STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SANDRA JOHNSON,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 11-6467
	)	
APALACHEE MENTAL HEALTH,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

On February 16, 2012, a duly-noticed hearing was held in Tallahassee, Florida, before F. Scott Boyd, an Administrative Law Judge assigned by the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Sandra Johnson, pro se
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Crawfordville, Florida 32327

For Respondent: Chris Rush, Esquire
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STATEMENT OF THE ISSUE

The issue is whether the Respondent committed an unlawful employment practice under section 760.10, Florida Statutes

(2011), by discriminating against Petitioner on the basis of race or sex, and if so, what remedy should be ordered.

PRELIMINARY STATEMENT

On August 15, 2011, Petitioner filed a complaint with the Florida Human Relations Commission (Commission), alleging that Apalachee Mental Health (Apalachee Center or Apalachee) had discriminated against her based upon her race and sex. On December 8, 2011, the Commission issued a Notice of Determination of No Cause, and on December 20, 2011, Petitioner filed a Petition for Relief. On December 21, 2011, the case was referred to the Division of Administrative Hearings for assignment of an administrative law judge.

The case was noticed for hearing on February 16, 2012, in Tallahassee, Florida. Petitioner testified and offered two exhibits. Petitioner's Exhibit 1, a composite of rebuttal statements prepared by Petitioner, had not been provided to Respondent as directed by the Order of Pre-hearing Instructions and was not admitted, but Petitioner was permitted to testify to the facts referenced within the statements. Petitioner's Exhibit 2 was admitted without objection. Respondent presented the testimony of seven witnesses and offered eleven exhibits. Respondent's Exhibits A through G, K through M, and Q were admitted, with the caveat that Exhibit D, a written statement of

Mr. Alphonzo Robinson, contained hearsay that could not alone support a finding of fact.

The one-volume Transcript of the proceedings was filed with the Division of Administrative Hearings on March 15, 2012. Both parties timely submitted Proposed Recommended Orders, which were considered.

FINDINGS OF FACT

1. Apalachee Center is a not-for-profit health center providing mental health and substance abuse services in the Big Bend region of North Florida, which employs over 15 people. One of its facilities is a 16-bed mental health residential facility in Tallahassee, Florida, primarily housing men who suffer from severe mental illness.

2. Ms. Sandra Johnson, an African-American woman and Petitioner in this case, has been a Licensed Practical Nurse (LPN) since 1984. She began working for Respondent in 2009 as the only LPN on duty on "B Shift Days" from 7:00 a.m. to 7:00 p.m. at the Forensic Residential Program. Another LPN, Ana Degg, was a white woman who worked on the "A" shift, and was the lead forensic nurse and Petitioner's acting supervisor, though she was not actually present during the shift Petitioner worked.

3. Most of the residents in the facility in which Petitioner worked have been found incompetent by the criminal justice system and have been sent to the program by court order.

Petitioner maintained their medications, monitored their health, and helped to ensure that they did not leave the facility.

4. At the time she was hired, Petitioner was made aware of Apalachee Center's policies prohibiting discrimination and had been advised to immediately report any suspected discrimination to the Human Resources Department.

5. Ms. Candy Landry, the Human Resources Officer at Apalachee Center, is proud of Apalachee's diversity record. Apalachee employs more African-Americans than whites.

6. Ms. Degg had some conflicts with Petitioner immediately after they began working together, but later came to the conclusion that it was just a reflection of Petitioner's personality. Ms. Degg said that she still continued to receive some staff complaints, mostly about Petitioner's demeanor. She testified that Petitioner "came off as gruff." Ms. Degg was very credible.

7. Ms. Degg consulted Ms. Jane Magnan, Registered Nurse (RN) who was the Director of Nursing, and Ms. Jeanne Pope, the Director of Residential Services, as to the best way to handle the situation. Ms. Magnan and Ms. Pope each testified that they advised Ms. Degg to start with basic lines of communication and mentoring on a one-to-one level to see if the problem could be handled before anything went to the written stage.

8. Ms. Degg provided some handouts on interpersonal relations and "soft skills" to Petitioner and her unit and tried to coach Petitioner on how to be a bit more professional in her interactions. Ms. Degg told Petitioner that staff was saying that Petitioner was rude and she asked her to talk to people a little differently. She said Petitioner responded by saying that that was "just the way she was." Petitioner's conduct did not change and complaints continued.

9. Ms. Magnan, who had hired Petitioner, believed that Ms. Degg found it difficult to discipline Petitioner. Ms. Magnan also believed there was some resistance from Petitioner in acknowledging Ms. Degg, a fellow LPN, as Petitioner's supervisor.

