STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WALTER F. GIBSON, Petitioner, vs. ORLANDO HMA, INC., d/b/a UNIVERSITY BEHAVIORAL CENTER, Respondent.	)	Case No. 04-2287

RECOMMENDED ORDER

On December 1 and 2, 2004, an administrative hearing in this case was held in Orlando, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephen M. Smith, Esquire
Jennifer Smith, Esquire
2311 Republic Street
New Orleans, Louisiana 70129

For Respondent: Mark L. Van Valkenburgh, Esquire
Allen, Norton & Blue, P.A.
1477 West Fairbanks Avenue
Winter Park, Florida 32789

STATEMENT OF THE ISSUE

The issue in the case is whether Respondent discriminated against Petitioner in disciplinary matters and in termination of

Petitioner's employment because of race or in retaliation for complaints filed against Respondent.

PRELIMINARY STATEMENT

By a complaint filed January 13, 2003, with the Florida Commission on Human Relations (FCHR), Walter F. Gibson (Petitioner) alleged that he was the subject of discrimination based on race and in retaliation for complaints he made related to operation of Orlando HMA, Inc., d/b/a University Behavioral Center (Respondent).

By Determination of No Cause dated May 25, 2004, FCHR advised Petitioner that a "no cause" determination had been made and advised him of his right to file a Petition for Relief. Petitioner filed a Petition for Relief, which FCHR forwarded to the Division of Administrative Hearings for further proceedings.

At the hearing, Petitioner testified on his own behalf, presented the testimony of one other witness and had Exhibits numbered 1 through 16, 19 through 22, and 24 through 29 admitted into evidence. Respondent presented the testimony of nine witnesses (including Petitioner) and had Exhibits numbered 1 through 23 admitted into evidence.

The three-volume Transcript of the hearing was filed on January 12, 2005. By separate Motions for Extension of Time, both parties stipulated to a deadline of January 31, 2005, for

filing proposed recommended orders, and both parties filed Proposed Recommended Orders on the stipulated date.

On February 11, 2005, Respondent filed a Motion to Strike Petitioner's Proposed Findings of Fact and Conclusions of Law. On February 16, 2005, Petitioner filed a response in opposition of the motion.

As stated in the Motion to Strike, Petitioner's Proposed Recommended Order included an attached document that has no relevance to the instant case. The exhibit is rejected.

Paragraph eight of Petitioner's Proposed Recommended Order contains an inaccurate recitation of Petitioner's testimony. In response, Petitioner suggests that the inaccurate recitation of testimony was harmless and that the citation to the transcript was correct, so the error was "meaningless." The inaccurate recitation of testimony, while consisting of only a few words, altered the content of Petitioner's statement from a question to a complaint, and is not without meaning in this case. The Motion to Strike is granted as to paragraph eight of Petitioner's Proposed Recommended Order.

As to the remainder of the Motion to Strike, upon review of the motion and the response, it is hereby ordered that the Motion to Strike is otherwise denied.

FINDINGS OF FACT

1. Health Management Associates, Inc. (HMA), is the parent company for Respondent Orlando HMA, Inc., d/b/a University Behavioral Center (UBC). UBC provides residential care and treatment to juveniles.

2. At all times material to this case, Respondent employed Walter F. Gibson (Petitioner) as a mental health technician. Petitioner is black.

3. Petitioner's job evaluations were acceptable, and there is no evidence that he did not meet the requirements of the job at the time Respondent hired him.

4. On November 24, 2004, the parties filed a Statement of Agreed Facts that provides as follows:

> 1. UBC is a residential treatment center that offers a variety of programs including a program to which patients are committed by the courts under the direction of the Florida Department of Juvenile Justice. Petitioner was a staff member at Respondent's UBC facility.
>
> 2. In late November 2002, a UBC patient accused Petitioner of abuse. Pursuant to UBC policy, Petitioner was placed on one week administrative leave pending an investigation.
>
> 3. Petitioner was ultimately exonerated by Florida's Department of Children and Families and returned to work.
>
> 4. Petitioner was paid for the full term of his administrative leave.

5. Petitioner's initial complaint was made to the Florida Public Employees Relations Committee ("PERC") on or about January 6, 2003. PERC forwarded the complaint to the Florida Commission on Human Relations ("FCHR").

