STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PHILLIP RILEY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 12-2616
	)	
LAKE CORRECTIONAL INSTITUTION,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on January 23, 2013, by video teleconference at sites in Orlando and Tallahassee, Florida, before Elizabeth W. McArthur, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Todd Evan Studley, Esquire
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent committed an unlawful employment practice by discriminating against Petitioner on the basis of his race and his gender.

PRELIMINARY STATEMENT

Petitioner, Phillip Riley (Petitioner or Mr. Riley), filed a complaint with the Florida Commission on Human Relations (FCHR), in which he contended that Respondent, Lake Correctional Institution (LCI or Respondent), a correctional facility within the Department of Corrections (Department), committed an unlawful employment practice by terminating his employment based on his race and his gender. Following its investigation, FCHR issued a Determination: No Cause, finding no reasonable cause to believe that Respondent had engaged in an unlawful employment practice. Petitioner was informed of his right to an administrative hearing, which he exercised by timely filing a Petition for Relief. FCHR sent the case to DOAH for assignment of an Administrative Law Judge to conduct the requested hearing.

The final hearing was initially scheduled for November 1, 2012. A joint motion for continuance was granted, and the hearing was rescheduled for January 23, 2013.

Notwithstanding the requirements of section 120.57(1)(g), Florida Statutes (2012),[1/] and Florida Administrative Code Rule 28-106.214, FCHR did not provide a court reporter to preserve the testimony at the final hearing. The Notice of Hearing by Video Teleconference advised that if the parties did not provide a court reporter, each party was responsible for providing a notary public to swear in all witnesses who intended to testify.

Neither party provided a court reporter or a notary public. The parties agreed to have the undersigned swear in the witnesses via video teleconference.

At the final hearing, Petitioner testified on his own behalf. Petitioner did not offer any documentary evidence. Respondent presented the testimony of the following witnesses: Jennifer Folsom, warden of LCI; Major Victor Barber, correctional officer chief at LCI; Captain Etta Wright, who had been Petitioner's shift supervisor at LCI; Richard Easterbrook, institutional inspector with the Office of the Inspector General (OIG); and Dorothy Minta, senior inspector with the OIG. Respondent's Exhibits 1 through 4, 6(a) through 6(f), and 7 were admitted in evidence. In addition, official recognition was taken of the compilation of Florida Administrative Code rules marked as Respondent's Composite Exhibit 5.

At the conclusion of the hearing, the parties were informed that proposed recommended orders (PROs) would be due on February 4, 2013. Respondent timely filed its PRO. Petitioner filed his PRO late on February 5, 2013. Respondent did not object to the late-filed PRO by Petitioner. Both PROs have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Mr. Riley is a 25-year-old African-American male, who used to be employed as a correctional officer at LCI. His employment was terminated on December 9, 2011.

2. Mr. Riley was hired on April 3, 2009. When he was hired, Mr. Riley was provided a number of Department rules and policies, such as the Department's personnel rules in Florida Administrative Code Chapter 33-208, the employee driver's license requirement, the Department's anti-harassment and equal employment opportunity statements, and a sexual harassment brochure. Mr. Riley signed a receipt acknowledging that he had been given this material and that he was responsible for reading and complying with the requirements specified in the material.

3. Before Mr. Riley actually began working as a correctional officer at LCI, he completed three months of training at a site identified as "the Academy." Mr. Riley was trained in such matters as the Department's rules and defensive tactics to use with inmates when appropriate. After completing his training, on November 9, 2009, Petitioner was certified as a correctional officer.

4. Following the initial three-month training program required to attain certification, Petitioner was also required to participate in annual on-site in-service training to brush up on the skills and knowledge learned in the initial training course.

5. Mr. Riley's employment was subject to an initial one-year probationary term, which was standard and automatic for all employees.

6. Mr. Riley's employment file reflects a sizeable number of counseling and disciplinary actions taken against him during his two years and eight months employed by Respondent, which will be summarized below. Records of these prior actions were introduced in evidence without objection; Mr. Riley did not dispute the accuracy of his employment records in this regard.

