

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

KALISHA EAGLE,

Petitioner,

vs.

Case No. 15-5381

ALACHUA COUNTY BOARD OF COUNTY  
COMMISSIONERS,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on December 4, 2015, December 21, 2015, January 28, 2016, February 23, 2016, March 17, 2016, and May 18, 2016, in Gainesville, Florida, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Kalisha Eagle, pro se  
Post Office Box 708  
Newberry, Florida 32669

For Respondent: William E. Harlan, Jr., Esquire  
Alachua County Attorney's Office  
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STATEMENT OF THE ISSUES

The issues are whether Respondent ("the Alachua County Board of County Commissioners" or "Alachua County") committed

one or more unlawful employment practices and/or retaliated against Petitioner ("Kalisha Eagle") after she reported allegations of disparate treatment to Alachua County's Equal Employment Opportunity Office.

PRELIMINARY STATEMENT

Ms. Eagle filed a Charge of Discrimination with the Florida Commission on Human Relations ("the Commission") on approximately September 26, 2014, alleging that she was subjected to disparate treatment during her employment with Alachua County. In support thereof, Ms. Eagle alleged the following:

On or about August 4, 2008, I was hired by the above named employer as a Support Technician. I currently hold the position of Network Specialist. I am being subjected to different treatment by my immediate supervisor Virgillio Vensamoye because I am female. Mr. Vensamoye has taken my equipment which impairs my ability to perform tasks and gives them to newer employees (all males). Mr. Vensamoye does not assign me certain projects because they require [me] to work after hours and weekends and I am a single parent. I am being passed over for certain jobs and projects that could lead to on the job training, experience and promotions. On June 9, 2014, I went to my local EEO since the concerns I reported in January 2012 were not addressed. Subsequently, in retaliation, I was issued a counseling memo addressing performance issues.

My employer gave me no reason for the above treatment.

I believe [Alachua County] discriminated against me because of my sex, female, in violation of Title VII of the Civil Rights Act of 1964, as amended. I also believe that [Alachua County] retaliated against me for reporting discrimination in violation of Section 704(a) of Title VII.

The Commission conducted an investigation and issued a Determination on August 19, 2015, concluding that there was no reasonable cause to believe that an unlawful employment practice had occurred:

[Ms. Eagle] alleged that she had been subjected to different terms and conditions in her employment in an information technology department due to sex-based discrimination. [Ms. Eagle] established a *prima facie* case for discrimination because [Ms. Eagle] showed she was assigned less complex work than all 11-12 men in her department. [Alachua County], however, provided a legitimate, nondiscriminatory reason for assigning her less complex work: (1) [Ms. Eagle] works part-time and is assigned work that can be completed during a shorter workday and (2) the men have a different job title than [Ms. Eagle] and have, by function of that title, autonomous responsibilities over the servers and other higher-level equipment, while [Ms. Eagle]'s position does not. Additionally, [Alachua County] noted that, as an office policy, many complex or interesting projects have an open invitation for all unit members to voluntarily assist to gain experience. [Ms. Eagle] did not establish that [Alachua County]'s reason was a pretext for discrimination. [Ms. Eagle] also alleged, but did not establish a *prima facie* case for, retaliation. [Ms. Eagle] engaged in protected activity *after* she incurred the sole complained-of adverse employment action.

Ms. Eagle responded by filing a Petition for Relief on September 24, 2015, substantially expanding upon the allegations set forth in her Charge of Discrimination.

On September 24, 2015, the Commission referred this matter to DOAH for a formal administrative hearing.

The final hearing was commenced as scheduled on December 4, 2015. While the Parties stated in their separate responses to the Initial Order that the final hearing could be completed in one to two days, it became apparent by the end of the December 4, 2015, hearing that much more time would be required to complete the evidentiary portion of this matter. Accordingly, the undersigned conducted additional proceedings on December 21, 2015, January 28, 2016, February 23, 2016, March 17, 2016, and May 18, 2016.

