

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

STEPHANIE PEARCE, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 11-2452  
 )  
 OSCEOLA REGIONAL MEDICAL )  
 CENTER, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

A final administrative hearing was held in this case on March 15, 2012, in Orlando, Florida, before J. Lawrence Johnston, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jerry Girley, Esquire  
The Girley Law Firm, P.A.  
125 East Marks Street  
Orlando, Florida 32803

For Respondent: Thomas M. Findley, Esquire  
Messer, Caparello and Self, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent violated section 760.10(7), Florida Statutes (2011), by discriminating against Petitioner, who is white, because Petitioner opposed Respondent's discrimination against other employees because of

race and color, in violation of section 760.10(1)(a), and by discriminating against Petitioner because of a handicap in violation of section 760.10(1)(a).

PRELIMINARY STATEMENT

Petitioner filed with the Florida Commission on Human Relations (FCHR) a complaint alleging that Respondent discriminated against Petitioner for opposing discrimination against minority employees and for having a handicap or disability (fibromyalgia and "issues" with the discs in her back). FCHR investigated and determined that there was "no cause" to believe that illegal discrimination had occurred. Petitioner then filed a Petition for Relief, which FCHR referred to the Division of Administrative Hearings.

At the hearing, Petitioner testified and had Petitioner's Exhibit 1 admitted in evidence. Respondent called four witnesses: Charlene Roch; Karen Franco; Sara Jane Forsyth; and Silvia Lollis. Respondent also had Respondent's Exhibits 1 through 22, C8, and S7 admitted in evidence.

Respondent ordered a Transcript, which was filed on April 2, 2012. Respondent timely filed a Proposed Recommended Order, which has been considered. Petitioner did not file a proposed recommended order.

## FINDINGS OF FACT

1. Petitioner is a registered nurse. She was hired by Respondent in mid-July 2009, participated in an orientation program for approximately a month, and began work as a charge nurse on the night shift of the cardiovascular step-down unit in late August. The cardiovascular step-down unit primarily cares for patients who are recuperating from cardiovascular surgeries and procedures.

2. In early September, Petitioner was counseled for two unscheduled absences and for twice leaving her shift early on account of illness.

3. On November 27, 2009, Petitioner left her shift due to illness without notifying her supervisor. Respondent began taking steps to terminate Petitioner's employment. Respondent told Petitioner not to report for her next shift but to attend a meeting with the director of human resources, the chief nursing officer, and the nurse director. After the meeting, Respondent decided to terminate Petitioner's employment.

4. After the meeting, Petitioner hand-wrote a 12-page letter defending her actions on November 27 and her performance on the job in general. Several days later, she hand-wrote another similar letter, this one 36 pages long. In neither of these letters, or at any time up until then, did Petitioner claim that she was being retaliated against for opposing discrimination

against minority employees or that she was being discriminated against because of a handicap or disability. Instead, she excused her actions on November 27 and blamed several other employees of Respondent for making her actions and job performance in general look worse than they actually were.

5. One of Petitioner's main targets of blame in these letters was Karen Franco. Franco is a Filipino registered nurse who sometimes worked as the charge nurse on her shift. Petitioner claims that she received Franco's agreement to cover for Petitioner as charge nurse on November 27, in addition to caring for the patients assigned to Franco on the shift, and did extensive preparation of a charge report for Franco to update and deliver at the end of the shift. Petitioner says she told Franco and almost everyone else on the shift that she was leaving early and placing Franco in charge. Petitioner says she forgot to tell her supervisor and called Franco from her cell phone in the parking lot to ask her to notify the supervisor. Petitioner says Franco agreed to do so.

6. Franco contradicted practically all of Petitioner's version of events. According to Franco, she refused to be placed in charge in addition to caring for her patients, did not know when Petitioner left the building, did not know Petitioner was gone until she received a telephone call after Petitioner already

had left the building, and did not agree to advise the supervisor for Petitioner.

7. Another target of Petitioner's blame in these letters was Dena Vegter, the nurse manager for Petitioner's night shift. In the first letter, Petitioner's main complaint was that Vegter reacted with hostility when Petitioner made suggestions to improve the operation of the night shift unit. The letter said nothing about Vegter supposedly discriminating against minority nurses, about Petitioner opposing this practice, or about Vegter or anyone else retaliating against Petitioner for her opposition.

8. In the second letter, Petitioner modified her complaint against Vegter, alleging that Vegter became hostile when Petitioner refused to cooperate with a plan to "crush" and drive off a nurse named Choissette, whom Vegter perceived to be a poor nurse and a liability to the unit. She also alleged in the second letter that Vegter wanted Petitioner to cooperate in getting rid of a nurse with a hearing impairment and that Petitioner herself was fired on account of medical issues.