6. Petitioner's initial Charge of Discrimination claiming retaliation, FCHR Number 23-01298 was dismissed with a "No Cause" determination on May 7, 2003.

7. On January 13, 2003, Petitioner filed a second Charge of Discrimination.

8. On May 23, 2003, Petitioner received a paid suspension after an alleged conflict with co-workers.

9. On May 27, 2003, Petitioner asked to amend his Second Charge of Discrimination to allege retaliation.

10. On October 7, 2003, Petitioner was found allegedly asleep and his employment was terminated later that day.

11. On October 9, 2003, Petitioner amended his Charge of Discrimination alleging that his termination was due to his race and in retaliation of his complaining of discrimination.

5. Respondent has a policy against discrimination. According to the employee handbook, Respondent "acknowledges the commitment to Equal Employment Opportunity Employment regardless of race" and other protected classifications.

6. The handbook sets forth a procedure for resolving issues related to harassment. The handbook also sets forth a

"problem-solving procedure" to utilize in resolving issues related to working relationships.

7. Petitioner received a copy of the UBC employee handbook upon beginning his employment with Respondent.

8. The problem-solving procedure sets forth a series of steps, including verbal discussions with an immediate supervisor and then, if necessary, a department manager. If the problem cannot be resolved at that level, an employee is to contact the Human Resources Director who may ask the complainant to submit the complaint in writing. The written complaint is subsequently forwarded to the Facility Administrator for review and resolution.

9. Although Petitioner questioned the practice of late-signed group therapy session notes (discussed herein) there is no credible evidence that Petitioner followed the appropriate reporting process prior to filing the complaint at issue in this case.

10. There is no evidence that Petitioner's concerns of discrimination based on race or in retaliation for complaints filed were the subject of any dispute resolution procedures identified in the employee handbook.

11. During the time Petitioner was employed as a mental health technician at UBC, group therapy sessions were conducted twice daily for UBC residents. The therapist or mental health

technician in charge of the session was responsible for making notes about the session.

12. Petitioner believed that session notes were to be signed by the therapist or mental health technician in charge of the session when the notes were written. Nonetheless, on occasion, Petitioner was asked to sign his notes some time after the sessions were completed, because he had not signed them when he drafted the notes.

13. For reasons unclear, Petitioner apparently believed that late-signed session notes constituted Medicaid fraud.

14. Petitioner testified that at some point during the spring of 2002, he questioned his supervisor about the legality of late-signed session notes and was told to sign them.

15. There is no evidence that any employee of Respondent asked Petitioner to sign notes for therapy sessions Petitioner did not conduct.

16. There is no evidence of any legal requirement requiring that session notes be signed at the time they are drafted.

17. On August 2, 2002, Petitioner received a verbal reprimand for numerous instances of tardiness to work.

18. Petitioner asserts that the reprimand was discriminatory; however, the evidence establishes that other employees tardy to work, including white, black, and Hispanic

employees, received verbal reprimands. Some tardy employees of various races were excused for reasons that were determined to be legitimate by Respondent. There is no evidence that any employee's race was a factor in whether or not tardiness was excused.

19. There is no evidence that Petitioner's race was a factor in the reprimand. The verbal reprimand was not in retaliation for any pending complaints filed by Petitioner because he had not yet filed any complaints.

20. Petitioner testified that in August 2002, he anonymously called Respondent's corporate compliance telephone number to inquire as to whether the practice of late-signed session notes was illegal. Respondent's records do not indicate that such a call was received, and there is no evidence that Respondent took any related action.

21. In November 2002, one or more patients at UBC apparently called the abuse hotline operated by the Department of Children and Family Services (DCFS) and reported Petitioner for alleged abusive behavior.

22. Petitioner suggests that the abuse allegation came, not from patients, but from administration sources in the facility. There is no evidence supporting the assertion, which is also contrary to the Statement of Agreed Facts.

23. Standard UBC practice when an employee is reported to the abuse hotline is to move the employee to another unit pending resolution of the matter. An employee may be prohibited from interacting with children while the report is pending. Depending on the circumstances, an employee may be suspended. A legitimate report of abuse is cause for termination of employment.

24. Petitioner received a three-day suspension after the abuse allegation reported to DCFS was relayed to UBC. Upon returning to UBC, Petitioner was assigned to work in a different unit.

