STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

LINDA J. COONROD,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 08-4556
	)	
BAPTIST HOSPITAL, INC.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

A hearing was held pursuant to notice, on December 16, 2008, via video teleconferencing with locations in Pensacola and Tallahassee, Florida, before the Division of Administrative Hearings by its designated Administrative Law Judge, Barbara J. Staros.

APPEARANCES

For Petitioner: Linda J. Coonrod, pro se
4487 Audiss Road
Milton, Florida 32583

For Respondent: Russell F. Van Sickle, Esquire
Beggs & Lane, LLP
Post Office Box 12950
Pensacola, Florida 32591-2950

STATEMENT OF THE ISSUE

Whether Respondent violated the Florida Civil Rights Act of 1992, as alleged in the Employment Complaint of Discrimination filed by Petitioner on December 24, 2007.

PRELIMINARY STATEMENT

On December 24, 2007, Petitioner, Linda J. Coonrod, filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations (FCHR), which alleged that Baptist Hospital violated Section 760.10, Florida Statutes (2007), by discriminating against her on the basis of disability.

The allegations were investigated and on July 30, 2008, FCHR issued its determination of "No Cause" and Notice of Determination: No Cause.

A Petition for Relief was filed by Petitioner on August 22, 2008. FCHR transmitted the case to the Division of Administrative Hearings on or about September 17, 2008. A Notice of Hearing by video teleconference was issued by Administrative Law Judge Suzanne Hood on October 3, 2008, setting the case for formal hearing on December 16, 2008. Prior to hearing, the case was transferred to the undersigned.

At hearing, Petitioner testified on her own behalf. Respondent presented the testimony of Melanie Kuzma and Venus Jones. Respondent offered into evidence Exhibits 1 and 2, which were admitted into evidence.

A Transcript consisting of one volume was filed on December 22, 2008. Respondent timely filed a Proposed Recommended Order which has been considered in the preparation

of this Recommended Order. Petitioner did not file any post-hearing submission.

FINDINGS OF FACT

1. Petitioner, Linda J. Coonrod, was employed by Respondent, Baptist Hospital (the hospital), since approximately 1993. She became a unit coordinator in approximately 2002 and remained in that position until she was terminated from employment effective September 4, 2007.

2. Petitioner is a licensed practical nurse. Her position as a unit coordinator required her to perform such tasks as answering the phone, coordinating doctors' appointments and doctors' orders, and performing various tasks using a computer.

3. Petitioner's regular work schedule was Monday through Friday from 6:00 a.m. until 2:00 or 3:00 p.m.

4. Petitioner was scheduled to work on Thursday, August 30, 2007, and Friday, August 31, 2007. However, she did not report to work on either August 30 or 31.

5. Petitioner did not report to work as scheduled on August 30 and 31, 2007, because she had been admitted as a patient to the emergency room of the hospital on the evening of August 29, and remained a patient at the hospital on August 30 and 31, 2007. She was discharged on September 1, 2007, a Saturday.

6. Melanie Kuzma is a registered nurse and is employed by Respondent as the clinical manager of the medical floor. Ms. Kuzma was Petitioner's supervisor when Petitioner was employed at the hospital.

7. Unfortunately, Ms. Kuzma did not know why Petitioner did not report for work as scheduled on August 30 and 31. Petitioner was being treated at the hospital for chest pain and was given several medications while a patient there. She could not or did not notify Ms. Kuzma of her admission to the hospital and her resulting unavailability to report to work as scheduled. Petitioner did not ask her treating nurse, her treating doctor, or anyone else to inform Ms. Kuzma of her whereabouts. No one else contacted Ms. Kuzma as to Petitioner's whereabouts. In any event, Ms. Kuzma was not aware of why Petitioner did not report to work as scheduled.

8. While in the hospital as a patient, Petitioner was not in the same unit in which she worked as an employee. Ms. Kuzma was not a supervisor over the area of the hospital where Petitioner was a patient.

9. When Petitioner did not report to work as scheduled on August 30, 2007, Ms. Kuzma called Petitioner's home. No answering machine or voice mail was available to leave a message, so she and the unit coordinator continued to call Petitioner's home throughout the day with no success.

10. When Petitioner did not report to work as scheduled the following day, Ms. Kuzma and the unit coordinator continued to call Petitioner's home. Again, they did not reach Petitioner and had no way of leaving a message.

11. Attempting to call a person who fails to report to work as scheduled is standard practice at the hospital. A person who fails to report to work as scheduled and fails to call in is referred to by the hospital as a "no call, no show."