9. Before writing these letters, Petitioner never complained to anyone at the hospital that Vegter was targeting minority nurses or nurses with disabilities, not even to Sandria George, Vegter's immediate supervisor, who is black and participated in firing Petitioner.

10. Besides George, Respondent had numerous minority nurses and other staff. Petitioner did not prove that Vegter or anyone else employed by Respondent was discriminating against minorities. When Vegter moved from the step-down unit to the cardiovascular unit, several minorities requested to be transferred with her, including several individuals Petitioner claims were Vegter's "targets."

11. During and after Petitioner's employment by Respondent, Respondent fired some minority nurses, some minority nurses resigned, and some non-minority nurses were hired. However, during the same time period, some non-minority nurses were fired or resigned, and some minority nurses were hired.

12. As for the alleged discrimination against Petitioner because of her handicap, during the time she worked at the hospital, Petitioner never claimed to have a handicap or disability. She alleged in her complaint of discrimination filed in November 2010 that she had fibromyalgia and "issues" with the discs in her back that prevented her from working four days in a row. However, Petitioner did not prove that she had a medical condition that limited her in any major life activity. In addition, at Petitioner's request, she never was scheduled to work more than three days in a row and usually was scheduled for no more than two days in a row.

13. Petitioner now claims that she was demoted from charge nurse because of her inability to work four days in a row and in retaliation for opposing discrimination against minority nurses. However, the evidence was that there was no actual charge nurse position at the time Petitioner worked for Respondent. Rather, the nurse manager would assign one of the nurses on duty to be in charge of the shift. The charge nurse would receive a small additional amount of pay, but it was not a permanent job classification. In any event, Petitioner clearly was not demoted since she was assigned to be in charge on her last night on the job before her termination.

14. After filing her complaint of discrimination, Petitioner again modified her story to allege for the first time what she described as an elaborate plot by her and Vegter. Petitioner said Vegter was an old and dear friend of Petitioner who agreed to have Petitioner hired by Vegter's immediate supervisor, Sandria George, while concealing from George her close friendship with Petitioner. According to Petitioner, after George hired her, the plan was for Petitioner to improve the operation of the night shift and share credit with Vegter, to the benefit of both of them.

15. Vegter persuasively contradicted most of Petitioner's allegations. She testified that she had no close friendship with Petitioner, but an rather an old friendship based on prior

employment together. She also testified that there was no plot to dupe George and the hospital. To the contrary, Vegter testified that she openly acknowledged to George that she knew Petitioner and requested that George interview Petitioner and make an independent decision whether to hire her. She also denied targeting minority nurses or nurses with handicaps or disabilities.

16. Respondent had legitimate, non-discriminatory reasons for all employment actions taken with respect to Petitioner. Petitioner failed to prove that Respondent's reasons were pretexts for actual retaliation against Petitioner for opposing illegal discrimination or for actual discrimination against Petitioner based on handicap. There was no persuasive evidence that Respondent discriminates against nurses or other employees because of race or handicap (disability). Petitioner's testimony regarding such discrimination is rejected as not credible.

17. In December 2009, Petitioner both threatened Respondent and begged Respondent for her children's sake to allow her to resign with severance pay instead of being terminated. Respondent agreed so that Petitioner would be able to collect unemployment and be reemployed more easily. In return, Petitioner agreed not to bring an action such as this one.



### CONCLUSIONS OF LAW

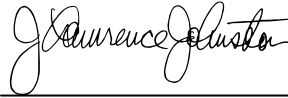
18. Section 760.10(1)(a), Florida Statutes, makes it unlawful for an employer to "discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status." Section 760.10(7) makes it unlawful for an employer to discriminate against someone who has opposed any such unlawful practice.

19. Petitioner has the burden to prove the alleged violations of this statute. Petitioner did not meet her burden of proof. Respondent had legitimate, non-discriminatory reasons for all employment actions taken with respect to Petitioner, and Petitioner did not prove that Respondent's reasons were pretexts for actual statutory violations. The Petition for Relief should be dismissed. See Fla. Admin. Code R. 60Y-5.008(5).

### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that FCHR enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 15th day of May, 2012, in Tallahassee,  
Leon County, Florida.



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J. LAWRENCE JOHNSTON  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of May, 2012.

COPIES FURNISHED:

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

Thomas M. Findley, Esquire  
Messer, Caparello and Self, P.A.  
2618 Centennial Place  
Tallahassee, Florida 32308

Jerry Girley, Esquire  
The Girley Law Firm, P.A.  
125 East Marks Street  
Orlando, Florida 32803

Lawrence Kranert, 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.