25. The suspension was intended to be a paid suspension, but through clerical error, Petitioner was not paid for the three days at the end of the regular pay cycle. Petitioner did not notify anyone in a position to correct the non-payment at the time the error occurred.

26. There is no evidence that the failure to pay Petitioner for the three-day suspension period was because of his race. The suspension was not in retaliation for any pending complaints filed by Petitioner because he had not yet filed any complaints.

27. The abuse report was subsequently determined to be unfounded. Because the report was unfounded, UBC did not consider the paid suspension to constitute disciplinary action.

28. On December 23, 2002, Petitioner sent what he believed was an anonymous email from a personal Yahoo.com email account to Respondent's corporate headquarters.

29. The email does not specifically mention the issue of late-signed session notes or alleged Medicaid fraud. The email seeks "support to help eradicate ongoing abuse towards employees and helpless youth at one of your hospitals." The email alleges unidentified illegal and unethical behaviors and unspecified violations of corporate policy. The only factual assertion set forth in the email relates to an allegation that the "hospital director" speaking at a meeting said, "he would not support any staff member that file charges against any youth who violently attacks them."

30. Unbeknownst to Petitioner, the email he sent to Respondent's corporate headquarters contained Petitioner's name.

31. On December 24, 2002, the corporate headquarters forwarded Petitioner's email to David Beardsley, the UBC Administrator and Chief Executive Officer. Petitioner's email was also forwarded for investigation to Wayne Neiswender, the Director of Human Resources for HMA, who was based in Naples, Florida.

32. On January 6, 2003, Petitioner submitted a complaint to PERC seeking protection under the "Whistleblower Act." Petitioner testified that he filed a complaint with PERC after

being verbally instructed to do so by someone in the Office of the Governor.

33. On January 13, 2003, Petitioner filed a charge of discrimination with FCHR (FCHR Case No. 23-00981) alleging that Petitioner had been discriminated against on the basis of race by being verbally reprimanded for tardiness in August 2002 and for being suspended based on the abuse allegation in November 2002. Petitioner asserted that non-black employees who committed similar infractions did not receive the same discipline.

34. In mid-January 2003, Mr. Neiswender traveled to Orlando and met with David Beardsley to discuss the letter. Mr. Neiswender's investigation focused on gathering information to identify specific instances of the alleged unethical or illegal activities that Petitioner claimed in his email were taking place at the facility.

35. Mr. Neiswender met with Petitioner at a time and location chosen by Petitioner. Petitioner refused to cooperate with Mr. Neiswender's investigation and refused to provide any specific information related to alleged Medicaid fraud or any other unethical or illegal activities he claimed in his email were occurring at UBC.

36. Mr. Neiswender learned from Petitioner that Petitioner had not received payment for the three-day suspension during the

appropriate payment cycle. Mr. Neiswender informed the appropriate UBC personnel and a check was issued to Petitioner to cover the unpaid time. There is no evidence that Respondent's failure to compensate Petitioner for the suspension period was based on race or in retaliation for any complaint. There is no evidence that prior to Petitioner's telling Mr. Neiswender about the non-payment, anyone at UBC other than Petitioner was aware that he had not been paid for the suspension period.

37. Mr. Neiswender met with other UBC employees during his investigation, but was unable to identify any specific instances of unethical or illegal behavior. Mr. Neiswender concluded that Petitioner's allegations were unsupported by fact.

38. Because the allegations involved improper use of public Medicaid funds, the allegations were also investigated and ultimately dismissed by the Office of the Inspector General for the State of Florida.

39. On February 28, 2003, Petitioner filed a Whistleblower's complaint with FCHR (FCHR Case No. 23-01298) alleging that since August 4, 2002, he had been suspended in November 2002, and "harassed as recently as January 25, 2003," in retaliation for reporting allegations of Medicaid fraud to the HMA corporate compliance telephone line and to PERC.

40. The investigation by FCHR of Case No. 23-01298 was terminated by notice issued on May 7, 2003. The Notice of Termination sets forth Petitioner's right to appeal the termination of the investigation. Petitioner did not appeal the termination of the investigation.

41. During May 2003, Petitioner was working in a UBC program unit identified as "Solutions." The Solutions unit is physically divided into two units ("Solutions I" and "Solutions II") separated by the nurses' station and doorway. Calvin Ross, a black man, was Petitioner's supervisor.

