STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GEORGIE BREVILLE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-3130
	)	
FLORIDA MANAGEMENT SOLUTIONS, INC.,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on August 30, 2011, in Gainesville, Florida, before E. Gary Early, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Georgie Breville, pro se
2678 SW 14th Drive
Gainesville, Florida 32608

For Respondent: Carla D. Franklin, Esquire
204 West University Avenue, Suite 3
Gainesville, Florida 32601

STATEMENT OF THE ISSUE

Whether the Petitioner demonstrated that she was employed by Respondent, the "employer" identified in her Petition for Relief, thus allowing her to proceed with her claim that she was the subject of an unlawful employment practice by Respondent.

PRELIMINARY STATEMENT

This case was initiated through the issuance of a "Notice of Determination: No Cause" by the Florida Commission on Human Relations, by which the Commission determined that Respondent was an "employer" as defined in the Florida Civil Rights Act of 1992, but that no reasonable cause existed to believe that Respondent engaged in an unlawful employment practice involving Petitioner. Petitioner filed a Petition for Relief, which was referred to the Division of Administrative Hearings (Division) for disposition, and assigned to the undersigned. The final hearing was scheduled for August 30, 2011, in Gainesville, Florida. On August 20, 2011, Respondent filed a pleading entitled "Motion to Dismiss Petition, or, in the Alternative, to Limit the Hearing to the Issue of Whether an Employee-Employer Relationship Existed Between the Parties." The Motion was served by U.S. Mail, thus leaving insufficient time for a response prior to the hearing. Given the evidentiary nature of the issue, the hearing proceeded as scheduled.

At the hearing, the Motion was taken up in order to determine the fundamental issue of whether Respondent was Petitioner's employer, or whether Respondent had any degree of authority or control over the terms and conditions of Petitioner's employment, over the person alleged to have engaged in discriminatory conduct, or over the alleged unlawful

employment practice, i.e., termination of Petitioner from employment. The failure to prove the existence of an employee-employer relationship would constitute a failure to prove the most basic jurisdictional element of an unlawful employment practice complaint, and would obviate the necessity of proceeding with any further evidence of discriminatory acts.

Petitioner testified on her own behalf, and offered Petitioner's Exhibits 1 through 3, each of which was admitted into evidence. Respondent presented the testimony of Angela Pate, Respondent's Executive Director, during all time periods pertinent to this proceeding. Respondent offered Respondent's Exhibits 1 through 3, each of which was admitted into evidence.

FINDINGS OF FACT

1. Workforce Florida, Inc. (WFI), is a not-for-profit corporation created by the Legislature as the policy organization for the state of Florida charged with implementing the federal Workforce Investment Act of 1998, Pub. L. No. 105-220. WFI was administratively housed within the Agency for Workforce Innovation (AWI) but was not subject to its control, supervision, or direction.[1/] WFI provides oversight and policy direction to ensure the proper administration of a number of job counseling, placement, and training programs funded by the federal government.

2. The Alachua-Bradford Regional Workforce Board d/b/a FloridaWorks (Board) is one of 24 regional workforce boards established by law to provide ongoing oversight related to administrative costs, duplicated services, career counseling, economic development, equal access, compliance and accountability, and performance outcomes, and to oversee the "one-stop" delivery system in its local area. The regional boards are chartered by WFI upon a determination that the membership and workforce development plans are consistent with state law and the overall state workforce development strategy. The members of the Board are appointed by the county commissions of Alachua and Bradford Counties. The Board itself has no employees.

3. "One-stop" services include a variety of services related to employment, career counseling, education, skills training, and support services.

4. Certain federally-funded services provided at one-stop service centers, including Wagner-Peyser Act labor exchange services, are required to be administered by state employees, rather than local or contracted providers. For those services, AWI places AWI employees at the one-stop centers.

5. The Florida Institute for Workforce Innovation (FIWI) is the Board's contracted one-stop delivery system operator. Employment services offered in Alachua and Bradford Counties are

provided through the one-stop delivery system, under the guidance of FIWI. FIWI is the "hands on" service provider responsible for the day-to-day operation of the service programs.

