STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LAUREN M. BUECKER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-2132
	)	
TT OF SAND LAKE, INC., d/b/a CENTRAL FLORIDA CHRYSLER JEEP DODGE,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the final hearing of this case on August 13 and 14, 2008, in Orlando, Florida, on behalf of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Jeremy K. Markman, Esquire
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Orlando, Florida 32814

For Respondent: Donald St. Denis, Esquire
Michael J. Lufkin, Esquire
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STATEMENT OF THE ISSUE

The issue is whether Respondent discriminated against Petitioner on the basis of her gender or subjected her to a

hostile work environment in violation of Section 760.10, Florida Statutes (2006).[1]

PRELIMINARY STATEMENT

On August 3, 2007, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (Commission). The Commission investigated the allegations in the Charge of Discrimination and, on March 20, 2008, issued a determination that no cause existed to believe the alleged discrimination occurred. Petitioner requested an administrative hearing in a Petition for Relief, filed with the Commission on April 23, 2008, and the Commission referred the matter to DOAH to conduct the final hearing.

At the hearing, Petitioner testified and submitted eight exhibits for admission into evidence. Respondent cross-examined Petitioner, presented the testimony of five witnesses, and submitted 19 exhibits.

The identity of the witnesses and exhibits and any rulings regarding each are reported in the four-volume Transcript of the hearing filed with DOAH on September 24, 2008. Petitioner timely filed her Proposed Recommended Order (PRO) on October 1, 2008. Respondent timely filed its PRO on October 14, 2008.

FINDINGS OF FACT

1. Petitioner is an aggrieved person within the meaning of Subsection 760.02(10). Petitioner is a female and filed a complaint with the Commission alleging that Respondent engaged in gender discrimination, sexual harassment, and the creation of a hostile work environment.

2. Respondent is an employer within the meaning of Subsection 760.02(7). Respondent operates a car dealership and services new and used Chrysler-manufactured automobiles and trucks in the State of Florida.

3. Respondent hired Petitioner as a lube tech in Respondent's service department on July 26, 2006. Petitioner was the only female employee in the service department. Petitioner remained employed as a lube tech in the Quick Lube part of the service department throughout her employment and earned $7.50 per hour. Respondent did not raise or lower Petitioner's compensation during her employment. Respondent terminated Petitioner's employment on February 28, 2007.

4. On March 22, 2007, Petitioner obtained employment at an automobile dealership in West Palm Beach, Florida, at an hourly rate of $13.00. Arrigo Dodge Chrysler Jeep (Arrigo) hired Petitioner as a pre-delivery inspection technician, but Petitioner voluntarily terminated that employment for personal reasons unrelated to this proceeding.[2]

5. On or about February 28, 2007, Petitioner filed a claim for unemployment compensation.[3] Respondent responded to the claim on March 8, 2007. The response stated, in relevant part, that Mr. Richard Burton, the service manager and Petitioner's immediate supervisor during her employment with Respondent, terminated Petitioner's employment for violation of Respondent's so-called "no-dating" policy. The no-dating policy prohibits Respondent's employees who are managers or supervisors from dating non-management employees.

6. The response to the unemployment compensation claim is an admission within the meaning of Subsection 90.803(18)(a). However, the admission contains two factual inaccuracies. First, Mr. Burton had no authority to hire or fire employees he supervised. Second, the no-dating policy was not a ground for the termination of Petitioner's employment.

7. As further described in subsequent findings, Respondent corrected the inaccuracies in the response to the claim for unemployment compensation through testimony at the administrative hearing in this proceeding. The fact-finder found the testimony to be credible and persuasive.