42. On May 13, 2003, Mr. Ross directed Petitioner to stay out of the Solutions I unit, because a female patient in Solutions I alleged that Petitioner acted improperly towards her. Mr. Ross told Petitioner to remain in the Solutions II unit until the matter was resolved.

43. Although Mr. Ross did not identify the female patient to Petitioner, Petitioner believed he knew who the complainant was. Later during the week, Petitioner had several encounters with the complainant, including two incidents at the nurses' station during which Petitioner twice directed the complainant (who was unaccompanied by staff) to return to her unit and to her room.

44. On May 13, 2003, a third encounter between Petitioner and the complainant occurred when Petitioner was called

temporarily into the Solutions I unit to assist in returning an unruly male patient to his room. After the situation with the male patient was resolved, Petitioner did not leave the Solutions I unit, but instead saw and began to talk to the complainant.

45. At the time of the encounter, the complainant was outside her room. Petitioner directed her to return to her room.

46. The complainant had permission from the Solutions I staff to be out of her room, a fact of which Petitioner was unaware. The complainant reacted negatively to Petitioner's direction and became very emotional, crying and screaming at Petitioner. Prior to her interaction with Petitioner on that day, the complainant's behavior had been appropriate and controlled.

47. Petitioner then became involved in a confrontation with a Solutions I unit staff member (a white female) in front of unit patients when the staff member explained to Petitioner that the complainant indeed had permission to be outside the room. Petitioner was unhappy that other staff had not supported his instructions to the complainant and told the staff member that she was "unprofessional" and "inappropriate" in such a hostile manner as to cause the staff member to become

emotionally upset and to leave the facility before the end of her shift.

48. Petitioner then had yet another confrontation with a different staff member (a white female) on the same day during which Petitioner in front of unit patients told the staff member that she was incompetent, and accused the staff member of joining with patients to "get him."

49. Mr. Ross investigated Petitioner's conduct towards the co-workers on the day in question, and determined that Petitioner's behavior warranted a paid suspension.

50. Mr. Ross was not aware that Petitioner had any pending complaints against the facility at the time he imposed the suspension. Mr. Ross' supervisor and the facility's Human Resource Coordinator approved the suspension. The evidence fails to establish that the suspension was based on race or in retaliation for any pending complaints filed by Petitioner.

51. The employee who left her shift early had a letter placed in her personnel file cautioning that another incident of early departure would result in termination of her employment.

52. Petitioner was also required to complete a Performance Improvement Plan, which he did successfully in June 2003.

53. In September 2003, Respondent became aware that a night employee was discovered sleeping during working hours in the lobby of the facility. The employee supposedly began

sleeping during a work-break and did not awaken to return to his shift.

54. Because of previous problems with patients leaving assigned rooms and wandering freely into each other's rooms when unsupervised, Respondent regards sleeping by employees during work hours to be a serious issue. Employees on break are permitted to nap in their cars, but the UBC employee handbook specifically states that "sleeping on the job" will not be tolerated.

55. While investigating the September sleeping incident, Respondent learned that a unit night supervisor was in the practice of allowing employees to combine multiple break time and to sleep "off unit" for the period of the combined break time. Respondent initially intended to terminate the sleeping employee, but because the unit supervisor permitted the practice, the offending employee was reprimanded and warned that another incident of sleeping would result in termination.

56. The night supervisor's practice was not acceptable to administrators of the facility, and a memo dated September 25, 2003, was issued to all employees, including Petitioner, prohibiting the practice of combining break time. The memo further stated as follows:

> Sleeping: No staff member is to sleep while on duty at UBC. This includes all 3 shifts. Staff on the evening and night shifts are

> paid an extra differential based on the fact that these hours are perhaps more difficult to work. No sleeping at any time while in the building.

57. In October 2003, Petitioner was found asleep while sitting in a chair in a unit hallway. Two employees, a nurse-manager and an orderly, observed Petitioner sleeping. The orderly called Petitioner's name once to awaken him, but was unsuccessful. After she called his name again, he woke up.

58. The evidence further establishes that Petitioner failed to complete two sets of the "quarterly rounds" (which are done every fifteen minutes) intended to assure that patients are safely in their assigned rooms.