7. Prior to the termination of his employment in December 2011, the next most recent disciplinary action against Petitioner was based on an incident occurring in January 2011. As a result of that incident, the Department initially decided to terminate Mr. Riley's employment. Petitioner, represented by counsel, exercised his right to appeal that decision to the Public Employees Relations Commission (PERC).

8. Right before the PERC evidentiary hearing, Petitioner and the Department settled their dispute in a written settlement agreement signed by Petitioner and Petitioner's counsel. Pursuant to the settlement agreement, the Department agreed to rescind its dismissal letter and replace it with a suspension letter, by which Petitioner was suspended without pay for 44 workdays, from March 11, 2011, through May 12, 2011. Petitioner agreed to accept the suspension. In addition, the

Department imposed a new one-year term of probationary employment status, starting May 13, 2011, and Petitioner accepted the one-year probationary term. Petitioner acknowledged that during the term of his probationary status, he would have no appellate rights before PERC for discipline, including for dismissal.

9. The suspension letter summarized the incident that initially provoked a termination letter. According to the letter, Mr. Riley was observed by another correctional officer in several inappropriate encounters with an inmate: first, Mr. Riley was seen walking up to stand behind the inmate, and then, the inmate was lying on the floor; a short while later, Mr. Riley was observed dragging the same inmate by both of his feet down an aisle. After the inmate was returned to the dorm, the correctional officer informed Mr. Riley that dragging the inmate down the aisle was inappropriate and against policy and procedure. The officer asked Mr. Riley whether he was horse-playing or using force, and Mr. Riley replied that he was horse-playing. The correctional officer reiterated that this was inappropriate behavior with the inmate.

10. At the final hearing, Mr. Riley admitted to the horse-playing incident. Petitioner accepted a substantial disciplinary consequence for his inappropriate conduct.

11. Before the horse-playing incident, Petitioner's employment history was peppered with incidents for which

Petitioner was counseled or disciplined for violating rules, policies, and procedures. Mr. Riley received three supervisory counseling memoranda: on March 31, 2010, for attendance issues; on September 7, 2010, for refusing an overtime shift when it was his turn; and on November 3, 2010, for miscounting inmates. Mr. Riley received a written reprimand on September 17, 2010, for negligence and failure to follow instructions. The reason for the reprimand was that in a forced cell extraction, Mr. Riley used a leg restraint chain in an unauthorized manner to physically transport an inmate from his cell. And on May 20, 2010, Mr. Riley was suspended for ten days, without pay, for failure to maintain proper security, negligence, and failure to follow instructions. The suspension was based on Mr. Riley's failure to conduct a 30-minute security check on the wing to which he was assigned and Mr. Riley's departure from his assigned wing to visit a different wing, without being relieved from his assigned post or authorized to enter the other wing.

12. The horse-playing incident occurred on January 22, 2011. Following Mr. Riley's March 12, 2011, through May 12, 2011, suspension for that incident, Mr. Riley returned to work on May 13, 2011, as a probationary employee.

13. Mr. Riley's probationary employment status would have lasted until May 12, 2012; however, he did not remain employed

for the full year of his probationary status. His employment was terminated by letter dated December 9, 2011.

14. The December 9, 2011, letter did not specify reasons for Mr. Riley's "probationary dismissal." Instead, the letter simply indicated that Mr. Riley was dismissed in accordance with Florida Administrative Code Rule 60L-33.002(5) (providing that a Department employee who is not permanent in a position, serves at the pleasure of the Department and is subject to any personnel action, including dismissal, at the Department's discretion).

15. Although not required, LCI Warden Jennifer Folsom met with Petitioner and told him that she had decided to terminate his employment, for two reasons: first, because of his failure to report several traffic citations imposing fines in excess of $200, as he was required to do by Department rule; and second, because of the attendance problems he continued to have since returning from suspension.

16. The evidence established that Petitioner received at least two traffic citations for which fines in excess of $200 per citation were imposed, which he did not report to the Department, as required. Petitioner's traffic citations were discovered during a driver's license records check, as part of an OIG investigation into an inmate complaint against Petitioner. The complaint was ultimately determined to be unsubstantiated, but the information regarding Petitioner's unreported traffic

citations was passed on for action. The correctional officer chief, Major Victor Barber, instructed Petitioner to immediately submit the required report of his citations to his shift supervisor, then-Lieutenant (now Captain) Etta Wright. Petitioner did not follow those instructions. Petitioner was given several reminders; he finally submitted the report of his traffic citations six days after Major Barber told him to do so.