6. Respondent is the Board's contracted administrative entity responsible for program compliance, quality assurance, and monitoring. Respondent provides administrative services to the Board itself, and is responsible for the Board's fiscal activities and disbursements to contracted providers. Respondent does not perform any human relations or personnel evaluations, supervision, or oversight for the Board or for any entity operating from the one-stop center.

7. In addition to responsibilities prescribed by statute, the descriptions and delineations of authority under which AWI and the Board operate are established in the "Master Cooperative Agreement Between FloridaWorks and the Agency for Workforce Innovation (AWI)." The Master Agreement "sets forth the terms and conditions that FloridaWorks . . . agrees to [for] the receipt of federal workforce funds from [AWI]."

8. Exhibit "A" to the Master Agreement consists of a "Memorandum of Understanding between FloridaWorks and the Agency for Workforce Innovation for the Delivery of Wagner-Peyser Funded Employment Services and Other Workforce Program Services Provided by the Agency." The purpose of the Memorandum of Understanding is to "establish an organizational framework to integrate the

delivery of Agency program services into the One-Stop delivery system established by the Board." The Memorandum of Understanding further provides that "[a]lthough the One-Stop system operator or managing partner shall have overall authority for directing agency staff assigned to One-Stop centers, personnel matters, such as hiring and discipline, shall remain under the ultimate authority of the agency." Finally, the Memorandum of Understanding provides that:

> AWI staff assigned to the local One-Stop centers shall deliver [AWI] program services listed in Section I of this Agreement. The delivery of these services shall be done in compliance with all applicable Federal and State laws, including equal opportunity and non-discrimination laws. [AWI] shall be responsible for funding, directing, controlling, and delivering the workforce services provided by the AWI staff consistent with Federal guidelines and consistent with the direction provided by the Board.

9. The organizational chart in the Memorandum of Understanding identified Petitioner as an AWI staff member assigned to deliver AWI program services.

10. Petitioner was employed by FIWI from 2001 to 2002. In 2002, Petitioner accepted employment with AWI. As an employee of AWI, Petitioner received pay and benefits as an employee of the state of Florida, including group health insurance and contributions to the State Retirement System.

11. Petitioner performed her job duties at the Alachua-Bradford one-stop service center as an AWI employee.

12. The alleged discriminatory acts were directed at Petitioner by Ms. Betty Holmes, Petitioner's supervisor and an employee of AWI.[2/]

13. The adverse employment practice that resulted from the alleged discriminatory acts, i.e. the termination of Petitioner, was accomplished by a termination letter issued by AWI, and signed by Tom Clendenning, AWI's Assistant Director.

14. Respondent did not hire Petitioner. Respondent did not directly supervise Petitioner. Respondent did not evaluate Petitioner's performance as an employee. Respondent did not have decision-making authority as to where Petitioner physically worked. Respondent was not responsible for Petitioner's pay or benefits. Respondent was not involved in the decision to eliminate Petitioner's position or otherwise terminate Petitioner from employment. In short, Respondent exhibited no indicia of being Petitioner's employer.

15. Ms. Pate was not advised of any discriminatory acts by Ms. Holmes or otherwise. Although Ms. Pate indicated that she had an open door policy, attended regular meetings of one-stop center personnel, and frequently walked the corridors of the one-stop center building, none of which Petitioner disputed, Petitioner indicated that she would not intrude on a person

without a specific reason and an appointment. Petitioner did not make any such appointment with Ms. Pate, nor does the record reveal that information regarding Ms. Holmes' alleged discriminatory acts was ever conveyed to any employee of Respondent.

CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2010).

17. Unless specifically stated otherwise herein, all references to the Florida Statutes will be to the 2010 codification which was that in effect when the unlawful employment practice that forms the basis for Petitioner's claim occurred.