8. August 3, 2007, when Petitioner filed the Charge of Discrimination, was the first time Petitioner alleged that

Mr. Burton coerced her into having sexual intercourse with him on October 5 and 13, 2006, and harassed her thereafter. The Charge of Discrimination alleges in relevant part:

> On October 5, 2006, Richard Burton invited me out drinking with a group after work. After drinking, when all others left, he walked me to my car where he began to kiss me. I pushed him away, but he continued. I felt if I did not acquiesce, I would be fired. He grabbed my breast and put his hand down my pants. He then directed me to his car, drove across the street, exited his side of car, came to my side and had sexual intercourse with me. He then drove me back to my care [sic] and I went home crying. On October 13, 2006, Mr. Burton again invited me for drinks, and directed me to perform oral sec [sic] in the parking lot of the bar. He then attempted to have sexual intercourse with again, but could not. . . .
>
> I was invited out for drinks with Mr. Burton again, but refused. On two occasions, I was told by Richard Burton that if I did not continue our relationship, I would be fired. The treatment became terrible. Mr. Burton no longer protected me from the nasty comments of other employees, including other employees saying I was "stupid", telling me to "go home and make babies" because that is what I was supposed to do and that I did not belong. Some of the worst comments came from Joseph Roadkit, technician, Dave Morgan, technician, Curtis, technician, and Devon, porter. I became friends with another technician, Wesley Wilkerson. On occasions when I was not busy, I would attempt to learn from him. I spend time with him as he was an experienced technician. Despite other lube techs talking to other employees when they are slow, I was disciplined in January 2007, for talking to Mr. Wilkerson. I transferred from an inside job with opportunities to

> learn and advancement to working outside with limited opportunities. This decision was made by Richard Burton and Tom Grabby [sic], Manager of Fixed Operations. Eventually, in February 2007, Joseph Roadkit was terminated due to his behavior.
>
> On February 24, 2007, Richard Burton invited me out for drinks for the first time in a while. I initially agreed until he advised I would have to drive him home. I advised him I could not. Mr. Burton assured me he would never fire me as I had hit his "soft spot". I refused to go out with him. Four days later Richard Burton approached me at work with the manager of fixed operation's wife, Patti Grabby [sic]. Mr. Burton advised me I was terminated as there was no room for me in the shop anymore. I was not the least qualified nor was I the last hired.

9. Mr. Burton did not testify in the administrative hearing. Respondent terminated the employment of Mr. Burton, sometime after Respondent terminated the employment of Petitioner, because Mr. Burton was no longer licensed to drive, and a valid driver's license is a job requirement of the position held by Mr. Burton.

10. Petitioner's testimony was the only testimony concerning the alleged coerced sexual intercourse and sexual harassment by Mr. Burton. The fact-finder finds the testimony of Petitioner to be less than credible and persuasive.

11. Petitioner's testimony that she was the victim of sexual coercion on October 5, 2006, is less than persuasive. Petitioner had a restricted driver's license that authorized her

to drive to and from work. Petitioner drove to a local Ale House to have drinks with Mr. Burton, Mr. Radtke, and Mr. Radtke's wife. Everyone at the table was drinking alcoholic beverages. Petitioner consumed six alcoholic beverages in approximately four hours.

12. Petitioner consumed two drinks identified in the record as Smirnoff Ice, a malted-rum, bottled drink, and four shots, identified in the record as vanilla vodka. After the fifth shot, Petitioner went to the bathroom, "puked up my cheeseburger and the rest of the drinks," returned to the table, and consumed the sixth shot.

13. The testimony of Petitioner during the hearing contains several inconsistencies with her deposition testimony, responses to discovery, and allegations in the Charge of Discrimination. Petitioner alleges in the Charge of Discrimination, "I felt if I did not acquiesce, I would be fired." Petitioner found greater detail in her testimony during direct examination in the final hearing. Petitioner testified that after sexual intercourse in Mr. Burton's vehicle, Mr. Burton said, "If you tell anybody, I will fire you."

14. The Charge of Discrimination does not allege that Mr. Burton used force to engage in sexual intercourse with Petitioner. The testimony of Petitioner during direct examination in the final hearing claims that Mr. Burton

prevented Petitioner from exiting the vehicle by grabbing her hand each time she reached for the door handle. Petitioner did not seek medical treatment for rape and did not report a rape to any law enforcement agency.

15. Petitioner viewed the alleged encounters with Mr. Burton as "dates."

> Q. Did what happened between you and Richard Burton, did you consider that dating?
>
> A. Yes.
>
> Q. Why did you consider that dating?
>
> A. Because sex is sex.

Transcript (TR) at 130, lines 5 through 9.

