

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

GEORGIE BREVILLE,

Petitioner,

vs.

Case No. 13-1642

FLORIDA DEPARTMENT OF ECONOMIC  
OPPORTUNITY,

Respondent.

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RECOMMENDED ORDER

An administrative hearing was conducted in this case on July 25, 2013, via video teleconference with sites in Gainesville and Tallahassee, Florida, before Suzanne Van Wyk, an administrative law judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Georgie Breville, pro se  
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Gainesville, Florida 32608

For Respondent: Michael Golen, Esquire  
Department of Economic Opportunity  
107 East Madison Street  
Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Respondent, Department of Economic Opportunity (DEO or Department), discriminated against Petitioner, Georgie Breville, in violation of the Florida Civil Rights Act of 1992

(the Act), sections 760.01-760.11 and 509.092, Florida Statutes, based upon her national origin, age, disability, or in retaliation.

PRELIMINARY STATEMENT

This matter was initially transmitted to the Division of Administrative Hearings (DOAH) on January 7, 2013, and assigned to the undersigned as DOAH Case No. 13-0027. On February 6, 2013, the undersigned relinquished jurisdiction in that case to the Florida Commission on Human Relations (Commission), finding that Petitioner's claim of employment discrimination was untimely.

Petitioner's Complaint of Discrimination was filed on September 29, 2011, and states that the last act of discrimination occurred on October 1, 2010. The undersigned granted Respondent's Motion to Relinquish Jurisdiction, finding that Petitioner's claim was untimely, having been filed more than 365 days after the last alleged act of discrimination, which was her notice of termination on September 20, 2010, rather than the effective date of her termination on October 1, 2010.

The Commission entered an Order remanding the case to DOAH on May 1, 2013, interpreting the undersigned's Order Relinquishing Jurisdiction as having reached only Petitioner's claim for unlawful discharge. The Commission sought resolution

of Petitioner's claim of hostile work environment and discrete acts of discrimination other than unlawful discharge.

On May 10, 2013, Respondent filed a Motion for Clarification seeking that the undersigned either (1) find that no timely allegation of employment discrimination was filed by Petitioner and enter an Order Relinquishing Jurisdiction; or (2) alternatively, clarify the specific issues and time periods on which evidence would be heard at the final hearing in this matter. Petitioner filed no response to the Motion for Clarification.

On July 17, 2013, the undersigned granted Respondent's Motion for Clarification and entered an Order limiting the scope of the final hearing in this case to the issue of whether Respondent is liable to Petitioner for any act of discrimination, other than termination, between September 29 and October 1, 2010.

On July 22, 2013, Petitioner filed both a Motion to Compel Discovery Against Respondent and an Amended Motion to Compel Against [sic] Respondent (the Motions). The Department filed a Response to the Motions on July 23, 2013. Following a telephonic hearing on the Motions, the undersigned entered an Order denying the Motions.

At the final hearing on July 25, 2013, Petitioner testified on her own behalf and offered 15 exhibits, most of which were received into evidence over objection.<sup>1/</sup> Respondent offered no

witnesses<sup>2/</sup> and offered Respondent's Exhibits RA-2, R-8, and R-11 through R-14, which were received into evidence.

The proceedings were recorded and a Transcript was ordered. On August 7, 2013, Respondent filed an unopposed Motion for Extension of Time to File its Proposed Recommended Order (PRO), anticipating filing of the Transcript on or about August 13, 2013. The Motion for Extension of Time was granted, giving the parties an additional seven days, or until August 30, 2013, to file PROs.

The one-volume Transcript was filed on August 26, 2013, and the undersigned entered an Order on Post-hearing Submissions clarifying that PROs were due on or before September 5, 2013, notwithstanding the prior Order Granting Extension of Time to August 30, 2013. Respondent filed its PRO on August 30, 2013. On September 5, 2013, Petitioner filed a timely Motion for Extension of Time to File Her PRO, which was granted, extending the deadline for filing PROs to September 9, 2013. Petitioner timely filed a PRO on September 9, 2013. The parties' PROs have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

1. Petitioner is a 64-year-old female from Mauritius, a French island nation off the coast of Africa. As such, she falls within a protected class based on age and national origin.