Exhibits 1-3, 4A, 5, 7-9, 12-13, 15, 20A, 20B, 21-27, A, and B from Alachua County were accepted into evidence. Exhibits 0, A-Z, AA-ZZ, ZZ<sub>1</sub>-ZZ<sub>3</sub>, 1, and 1A from Ms. Eagle were accepted into evidence with the caveat that the undersigned would not consider handwritten comments that Ms. Eagle added to the documents after their creation.

Transcripts from the aforementioned hearing dates were filed with DOAH on the following dates: (1) two volumes from the December 4, 2015, hearing were filed on January 12, 2016; (2) two volumes from the December 21, 2015, hearing were filed

on January 19, 2016; (3) one volume from the January 28, 2016, hearing was filed on February 22, 2016; (4) two volumes from the February 23, 2016, hearing were filed on March 10, 2016; (5) two volumes from the March 17, 2016, hearing were filed on March 31, 2016; and (6) two volumes from the May 18, 2016, final hearing were filed on June 23, 2016.

After receiving two extensions, Alachua County filed a timely Proposed Recommended Order on July 20, 2016. Ms. Eagle did not file a proposed recommended order.

On August 11, 2016, Ms. Eagle filed a motion asking the undersigned to accept approximately 129 pages of documents into evidence. Alachua County filed a response on August 15, 2016, stating that it had no objection. Via a separately issued Order, the undersigned granted Ms. Eagle's motion.

#### FINDINGS OF FACT

##### Findings Adduced from Testimony and Evidence Presented during the Final Hearing

1. The Alachua County Board of County Commissioners has adopted a policy mandating that "[d]iscrimination against any person in recruitment, examination, appointment, training, promotion or any other employee action because of political opinions or affiliations or because of race, color, age, sex, religion, national origin, marital status, disability, sexual orientation, gender identify or expression is prohibited."

2. That same policy statement also prohibits “[r]etaliatio[n] against any person for bringing an allegation forward, filing a complaint or participating in an investigation of alleged unlawful discrimination.”

3. Alachua County’s governmental offices are served by an Information Technology Department (“the IT Department”) which consists of five teams: the help desk, applications, security, telecommunications, and networking.

4. The network team handles infrastructure or hardware-related requests that require someone to go into the field in order to resolve a problem.

5. The network specialist position is an entry level position for the network team, and there is only one network specialist position in the IT Department.

6. The network specialist’s duties include desktop support and assisting network analysts in projects and tasks involving server support and network infrastructure. Also, the network specialist is the “first responder” to any help desk calls that cannot be resolved within 30 minutes over the phone. In addition, the network specialist installs software and ensures that devices such as printers and scanners are operating properly.

7. The network team also consists of network analysts who handle more complex tasks than the network specialist and perform high-level work on servers.

8. There are five to seven network analysts in the IT Department. During the time period relevant to the instant case, Virgilio Vensamoye managed the network team.

9. Much like the information technology field as a whole, Alachua County's IT Department predominantly consists of males. Of the 44 employees in the IT Department, approximately 34 are males and 10 are females. There are no females currently working on the network team.

10. The IT Department hired Ms. Eagle (an African-American female) on August 4, 2008, to work on the help desk as a support technician.

11. Ms. Eagle had a substantial amount of experience with and/or knowledge of information technology prior to beginning her employment with Alachua County. For instance, she earned a certificate in PC Support Services from Santa Fe Community College in 2001 and an associate of science degree in computer information systems analysis from Santa Fe Community College in 2002. Ms. Eagle has also earned several certifications related to computer science.

12. Ms. Eagle's performance evaluations and the testimony given at the final hearing indicate that she was performing well at the help desk.

13. Following an interview,<sup>1/</sup> during which she outperformed two other internal candidates, Ms. Eagle was promoted to the network specialist position on February 1, 2010.

14. The network specialist position paid Ms. Eagle \$22.33 an hour and was a 59-percent increase over her previous compensation rate.

15. In the two years following her promotion, Ms. Eagle continued to perform well. For example, Mr. Vensamoye wrote a performance evaluation covering the period between October 1, 2010, and September 30, 2011, stating the following: "Kalisha has an exceptional attitude for helping us to resolve any problem we may have. She has taken over the tasks to assist the help desk as a first responder to help desk calls and ISR's. She is always willing to help at a moment's notice like she did when the Guardian ad Litem moved to their new offices."