16. The Charge of Discrimination alleges that Mr. Burton accompanied Petitioner to his vehicle on October 5, 2006, after Mr. Radtke and his wife had left the Ale House. Petitioner testified on direct examination in the final hearing that Mr. Radtke and his wife were at the restaurant while the alleged coerced sexual intercourse occurred.

17. Petitioner testified that she agreed to meet Mr. Burton for drinks again on October 13, 2006. Mr. Radtke and his wife were again present at the restaurant. When Mr. Burton allegedly offered to accompany Petitioner to her vehicle, Petitioner did not ask Mrs. Radtke to accompany her.

18. Petitioner testified that the alleged coerced sexual intercourse on October 5 and 13, 2006, occurred in Mr. Burton's vehicle. Petitioner's testimony lacks plausibility.

19. Petitioner weighed 170 pounds at a height of five feet, six inches, and Mr. Burton weighed 194 pounds at a height of five feet, eight inches. Mr. Burton drove a Jeep Compass on both nights, the smallest of the sport utility vehicles manufactured by Jeep. On October 5, 2006, Petitioner testified that Mr. Burton placed Petitioner in the passenger side of the vehicle, told her not to open the door, walked to the other side of the car, sat in the driver's seat, and drove to a construction site across the parking lot that was abandoned at that time of night.

> Q. So when he drove the car over to that construction area, how did he get you in the back seat?
>
> A. He threw me between the two seats.[4]
>
> Q. What happened next?
>
> A. Well, he went-–he came into the back. And he put my panties down to about my knees, and he put his dick in me. I'm screaming, "No. Stop."
>
> Q. And what happened next?
>
> A. He finished and I ran pulling up my underwear to my car.

20. The Charge of Discrimination alleges that Mr. Burton drove Petitioner back to her car after the sexual intercourse on October 5, 2006. Petitioner's vehicle was parked in the parking

lot at some distance from the construction area. The table where Mr. Radtke and his wife were sitting is in the outside bar area of the restaurant. Petitioner testified that her screams were not heard by patrons in the outside bar because the bar was crowded and noisy. Petitioner did not present the testimony of any witnesses in the outside bar who, more likely than not, would have observed Petitioner running from the construction area to her vehicle at some distance across the parking lot while Petitioner pulled her underwear up from her knees.

21. On October 5 and 13, 2006, Petitioner remained in the passenger seat of Mr. Burton's vehicle, with nothing preventing her from leaving the vehicle, while Mr. Burton allegedly walked from the passenger's side to the driver's side of the vehicle.

22. Other inconsistencies further attenuate the testimony of Petitioner. During the final hearing, Petitioner claimed the coerced intercourse occurred on October 2 and 3, 2006. Although those dates correspond to telephone communications between Mr. Burton and Petitioner, Petitioner's sworn Answers to Respondent's First Set of Interrogatories, sworn statement in her Charge of Discrimination, and prior deposition testimony all allege that her contact with Mr. Burton was on October 5 and 13, 2006.

23. Petitioner testified in the administrative hearing that on October 5, 2006, Petitioner contacted Mr. Burton to let him

know that she would meet him for drinks. In her deposition, Petitioner testified that on the night of the first incident, Mr. Burton called her to confirm her attendance.

24. Petitioner contends that Mr. Burton called her several times on the night of the second incident, both before and after the incident. The evidence clearly demonstrates that Petitioner received no telephone calls from Mr. Burton on either October 5 or 13, 2006.

25. Petitioner testified in the final hearing that she was wearing a dress on the night of the first incident. However, in sworn Answers to Respondent's First Set of Interrogatories, Petitioner alleges that Mr. Burton "put his hand down [her] pants." The same allegation is reiterated by Petitioner in the Petition for Relief. In her deposition, Petitioner testified that Mr. Burton allegedly stuck his hand down her pants and that at the end of the first incident, Petitioner left pulling up her "pants and underwear." (Emphasis supplied) Petitioner unpersuasively attempted to explain the apparent discrepancy by testifying in the final hearing that when she uses the term "pants" she is referring to her underwear.