2. Respondent, DEO, is the successor State agency to the former Agency for Workforce Innovation (AWI) with the responsibility to implement the FloridaWorks program. FloridaWorks is organized into Regional Workforce Boards which oversee the delivery of employment services in their local jurisdictions. Employment services delivered at local One-Stop Centers include job searches, job counseling, and resume drafting, among others.

3. Petitioner was employed at the FloridaWorks Alachua County One-Stop Career Service Center in Gainesville, Florida, from 2001 through 2010. At all times relevant hereto, Petitioner was an employee of AWI in the position of Customer Service Specialist.

4. In her capacity as Customer Service Specialist, Petitioner met with job seekers, assessed their needs, and referred them for assessment testing and community services. She also conducted workshops on resume writing, interviewing skills, and job search skills.

5. In February 2009, Betty Holmes, an AWI employee, became Petitioner's supervisor.

6. By letter dated September 17, 2010, Petitioner was terminated from her employment with AWI effective October 1, 2010. The termination letter was hand delivered to Petitioner on September 20, 2010, by Ms. Holmes in her office at the One-Stop

Center. The letter stated that Petitioner's termination was due to loss of funding for the Regional Workforce Board.

7. On October 22, 2010, Petitioner filed a Charge of Discrimination with the Commission alleging that Florida Management Solutions, Inc. (FMS), had discriminated against her on the basis of her national origin, age, and in retaliation by giving her unfair negative evaluations, harassing and demeaning her, assigning her a larger workload than other employees, and ultimately unfairly terminating her.<sup>3/</sup>

8. The Commission issued a Determination of No Cause on May 16, 2011, finding there was no cause to find that Respondent had committed an unlawful employment action. Petitioner timely filed with the Commission a Petition for Relief against FMS, which was forwarded to DOAH for assignment of an administrative law judge (ALJ) to conduct a fact-finding hearing.

9. Following an evidentiary hearing on the matter, the ALJ entered a Recommended Order finding that FMS was not Petitioner's employer during the time period in which the alleged acts of discrimination occurred. Rather, the ALJ found that AWI was Petitioner's employer. The Recommended Order was entered on September 14, 2011.

10. On September 29, 2011, Petitioner filed a Complaint of Discrimination against AWI alleging unlawful employment discrimination on the basis of her race, national origin, age,

and in retaliation. Again, the Commission issued a Determination of No Cause and Petitioner filed a Petition for Relief, which was forwarded to DOAH and assigned to the undersigned for conduct of an evidentiary hearing.

11. Petitioner's Complaint of Discrimination alleges that she was discriminated against by being assigned a larger caseload and being held to different performance standards than similarly situated non-classified employees; denied training; given unmerited negative performance evaluations; harassed, demeaned, and threatened, resulting in negative health issues; and unlawfully terminated, resulting in loss of benefits and future employment opportunities. As such, Petitioner's complaint raises both individual discrete acts of discrimination, as well as an ongoing hostile work environment.

12. Petitioner's complaint and testimony are largely focused on the treatment she received from Ms. Holmes, her supervisor from February 2009 to October 1, 2010.

13. Petitioner alleges that when Ms. Holmes became her supervisor, Ms. Holmes removed Petitioner from her usual duties and assigned Petitioner a caseload of 150 cases in a program with which she was not familiar. Petitioner argues that the assignments were unreasonable and, perhaps, even unauthorized by the agency. Petitioner further alleges that Ms. Holmes was critical of Petitioner's inability to complete the cases in a

timely manner, and that Petitioner was denied the training she requested to better perform on the job.

14. Ms. Holmes' assignment of job duties to Petitioner, as well as Petitioner's request for training, occurred more than 365 days prior to the date on which Petitioner filed her Complaint of Discrimination.

