STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DARCELLA D. DESCHAMBAULT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-2596
	)	
TOWN OF EATONVILLE,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A formal hearing was conducted in this case on July 30 and October 8, 2008, in Orlando, Florida, before Lawrence P. Stevenson, a duly-designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Darcella D. Deschambault, pro se
611 Calibre Crest Parkway, No. 204
Altamonte Springs, Florida 32714

For Respondent: Joseph Morrell, Esquire
Town of Eatonville
1310 West Colonial Drive, Suite 28
Orlando, Florida 32804

STATEMENT OF THE ISSUE

The issue is whether Respondent committed an unlawful employment practice contrary to Section 760.10, Florida Statutes (2008),[1] by discriminating against Petitioner based on her color and/or her age.

PRELIMINARY STATEMENT

On November 5, 2007, Petitioner Darcella D. Deschambault ("Petitioner") filed a Complaint of Employment Discrimination against Respondent Town of Eatonville (the "Town"). Petitioner alleged that she was harassed and transferred to a lesser position based on her skin color and her age.

On April 21, 2008, the Florida Commission on Human Relations ("FCHR") issued a Determination: Cause, finding reasonable cause to believe that an unlawful employment practice occurred in connection with Petitioner's involuntary transfer.[2] On May 23, 2008, Petitioner filed a Petition for Relief with FCHR.

On May 28, 2008, FCHR referred the case to the Division of Administrative Hearings. The hearing was scheduled to be held on July 30, 2008. At the outset of the hearing, counsel for the Town informed the undersigned that a key witness, Mayor Anthony Grant, was unavailable to testify. The hearing proceeded with such witnesses as were available and then was continued until a date could be set for Mayor Grant's testimony. The hearing reconvened on October 8, 2008, at which time Mayor Grant's testimony was heard, as well as Petitioner's rebuttal testimony.

At the hearing, Petitioner testified on her own behalf and presented the testimony of Gina King Brooks, a friend who owns a business across the street from the Eatonville Town Hall.

Petitioner offered no exhibits. The Town presented the testimony of Cathlene Williams, the town clerk; Roger Dixon, the Town's public works director; and Mayor Anthony Grant. The Town's Exhibits 1 through 8 were admitted into evidence.

A Transcript of the first portion of the hearing was filed on August 25, 2008. A Transcript of the conclusion of the hearing was filed on October 31, 2008. At the conclusion of the final hearing, the parties were informed of the provisions of Florida Administrative Code Rule 28-106.216 regarding the filing of proposed recommended orders. Neither party filed a proposed recommended order or requested an extension of the time period for filing.

FINDINGS OF FACT

1. The Town is an employer as that term is defined in Subsection 760.02(7), Florida Statutes.

2. Petitioner was hired by the Town in November 2004 as an administrative assistant to Mayor Anthony Grant. Petitioner is a dark-skinned African-American woman who was 51 years of age at the time of the hearing.

3. Petitioner was interviewed and hired by a committee appointed by Mayor Grant. The committee included town clerk Cathlene Williams, public works director Roger Dixon, and then-chief administrative officer Dr. Ruth Barnes. Mayor Grant did

not meet Petitioner until the day she started work as his administrative assistant.

4. The mayor's administrative assistant handles correspondence, filing, appointments, and anything else the mayor requires in the day-to-day operations of his office. For more than two years, Petitioner went about her duties without incident. She never received a formal evaluation, but no testimony or documentary evidence was entered to suggest that her job performance was ever less than acceptable during this period.

5. In about August 2007, Petitioner began to notice a difference in Mayor Grant's attitude towards her. The mayor began screaming at her at the top of his lungs, cursing at her. He was relentlessly critical of her job performance, accusing her of not completing assigned tasks.

6. Petitioner conceded that she would "challenge" Mayor Grant when he was out of line or requested her to do something beyond her job description. She denied being disrespectful or confrontational, but agreed that she was not always as deferential as Mayor Grant preferred.

7. During the same time period, roughly July and August 2007, Petitioner also noticed that resumes were being faxed to the Town Hall that appeared to be for her job. She asked

Ms. Williams about the resumes, but Ms. Williams stated she knew nothing and told Petitioner to ask the mayor.

