

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SUSAN BYERS, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 08-0683  
 )  
 FAMILY DOLLAR SERVICES, INC., )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 30, 2008, in Marianna, Florida, before Susan B. Harrell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Susan C. Byers, pro se  
2204 Highway 73 South  
Marianna, Florida 32448

For Respondent: Wayne L. Helsby, Esquire  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Avenue, Suite 100  
Winter Park, Florida 32789

STATEMENT OF THE ISSUE

The issue in this case is whether Petitioner has been the subject of an unlawful employment practice as defined in Chapter 760, Florida Statutes (2006).<sup>1</sup>

PRELIMINARY STATEMENT

On January 8, 2008, the Florida Commission on Human Relations (Commission) issued a Determination: Cause, determining that there was reasonable cause to believe that Respondent, Family Dollar Services, Inc. (Family Dollar Services), had retaliated against Petitioner, Susan Byers, for complaining to Family Dollar Services' human resources office about discrimination based on sex. On January 29, 2008, Ms. Byers filed with the Commission a Petition for Relief for a retaliatory discharge. The case was transmitted to the Division of Administrative Hearings on February 8, 2008, for assignment of an Administrative Law Judge.

The case was originally assigned to Administrative Law Judge Diane Cleavinger, but was transferred to Administrative Law Judge Susan B. Harrell to conduct the final hearing.

At the final hearing, Ms. Byers testified on her own behalf. She did not submit any exhibits. Family Dollar Services called the following witnesses: Angela Anderson Lance, Christopher Thomas Miller, Craig Milburn Moore, and William Jefferson Brewer. Respondent's Exhibits 1 through 6, 9 through 16, 18, and 19 were admitted in evidence.

The Transcript was filed on June 25, 2008. On June 27, 2008, Family Dollar Services filed a Motion for Extension of Time to File Post-Hearing Brief and requested the time for

filing be extended to July 21, 2008. Family Dollar Services filed a post-hearing submittal on July 21, 2008. As of the date of this Recommended Order, Ms. Byers had not filed a post-hearing submittal.

#### FINDINGS OF FACT

1. Family Dollar Services operates distribution centers for Family Dollar Stores, Inc., which is a large nationwide chain of self-service stores selling basic, lower-priced goods for family and home needs.

2. At all times relevant to this case, Ms. Byers was a forklift area manager at Family Dollar Services' distribution center in Marianna, Florida. Ms. Byers' supervisors were Craig Moore, who was the operations manager, and Chris Miller, who was the department manager.

3. On August 23, 2006, Ms. Byers met with Angel Anderson,<sup>2</sup> who was the human resources manager for Family Dollar Services, to discuss an issue that involved Mr. Moore. Ms. Byers advised Ms. Anderson that she felt that Mr. Moore was "talking down to her," but Ms. Byers was unable to give any specific instances in which Mr. Moore had talked down to her. Ms. Anderson told Ms. Byers that she could relay the information to Don Braun, who, at the time, was regional vice president for Family Dollar Services. Ms. Byers indicated that she did not want

Ms. Anderson to do anything then, but wanted to see if she could handle it on her own. Ms. Byers did not mention that she felt that she was being discriminated against because she was a woman.

4. Ms. Byers claims that she spoke to Ms. Anderson about Mr. Moore on three other occasions, but Ms. Anderson does not recall those conversations. If Ms. Anderson had received a complaint from Ms. Byers, alleging that she was being discriminated against based on her sex, Ms. Anderson would have taken a written statement from Ms. Byers and sent it to the corporate office in North Carolina. An investigation would have been initiated based on the complaint. No written statement was taken from Ms. Byers, and no investigation was initiated. Ms. Byers never complained to Ms. Anderson at any time that she was being discriminated against based on her sex.

5. On August 28, 2006, Mr. Moore, Mr. Miller, and Ms. Anderson met with Ms. Byers to discuss Ms. Byers' interaction with some of her subordinate employees. Ms. Byers had been observed taking breaks and eating lunch with the same subordinate employees each day. During the meeting, Mr. Moore and Mr. Miller advised Ms. Byers that it was not a good management practice to take breaks and eat lunch with the same subordinate employees each day because the practice could create

a perception of favoritism and advised Ms. Byers to refrain from such practice.

6. At the end of the meeting on August 28, 2006, Mr. Miller and Mr. Moore made it clear to Ms. Byers that the matters discussed in the meeting were to be considered confidential and were not to be discussed with other employees. About an hour after the meeting, Mr. Miller overheard Ms. Byers and another employee, Jackie Hodges, talking about the meeting. Mr. Miller could not tell exactly what was being said. Later, Ms. Hodges came to Mr. Miller's office and indicated that Ms. Byers was upset and distressed by the meeting. Mr. Miller took Ms. Hodges' comments to mean that Ms. Byers had told Ms. Hodges about the meeting, despite Mr. Miller's and Mr. Moore's admonitions to keep the meeting confidential.

7. Mr. Miller confronted Ms. Byers about her discussion with Ms. Hodges. Ms. Byers denied telling Ms. Hodges about the meeting and claimed that Ms. Hodges had merely seen that Ms. Byers was upset by what had been said to her in the meeting.