15. Petitioner alleges that the employee evaluations Ms. Holmes performed, completed, and signed in April 2009 and April 2010 were unmerited.<sup>4/</sup> The evaluations complained of were completed more than 365 days prior to the date on which Petitioner filed her Complaint of Discrimination.

16. Petitioner alleges that Ms. Holmes unnecessarily contacted 9-1-1 on May 18, 2010, when Petitioner fainted in Ms. Holmes' office, and allegedly told the paramedics that Petitioner was acting erratically prior to fainting, allegations which Petitioner denies.

17. The incident during which Petitioner fainted and was taken to the hospital by the paramedics occurred more than 365 days prior to the date on which Petitioner filed her Complaint of Discrimination.

18. Petitioner alleges that Ms. Holmes spoke harshly to her, yelled at her, told her to "shut up," and made demeaning comments about Petitioner's French accent. Petitioner testified



that Ms. Holmes made Petitioner repeat after her, and on at least one occasion said, "This is how Americans speak."

19. All the statements alleged to have been made by Ms. Holmes occurred more than 365 days prior to the date on which Petitioner filed her Complaint of Discrimination.

20. On May 26, 2010, Petitioner filed a grievance with AWI Human Resources regarding Ms. Holmes' alleged harassment of Petitioner as well as her unmerited negative evaluation. After filing the grievance, Petitioner met with Ms. Holmes and her direct supervisor, Arelis Rosario, to discuss her performance evaluation and other issues raised in Petitioner's grievance. A written summary of the meeting was made and signed by Petitioner, Ms. Rosario, and Ms. Holmes on June 2, 2010. Petitioner disagrees with the substance of the summary and maintains that her grievance was not satisfactorily resolved.

21. Petitioner alleges that she was terminated, in part, in retaliation for filing the grievance against Ms. Holmes.

22. The grievance filed against Ms. Holmes, as well as the resolution meeting between Petitioner, Ms. Holmes, and Ms. Rosario, occurred more than 365 days prior to Petitioner's Complaint of Discrimination.

23. Petitioner was notified of her termination on September 20, 2010, which was a Monday. At hearing, Petitioner

did not testify with certainty whether, or on which days, she was absent from work following notice of her termination.

24. Petitioner had enough accumulated leave to take the two weeks off between termination and effective date. However, Petitioner chose not to.

25. Petitioner was uncertain about the days that Ms. Holmes was in the office during either the week of her termination or the following week.

26. At final hearing, Petitioner seemed confused about various events she related. On the whole, Petitioner's testimony was inconsistent and equivocal.

27. The evidence was clear that Petitioner was assigned no work during the period of September 20, 2010, through October 1, 2010. Petitioner had little, if any, interaction with Ms. Holmes during that same time period. She testified that her co-workers avoided her and barely spoke to her. Petitioner spent most of her time cleaning out her office and packing her belongings. In what must have been an awkward situation, Petitioner gave away many of her personal belongings to her co-workers during the time period between September 20, 2010, and October 1, 2010.

Petitioner gave Ms. Holmes a vase from her office as a gift, although the exact date was not established.

28. Petitioner introduced no evidence of any discrete acts of discrimination by Ms. Holmes, or any other AWI employee, between September 29, 2010, and October 1, 2010.

29. Petitioner has been diagnosed with breast cancer and has been under treatment for several years. Petitioner did not take sick leave when employed at AWI. Instead, she took annual leave for her treatments or attended doctor's visits during her lunch hour. The evidence did not support a finding that her employer knew of either her diagnosis or treatment.

#### CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2012), and Florida Administrative Code Rule 60Y-4.016(1).

31. The State of Florida, under the Florida Civil Rights Act of 1992, sections 760.01-760.11 and 509.092, incorporates and adopts the legal principles and precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. §§ 2000e, et seq.

32. Pursuant to subsection 760.10(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.

33. Section 760.11 sets forth the procedures for filing a complaint against an employer for an unlawful employment practice, as follows:

(1) Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, employment agency, labor organization, or joint labor-management committee, or, in the case of an alleged violation of s. 760.10(5), the person responsible for the violation and describing the violation.