12. Ms. Kuzma notified Venus Jones, the Employee Relations Manager for the hospital, that Petitioner had not reported to work as scheduled and failed to call in for two days.

13. Ms. Jones informed Ms. Kuzma that when an employee had two days "no call, no show," that it would result in discharge from employment with the hospital.

14. Petitioner reported to work on Monday, September 3, 2007, which was a holiday. It was then that Petitioner told Ms. Kuzma that she had been admitted as a patient in the hospital on the evening of August 29, and remained a patient on August 30 and 31, 2007.

15. Ms. Jones has terminated the employment of other employees for "no call, no show" for a two-day period. Ms. Jones does not consider anything unique about Ms. Coonrod's situation.

16. Ms. Jones did not consider Petitioner's reason for her "no call, no show" to work to be adequate.

17. On September 11, 2007, Ms. Jones sent a letter to Petitioner informing her that her employment was terminated for failure to report to work and failure to notify her department of her absence.

18. Petitioner acknowledged that her heart problem which precipitated her hospitalization at the time in question was not a disability. This medical condition did not prevent her from working and did not limit her from doing everyday tasks such as getting dressed, driving, brushing her teeth, or other normal life activities.

19. When questioned at hearing about her medical condition, Petitioner responded, "I'm not disabled. I don't have a handicap because of it." Further, there is no evidence in the record that anyone employed by Respondent perceived Petitioner to have a disability.

CONCLUSIONS OF LAW

20. The Division of Administrative Hearings has jurisdiction over the parties and subject matter in this case. Sections 120.569 and 120.57, Florida Statutes (2008).

21. Section 760.10(1), Florida Statutes (2007), states that it is an unlawful employment practice for an employer to

discharge or otherwise discriminate against an individual on the basis of handicap.

22. Florida courts have recognized that actions for discrimination on the basis of disability are analyzed under the same framework as Americans with Disabilities Act (ADA) claims. St. Johns County School District v. O'Brien, 973 So. 2d 535, 540 (Fla. 5th DCA 2007); Chanda v. Engelhard/ICC, 234 F.3d 1219, 1221 (11th Cir. 2000).

23. The ADA defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Evans v. County of Alachua, 937 So. 2d 693, 694 n.1 (Fla. 1st DCA 2006); Chanda, supra at 1221. For purposes of the ADA, a person who has a record of having an impairment that substantially limits one or more major life activities, or a person who is regarded by the employer as having such an impairment, may also be protected. St. Johns County School District v. O'Brien, supra, 973 So. 2d at 541.

24. In order to establish a prima facie case of disability discrimination, Petitioner must show that she is disabled, is able to perform the essential elements of the job she seeks, and that she was discriminated against by the employer because of her disability. St. Johns, supra at 541; Reed v. Heil Co., 206 F.3d 1055 (11th Cir. 2000).

25. Petitioner acknowledged that she does not have a disability and that she is not limited in any life activity. Further, no evidence was presented that Respondent regarded Petitioner as having a disability. Accordingly, Petitioner does not meet the first prong of the test and, therefore, has not established a prima facie case of handicap discrimination.

26. Even if Petitioner had established a prima facie case, the burden to go forward would shift to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. St. Johns, supra at 541, citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973); and see Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991) (court discusses shifting burdens of proof in discrimination cases).

27. Respondent articulated a legitimate, non-discriminatory reason for its employment action. That is, Petitioner was discharged for her "no call, no show" on August 30 and 31, 2007.

28. Citing Cleveland v. Home Shopping Network, Inc., 369 F.3d 1189, 1193 (11th Cir. 2004), the court in St. Johns explained that in handicap or disability discrimination cases:

> Once the claimant demonstrates a prima facie case, and the employer responds with a non-discriminatory reason, the inference of discrimination is eliminated, and the McDonnell Douglas framework disappears.

> The plaintiff bears the ultimate burden of proving that the defendant intentionally discriminated against her because of her disability.

973 So. 2d 535 at 543.

34. It is beyond the scope of this case for the undersigned to determine whether Respondent's decision to terminate Petitioner's employment, after learning of the reason why Petitioner did not report to work or call in, was overly harsh. What is relevant to this analysis is that Respondent's actions were not based upon unlawful discrimination. "The employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." Department of Corrections v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991), quoting from Nix v. WLCY Radio/Rahall Communications, 738 F. 2d 1187 (11th Cir. 1984).

RECOMMENDATION

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

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing the Employment Charge of Discrimination and Petition for Relief.

DONE AND ENTERED this 13th day of February, 2009, in Tallahassee, Leon County, Florida.

BARBARA J. STAROS
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 February, 2009.

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.