STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTINA QUINTERO,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 06-0413
	)	
CITY OF CORAL GABLES,	)	
	)	
Respondent.	)	
_____	)	

RECOMMENDED ORDER

A hearing was held pursuant to notice on April 12, 2006, and concluded on May 3, 2006, by video teleconference at sites in Miami and Tallahassee, Florida, before Florence Snyder Rivas, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Christina Quintero, pro se
4780 Northwest 2nd Street
Miami, Florida 33126

For Respondent: David C. Miller, Esquire
Akerman Senterfitt
Sun Trust International Center, 28th Floor
One Southeast Third Avenue
Miami, Florida 33131

STATEMENT OF THE ISSUE

Whether Respondent terminated Petitioner's employment in violation of Chapter 760, Florida Statutes (2004), popularly

known as the Florida Civil Rights Act of 1992 (Florida Civil Rights Act).

PRELIMINARY STATEMENT

On June 7, 2005, the Petitioner, Christina Quintero (Petitioner), filed a complaint with the Florida Commission on Human Relations (FCHR). In her complaint, Petitioner alleged that the Respondent City of Coral Gables (Respondent or City), had discriminated against her on the basis of age, national origin, and disability in violation of the Florida Civil Rights Act, when it terminated her employment in its police department records office on July 16, 2004. The complaint was investigated and on December 22, 2005, FCHR issued its determination of "no cause." Petitioner thereafter filed a Petition for Relief, invoking the jurisdiction of the Division of Administrative Hearings. In the Petition for Relief, Petitioner alleged discrimination on the basis of national origin. Following extensive discovery, the case came on for hearing on April 3, 2006. The date was selected to accommodate the schedules of the parties and their witnesses. The parties had been encouraged to request as much time as could possibly be necessary; one day was requested and was granted. Unfortunately, following nine hours of hearing on April 3, 2006, it became apparent that one day, even a very long one, was insufficient time. Accordingly, the undersigned continued the hearing to the next available date

upon which the parties and videoconferencing facilities would be available, May 3, 2006.

The identity of witnesses, exhibits, and attendant rulings are contained in the one-volume transcript of the proceedings filed with the Division of Administrative Hearings on May 30, 2006. Timely post-hearing submissions have been filed by the parties and have been duly-considered.

All citations to the Florida Statutes are to Florida Statutes (2004), unless otherwise specified.

FINDINGS OF FACT

1. Petitioner is an Hispanic female. Petitioner was employed by Respondent in records for almost 15 years prior to July 16, 2004, when she was terminated.

2. Respondent is a municipal corporation located in Miami-Dade County, Florida, and an employer within the meaning of the Florida Civil Rights Act. Respondent provides a variety of public services generally associated with cities of comparable size, including a full service police department. At all relevant times, Hispanics comprised approximately half of the police department's workforce. Many of these individuals were employed in supervisory capacities. Four Hispanics were supervisors in Petitioner's chain of command.

3. In her position in records, Petitioner was responsible to timely and accurately process official police documents.

Such processing included the completion of forms and transmittal documents and timely copying, filing and production of such documents to appropriate individuals and authorities (document processing). Failure to discharge any of the foregoing responsibilities is reasonably deemed by Respondent to be incompetence, and a firing offense(s).

4. In her position in records, Petitioner was also responsible to comply with all directives of supervisors and to cooperate in internal affairs investigations. Cooperation in this context includes providing sworn statements and/or answering questions under oath as may be required by Respondent. Failure to comply with directives and to cooperate in internal affairs investigations are reasonably deemed by Respondent to be insubordination, and firing offenses.

5. On April 29, 2004, a member of the public presented himself to records and requested a copy of an official police record to which he was entitled to access, specifically a traffic ticket. Records could not locate the document because it had not been properly processed by Petitioner, who was responsible for doing so. Having become aware of a problem with this particular document processing, Respondent thereupon took reasonable steps to determine whether this was an isolated error by Petitioner. In so doing, Respondent discovered and documented a high volume of document processing errors with

respect to official police records for which Petitioner was responsible.

6. In February 2004, one of Petitioner's supervisors – one who happened to be Hispanic -- issued a written directive (the February directive) to all records employees which required that they disclose, on a weekly basis, any "backlogs" of document processing work. In direct violation of the directive, Petitioner never disclosed existence of her backlog, which was, by April 29, 2004, extremely large. Now on notice of the backlog and deeply concerned about its potential effects on the police department and the public it serves, and pursuant to police department policy, an internal affairs investigation was initiated under the leadership of the same Hispanic supervisor. Over the course of the investigation, Respondent learned that the problem(s) revealed on April 29, 2004, were only the "tip of the iceberg."