10. Petitioner had no "write-ups" from the time of her employment at Apalachee in August or September of 2009 until January of 2011.

11. On January 21, 2011, Petitioner was presented a memorandum dated January 7, 2011, to document a Written Supervisory Session on two incidents. First, the memorandum stated that Petitioner had been counseled for failure to give a report to the oncoming nurse who had arrived late for her shift. Second, it stated that Petitioner had been counseled for being rude and unprofessional in a telephone conversation with the

Dietary Supervisor. The memorandum was signed by Petitioner and by Ms. Degg.

12. Ms. Degg testified that in response Petitioner had denied that she had failed to give a report to the oncoming nurse, but that the other staff people had corroborated what the oncoming shift nurse had told her, so she believed it had happened.

13. At hearing, Petitioner continued to deny that she had failed to give a report to the oncoming nurse and denied that she had been rude or unprofessional in her conversation with the Dietary Supervisor.

14. In the months following the January "write-up," Ms. Degg did not notice any change in Petitioner's demeanor and continued to receive complaints. She noted that she did not personally consider Petitioner's behavior to be rude, but others did, and she could understand why.

15. On May 18, 2011, Petitioner was presented a memorandum dated May 10, 2011, to document another Written Supervisory Session. The memorandum indicated that Petitioner had been unprofessional in communications to a Mental Health Assistant (MHA) whom Petitioner supervised. It stated that Petitioner had used phrases such as "shut up" and "get out of my face" to the MHA and that Petitioner had previously been counseled regarding this issue. The Memorandum was signed by Petitioner and by

Ms. Magnan and Ms. Pope. Ms. Magnan and Ms. Pope offered Petitioner training and assistance. On the memorandum, Petitioner wrote that she did not agree with the statement and that she was willing to learn.

16. On May 27, 2011, Petitioner's Employee Performance Evaluation for the period April 23, 2010, through May 15, 2011, was presented to Petitioner. It indicated "Below Performance Expectations" or "Needs Improvement" in several areas, including supervision of MHAs, training of staff, unit management, acceptance of responsibility, and attitude. Hand-written notes by Ms. Magnan and Ms. Dianne VanZorge, the RN supervising the forensic unit, commented on difficulties in communicating with staff, compromised staff morale, and lack of leadership. The report noted that various employees had brought Petitioner's attitude to the attention of the Program Director and Director of Nursing. The evaluation was signed by Petitioner, Ms. Magnan, and Melany Kearley, the Chief Operations Officer.

17. In conjunction with this unfavorable Employee Performance Evaluation, and in accordance with Apalachee policy, Petitioner was placed on a Corrective Action Plan, a 60-day period of Conditional Probationary Status. The memorandum advising Petitioner of this action explained that Petitioner should immediately take action to maintain a friendly and productive work atmosphere, demonstrate respect and courtesy

towards clients and co-workers, and demonstrate initiatives to improve Petitioner's job and the program. The memorandum advised that any further non-compliance could result in disciplinary action or termination of employment.

18. Petitioner's supervisor was changed to Ms. VanZorge. Petitioner knew Ms. VanZorge because they had worked together many years earlier. Petitioner was advised in the Corrective Action Plan that Ms. VanZorge would meet with her on a weekly basis to provide any needed assistance.

19. At the time Petitioner was placed on probation, Ms. Magnan testified that Petitioner became angry. Petitioner asked if they wanted her to quit. Ms. Magnan encouraged Petitioner not to quit, telling her that that "we are going to work this out." Ms. Magnan and Ms. VanZorge testified that they made sure that Petitioner acknowledged that resources and coaching were available to help her.

20. Petitioner testified that leadership, nursing management, and supervisory resources were not subsequently provided to her as promised.

21. On June 29, 2011, Mr. Alphonzo Robinson, an African-American MHA who worked under Petitioner's supervision, submitted complaints about Petitioner to Ms. VanZorge and Ms. Pope. Ms. VanZorge and Ms. Pope then met with Petitioner regarding these complaints.

22. A memorandum documenting the meeting with Petitioner, prepared the same day, states that an MHA reported that Petitioner had eaten a resident's lunch. The MHA alleged that the resident had gone out on a morning community pass, asking staff to save his lunch for him until he returned. The memorandum states that when the resident returned, the MHA went to get his lunch for him, only to find Petitioner eating the last of the resident's food in the staff kitchen. The MHA indicated that Petitioner denied eating the resident's lunch, saying that it had been thrown away, and directed the MHA to give the resident another patient's meal instead. Only an empty tray without food was found in the garbage. The MHA noted that another patient's lunch could not be substituted because the first resident was diabetic and had special dietary needs.