8. When Petitioner questioned the mayor about the resumes, he took her into his office and asked her to do him a favor. He asked if she would work across the street in the post office for a couple of weeks, to fill in for a post office employee who was being transferred to the finance department; as a team player, Petitioner agreed to the move.

9. While she was working as a clerk at the post office, Petitioner learned that the mayor was interviewing people for her administrative assistant position. She filed a formal complaint with the Town. For a time after that, she was forced to work half-time at the post office and half-time in the mayor's office.

10. On or about October 22, 2007, Petitioner was formally transferred from her position as administrative assistant to the mayor to the position of postal clerk in the post office. Her salary and benefits remained the same.

11. At the hearing, Mayor Grant testified that he moved Petitioner to the post office to lessen the stress of her job. Based on his conversations with Petitioner, he understood that Petitioner was having personal or family problems. He was not privy to the details of these problems, but had noticed for some time that Petitioner seemed to be under great stress. The post

office was a much less hectic environment than the mayor's office, and would be more amenable to her condition.

12. Ms. Williams, the town clerk, testified that the mayor told her that Petitioner was stressed and needed more lax duties than those she performed in the mayor's office.

13. Mr. Dixon, the public works director, testified that Petitioner had indicated to him that she was under pressure, but she did not disclose the cause of that pressure. He recalled that, toward the end of her employment with the Town, Petitioner mentioned that she felt she was being discriminated against because of her skin color.

14. Petitioner denied ever telling Mayor Grant that she was feeling stressed. She denied telling him anything about her family. Petitioner stated that the only stress she felt was caused by the disrespect and humiliation heaped upon her by Mayor Grant.

15. Petitioner's best friend, Gina King Brooks, a business owner in the Town, testified that Petitioner would come to her store in tears over her treatment by the mayor. Petitioner told Ms. Brooks that she was being transferred to the post office against her will, was being forced to train her own replacement in the mayor's office,[3] and believed that it was all because of her age and complexion.

16. Mayor Grant testified that he called Petitioner into his office and informed her of the transfer to the post office. He did not tell her that the move was temporary. He did not view the transfer from administrative assistant to postal clerk as a demotion or involving any loss of status.

17. Mayor Grant testified that an additional reason for the change was that he wanted a more qualified person as his administrative assistant. He acknowledged that Petitioner was actually more experienced than her eventual replacement, Jacqueline Cockerham.[4] However, Petitioner's personal issues were affecting her ability to meet the sensitive deadlines placed upon her in the mayor's office. The mayor needed more reliable support in his office, and Petitioner needed a less stressful work environment. Therefore, Mayor Grant believed the move would benefit everyone involved.

18. Mayor Grant denied that Petitioner's skin color or age had anything to do with her transfer to the post office.

19. Petitioner was replaced in her administrative assistant position by Ms. Cockerham, a light-skinned African-American woman born on October 17, 1961. She was 46 years of age at the time of the hearing. Documents introduced by the Town at the hearing indicate the decision to hire Ms. Cockerham was made on March 26, 2008.

20. Ms. Williams testified that she conducted the interview of Ms. Cockerham, along with a special assistant to the mayor, Kevin Bodley, who no longer works for the Town.

21. Both Ms. Williams and Mayor Grant testified that the mayor did not meet Ms. Cockerham until the day she began work in his office.

22. Petitioner testified that she knew the mayor had met Ms. Cockerham before she was hired by the Town, because Mayor Grant had instructed Petitioner to set up a meeting with Ms. Cockerham while Petitioner was still working in the mayor's office. Mayor Grant flatly denied having any knowledge of Ms. Cockerham prior to the time of her hiring. On this point, Mayor Grant's testimony, as supported by that of Ms. Williams, is credited.

23. To support her allegation that Mayor Grant preferred employees with light skin, Petitioner cited his preferential treatment of an employee named Cherone Fort. Petitioner claimed that Mayor Grant required her to make a wake-up call to Ms. Fort every morning, because Ms. Fort had problems getting to work on time. Ms. Fort was a light-skinned African-American woman.

24. Under cross-examination, Petitioner conceded that Mayor Grant and Ms. Fort were friends, and that his favoritism toward her may have had nothing to do with her skin color.