7. The internal affairs investigation uncovered “hundreds and hundreds” of additional document processing errors. Virtually all of the errors discovered involved official police records for which Petitioner was responsible. In the course of the internal affairs investigation, Petitioner was directed to give a sworn statement, and refused to do so, which refusal was deemed to constitute insubordination.

8. Petitioner's errors as documented in the internal investigation demonstrated incompetence. Her failure to comply with the February directive and to provide a sworn statement to internal affairs investigators constituted insubordination. At the conclusion of the internal affairs investigation, Petitioner was terminated for incompetence in the performance of her document processing responsibilities and for insubordination. Petitioner failed to discredit the factual underpinnings of Respondent's decision to terminate her employment; neither did she establish any discriminatory basis upon which Respondent terminated her employment.

9. Respondent replaced Petitioner with an Hispanic, who remained employed by Respondent through and including the time of the hearing.

CONCLUSIONS OF LAW

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

11. The Florida Civil Rights Act, among other things, forbids the discriminatory firing of an employee. Subsection 760.10(1)(a), Florida Statutes, states:

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

> (a) To discharge or to fail or refuse to hire any individual, or otherwise 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.

12. Respondent is an "employer" as defined in Subsection 760.02(7), Florida Statutes, which provides:

> (7) "Employer" means any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person.

13. FCHR and Florida courts look to federal discrimination law for guidance when construing provisions of the Florida Civil Rights Act. See Brand v. Florida Power Corp., 633 So. 2d. 504, 509 (Fla. 1st DCA 1994). Accordingly, the United States Supreme Court's model for employment discrimination cases set forth in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), applies to claims arising under the Florida Civil Rights Act. See Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

14. Under the McDonnell Douglas analysis, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful employment discrimination. If the prima facie case is established, the burden shifts to Respondent employer to rebut this preliminary showing by producing evidence

that the adverse action was taken for some legitimate, non-discriminatory reason. If the employer rebuts the prima facie case, the burden shifts back to Petitioner to show by a preponderance of the evidence that Respondent's articulated reason(s) for its adverse employment decision is pretextual. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

15. The unlawful employment practice alleged in this case is discrimination based on national origin. In order to prove a prima facie case of discrimination on this basis, Petitioner must prove that she: (1) belongs to a protected class; (2) was treated differently or less favorably than similarly situated employees outside of her classification, or that she was replaced by a person outside her protected class; (3) was qualified for the position she held; and (4) that she suffered an adverse employment action. See Maynard v. Board of Regents of Division of Universities of the Florida Department of Education, 342 F.3d 1281 (11th Cir. 2003); Kelliher v. Veneman, 313 F.3d 1270, 1275 (11th Cir. 2002); Williams v. Vitro Services Corporation, 144 F.3d 1438, 1441 (11th Cir. 1998); Anderson v. Lykes Pasco Packing Co., 503 So. 2d 1269, 1270 (Fla. 2d DCA 1986).

16. Here, Petitioner failed to prove a prima facie case because she proved only three of the four required elements.

Petitioner proved that she belonged to a protected class; was qualified for the position she held; and suffered an adverse employment action, i.e. termination. However, Petitioner did not prove that Respondent treated similarly situated employees outside of her classification differently or more favorably, or that she was replaced by a person outside her protected classification. To the contrary, the evidence did not establish that any similarly situated employee was treated more favorably or would not be terminated under the facts and circumstances set forth above. Likewise, the evidence did not establish that Petitioner was replaced with a person outside her protected classification; instead, the evidence established that the person who replaced her was Hispanic.

17. Assuming arguendo that Petitioner had established a prima facie case, it would be necessary to consider the second McDonnell Douglas factor, which requires Respondent to provide a legitimate, nondiscriminatory reason for its adverse employment action. In this case, Respondent elected to put on a defense and established by preponderant persuasive evidence that the basis for its adverse employment action was incompetence and insubordination. Petitioner did not demonstrate that these articulated reasons given by Respondent for the adverse employment action were pretextual.

18. Petitioner failed to establish a prima facie case of unlawful employment discrimination. Respondent was not obligated to put on a defense. Nonetheless, Respondent elected to rebut the presumption that would have arisen if the Petitioner has put on a prima facie case. Respondent then proved with preponderant, persuasive evidence that there were legitimate, non-discriminatory reasons for Petitioner's termination. Petitioner failed to prove that Respondent's reasons for terminating her employment were pretextual. In sum, national origin played no role in the decision to terminate Petitioner's employment; she was fired because of conduct justifying her termination.

RECOMMENDATION

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

RECOMMENDED that the FCHR enter its final order dismissing the Petition for Relief.

DONE AND ENTERED this 14th day of September, 2006, in Tallahassee, Leon County, Florida.

FLORENCE SNYDER RIVAS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of September, 2006.

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.