23. The memorandum also indicates that several other complaints were made against Petitioner by the MHA and discussed with her at the meeting. It was alleged that the Petitioner was continually rude to staff, asked residents to run errands for her, left the commode dirty with urine and feces, and used her hands to get ice from the ice machine. The memorandum noted that at the meeting, after an initial denial, Petitioner finally had admitted that she had eaten the resident's lunch. It also noted that Petitioner had admitted that "a while back" she had asked residents to get Cokes for her, but that now she drank

water. The memorandum concluded by noting that the expectations on Petitioner's Corrective Action Plan had been reviewed, and that it was further discussed that Petitioner was not to eat any resident meals or ask them to perform errands. Petitioner had been instructed to buy a meal ticket or bring her own, clean up after herself, and adhere to infection control policy and universal precautions.

24. At hearing, Ms. VanZorge testified that during the meeting Petitioner admitted having eaten the resident's lunch, but stated she had not done that for a long while prior to that. Ms. VanZorge stated that Petitioner also admitted she had gotten ice with her hands once.

25. Ms. Pope testified that Petitioner had initially denied eating the resident's food, but then later during the course of the meeting had admitted that she had eaten it, and also admitted that she had sent residents to run errands for her.

26. MHA Kim Jenkins, a white woman and the second MHA under Petitioner's supervision, testified that she knew nothing about the allegations that Petitioner ate a resident's lunch. She testified that the bathroom was a unisex bathroom and that Petitioner did leave it in an unsanitary condition almost every time she used it, although she had been too embarrassed for Petitioner to ever discuss that with Petitioner. Ms. Jenkins

said she did try to discuss all of the other recurring issues with Petitioner. She testified that Petitioner was rude on a daily basis. She testified that she had seen Petitioner going through other staff members' mail and opening it. She testified that Petitioner did get ice with her bare hands on several occasions. On cross-examination, Ms. Jenkins stated that she did not document any of these incidents and could not remember dates on which they occurred. Pressed to provide dates, Ms. Jenkins testified that the only approximate date she could remember was the time that Petitioner sent a client with a staff member to get two hot dogs for Petitioner and the client had ended up paying for the hot dogs. Ms. Jenkins said that she knew this occurred in October because Ms. Jenkins had been assigned to the unit for only about two weeks when it happened. Ms. Jenkins testified that she clearly remembered when this occurred because Ms. Jenkins had been "written up" by Petitioner shortly afterwards for stopping at a McDonald's drive-through on the way back from a client's doctor's appointment to allow the client to buy some ice cream. Ms. Jenkins testimony was very credible.

27. Petitioner testified at hearing that the allegations in the June 29, 2011, letter of Alphonzo Robinson were not true. She testified that she did not eat a patient's food, never asked patients to buy sodas or candy for her, never left urine and

feces on the toilet seat, and that he never caught her sleeping on the job. She testified that it was a public bathroom, and noted that anyone could have left it in that condition. She also stated that someone should wonder, "[W]hy was Alphonzo Robinson in ladies' bathroom watching toilet seats? Apparently he needs to be monitoring the patient and not the lady bathroom." Petitioner noted that in all of the allegations against her, "[I]t is their word against mine."

28. In a memo dated July 1, 2011, to Ms. Kearley, Ms. Pope recommended the termination of Petitioner's employment with Apalachee Center. Ms. Magnan, Ms. VanZorge, and Ms. Pope were unanimous in this recommendation.

29. On or about July 6, 2011, Ms. Pope accompanied Petitioner to the office of Ms. Candy Landry, the Human Resources Officer, where Petitioner was informed that her employment was terminated.

30. Ms. Landry testified that Petitioner had violated policies of Apalachee and that the disciplinary process and termination of employment with respect to Petitioner had followed standard procedures. Ms. Landry testified that Petitioner's replacement was also African-American.

31. Petitioner filed a complaint with the Florida Human Relations Commission (Commission), alleging that Apalachee

Center had discriminated against her based upon her race and sex on August 15, 2011. Her complaint alleged that non-African-American employees had never been disciplined without reason, as she had been. Her complaint stated an employee had made unwelcome comments that she was "fine," "sexy" and "beautiful." On December 20, 2011, Petitioner filed a Petition for Relief, which was referred to the Division of Administrative Hearings.