17. Based not only on Petitioner's failure to submit the required report of his traffic citations, but also, on Petitioner's failure to follow the instructions of his superiors, an incident report was written up and brought to the attention of the warden.

18. At the final hearing, Mr. Riley admitted that he had at least two citations with fines exceeding $200. He said that he had paid off the fines, and, although, he knew about the reporting requirement, at the time, he was under the misimpression that by paying off the fines, he did not have to report the citations.

19. The competent, credible evidence of record also established that between May 13, 2011, and December 9, 2011, Mr. Riley had the same kind of attendance problems for which he had been previously counseled, only more so. In March 2010, Petitioner was counseled for having five unscheduled absences in one year. In less than seven months in 2011, Petitioner had five

unscheduled absences due to sickness or family sickness. In addition, Mr. Riley was late twice, both classified as unscheduled absences. These unscheduled absences were in addition to one absence for sickness, which was not considered unscheduled; one personal holiday; plus 13 days of annual leave.

20. Respondent's witnesses credibly testified that unscheduled absences are a particular problem because Petitioner was employed in a work environment where staffing shortages cannot be tolerated, and it is very difficult to cover for absences with little advance warning. Moreover, filling an unscheduled gap in required coverage of correctional officers assigned to guard inmates usually comes at great costs. These costs come in the form of strain on the officers who might have to work back-to-back shifts to cover for an unscheduled absence and, also, in the form of overtime expense that could be avoided with more advance notice.

21. Mr. Riley was on notice that the magnitude of his unscheduled absences was considered excessive, when he was counseled in March 2010 for fewer unscheduled absences than he had between May and December 2011. A supervisory counseling memorandum dated March 31, 2010, was issued to Mr. Riley because he had used five days of unscheduled sick leave between April 3, 2009, and March 31, 2010. The memorandum noted that Mr. Riley

had been previously counseled regarding attendance-related issues and explained the problems caused by Mr. Riley's absences:

> While it is understood that from time to time, an employee suffers personal illnesses and other associated problems including family illnesses, that make it impractical for him to report for duty, you should make every effort to report for your scheduled shift and to maintain an acceptable attendance record. Your presence on the job is vital to the effective operation of the institution. When you fail to report for duty as scheduled, your absence places a burden upon your supervisor, who must then find someone to cover your post, and your fellow employees, who must cover your shift.
>
> Management has a right to expect that its employees report to work as scheduled. Future behavior of a similar nature may result in formal disciplinary action.

22. Mr. Riley failed to credibly explain his record of a significant number of unscheduled absences between May and December 2011, while he was on probation. Petitioner acknowledged that he left work at least once while on probation because he was not feeling well. He also acknowledged that "there were times" when he would call in sick, but said that he would follow protocol by calling in an hour or two before his shift.

23. Petitioner's testimony regarding his attendance issues was vague. For example, he was equivocal regarding whether he ever failed to call in sick; he could only say that he did not

recall doing so. In the face of documentary evidence of Mr. Riley's attendance record, showing specific dates on which Mr. Riley was credited with "unscheduled absence[s]-sick" and "unscheduled absence[s]-family sick," Mr. Riley's vague, generalized testimony attempting to discount his absentee record lacked credibility.[2/] Mr. Riley knew from his prior counseling that correctional officers guarding inmates are held to strict standards for attendance because of their work environment, with critical staffing needs 24 hours per day, every day of every week. Mr. Riley should have known that his absences, totaling 20 workdays between May and December 2011, five days of which were unscheduled absences, would be considered excessive.

24. Petitioner attempted to prove that other employees who were not members of his race class and/or gender class were treated more favorably than he was. However, Petitioner offered only his understanding of the conduct of other employees and the consequences for such conduct. Petitioner offered no competent non-hearsay evidence to supplement or corroborate his understanding.