34. Florida courts have held that because the Act is patterned after Title VII of the Civil Rights Act of 1964, as amended, federal case law dealing with Title VII is applicable. See, e.g., Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

#### Petitioner's Claims

35. Petitioner's claims include both discrete discriminatory acts and a hostile work environment. While some of the alleged discrete actions -- such as unlawful termination and unmerited performance evaluations -- stand on their own, other discrete acts -- such as derogatory remarks regarding her

accent -- may factor into a determination of hostile work environment.

36. The law is clear that claims for both discrete acts of discrimination and hostile work environment necessarily end, at the latest, on the date of the Petitioner's termination. See Thompson v. Orange Lake Country Club, 224 F. Supp. 2d 1368, 1380 (M.D. Fla. 2002) (finding Petitioner's claims of both gender discrimination and hostile work environment were time-barred when filed more than 365 days after the date of her termination).

37. The undersigned previously ruled that Petitioner's claim of unlawful termination was time-barred because her cause of action for employment discrimination began to accrue on September 20, 2010, the date she received notice of her termination, rather than October 1, 2010, the effective date of her termination.<sup>5/</sup>

38. Based on the authority of Orange Lake, 224 F. Supp. at 1380, all of Petitioner's remaining claims for discrete acts of discrimination are also time-barred because they occurred more than 365 days before September 29, 2011, the date on which she filed her Complaint of Discrimination.

39. The only claims cognizable in the instant case would be for discriminatory acts occurring between September 29, 2010, and October 1, 2010, Petitioner's last day on the job. None of the acts complained of occurred on September 29 or 30, 2010, or

October 1, 2010. Petitioner introduced no credible evidence of any discrete act of discrimination on the relevant dates.

40. As to Petitioner's claim of hostile work environment, she likewise presented no evidence relating to acts which contributed to a hostile work environment on any of the relevant dates. The undersigned infers from the testimony that the work environment was awkward. Petitioner chose to come into the office for most of the last two weeks after receiving her notice, rather than taking her accrued leave. Petitioner had no cases to work on and no applicants to meet with. She spent her time packing up her office and giving away personal belongings. While the situation was clearly awkward, Petitioner did not demonstrate by a preponderance of the evidence that it was hostile.

41. In ruling on hostile work environment claims the court may consider the entire time period of the hostile environment so long as an act contributing to the claim occurs within the filing period. See Bradley v. Fla. Dep't of Transp., 2002 U.S. Dist. LEXIS 27475 (D. Fla., Nov. 11, 2002); citing Passenger Corp. v. Morgan, 536 U.S. 101, 114 (2002). Therefore, had Petitioner presented some evidence of discrete acts of discrimination occurring on the relevant dates, the acts occurring prior to September 29, 2010, may have been relevant and considered by the undersigned as supporting Petitioner's claim of hostile work environment.

42. As Petitioner presented no evidence of any act of discrimination which is cognizable in this proceeding, the undersigned concludes that Respondent is not liable to Petitioner for any violation of the Civil Rights Act of 1992.

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 Petitioner's Discrimination Complaint and Petition for Relief consistent with the terms of this Recommended Order.

DONE AND ENTERED this 26th day of September, 2013, in Tallahassee, Leon County, Florida.



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SUZANNE VAN WYK  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 26th day of September, 2013.

ENDNOTES

1/ Petitioner's Exhibits 5, 6a, and 6b were admitted without objection.

2/ Respondent did not comply with the undersigned's Order of Pre-Hearing Instructions by providing the Petitioner with a list of the names and addresses of persons it intended to call as witnesses prior to hearing.

3/ FMS was the state contractor which operated the FMS One-Stop Center at the time Petitioner filed her first Charge of Discrimination.

4/ The evidence shows that Petitioner's direct supervisor, Arelis Rosario, completed Petitioner's 2010 evaluation, not Ms. Holmes.

5/ See Breville v. Florida Dep't of Econ. Opportunity, Case No. 13-0027, Order on Respondent's Motion to Relinquish Jurisdiction (Fla. DOAH Feb. 6, 2013).

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.