18. Section 760.10(1), Florida Statutes, provides that:

> (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.

19. The term "employer" is defined in section 760.02(7) as "any person 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." Though not explicit in the statute, the "employer" must have an employee-employer relationship with the person alleging discrimination in order to be liable for an unlawful employment practice under section 760.10(1).

20. Section 20.50(1), Florida Statutes, provides that:

> (1) The Agency for Workforce Innovation shall ensure that the state appropriately administers federal and state workforce funding by administering plans and policies of Workforce Florida, Inc., under contract with Workforce Florida, Inc. The operating budget and midyear amendments thereto must be part of such contract.
>
> (a) All program and fiscal instructions to regional workforce boards shall emanate from the agency pursuant to plans and policies of Workforce Florida, Inc. Workforce Florida, Inc. shall be responsible for all policy directions to the regional boards.
>
> (b) Unless otherwise provided by agreement with Workforce Florida, Inc., administrative and personnel policies of the Agency for Workforce Innovation shall apply.

21. Section 445.004(2), Florida Statutes, provides that:

> (2) Workforce Florida, Inc., is the principal workforce policy organization for the state. The purpose of Workforce Florida, Inc. is to design and implement strategies that help Floridians enter, remain in, and advance in the workplace, becoming more highly skilled and successful, benefiting these Floridians, Florida businesses, and the

> entire state, and to assist in developing the state's business climate.

22. Section 445.004(11) provides that:

> (11) The workforce development system shall use a charter-process approach aimed at encouraging local design and control of service delivery and targeted activities. Workforce Florida, Inc. shall be responsible for granting charters to regional workforce boards that have a membership consistent with the requirements of federal and state law and that have developed a plan consistent with the state's workforce development strategy.

23. Section 445.007(1) provides, in pertinent part, that "[o]ne regional workforce board shall be appointed in each designated service delivery area and shall serve as the local workforce investment board pursuant to Pub. L. No. 105-220." Section 445.007(4) provides, in pertinent part, that:

> In addition to the duties and functions specified by Workforce Florida, Inc., and by the interlocal agreement approved by the local county or city governing bodies, the regional workforce board shall have the following responsibilities:
> (a) Develop, submit, ratify, or amend the local plan pursuant to Pub. L. No. 105-220, Title I, s. 118, and the provisions of this act.
>
> (b) Conclude agreements necessary to designate the fiscal agent and administrative entity. . . .
>
> (c) Complete assurances required for the charter process of Workforce Florida, Inc., and provide ongoing oversight related to administrative costs, duplicated services, career counseling, economic development,

> equal access, compliance and accountability, and performance outcomes.
> (d) Oversee the one-stop delivery system in its local area.

24. Section 445.009(3) provides, in pertinent part, that:

> Beginning October 1, 2000, regional workforce boards shall enter into a memorandum of understanding with the Agency for Workforce Innovation for the delivery of employment services authorized by the federal Wagner-Peyser Act. This memorandum of understanding must be performance based.
>
> * * *
>
> (b) Employment services must be provided through the one-stop delivery system, under the guidance of one-stop delivery system operators. One-stop delivery system operators shall have overall authority for directing the staff of the workforce system. Personnel matters shall remain under the ultimate authority of the Agency for Workforce Innovation. However, the one-stop delivery system operator shall submit to the agency information concerning the job performance of agency employees who deliver employment services. The agency shall consider any such information submitted by the one-stop delivery system operator in conducting performance appraisals of the employees.

25. Chapter 760 is analogous to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. Cases interpreting Title VII are, therefore, applicable in construing and applying chapter 760. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991); Sch. Bd. of Leon Co. v. Hargis, 400 So. 2d 103, 108 (Fla. 1st DCA 1981); Harper v.

Blockbuster Entertainment Corp., 139 F.3d 1385, 1387 (11th Cir. 1998), cert. denied, 525 U.S. 1000, 119 S. Ct. 509, 142 L.Ed.2d 422 (1998).