25. Petitioner testified to his understanding that one white male officer was caught on camera horse-playing with an inmate, for which that officer received no reprimand.

26. Petitioner also testified to his understanding of cell phone issues involving a second white male officer: a cell phone

was found in the possession of an inmate, and the white male officer's phone number was in the inmate's cell phone; Petitioner heard that the only consequence was that the white officer was told not to have contact with inmates. Later, the officer's cell phone was found in his car, where it was not allowed. This time, Petitioner's understanding was that the officer was allowed to resign.

27. Petitioner testified to his understanding that a white female employee "had attendance issues" and was allowed to resign. Petitioner did not offer his understanding about what kind of "attendance issues" resulted in her being asked to resign, what position she had been employed in, whether she had been previously counseled for attendance issues, or whether she had a prior record of discipline.

28. Petitioner testified to his understanding that another white female employee also "had attendance issues." Petitioner's testimony about the second white female employee with attendance issues suffered from the same lack of information as did his testimony about the first white female employee with attendance issues. In addition, Petitioner failed to explain what consequences befell the second white female employee for the unspecified attendance issues.

29. Petitioner admitted that as far as he knows, the four employees discussed in the four preceding paragraphs were not on probationary employment status.

30. Petitioner knew of no employee who failed to report traffic citations and who was not terminated.[3/]

CONCLUSIONS OF LAW

31. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, 120.57(1), and 760.11(7), Fla. Stat.

32. Section 760.10(1) provides that it is an unlawful employment practice for an employer to discharge or otherwise discriminate against an individual on the basis of race or gender.

33. Respondent is an "employer" within the meaning of the Florida Civil Rights Act (FCRA). § 760.02(7).

34. FCHR and Florida courts have determined that federal discrimination law should be used as guidance when construing the FCRA. See Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 21 (Fla. 3d DCA 2009); Brand v. Fla. Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994).

35. Petitioner offered no direct evidence to prove his claim of race or gender discrimination. Instead, as acknowledged in Petitioner's PRO, given the absence of any direct evidence of

discrimination, "[a] finding of discrimination, if any, must be based on circumstantial evidence."

36. The shifting burden analysis established by the U.S. Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), applies to this circumstantial-evidence-based discrimination claim. Under this well-established model of proof, the complainant bears the initial burden of establishing a prima facie case of discrimination. If Petitioner is able to make out a prima facie case, the burden shifts to the employer to articulate a legitimate, non-discriminatory explanation for the employment action. See Dep't of Corr. v. Chandler, 582 So. 2d 1183, 1186 (Fla. 1st DCA 1991) (discussing shifting burdens of proof in discrimination cases under McDonnell and Burdine). The employer has the burden of production, not persuasion, and need only articulate that the decision was non-discriminatory. Id.; Alexander v. Fulton Cnty., Ga., 207 F.3d 1303, 1339 (11th Cir. 2000). Petitioner must then come forward with specific evidence demonstrating that the reasons given by the employer are a pretext for discrimination. Dep't of Corr. v. Chandler, supra, at 1187. Petitioner must satisfy this burden by showing directly that a discriminatory reason, more likely than not, motivated the decision, or indirectly, by showing that the proffered reason for

the employment decision is not worthy of belief. Id.; Alexander v. Fulton Cnty., Ga., supra.

37. "Although the intermediate burdens of production shift back and forth, the ultimate burden of persuading the trier of fact that the employer intentionally discriminated against the employee remains at all times with the [petitioner]." EEOC v. Joe's Stone Crabs, Inc., 296 F.3d 1265, 1273 (11th Cir. 2002); see also Byrd v. BT Foods, Inc., 948 So. 2d 921, 927 (Fla. 4th DCA 2007) ("The ultimate burden of proving intentional discrimination against the plaintiff remains with the plaintiff at all times.").

38. In this case, Petitioner sought to establish a prima facie case of discrimination through a disparate treatment theory. A prima facie case of discrimination based on a disparate treatment theory requires proof that: (1) Petitioner belongs to a protected class; (2) Petitioner was subjected to adverse employment action; (3) similarly-situated employees, who are not members of Petitioner's protected class(es), were treated more favorably than Petitioner; and (4) Petitioner was qualified to do the job. City of W. Palm Bch. v. McCray, 91 So. 3d 165, 171 (Fla. 4th DCA 2012) (citing U.S. E.E.O.C. v. Mallinckrodt, Inc., 590 F. Supp. 2d 1371, 1376 (M.D. Fla. 2008)).