8. Mr. Miller went to Ms. Anderson and Mr. Moore to discuss Ms. Byers' failure to abide by her supervisor's direction of confidentiality. Mr. Miller and Mr. Moore also discussed the issue with Mr. Braun, and it was decided that Ms. Byers should be issued an initial written counseling for her failure to follow her supervisors' direction. Mr. Miller

directed Ms. Anderson to draft the initial written counseling. According to the Distribution Center Disciplinary Policy of Family Dollar Services, an initial written counseling is the lowest level of discipline that can be given to a Family Dollar Services' employee.

9. On August 29, 2006, Mr. Miller and Mr. Moore called Ms. Byers to a meeting in Mr. Moore's office to issue Ms. Byers the initial written counseling. Ms. Byers came to the meeting and became upset. She told them that it was unfair to give her the initial written counseling and that she was quitting. She accused Mr. Moore of hating her because she was a white woman and left Mr. Moore's office. On her way back to the warehouse area where her workstation was located, Ms. Byers stopped at Ms. Anderson's office and told Ms. Anderson: "I quit, Angel. They finally did this to me and I've had enough. I quit."

10. Ms. Byers went to her workstation and gathered her things. Mr. Miller followed her to her work area. Because Ms. Byers was upset, Mr. Miller had a security officer escort Ms. Byers from the facility.

11. Ms. Byers was not terminated from her employment. Neither Mr. Miller nor Mr. Moore had the authority to terminate Ms. Byers because she was a manager. Termination of managers had to be authorized by corporate headquarters. No authorization was sought from the corporate headquarters, and no

authorization was given by corporate headquarters to terminate Ms. Byers.

12. Ms. Byers applied for and received unemployment compensation benefits after she left the employment of Family Dollar Services. She argues that her receipt of unemployment benefits is evidence that she was terminated from her employment. The evidence established that unemployment compensation claims against Family Dollar Services were handled for Family Dollar Services by a third party. Ms. Anderson received notice from the third party contractor that Ms. Byers had been awarded unemployment compensation benefits, and Ms. Anderson instructed the contractor to appeal the decision on the basis that Ms. Byers voluntarily left her employment, but the contractor failed to do so.

#### CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat. (2007).

15. The anti-retaliatory provision of the Florida Civil Rights Act, Subsection 760.10(7), Florida Statutes, provides:

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.

16. The Florida Civil Rights Act is patterned after federal Title VII, and Subsection 760.10(7), Florida Statutes, is virtually identical to its federal counter part in Title VII. See 42 U.S.C. § 2000e-3(a). Because the Florida Civil Rights Act is patterned after Title VII, federal case law on Title VII applies to Florida Civil Rights Act claims. Guess v. City of Miramar, 889 So. 2d 840, 846 n.2 (Fla. 4th DCA 2004).

17. To establish a prima facie claim of retaliation under Title VII, the employee must demonstrate that she engaged in a statutorily protected activity, she suffered an adverse employment action, and there is a casual relation between the two events. Guess, 889 So. 2d at 846. In Rice-Lamar v. City of Fort Lauderdale, 853 So. 2d 1125, 1132-1133 (Fla. 4th DCA 2003), the court, citing Olmsted v. Taco Bell Corp., 141 F.3d 1547, 1560 (11th Cir. 1988), stated:

[T]he casual link requirement under Title VII must be construed broadly; "a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated." Once the prima facie case is established, the employer must proffer a legitimate, non-retaliatory reason for the adverse employment action. The plaintiff bears the ultimate burden of proving by a preponderance of the evidence that the



reason provided by the employer is a pretext for prohibited, retaliatory conduct.

18. Ms. Byers has failed to establish a prima facie case of retaliation. She made a complaint to Ms. Anderson that Mr. Moore "talked down to her." Ms. Byers did not make a complaint that Mr. Moore discriminated against her because she is a woman. Ms. Byers asked Ms. Anderson to keep her complaint confidential and told Ms. Anderson that she would try to work it out herself. There was no evidence presented that either Mr. Moore or Mr. Miller had been made aware that Ms. Byers had made a complaint to Ms. Anderson. Ms. Byers voluntarily quit her employment when she learned that she was going to be issued an initial written counseling for failing to adhere to her supervisors' direction that she keep a meeting with them confidential. Ms. Byers was not terminated from her employment by either Mr. Moore or Mr. Miller. Ms. Byers failed to establish a causal connection between her making a complaint to Ms. Anderson and her subsequent unemployment. Additionally, Ms. Byers neither alleged in her Petition for Relief nor established at hearing that the initial written counseling stemmed from her complaint to Ms. Anderson.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that a final order be entered dismissing Susan Byers' Petition for Relief.

DONE AND ENTERED this 24th day of July, 2008, in Tallahassee, Leon County, Florida.

*Susan B. Harrell*

---

SUSAN B. HARRELL  
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 24th day of July, 2008.

ENDNOTES

<sup>1/</sup> Unless otherwise stated, all references to the Florida Statutes are to the 2006 codification.

<sup>2/</sup> Angel Anderson's name has since changed to Angel Anderson Lance. Since her name appears as "Anderson" throughout the exhibits admitted in evidence, she will be referred to as Ms. Anderson.

COPIES FURNISHED:

Elizabeth Reveley, Esquire  
Family Dollar Services, Inc.  
Post Office Box 1017  
Charlotte, North Carolina 28201

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

Susan C. Byers  
2204 Highway 73 South  
Marianna, Florida 32448

Wayne L. Helsby, Esquire  
Allen, Norton & Blue, P.A.  
1477 West Fairbanks Avenue, Suite 100  
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.