26. In cases of discrimination brought under the Florida Human Rights Act of 1977, sections 760.01-760.11, a Petitioner has the burden of proving by a preponderance of the evidence that Respondent committed an unlawful employment practice, a burden that is ultimately retained by the Petitioner throughout the proceeding. Bryant, 586 So. 2d at 1209 (citing McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973)).

27. The United States Supreme Court has established the requirements for proving a prima facie case of discrimination, which can vary depending on differing factual situations. McDonnell-Douglas Corp. v. Green, 411 U.S. at 802 n. 13; see also, Schwartz v. State of Florida, 494 F. Supp. 574, 583 (N.D. Fla. 1980). In short, those requirements are:

> [t]hat "a Title VII plaintiff carries the initial burden of showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were "based on a discriminatory criterion illegal under the Act."

Furnco Construction Corp. v. Waters, 438 U.S. 567, 576 (1977), citing Teamsters v. United States, 431 U.S. 324, 358 (1977).

28. If a Petitioner proves a prima facie case of discrimination, the burden shifts to the employer "to articulate

some legitimate nondiscriminatory reason" for the adverse employment action. McDonnell-Douglas Corp. v. Green, 411 U.S. at 802.

29. Once the employer succeeds in carrying its burden of producing a nondiscriminatory reason for the challenged action, the employee must show that the employer's reason is pretextual. The final and ultimate burden of persuading the trier of fact, by a preponderance of the evidence, remains at all times with the employee. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 507-508 (1993); Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 257 (1981).

30. In this case, Petitioner failed to prove that Respondent was her employer, thus failing in her initial prima facie case of discrimination. Respondent did not discharge Respondent, or otherwise discriminate against Respondent with respect to compensation, terms, conditions, or privileges of employment, because the evidence is uncontroverted that Respondent was not in an employee-employer relationship with Petitioner.

31. Petitioner simply filed her complaint against the wrong entity. Although Petitioner worked at the Alachua-Bradford one-stop service center, and Respondent was the administrative entity for that center, Respondent was not Petitioner's employer, and had no duties or responsibilities towards Petitioner that would

place it in an employer relationship with Petitioner. Rather, Petitioner was an employee of AWI, as was Betty Holmes, Petitioner's supervisor and the source of the alleged discriminatory acts.

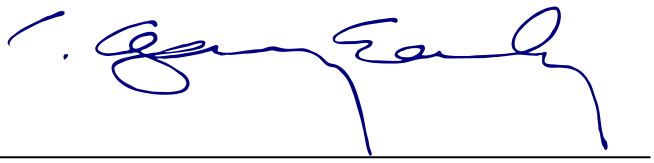
32. The hearing in this case was limited to a determination of the employee-employer relationship as requested in Respondent's Motion to Dismiss Petition, or, in the alternative, to Limit the Hearing to the Issue of Whether an Employee-Employer Relationship Existed Between the Parties. Thus, that motion is granted. Based upon the limitation on the scope of the proceeding, the issue of whether Petitioner was discriminated against or was the subject of an unlawful employment practice by AWI was not reached. Thus, this order should not be construed as having any stare decisis effect in any subsequent proceeding involving Petitioner's actual employer.

RECOMMENDATION

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

RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing Petitioner's Petition for Relief.

DONE AND ENTERED this 14th day of September, 2011, in Tallahassee, Leon County, Florida.



E. GARY EARLY
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of September, 2011.

[1/] The AWI was subject to extensive governmental reorganization in 2011, which resulted in its dissolution, with its duties and responsibilities transferred to the Department of Economic Opportunity. All acts material to this proceeding occurred while AWI was still an agency of the state of Florida.

[2/] Although the organizational chart received in evidence shows Petitioner's supervisor to be Arelis Rosario, an employee of FIWI, both Petitioner and Ms. Pate considered Ms. Holmes to be Petitioner's direct supervisor.

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 of Dismissal. Any exceptions to this Recommended Order of Dismissal should be filed with the agency that will issue the Final Order in this case.