26. Petitioner did not avail herself of the procedures outlined in Respondent's written No Harassment policy for complaining about discrimination, sexual harassment, or the creation of a hostile work environment. Written Equal

Employment Opportunity and No Harassment policies are contained in Respondent's Employee Handbook. The written policy specifically prohibits its employees from engaging in any verbal or physically offensive conduct and expressly prohibits offensive sexual remarks, advances, or requests. Further, the written policy explicitly describes the procedures available to a victim to report violations.[5]

27. Petitioner received the Employee Handbook and reviewed the Equal Employment Opportunity and No Harassment policies at the time of her hiring. Petitioner acknowledged in writing her receipt, review, and understanding of these policies.

28. The evidence does not establish a prima facie showing that Respondent discriminated against Petitioner, harassed Petitioner, or created a hostile work environment. Respondent terminated Petitioner's employment for valid business reasons unrelated to Petitioner's gender or the alleged coerced sexual intercourse by Mr. Burton.

29. When Respondent first employed Petitioner, Petitioner enrolled in the Chrysler Dealer Connect computer training system for Level I and II courses and examinations, which was the customary practice of new employees in the service department. Technicians such as Petitioner must complete each training course and examination to reach the next level of certification.

30. Petitioner claims, in relevant part, that Respondent prevented Petitioner from talking to and learning from more experienced technicians. However, lube technicians such as Petitioner do not advance through the Chrysler training program by talking to service technicians.

31. Respondent provided Petitioner with access to the Chrysler Dealer Connect training courses through a computer area in its service department. Petitioner, like other technicians, also had access to computers in management offices when available.

32. Petitioner remained in the Chrysler Dealer Connect system up to and through February 2007. In eight months of employment, Petitioner completed Level I certification and several Level II courses. The average for Level I and II course completion and certification in the service department is three and one-half months.

33. Respondent pays lube technicians and service technicians differently. Respondent pays lube technicians an hourly rate and pays service technicians a flat rate based on work actually completed. Respondent maintains a policy that requires lube technicians who are not busy to either clean their work area or train through the Chrysler Dealer Connect system. The policy prohibits lube technicians from training by talking to service technicians in lieu of Chrysler training. Lube technicians who socialize with service technicians reduce the production rates of

service technicians and reduce the lube technicians' Chrysler training time.

34. Respondent repeatedly corrected Petitioner for spending her free time at work socializing with service technicians in their bays rather than utilizing the Chrysler Dealer Connect training system. The corrections were verbal, as are the majority of Respondent's corrective measures.

35. Chrysler requires Respondent to maintain a monthly Customer Service Index (CSI) of approximately 90 percent. A CSI is a manufacturer-distributed evaluation by consumers based on customer satisfaction with the service provided by the service department. The consequences of a low CSI is detrimental for Respondent.

36. The Quick Lube portion of Respondent's service department has significant CSI implications because of the high volume of customer contact. Petitioner worked in the Quick Lube part of the service department during her employment with Respondent.

37. Respondent repeatedly corrected Petitioner for noncompliance with Respondent's "Personal Appearance" policy. Petitioner did not keep her shirt tucked in. Petitioner did not wash her hands after working on a customer's vehicle. Petitioner did not wear a clean uniform despite having several in her possession. Petitioner did not wear her hat facing forward.

Petitioner’s unprofessional appearance and her visibility at Respondent’s Quick Lube caused her to be singled out by customers to Mr. Tom Grabbe, the fixed operations manager for Respondent and the immediate supervisor of Mr. Burton.

38. Respondent received numerous customer complaints about Petitioner’s poor quality of work and performance. In August 2007, Petitioner received three negative Customer Feedback Reports (CFRs) for poor job quality and performance. One customer waited an hour and a half for an oil change when the Quick Lube was not busy. Petitioner failed to put the oil cap back onto the engine of another customer’s vehicle. Petitioner put too much oil into the engine of another customer’s vehicle and soiled the fender of that vehicle with oil.

39. On January 25, 2007, a fourth CFR complained about Petitioner’s poor quality of work and performance. Petitioner was using her cellular telephone while rotating tires. Petitioner also dropped a tool on the customer’s vehicle and dented the body of the vehicle.

