

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CHRISTY MILLER,

Petitioner,

vs.

Case No. 15-2640

FLORIDA DEPARTMENT OF
CORRECTIONS,

Respondent.

_____ /

RECOMMENDED ORDER

On November 5, 2015, an administrative hearing in this case was held by video teleconference in Sarasota and Tallahassee, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Christy Michelle Miller
3351 Mayflower Street
Sarasota, Florida 34231

For Respondent: M. Lilja Dandelake, Esquire
Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

STATEMENT OF THE ISSUE

The issue in the case is whether Christy Miller (Petitioner) was the subject of unlawful discrimination by the Florida Department of Corrections (Respondent) on the basis of

sex or marital status, or in retaliation, in violation of chapter 760, Florida Statutes (2015)^{1/}.

PRELIMINARY STATEMENT

By Complaint of Discrimination filed with the Florida Commission on Human Relations (FCHR) on October 21, 2013, the Petitioner alleged that the Respondent committed unlawful discrimination against her on the basis of sex or marital status, or in retaliation.

By Notice of Determination dated February 15, 2015, the FCHR determined that there was "no reasonable cause to believe that an unlawful employment practice occurred."

On March 19, 2015, the Petitioner filed a Petition for Relief with the FCHR. On May 12, 2015, the FCHR forwarded the Petition for Relief to the Division of Administrative Hearings, which scheduled and conducted the proceeding.

At the hearing, the Petitioner testified on her own behalf, presented the testimony of four witnesses, and had Exhibits numbered 1 through 5 and 8 admitted into evidence. The Respondent presented no testimony or exhibits.

No transcript of the hearing was filed. Both parties filed proposed recommended orders that have been reviewed in the preparation of this Order.

FINDINGS OF FACT

1. At all times material to this case, the Petitioner was employed by the Respondent as a Correctional Probation Senior Officer in Winter Haven, Florida.

2. The Respondent is a state agency as defined in chapter 110, Florida Statutes.

3. At various times prior to April 2012, Don Parrish, another employee of Respondent, had served as an "acting" supervisor in the Respondent's office.

4. The Petitioner testified that Mr. Parrish, during a period when he was the acting supervisor, inquired as to her marital status, and suggested they could "get together" if the marriage was not successful. Mr. Parrish's comment made the Petitioner uncomfortable.

5. In April 2012, Mr. Parrish became a Correctional Probation Senior Supervisor and was the Petitioner's direct supervisor until she terminated employment in January 2013.

6. The Petitioner testified that, as her supervisor, Mr. Parrish "micromanaged" her schedule and "harassed" her.

7. While the Petitioner worked under Mr. Parrish's supervision, the two engaged in repeated verbal altercations primarily directed towards matters of work scheduling and the Petitioner's attendance.

8. The Petitioner testified that Mr. Parrish routinely denied her requests to alter or adjust her work schedule to accommodate personal matters.

9. Some female employees in the office, including the Petitioner, were of the opinion that Mr. Parrish gave preferential treatment to another female who worked in the office by routinely approving her requests related to her work schedule.

10. The Petitioner also asserted that other employees received preferential treatment from Mr. Parrish in matters of case assignments.

11. The evidence fails to establish that decisions made by Mr. Parrish as to the Petitioner's work schedule included consideration of the Petitioner's gender or marital status, or were retaliatory.

12. On occasion, Mr. Parrish made remarks in the office that made the Petitioner uncomfortable. The Petitioner testified at the hearing that Mr. Parrish commented on the physical appearance of other female employees, or of offenders who were present in the office, in a manner that the Petitioner found offensive.

13. At all times material to this case, Brian Wynns was the Respondent's "Circuit Administrator" responsible for

operation of the Winter Haven Probation Office. Mr. Wynns was Mr. Parrish's supervisor.

14. At some point prior to August 2012, Lou Bland, another female employee in the Respondent's Winter Haven office, filed a formal complaint against Mr. Parrish. According to Ms. Bland, she filed the complaint after Mr. Parrish yelled at her in a "threatening" manner. Ms. Bland testified that her complaint was resolved by Mr. Wynns, that Mr. Parrish apologized to Ms. Bland, and that she had no further problems with Mr. Parrish.

15. At the hearing, Ms. Bland testified that she never observed Mr. Parrish engage in what she would describe as sexual harassment.

16. Following a verbal altercation between the Petitioner and Mr. Parrish in August 2012, the Petitioner contacted Mr. Wynns by telephone to complain about Mr. Parrish.

17. The Petitioner did not file a formal written complaint against Mr. Parrish. The Petitioner testified that she was aware the Respondent had a formal procedure related to submission and resolution of complaints of discrimination. The Respondent's formal procedures were not offered into evidence at the hearing.

18. There is no evidence as to what transpired between Mr. Wynns and Mr. Parrish regarding the Petitioner's verbal

complaint. The Petitioner testified that she presumed Mr. Parrish was aware of her conversation with Mr. Wynns, because she perceived his behavior to be more hostile after the conversation occurred.

19. After August 2012, the Petitioner and some of her co-workers discussed collectively meeting with Mr. Wynns to voice their dissatisfaction with Mr. Parrish. The Petitioner's co-workers eventually decided not to participate in such a meeting, so it did not occur. Instead, the Petitioner met with Mr. Wynns on December 12, 2012, and submitted a letter of resignation from her position, effective January 31, 2013.

20. Although the Petitioner testified that she resigned because she could no longer tolerate Mr. Parrish, the Petitioner's letter of resignation referenced personal issues unrelated to Mr. Parrish as the primary basis for her decision to leave.

21. The evidence fails to establish that, prior to December 12, 2012, the Petitioner advised Mr. Wynns that her problems with Mr. Parrish had not been resolved by their August 2012 telephone conversation.