25. Petitioner claimed that there were other examples of the mayor's "color struck" favoritism toward lighter-skinned employees, but she declined to provide specifics.[5] She admitted that several dark-skinned persons worked for the Town, but countered that those persons do not work in close proximity to the mayor.

26. As to her age discrimination claim, Petitioner testified that a persistent theme of her conversations with Mayor Grant was his general desire for a younger staff, because younger people were fresher and more creative. The mayor's expressed preference was always a concern to Petitioner.

27. Petitioner testified that she felt degraded, demeaned and humiliated by the transfer to the post office. She has worked as an executive assistant for her entire professional career, including positions for the city manager of Gainesville and the head of pediatric genetics at the University of Florida. She believed herself unsuited to a clerical position in the post office, and viewed her transfer as punitive.

28. In April 2008, Petitioner was transferred from the post office to a position as assistant to the town planner. Within days of this second transfer, Petitioner resigned her position as an employee of the Town. At the time of her resignation, Petitioner was being paid $15.23 per hour.

29. Petitioner is now working for Rollins College in a position she feels is more suitable to her skills. She makes about $14.00 per hour.

30. The greater weight of the evidence establishes that there was a personality conflict between Petitioner and Mayor Grant. Neither Petitioner nor Mayor Grant was especially forthcoming regarding the details of their working relationship, especially the cause of the friction that developed in August 2007. Neither witness was entirely credible in describing the other's actions or motivations. No other witness corroborated Petitioner's claims that Mayor Grant ranted, yelled, and was "very, very nasty" in his dealings with Petitioner.[6] No other witness corroborated Mayor Grant's claim that Petitioner was under stress due to some unnamed family situation. The working relationship between Mayor Grant and Petitioner was certainly volatile, but the evidence is insufficient to permit more than speculation as to the cause of that volatility.

31. The greater weight of the evidence establishes that, due to this personality conflict, Mayor Grant wanted Petitioner transferred out of his office. He may even have used the subterfuge of a "temporary" transfer to exact Petitioner's compliance with the move. However, the purpose of this proceeding is not to pass judgment on Mayor Grant's honesty or skills as an administrator. Aside from Petitioner's suspicions, there is no solid evidence that Mayor Grant was motivated by anything other than a desire to have his office run more smoothly

and efficiently. Petitioner's assertion that the mayor's preference for lighter-skinned employees was common knowledge cannot be credited without evidentiary support.

32. Petitioner's age discrimination claim is supported only by Petitioner's recollection of conversations with Mayor Grant in which he expressed a general desire for a younger, fresher, more creative staff. Given that both Petitioner and Ms. Cockerham were experienced, middle-aged professionals, and given that Mayor Grant had nothing to do with the hiring of either employee, the five-year age difference between them does not constitute evidence of discrimination on the part of the mayor or the Town.

33. Petitioner was not discharged from employment. Though Petitioner perceived it as a demotion, the transfer to the post office was a lateral transfer within the Town's employment hierarchy. Petitioner was paid the same salary and received the same benefits she received as an administrative assistant to the mayor. A reasonably objective observer would not consider working as a clerk in a post office to be demeaning or degrading.

CONCLUSIONS OF LAW

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

35. The Florida Civil Rights Act of 1992 (the Florida Civil Rights Act or the Act), Chapter 760, Florida Statutes, prohibits discrimination in the workplace. Section 760.11(1), Florida Statutes, provides that any person aggrieved by a violation of the Act must file a complaint within 365 days of the alleged violation.

36. Subsection 760.10(1)(a), Florida Statutes, states the following:

> (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.

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

> (7) "Employer" means any person[7] 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 a person.

38. Florida courts have determined that federal case law applies to claims arising under the Florida's Civil Rights Act, and as such, the United States Supreme Court's model for employment discrimination cases set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), applies to claims arising under Section 760.10, Florida Statutes. See Paraohao v. Bankers Club, Inc., 225 F. Supp. 1353, 1361 (S.D. Fla. 2002); Florida State University v. Sondel, 685 So. 2d 923, 925 n.1 (Fla. 1st DCA 1996); Florida Department of Community Affairs v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

39. Under the McDonnell analysis, in employment discrimination cases, Petitioner has the burden of establishing by a preponderance of evidence a prima facie case of unlawful discrimination. If the prima facie case is established, the burden shifts to the Town, as the 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 evidence that Respondent's offered reasons for its adverse employment decision were pretextual. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981).