59. Petitioner testified that he was not asleep, but had merely "dozed off" for at most 20 seconds before awaking. Petitioner's testimony on this point is discredited due to the fact that the orderly had to twice call his name before he awoke, and to his failure to complete two sets of quarterly rounds (covering a period of 30 minutes).

60. As a result of being found sleeping while on duty, Petitioner's employment was terminated.

61. Since the September 2003 memo was issued, employees found sleeping on duty have been terminated. Such terminations have included white and Hispanic employees. There is no

credible evidence that any employee found asleep on duty since the memo has continued to be employed at UBC.

62. There is no evidence that Respondent's termination of Petitioner's employment was based on or related to his race, or in retaliation for any complaint filed by Petitioner.

CONCLUSIONS OF LAW

63. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2004).[1]

64. Petitioner asserts that he has been discriminated against because of race and in retaliation for filing complaints alleging such discrimination.

65. Respondent asserts that matters related to a claim of retaliation are immaterial to this case because FCHR addressed the retaliation claim in the Notice of Termination dated May 7, 2003, in FCHR Case No. 23-01298, to which no appeal was taken. However, the Statement of Agreed Facts filed by the parties on November 24, 2004, states that on May 27 and October 9, 2003, Petitioner amended charges of discrimination to allege retaliation. Accordingly, this Recommended Order has considered the claim of retaliation as set forth herein.

66. Section 760.10, Florida Statutes, provides as follows:

> (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.
>
> * * *
>
> (7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization 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.

67. Florida courts interpreting the provisions of Section 760.10, Florida Statutes, have held that federal discrimination laws should be used as guidance when construing provisions of the Florida law. See Brand v. Florida Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

68. Petitioner has the ultimate burden to establish discrimination either by direct or indirect evidence. The burden of proving retaliation follows the general rules enunciated for proving discrimination. Reed v. A.W. Lawrence & Co., 95 F.3d 1170 (2d Cir. 1996). Direct evidence is evidence that, if believed, would prove the existence of discrimination

without inference or presumption. Carter v. City of Miami, 870 F.2d 578, 581-582 (11th Cir. 1989). Blatant remarks, whose intent could be nothing other than to discriminate, constitute direct evidence of discrimination. See Earley v. Champion International Corporation, 907 F.2d 1077, 1081 (11th Cir. 1990). There is no evidence of direct discrimination on Respondent's part in this case.

69. Absent direct evidence of discrimination, Petitioner has the burden of establishing a prima facie case of racial discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In order to establish a prima facie case of discrimination, Petitioner must show that: he is a member of a protected group; he is qualified for the position; he was subject to an adverse employment decision; and he was treated less favorably than similarly-situated persons outside the protected class. McDonnell Douglas, 411 U.S. at 802.

70. If Petitioner establishes the facts necessary to demonstrate a prima facie case, the employer must then articulate some legitimate, nondiscriminatory reason for the challenged employment decision. The employer is required only to "produce admissible evidence which would allow the trier of fact rationally to conclude that the employment decision had not

been motivated by discriminatory animus." Burdine, 450 U.S. at 257. The employer "need not persuade the court that it was actually motivated by the proffered reasons . . ." Burdine, 450 U.S. at 254. This burden has been characterized as "exceedingly light." Perryman v. Johnson Products Co., Inc., 698 F.2d 1138, 1142 (11th Cir. 1983).

71. Assuming the employer articulates a legitimate, nondiscriminatory reason for the employment decision, the burden shifts back to Petitioner who then must establish that the reason offered by the employer is not the true reason, but is mere pretext for the decision.

72. The ultimate burden of persuading the trier of fact that there was intentional discrimination by Respondent remains with Petitioner. Burdine, 450 U.S. at 253.

73. In this case, the evidence establishes that Petitioner is a member of a protected class, that he was qualified for his position, and that he was subject to an adverse employment decision by disciplinary actions and finally the termination of his employment. The evidence fails to establish that Petitioner was treated less favorably than similarly situated non-black employees.

74. In order to make a prima facie case, Petitioner must demonstrate there were employees outside of the protected class who engaged in similar conduct, but were not terminated.