22. Following another verbal altercation with Mr. Parrish, the Petitioner accelerated the effective date of her resignation and terminated her employment on January 8, 2013.

CONCLUSIONS OF LAW

23. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57, Fla. Stat.

24. The Petitioner has alleged that she was subjected to unlawful discrimination by the Respondent on the basis of sex or marital status, or in retaliation, in violation of chapter 760, Florida Statutes. The 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., 396 So.2d 778 (Fla. 11st DCA 1981). The burden has not been met.

25. Chapter 760, Part I, Florida Statutes, sets forth the Florida Civil Rights Act of 1992 (the "Act"). The Respondent is an "employer" as defined in section 760.02(7). Section 760.10 provides in relevant part as follows:

(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.

* * *

(7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

26. Florida courts have determined that Title VII federal discrimination law should be used as guidance when applying the provisions of the Act. Fla. Dept. of Comm. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991); Sch. Bd. of Leon Co. v. Hargis, 400 So. 2d 103 (Fla. 1st DCA 1981).

27. The Petitioner has asserted that she was subjected to a hostile work environment on the basis of sexual harassment by her supervisor. The Act does not specifically include the phrase "sexual harassment," but courts have held that the phrase "terms, conditions, or privileges of employment" includes issues of disparate treatment and hostile or abusive work environment. Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993).

28. In order to substantiate a claim of hostile work environment under Title VII based on sexual harassment by a supervisor, an employee must establish the following elements: (1) that the employee belongs to a protected group; (2) that the employee has been subject to sexual harassment, such as

unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature; (3) that the harassment must have been based on the sex of the employee; (4) that the harassment was sufficiently severe or pervasive to alter the terms and conditions of employment and create a discriminatorily abusive working environment; and (5) a basis for holding the employer liable. Mendoza v. Borden, Inc., 195 F.3d 1238 (11th Cir. 1999).

29. The evidence establishes that only the first element has been met. The Petitioner belongs to a protected group.

30. Hostile workplace sexual harassment occurs when an employer's conduct "has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment." Steele v. Offshore Shipbuilding, Inc., 867 F.2d 1311, 1315 (11th Cir. 1989). Courts must determine whether an environment is sufficiently hostile or abusive by looking at all the circumstances, including frequency of discriminatory conduct, its severity, whether it is physically threatening or humiliating or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. Faragher v. City of Boca Raton, 118 S. Ct. 2275 (U.S. 1998). Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment is beyond Title

VII's purview. Oncale v. Sundowner Offshore Servs., Inc., 118 S. Ct. 998 (U.S. 1998). The evidence presented in this case fails to establish that Mr. Parrish's sexual comments were of such frequency and severity to interfere with any individual's work performance, including that of the Petitioner, or to create an intimidating, hostile, or offensive environment. The evidence also fails to establish that the alleged harassment was based on the Petitioner's gender.

31. Finally, the evidence fails to establish a basis for holding the Respondent liable. The single formal complaint filed against Mr. Parrish referenced a verbal altercation between another employee and Mr. Parrish. According to the complainant, the matter was handled promptly and effectively. The evidence fails to establish that the Respondent knew or should have known about Mr. Parrish's allegedly sexually-offensive behavior, or that the Respondent failed to take prompt action related to any report of such behavior. See Burlington Indus., Inc. v. Ellerth, 524 U.S. 742 (1998).

32. The Petitioner has asserted that she was discriminated against on the basis of her marital status. In order to substantiate a prima facie case of marital discrimination, the Petitioner must establish: (1) she was a member of a protected class; (2) she was performing her duties in a satisfactory manner and; (3) despite her satisfactory performance, she was

terminated. Again, only the first element has been met. The evidence fails to establish that the Petitioner was performing her job in a satisfactory manner, or that she suffered any type of adverse employment action from the alleged discrimination.

33. The Petitioner has alleged that she was retaliated against after complaining to Mr. Wynns about Mr. Parrish's behavior. To substantiate a prima facie case of retaliation under section 760.10(7), the Petitioner must demonstrate:

(1) that she engaged in statutorily protected activity; (2) that she suffered an adverse employment action; and (3) that the adverse employment action was causally related to the protected activity. Harper v. Blockbuster Entm't Corp., 139 F.3d 1385 (11th Cir.), cert. denied, 525 U.S. 1000 (1998). Only the first element has been met. The Petitioner's verbal complaint to Mr. Wynns was a protected activity. The evidence fails to establish that the Petitioner suffered an adverse employment action for doing so. The disputes with Mr. Parrish, which were the basis of her oral complaint to Mr. Wynns, continued, but the Petitioner did not pursue a formal complaint against Mr. Parrish. The Petitioner submitted a letter of resignation citing a variety of personal reasons for the decision to leave.

34. The Petitioner has implied that she was coerced to resign from her employment by the conditions of the job, and essentially was constructively discharged. In order to

substantiate a claim of constructive discharge in this case, the Petitioner must show that the employer made working conditions so difficult that a reasonable person would feel compelled to resign. Pa. State Police v. Suders, 542 U.S. 129 (U.S. 2004). The evidence fails to substantiate the claim of constructive discharge.

35. At the hearing, the Petitioner's exhibits identified medical and personal concerns that are not further disclosed herein. Because the Petitioner's complaint of discrimination does not allege discrimination on the basis of disability or by a failure to accommodate disability, the information was not relevant in this proceeding.

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 the Petitioner's complaint of discrimination.

DONE AND ENTERED this 11th day of December, 2015, in
Tallahassee, Leon County, Florida.

William F. Quattlebaum

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of December, 2015.

ENDNOTE

^{1/} All statutory references are to Florida Statutes (2015).

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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.