32. At hearing, Petitioner presented no evidence regarding similarly situated white employees.

33. Petitioner presented no evidence that anyone ever made comments that she was "fine," "sexy" or "beautiful." She did testify that she made a note on June 20, 2011, regarding Alphonzo Robinson. Her testimony was as follows:

> Okay. Ready for Alphonso Robinson. This is what he states, "I'm looking for a wife. Bring your friend down here so I can look at her." I informed Robinson to sit in day room with client. Let Kim Jenkins come from back there with the men. He states, "I don't want to deal with the men. When I worked at Florida Hospital, we punish inmate." I told him we don't do that here. Social Service case managers do that. Group coordinator recommend -- group coordinators recommend treatment, member, nurse, case manager, and Ms. Pope. Robinson state, "I used to be a man that – that – I used to be a man that a husband was having problem with sex, I took care of his wife." I stopped talking to him and just restrict everything to work only with Mr. Alphonzo Robinson. I gave this note to Ana Degg. I asked her please to address it with Ms. Pope. I never heard anything else about that. I did my

> job as I was told. I went by the instructions what the facility asked me to do.

Petitioner testified that she prepared the note with this information on June 20, 2011, and gave it to Ms. Degg. This would have been a bit more than one week prior to Mr. Robinson's complaints about her performance.

34. Under cross-examination, Mr. Robinson denied that he had been sleeping on the job or had made inappropriate sexual remarks. He denied that he made the allegations against Petitioner because he was fearful he would be terminated and was attempting to get Petitioner fired first:

> Q You said – you made sexual statements, you told me that you had a new lady, that her husband had problems with sex, and you took care of the lady. After that I learned that, to stay out from around you, because I am a married lady. I have been married for 37 years. I don't endure stuff like that. So after that, then later on you was in the room and you made a sexual comment. You – I said that is inappropriate, that's not the kind of behavior – we do not come to work for that kind of behavior.
>
> * * *
>
> Q So Alphonzo –
>
> A Yes.
>
> Q -- after you made that comment, and then you said those statements, and then after that I approached you and told you that you cannot be sleeping at the desk, and then you

> decided to make these statements, to go to Dianne, Kim's friend and all that, so they can get me fired before you get terminated, is that not true?
>
> A No, that's not.
>
> Q You had never been sleeping at the desk?
>
> A No, I haven't.

35. There is no evidence that Petitioner mentioned the note or showed it to anyone at the Florida Commission on Human Relations in connection with her complaint of discrimination. She did not provide a copy of the note to the Division of Administrative Hearings or to Respondent prior to hearing. Petitioner testified that she found the note in her papers when she went through them. Ms. Degg was no longer Petitioner's supervisor on June 20, 2011. Ms. Degg testified that she could not recall Petitioner ever complaining about anyone in the workplace sexually harassing her. Ms. Degg testified that she had received a written complaint about MHA Jenkins, but that she had never received any written complaint about MHA Robinson. Ms. Degg's testimony that she did not receive the note was credible, and is accepted as true.

36. Ms. VanZorge testified that Petitioner never complained to her about any type of sexual harassment by Mr. Robinson.

37. Ms. Pope testified that Petitioner never complained to her about any sexual harassment.

38. Ms. Candy Landry, the Human Resources Officer, testified that Petitioner never complained to her that she had been subjected to sexual harassment. She further testified that she was never aware of any allegations of sexual harassment of Petitioner from any source.

39. The facts do not support the conclusion that Respondent discriminated against Petitioner on the basis of race or sex.

CONCLUSIONS OF LAW

40. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties in this case under sections 120.569 and 120.57(1), Florida Statutes.

41. The Florida Civil Rights Act, sections 760.01–760.11 and 509.092, Florida Statutes (2011), is patterned after federal law contained in Title VII of the Civil Rights Acts of 1964, and Florida courts have determined that federal discrimination law should be used as guidance when construing its provisions. See Fla. State Univ. v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

42. Section 760.11(1) provides that an aggrieved person may file a complaint with the Commission within 365 days of the

alleged violation. Petitioner timely filed her complaint, and following the Commission's initial determination, timely filed her Petition for Relief requesting this hearing.

43. Respondent is an employer as that term is defined in section 760.02(7).

44. Petitioner has the burden of proving by a preponderance of the evidence that the Respondent committed an unlawful employment practice. Fla. Dep't of Transp. v. J.W.C. Co., Inc., 396 So. 2d 778 (Fla. 1st DCA 1981).