Maniccia v. Brown, 171 F.3d 1364, 1368 (11th Cir. 1999)(citing Jones v. Bessemer Carraway Med. Ctr., 137 F.3d 1306, 1311 (11th Cir.), OPINION MODIFIED by 151 F.3d 1321 (1998)(quoting Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997)). Petitioner has failed to do so. The evidence fails to establish that non-minority employees were treated differently than was Petitioner under similar circumstances. In fact, the evidence offered by Petitioner casts doubt upon his credibility. Petitioner asserted that all of the employees who received reprimands for tardiness were black or Hispanic, but the evidence establishes otherwise. Petitioner also asserted that the only employees disciplined or terminated for sleeping on duty were minorities, but the evidence again establishes otherwise.

75. The evidence establishes that the disciplinary actions taken towards Petitioner were routine, and were standard procedure for the facility under similar circumstances with other employees, regardless of race. The evidence establishes that Petitioner's termination for sleeping followed a direct warning from Respondent that sleeping on duty was not acceptable. The evidence establishes that other employees found sleeping on duty were also terminated, without regard to race. "Whatever the employer's decision-making process, a disparate treatment claim cannot succeed unless the employee's protected

trait actually played a role in that process and had a determinative influence on the outcome." Hazen Paper Co. v. Biggins, 507 U.S. 604, 610 (1993). This standard requires Petitioner to establish that "but for" his protected class and Respondent's intent to discriminate, he would not have been disciplined or terminated. The evidence fails to establish sufficient facts to establish a prima facie case of discrimination.

76. In order to establish a prima facie case of retaliation, Petitioner must satisfy four requirements. Petitioner must show that he engaged in a statutorily protected activity, that Respondent was aware of the protected activity, that Petitioner suffered adverse employment action, and that the adverse action was causally related to the protected activity. See Little v. United Technologies, Carrier Transicold Division, 103 F.3d 956, 959 (11th Cir. 1997)(citing Coutu v. Martin County Bd. of County Commissioners, 47 F.3d 1068, 1074 (11th Cir. 1995)).

77. Petitioner filed his first written complaints to FCHR and PERC in January 2003. Disciplinary actions that preceded the filing of the complaints are obviously not retaliatory. Subsequent to the filing of the complaints, Petitioner received a one-week suspension in May 2003 and was terminated in October 2003.

78. As to the suspension, the evidence fails to establish the second requirement for a prima facie case of retaliation because, although the personnel who concurred with the suspension had knowledge of the complaints, the supervisor who actually made the suspension decision was unaware that Petitioner had filed complaints against Respondent.

79. As to the termination of his employment, Petitioner has established three of the requirements for a prima facie case of retaliation. Petitioner engaged in a protected activity by filing his complaints against Respondent. Respondent was clearly aware of the filing of the complaints. Petitioner suffered an adverse action by being terminated from employment. However, the evidence fails to establish the fourth requirement for a prima facie case of retaliation: that the termination was causally related to the filing of the complaints. Other employees of various races or ethnicities who committed the same offense as Petitioner were likewise terminated. There is no evidence, either direct or indirect, that the termination of Petitioner's employment was related to, or in retaliation for, the filing of the complaints. An employer may terminate an employee fairly or unfairly and for any reason or no reason at all without incurring Title VII liability unless its decision was motivated by invidious discrimination. Kossow v. St. Thomas University, Inc., 42 F. Supp. 2d 1312, 1317 (S.D. Fla. 1999)

(citing Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1187 (11th Cir. 1984)).

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 Petition for Relief filed by Walter F. Gibson in this case.

DONE AND ENTERED this 2nd day of March, 2005, in Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
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 2nd day of March, 2005.

ENDNOTE

1/ All citations are to Florida Statutes (2004) unless otherwise indicated.

COPIES FURNISHED:

Denise Crawford, Agency Clerk
Florida Commission on Human Relations
2009 Apalachee Parkway, Suite 100
Tallahassee, Florida 32301

Michael Mattimore, Esquire
Allen, Norton & Blue, P.A.
906 North Monroe Street
Tallahassee, Florida 32303

Stephen M. Smith, Esquire
Jennifer Smith, Esquire
2311 Republic Street
New Orleans, Louisiana 70129

Mark L. Van Valkenburgh, Esquire
Allen, Norton & Blue, P.A.
1477 West Fairbanks Avenue
Winter Park, Florida 32789

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.