40. In order to prove a prima facie case of unlawful employment discrimination under Chapter 760, Florida Statutes, Petitioner must establish that: (1) she is a member of the protected group; (2) she was subject to adverse employment action; (3) she was qualified to do the job; and (4) her employer treated similarly-situated younger employees, or lighter-skinned employees, more favorably. See, e.g., Williams v. Vitro Services Corporation, 144 F.3d 1438, 1441 (11th Cir. 1998); McKenzie v. EAP Management Corp., 40 F. Supp. 2d 1369, 1374-75 (S.D. Fla. 1999).

41. Petitioner has failed to prove a prima facie case of unlawful employment discrimination.

42. Petitioner established that she is a member of a protected group, in that she is a dark-skinned African-American female, and she is 51 years of age. The Town did not contest that Petitioner was qualified to perform the job of administrative assistant.

43. Petitioner failed to objectively establish that she was subject to adverse employment action. In Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998), the United States Supreme Court adopted the concept of "tangible employment action," which is useful in this case:

> A tangible employment action constitutes a significant change in employment status, such as hiring, firing, failing to promote,

> reassignment with significantly different responsibilities, or a decision causing a significant change in benefits. Compare Crady v. Liberty Nat. Bank & Trust Co. of Ind., 993 F.2d 132, 136 (CA7 1993) ("A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation"), with Flaherty v. Gas Research Institute, 31 F.3d 451, 456 (CA7 1994) (a "bruised ego" is not enough); Kocsis v. Multi-Care Management, Inc., 97 F.3d 876, 887 (CA6 1996) (demotion without change in pay, benefits, duties, or prestige insufficient) and Harlston v. McDonnell Douglas Corp., 37 F.3d 379, 382 (CA8 1994) (reassignment to more inconvenient job insufficient).

44. It could be argued that Petitioner's transfer from administrative assistant to postal clerk constituted "reassignment with significantly different responsibilities," but that argument is less than persuasive in light of Ellerth and the cases cited therein, which point toward demotion, less distinguished titles, and material loss of benefits and responsibilities as criteria indicating "materially adverse change."

45. While Petitioner felt personally insulted by the transfer, the greater weight of the evidence established that the transfer was a lateral move. Petitioner was taken out of the fast-paced mayor's office and placed in the staid environs of the post office, with no change in salary or benefits. A

lateral transfer to a less exciting position does not constitute an adverse employment action for purposes of establishing unlawful employment discrimination under Chapter 760, Florida Statutes.

46. Petitioner also presented no evidence that age or skin color played any role in her on-the-job difficulties or her eventual transfer out of the mayor's office. Petitioner has not established a prima facie case of employment discrimination.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations issue a final order finding that the Town of Eatonville did not commit any unlawful employment practices and dismissing the Petition for Relief.

DONE AND ENTERED this 17th day of February, 2009, in Tallahassee, Leon County, Florida.

LAWRENCE P. STEVENSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of February, 2009.

ENDNOTES

[1/] Citations, hereinafter, shall be to Florida Statutes (2008) unless otherwise specified.

[2/] Petitioner had also alleged that there was a hostile work environment based on her sex, and inequitable treatment based on her gender related to mandatory attendance of female employees at "etiquette" training. FCHR found no cause to believe that discrimination occurred in connection with these allegations, and Petitioner did not pursue them at the hearing in this matter.

[3/] Petitioner testified that for an unspecified time, she was forced to work half-time at the post office and half-time in the mayor's office, but did not specifically state that she was brought back in order to train her replacement as the mayor's administrative assistant.

[4/] Petitioner's resume showed that she had 17 years of experience in positions similar to the one she held in Mayor Grant's office. Ms. Cockerham had 12 years of relevant experience, meaning that she was far from a novice.

[5/] The undersigned cautioned Petitioner that he could not base findings of fact on her assertions that "everybody knows" the mayor's preferences, unless she was willing to testify as to specific instances of discriminatory practices.

[6/] Ms. Brooks' testimony on this point was not based on first hand knowledge. She knew only what Petitioner told her regarding events in the mayor's office.

[7/] "Person" includes "any governmental entity or agency." § 760.02(6), Fla. Stat.

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.