45. Section 760.10(1)(a) provides that it is an unlawful employment practice 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."

46. Petitioner's complaint alleged unlawful discrimination in two contexts: first, that she was subjected to unwelcomed comments stating she was "fine," sexy, and "beautiful" based upon her gender; and second, that she was disciplined and discharged for no reason, unlike employees who were not African-American, based upon her race.

Discrimination based upon Gender

47. No evidence was presented that any employee told Petitioner that she was "fine," sexy, or "beautiful."

Petitioner did testify that Mr. Alphonzo Robinson made inappropriate remarks of a sexual nature to her. Mr. Robinson allegedly told her, "I'm looking for a wife. Bring your friend down here so I can look at her." Mr. Robinson allegedly also said, "I don't want to work with the men" and "I used to be a man that – that – I used to be a man that a husband was having problem with sex, I took care of his wife." Petitioner testified that she provided a note documenting these inappropriate statements to Ms. Degg, asking her to provide it to Ms. Pope, but that nothing was ever done. This might be considered an allegation that Respondent maintained a hostile work environment.

48. A prima facie case of discrimination on the basis of sex due to a hostile work environment requires proof of the following elements: (1) the employee belonged to a protected group; (2) the employee was subject to unwelcome harassment; (3) the harassment was based on a protected characteristic, such as gender; (4) that the harassment was sufficiently severe or pervasive to alter the terms or conditions of employment and create a discriminatorily abusive working environment; and (5) the employer was responsible for such environment under a theory of either vicarious or direct liability. See Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269, 1275 (11th Cir. 2002).

49. Even assuming Petitioner proved the first three elements, she failed to prove elements four and five.

50. In order to establish element four, that the sexual harassment affected a condition of employment, the Petitioner must show that the harassment was so severe or pervasive that it altered the interpersonal climate of the workplace, creating an objectively abusive and hostile atmosphere. Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 582 (11th Cir. 2000). The alleged statements of Mr. Robinson here, although inappropriate, do not approach this standard. Simple teasing, offhand comments, and isolated incidents are not sufficient. The Civil Rights Act is not a "general civility code." As the Supreme Court noted in Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998), "We have made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment."

51. Moreover, with respect to the fifth element, there was no demonstration that Respondent was made aware of the alleged inappropriate statements prior to hearing. Petitioner knew of her responsibility to report any suspected discrimination to the Human Resources Department. This was not done, as Petitioner herself admitted. Petitioner claimed to have provided a note regarding Mr. Robinson's statements to Ms. Degg, although she was no longer her supervisor. But Ms. Degg never was given the note, and further testified that Petitioner never complained to

her about discrimination. Petitioner did not claim to have informed anyone else, and numerous witnesses testified they were unaware of any allegations of harassment. In addition, Petitioner was MHA Robinson's supervisor, not the other way around. She was in a position to take needed corrective action if inappropriate conduct persisted. Petitioner did not prove that Respondent was even aware of any inappropriate statements, much less responsible for a discriminatory environment under a theory of either vicarious or direct liability.

52. In the context of the hearing, it was not even clear that Petitioner was maintaining that the alleged inappropriate statements of Mr. Robinson constituted an unlawful employment practice. It seemed rather that Petitioner was suggesting they demonstrated a motive for Mr. Robinson to fabricate his report and testimony, in support of her contentions that she had not violated Apalachee's policies, should not have been terminated, and was a victim of racial discrimination.

Discrimination based upon Race

53. Discrimination can be established through direct, circumstantial, or statistical evidence. U.S. Postal Serv. Bd. of Gov'nrs v. Aikens, 460 U.S. 711, 714 (1983); Schoenfeld v. Babbitt, 168 F.3d 1257, 1266 (11th Cir. 1999). Direct evidence of discrimination is evidence that, if believed, establishes the existence of discriminatory intent behind an employment decision

without inference or presumption. Wilson v. B/E Aero., Inc., 376 F.3d 1079, 1086 (11th Cir. 2004); Maynard v. Bd. of Regents, 342 F.3d 1281, 1289 (11th Cir. 2003).

54. There was no direct evidence of discrimination. Petitioner sought to prove discrimination through circumstantial evidence of disparate treatment. In McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), the Supreme Court established the analysis to be used in cases alleging claims under Title VII that rely on circumstantial evidence to establish discrimination. This analysis was later refined in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993).