39. Petitioner satisfied the first, second, and fourth elements of a prima facie case. Petitioner proved that as an

African-American male, he is a member of protected racial and gender classes. Petitioner's employment was terminated, thus subjecting him to an adverse employment action. And Petitioner established that he was qualified by certification for the position of correctional officer. Respondent did not dispute these matters.

40. However, the critical failure in Petitioner's attempt to establish a prima facie case came with respect to the third element. Petitioner failed to present any competent evidence that other similarly-situated employees, who were not members of the same protected classes, received more favorable treatment than Petitioner.

41. Petitioner offered only hearsay evidence with regard to the conduct and treatment of four other employees. However, as Petitioner was reminded during this testimony, hearsay cannot be used as the sole basis for a finding of fact, unless the hearsay would be admissible over objection in civil actions; such hearsay can only be used to supplement or explain admissible evidence. § 120.57(1)(c); Fla. Admin. Code R. 28-106.213(3). Petitioner offered no such admissible evidence.

42. Even if hearsay evidence could be used to support findings of fact, Petitioner's hearsay evidence would not have supported a finding that any of the other employees relied on by Petitioner were "similarly situated." In order to prove that the

other employees are "similarly situated," Petitioner must show that the employees are "similarly situated in all relevant respects[,]" including that they were "involved in or accused of the same or similar conduct" as Petitioner for which they were treated more favorably. Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997); accord City of W. Palm Bch. v. McCray, supra. Petitioner only testified to his understanding that two white female employees had "attendance issues," and one was allowed to resign in lieu of termination; Petitioner never said what happened to the other employee. It would be impossible to find, from this scant information, that these employees were "similarly situated." The nature and extent of "attendance issues" for these employees are unknown, making comparison impossible with Petitioner's absentee record. Petitioner did not even identify the positions that these employees held, making it impossible to determine whether their unspecified attendance issues would have presented the same problems as for a correctional officer such as Petitioner. In addition, the employment records of these other employees, including prior disciplinary actions and counseling memoranda, are unknown, making comparison impossible with Petitioner's track record of counseling memoranda, written reprimand, and suspensions. Petitioner offered no information to suggest that these employees with attendance issues also failed to report multiple traffic citations, as he did; in fact, it was

his understanding that the unspecified "attendance issues" were the only issues for these employees. Finally, Petitioner acknowledged that as far as he knew, these other employees were not on probation, as he was.

43. Petitioner's hearsay testimony regarding two white male employees was even further afield, in that neither employee was described as having attendance issues or as having failed to report traffic citations, and, thus, were not "involved in or accused of the same or similar conduct" as the conduct for which Petitioner was terminated. Holifield, supra. And for the same reasons that the scant (hearsay) information offered regarding the two white female employees was insufficient to allow the necessary comparisons, Petitioner's limited understanding about the two white male employees provided far too little information to show that they were "similarly situated."

44. Petitioner admitted that he knew of no employee who failed to report traffic citations and who was not terminated. It follows that Petitioner knew of no employee who was involved in the same or similar conduct that triggered the warden's decision to terminate Petitioner's employment. No other employee had the combination of excessive unscheduled and other absences, coupled with violations of the Department rule requiring employees to report infractions for which fines exceeding $200 are imposed. See Fla. Admin. Code R. 33-208.002(2)(a)2.

(requiring Department employees to file a written report within 24 hours after an arrest or notice to appear for violations of criminal laws or ordinances, except for minor violations for which the fine is $200 or less).

45. Thus, even if the hearsay nature of Petitioner's evidence could be ignored, Petitioner would have still failed to prove that any other similarly-situated employee, who was not either African-American or male, or both, was treated more favorably than Petitioner.

