Parker (October 3, 1995). Petitioner had to actually file a grievance with the Union, because Respondent was making the Petitioner use personal sick leave, and vacation time, from January 27, 1996 to February 27, 1996.
4. **THE DISPUTED ISSUES OF MATERIAL FACT ARE LISTED BELOW:**
- A. Petitioner did not resign due to medical reasons in April 1997. It is harassment and bias for Respondent to lie on that issue. Petitioner filed for medical retirement November 1996, because of the Respondents discrimination, harassment and bias in not putting Petitioner in another line of work, and harassing Petitioner to the point of medical retirement, saying no positions were available at that time (see job postings for April 1996 through November 1996), available from personnel.

FCHR NO. 97-1511

- B. The issues raised by Petitioner concerning harassment, discrimination, and retaliation which occurred in 1995 and 1996, being that the last date Petitioner actually worked was April 10, 1996, with a medical disability retirement date of January 1997, retroactive from approval date of July 1998.

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

- A. Respondent discriminated and acted in retaliation and bias, by not giving Petitioner another position within the agency, under ADA and/or worker's compensation law. Petitioner was entitled to due to the facts that all accidents/injury were incurred in the line of petitioner's duty, and respondent was negligent in their responsibilities to the Petitioner.
- B. Petitioner was harassed when Respondent acted in retaliation, and petitioner was sent home and not allowed to work from January 27, 1996 to February 27, 1996.
- C. That issues raised concerning harassment, retaliation and bias which occurred in 1995 and 1996, are in fact timely to be considered under the law the Florida Commission on Human Relations enforces. The last day of actual work of the Petitioner was April 10, 1996. Petitioner's complaint was filed April 7, 1997, (362 days) after last accident/incident, under the law complaint must be filed within (365 days).
- D. Petitioner is aware that the complaint filed with EEOC was untimely. Was not within the (300 days) EEOC allows. These complaints were not timely filed because of the physical trauma, and mental trauma caused by the Respondent, which left the Petitioner in a major depressed state, which started in October 1994 through this date. Petitioner remains disabled all of which is a direct result of the harassment, retaliation, and bias, brought on by the Respondent.
- E. For the sake of argument that Petitioner's issues could be timely under the law, there is overwhelming evidence from the Petitioner, and in the personnel records in the possession of the Respondent. They are still harassing, discriminate, retaliating, and acting in bias, by withholding information, and purposely misled Petitioner regarding the filing of a discrimination complaint, verbally and giving the wrong forms.
- F. Petitioner feels entitled to relief, based on evidence on record, which ultimately resulted in her disability ending a working career that would sustain and support Petitioner from October 1994 to this date.