55. Under McDonnell-Douglas, Petitioner has the burden of establishing by a preponderance of the evidence a prima facie case of unlawful discrimination. If a prima facie case is established, Respondent has the burden of articulating some legitimate, non-discriminatory reason for the action taken against Petitioner. It is a burden of production, not persuasion. If a non-discriminatory reason is offered by Respondent, the burden then shifts back to Petitioner to demonstrate that the offered reason is merely a pretext for discrimination. As the Supreme Court stated, before finding discrimination "[t]he factfinder must believe the plaintiff's explanation of intentional discrimination." Hicks, 509 U.S. at 519.

56. In order to establish a prima facie case, Petitioner must prove: (1) she is a member of a protected class; (2) she was subject to an adverse employment action; (3) her employer treated similarly situated employees who were not members of the protected class more favorably; and (4) she was qualified for the job or job benefit at issue. Gillis v. Ga. Dep't of Corr., 400 F.3d 883, 887 (11th Cir. 2005).

57. Petitioner established the first element. She is an African-American woman and is a member of a protected class.

58. Petitioner established the second element. She suffered an adverse employment action, in that she was disciplined, placed on probation, and ultimately terminated from employment.

59. Petitioner failed to establish the third element. In order to prevail in a disparate treatment claim, Petitioner must show unfavorable treatment compared with the treatment of employees who were not members of her protected class and were otherwise "similarly-situated in all relevant aspects." Knight v. Baptist Hosp. of Miami, Inc., 330 F.3d 1313, 1316. "The comparator must be nearly identical to the petitioner, to prevent courts from second-guessing a reasonable decision by the employer." Wilson v. B/E Aero., Inc., 376 F.3d 1079, 1091 (11th Cir. 2004). In other words, Petitioner must be "matched with persons having similar job-related characteristics who were

similarly situated" to Petitioner. MacPherson v. Univ. of Montevello, 922 F.2d 766, 775 (11th Cir. 1991).

60. Petitioner failed to show that Respondent treated similarly situated employees who were not members of her protected class more favorably. Petitioner offered no testimony or other evidence that any other LPN, of any race, had similar allegations against them or was treated more favorably. Mere conclusory allegations and assertions of discrimination are not sufficient to meet Petitioner's burden. See Earley v. Champion Int. Corp., 907 F.2d 1077, 1081 (11th Cir. 1990).

61. Petitioner also failed to establish the fourth element, that she was qualified for the job. Although Petitioner maintained she violated no policies, testimony from seven witnesses established that she had done so on numerous occasions. It does appear that relations between MHA Robinson and Petitioner, his supervisor, were strained. However, Petitioner was already on probation before Mr. Robinson's letter of June 29, 2011, based upon Petitioner's actions involving the Dietary Supervisor, the nurse on the following shift, MHA Jenkins, and other persons.

62. Petitioner failed to demonstrate a prima facie case of discrimination on the basis of race.

63. Even had Petitioner established a prima facie case of discrimination, Respondent articulated a legitimate, non-

discriminatory reason for its actions toward Petitioner. Respondent showed a gradually escalating response, consistent with Apalachee's policy, to correct the deficiencies Respondent perceived in Petitioner's performance. Petitioner's supervisor was changed. Respondent believed that Petitioner had a gruff demeanor and poor management skills, abused resident relationships, and failed to adhere to infection control policy and universal precautions.

64. Petitioner offered no evidence to suggest that Respondent's documented reasons for counseling her, placing her on probation, and terminating her employment was simply a pretext for unlawful discrimination. See Young v. Gen. Food Corp., 840 F.2d 825, 830 (11th Cir. 1988)("Once a legitimate, nondiscriminatory reason for dismissal is put forth by the employer, the burden returns to the plaintiff to prove by significant probative evidence that the proffered reason is a pretext for discrimination.").

65. Even had Petitioner succeeded in proving that MHA Robinson's allegations were complete fabrications, created simply to protect his own job -- which she did not do -- there remains no evidence to suggest that Respondent's decisions had anything to do with Petitioner's race or gender.

66. The Florida Civil Rights Act is not concerned with whether an employment decision is fair or reasonable, but only

with whether it was motivated by unlawful animus. See Nix v. WLCY Radio/Rahall Commc'ns, 738 F.2d 1181, 1187 (11th Cir. 1984).

RECOMMENDATION

Upon consideration of the above findings of fact and conclusions of law, it is

RECOMMENDED:

That the Florida Commission on Human Relations enter a final order dismissing Petitioner's complaint.

DONE AND ENTERED this 10th day of April, 2012, in Tallahassee, Leon County, Florida.

F. SCOTT BOYD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of April, 2012.

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.