46. By failing to prove that any other employee was similarly situated, Petitioner has failed to meet his burden of proving a prima facie case of discrimination based on his race or gender. Failure to establish a prima facie case ends the inquiry. See Ratliff v. State, 666 So. 2d 1008, 1012 n.6 (Fla. 1st DCA 1996) (citing Arnold v. Burger Queen Systems, 509 So. 2d 958 (Fla. 2d DCA 1987)), aff'd, 679 So. 2d 1183 (Fla. 1996).

47. Even if Petitioner had established a prima facie case of discrimination, Respondent met its burden of articulating legitimate reasons for terminating Petitioner's employment that had nothing to do with Petitioner's race or gender.

48. Petitioner failed to meet his ultimate burden to prove that he was fired because of his race or gender. Petitioner's status as a probationary employee meant that Respondent was not required to justify its decision to terminate Petitioner's

employment. Nonetheless, Respondent established legitimate non-race-based and non-gender-based reasons for its actions. Respondent had the right to insist on Petitioner's compliance with the rules governing employees and the standards applicable to correctional officers. Petitioner should have refrained from even the slightest transgression while on probation. Instead, the evidence showed that Petitioner violated a Department rule by not reporting his traffic citations, and Petitioner did not take heed from his prior counseling to avoid excessive absences during his probationary period. Those are reasons enough for the termination of his employment.

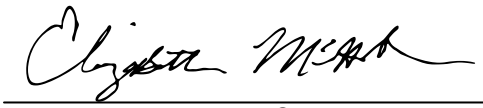
49. Petitioner may believe that Respondent's reasons for firing him were not good enough, but he voluntarily relinquished the right to contest the reasonableness of Respondent's employment decision by entering into a settlement agreement and agreeing to probationary employment status. The civil rights laws invoked by Petitioner in this case are not concerned with whether an employment decision is fair or reasonable, but only whether it was motivated by unlawful discriminatory intent. Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1361 (11th Cir. 1999). An "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." Nix v. WLCY Radio/Rahall Commun., 738

F.2d 1181, 1187 (11th Cir. 1984). Petitioner failed to prove that Respondent's decision was motivated by unlawful discriminatory intent.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Phillip Riley's Petition for Relief.

DONE AND ENTERED this 25th day of February, 2013, in Tallahassee, Leon County, Florida.



ELIZABETH W. MCARTHUR
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 25th day of February, 2013.

ENDNOTES

[1/] All statutory references are to the Florida Statutes (2012), unless otherwise indicated. It is noted that there have been no amendments during the time period relevant to this controversy to any of the cited statutes within the Florida Civil Rights Act.

[2/] Mr. Riley testified that Warden Folsom did not specify what his attendance problems were, as if to suggest that he was unable

to respond when she informed him of his termination. However, Petitioner had that opportunity at the final hearing. In advance of the final hearing, Respondent provided Petitioner with copies of its proposed exhibits, including the record detailing his absences. Petitioner, thus, had the opportunity to respond in his final hearing testimony to the specific problems evident from the record of his absences. Petitioner's failure to do so suggests that Petitioner could not refute or explain his absentee record.

[3/] Petitioner's PRO proposed the following finding of fact: "Petitioner's un-refuted testimony is that white males, and females who were similarly situated to him, either also failed to report traffic citations or also had attendance issues, but they were not disciplined as severely as he was and they were not terminated." Instead, Petitioner's uncorroborated hearsay testimony was that it was his understanding that two white females had unspecified attendance issues, and one was allowed to resign in lieu of termination; Petitioner did not describe the consequences of the other white female's unspecified attendance issues. Moreover, Petitioner admitted that he knew of no employee who failed to report traffic citations and was not terminated as a result. Petitioner's hearsay testimony regarding two white male employees described conduct that was unrelated to either attendance issues or failure to report traffic citations. Thus, not only was there no non-hearsay evidence that could support Petitioner's proposed finding of fact; there was not even hearsay testimony that could support such a finding (if hearsay evidence alone could suffice to support a finding of fact).

COPIES FURNISHED:

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

Cheyanne Costilla, Interim General Counsel
Florida Commission on Human Relations
Suite 100
2009 Apalachee Parkway
Tallahassee, Florida 32301

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

Todd Evan Studley, Esquire
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399

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.