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 Blairstone 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 26th 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.

COPIES FURNISHED:

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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.