40. Petitioner received other customer complaints. Not every customer complaint regarding Petitioner’s poor work quality and performance was reduced to writing as a CFR. Some customer complaints that were made on-site to Respondent’s employees would not generate a CFR because the complaint was resolved immediately. Petitioner admitted to being reprimanded at least two times in

addition to the previously discussed CFRs for getting grease on cars. Petitioner was also instructed to wipe dirt and grease off customer vehicles after customers complained.

41. In January 2007, Mr. Grabbe transferred Petitioner from an interior lube bay to an exterior lube bay. The transfer was in response to complaints from service technicians that Petitioner's numerous attempts to socialize with them was affecting their production.

42. The transfer from an inside bay to an outside bay in the Quick Lube portion of the service department was not a demotion. Petitioner continued the duties of a lube tech. Petitioner received the same compensation she received prior to the transfer. Petitioner had the same access to the Chrysler Dealer Connect training system before and after the transfer. Respondent required male lube techs to work in both the inside and outside lube racks.

43. In January 2007, service advisors informed Mr. Grabbe that customers continued to complain about Petitioner leaving grease on their vehicles. After Petitioner received her fourth CFR in January 2007, Mr. Grabbe instructed Ms. Wisty Fisher, the customer relations manager for the Service Department, to gather a sample of the customer complaints about Petitioner and to review the CFRs with Petitioner and Mr. Burton.

44. Ms. Fisher and Mr. Burton both addressed the four CFRs with Petitioner in a meeting and informed Petitioner that she needed to “clean up her act” and be more aware and conscious of the customers’ vehicles. The four CFRs compiled by Ms. Fisher were put into Petitioner’s personnel file. Respondent continued to receive customer complaints regarding Petitioner.

45. On the evening of February 27, 2007, Mr. Grabbe received a telephone call from a customer of Respondent complaining that grease and dirt had been left on his vehicle. Mr. Grabbe reviewed the service ticket number and discovered that Petitioner had been responsible for working on the vehicle.

46. Mr. Grabbe instructed Mr. Burton to terminate Petitioner the following morning because of Petitioner’s inability to refrain from getting grease on customer vehicles. Mr. Grabbe was the sole decision-maker in terminating Petitioner’s employment with Respondent. Mr. Burton did not raise the issue of whether Respondent should terminate Petitioner’s employment.

47. On February 28, 2007, Respondent terminated Petitioner’s employment based on Mr. Grabbe’s determination that Petitioner’s continued poor work quality and performance threatened Respondent’s CSI score. Respondent did not terminate Petitioner’s employment for violation of Respondent’s “No Dating” policy. Neither Respondent nor any of its employees had any knowledge of

Petitioner dating any individual employed by Respondent until after Petitioner was terminated.

48. Mr. Burton did not have authority to hire or fire any employee of Respondent. Mr. Burton had the authority to discipline Respondent's employees subject to the prior approval of Mr. Grabbe.

49. Respondent did not create or acquiesce in a hostile work environment for Petitioner. In September 2006, Petitioner was called a "stupid idiot" by one of Respondent's employees, Mr. Richard Lawrence. Petitioner alerted Mr. Burton to the comment, and Mr. Burton reprimanded Mr. Lawrence. At the time, Petitioner lived with Mr. Lawrence. The comment by Mr. Lawrence was the only negative comment made to Petitioner prior to October 13, 2006.

50. After October 13, 2006, the only comments which Petitioner was subjected to were from co-employees and pertained to Petitioner needing to "get back to work" and "do more stuff." Petitioner never complained to any employee of Respondent regarding any alleged comments after October 13, 2006.

CONCLUSIONS OF LAW

51. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2008). The parties received adequate notice of the administrative hearing.

52. It is unlawful under the Florida Civil Right Act (FCRA) for an employer to “discharge or 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 an individual's sex. § 760.10(1)(a). The FCRA is modeled after federal law, and federal case law may be used for guidance in evaluating the merits of claims arising under Chapter 760. Castleberry v. Edward M. Chadbourne, Inc., 810 So. 2d 1028, 1030 (Fla. 1st DCA 2002).

53. Petitioner bears the initial burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. Reeves v. Sanderson Plumbing Prod., Inc., 530 U.S. 133, 142 (2000). Failure to establish a prima facie case of discrimination ends the inquiry. Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996).

54. Petitioner may employ one of three means to establish a prima facie case of employment discrimination. Petitioner may establish a prima facie case of discrimination through direct evidence of discriminatory intent, statistical analysis evidencing a pattern of discrimination, or circumstantial evidence meeting the test established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Verbraeken v. Westinghouse Elec. Corp., 881 F.2d 1041, 1045 (11th Cir. 1989).

55. Petitioner did not present either direct or statistical evidence of discrimination. The fact-finder finds the circumstantial evidence of discrimination to be less than credible and persuasive and, therefore, finds that Petitioner did not make a prima facie showing that Respondent or its employees violated the FCRA.

56. When allegations of discrimination rely only on circumstantial evidence, courts follow the burden-shifting paradigm established in McDonnell Douglas and its progeny. Gamboa v. Am. Airlines, 170 Fed. Appx. 610, 612-13 (11th Cir. 2006). If Petitioner were to have succeeded in making a prima facie showing that Respondent or its employees violated the FCRA, a rebuttable presumption of discrimination would have been created, and the burden would shift to Respondent to articulate some legitimate, non-discriminatory reason for the challenged action. Texas Dep't of Comty. Affairs v. Burdine, 450 U.S. 248, 253-54 (1981). If Respondent carries this burden of rebutting Petitioner's prima facie case, Petitioner must demonstrate that the proffered reason was not the true reason, but merely a pretext for discrimination. Id.

57. The ALJ has no authority to examine the wisdom of an employer's business decision. The ALJ may not examine the wisdom of Mr. Grabbe's decision to terminate an at-will employee

for poor performance. Davis v. Town of Lake Park, Florida, 245 F.3d 1232, 1245 (11th Cir. 2001).

58. The failure of Petitioner to prove liability renders moot the issue of damages. If liability were proven, any award of back pay would be significantly reduced by subsequent comparable employment.

59. Petitioner must make a reasonable and good-faith effort to mitigate damages by seeking substitute employment that is "substantially equivalent" to the terminated position. Weaver v. Gallardo, Inc., 922 F.2d 1515, 1527 (11th Cir. 1991). Once comparable substitute employment is found, a claimant must make "reasonable and good faith efforts" to retain the job. Senello v. Reserve Life Ins. Co., 667 F. Supp. 1498, 1513 (S.D. Fla. 1987) (internal citation omitted). Where a claimant voluntarily quits a comparable job, "back pay should be decreased by the amount [she] would have earned had [she] not quit." Id. at 1513-14.

60. It is undisputed that Petitioner obtained substitute employment as a pre-delivery inspection technician with Arrigo on March 22, 2007. The record shows that Arrigo paid Petitioner at a rate of $13.00 per hour. The record further demonstrates that Petitioner voluntarily quit the position with Arrigo. If Respondent were liable for back pay, the back pay authorized in this administrative proceeding is limited to $1,320.00.

61. Respondent did not file a motion for attorney's fees and costs prior to the entry of this Recommended Order. Nor did Respondent submit evidence of the amount and reasonableness of any claim for fees and costs.

RECOMMENDATION

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

RECOMMENDED that the Commission enter a final order finding that Respondent did not commit the factual allegations and violations alleged in the Charge of Discrimination and Petition for Relief.

DONE AND ENTERED this 13th day of November, 2008, in Tallahassee, Leon County, Florida.

DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of November, 2008.

ENDNOTES

[1/] References to subsections, sections, and chapters are to Florida Statutes (2006), unless otherwise stated.

[2/] The period for which "back pay" is authorized in Subsection 760.11(6) is limited to the period from February 28 through March 21, 2007.

[3/] The agency that processed the unemployment compensation claim found the effective date of the claim to be February 25, 2007.

[4/] Petitioner testified that the alleged coerced sexual intercourse occurred in the passenger seat of Mr. Burton's vehicle on October 13, 2006.

[5/] Respondent does not maintain any written discipline policy but, in practice, maintains a progressive discipline policy where severity of discipline is based on the frequency of offense rather than the level of offense.

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.