16. Ms. Eagle made it known to several of her co-workers that she was looking to be challenged through her work and to use those challenges to grow as an IT professional.

17. That desire was also set forth in her performance evaluations. In the performance evaluation mentioned above, Ms. Eagle wrote that, "I want to learn and have more

participation during new server installations, setup and administration of Active Directory.”

18. When their work schedules allow, IT Department employees have opportunities to work with more experienced co-workers and learn through on-the-job training. The testimony presented at the final hearing strongly suggests that network analysts within the IT Department are willing to assist those with less knowledge to improve their skills through on-the-job training.

19. In October of 2011, David Velez (a network analyst) left the IT Department. While his position was vacant, Mr. Vensamoye assigned some of Mr. Velez’s network analyst duties to Ms. Eagle. That decision was set forth in a November 7, 2011, e-mail stating that Ms. Eagle “will be taking over Animal Services and Community Services but during this transition, please keep Kenny and me informed of any help desk calls assigned to Nikki<sup>2/</sup> for these two depts. I want her to have a successful take over in responsibilities.”

20. Ms. Eagle testified during the final hearing that the aforementioned e-mail led her to believe that she would be hired to fill one of the vacant network analyst positions.

21. That belief may have been reinforced by a November 28, 2011, e-mail from Mr. Vensamoye which described special circumstances under which the network analysts (who are salaried

employees) could be paid for working an amount of hours beyond what is considered usual and customary. Mr. Vensamoye began his November 28, 2011, e-mail by stating the following: "To all, (Except Nikki because this does not apply to you at least not yet but you need to know too)."

22. Ms. Eagle also believed that a promotion to network analyst was imminent because of her understanding that two people who previously held the network specialist position (Chris Johnson and Ian Van Kirk) had become network analysts approximately 18 months after they were hired as the network specialist.

23. A committee interviewed Ms. Eagle for the network analyst positions, but her inability to answer certain questions demonstrated that she was not ready to assume that role.

24. The IT Department ultimately hired two external applicants to fill the vacant positions. Mr. Vensamoye testified that the successful candidates had prior experience as network analysts and gave good interviews. In addition, one of the applicants had a veteran's preference.

25. Ms. Eagle was very upset that she was not hired to fill one of the vacancies and felt that the questions asked during her interview were unfair.

26. There was no testimony or documentary evidence indicating whether any other network analyst positions came open

during Ms. Eagle's tenure in the IT Department. Mr. Vensamoye testified that vacancies at the network analyst level are infrequent.

27. Ms. Eagle became even more upset when one or more of her co-workers asked for the equipment she had been using to handle the network analyst duties that Mr. Vensamoye had assigned to her via the November 7, 2011, e-mail.

28. Ms. Eagle asserts that no one told her that she would no longer be handling network analyst duties once the vacant positions were filled.

29. Because of the unsuccessful interview and the equipment issue mentioned above, Ms. Eagle visited Alachua County's Equal Employment Opportunity Office ("EEO Office") on January 12, 2012.

30. Up to this point, Ms. Eagle claims that she was receiving enough opportunities to acquire the skills necessary to become a network analyst.

31. Ms. Eagle did not file a formal complaint on January 12, 2012, but she did meet with an intake specialist within the EEO Office.

32. The intake specialist made the following entries in the EEO Office's computer system describing Ms. Eagle's allegations:

[Ms. Eagle] is upset that she is being unfairly treated. She says she is being passed over for certain jobs & projects that could lead to on the job training & experience & promotions. [Ms. Eagle] says her supr. [sic] Ken H., takes her equip. [sic] which impairs her ability to perform tasks and gives it to news emps. [sic]. [Ms. Eagle] says she interviewed for a position w/i [sic] her area and the position was given to two newer ext. [sic] emps. [sic]. [Ms. Eagle] says Ken said to her that she is not given certain projects becuz [sic] they require the tech to "get under desks" or work after hours/weekends becuz [sic] she is a single parent. [Ms. Eagle] says she never suggested that daycare was a problem and it prevents her from recd [sic] overtime. [Ms. Eagle] spoke with mgr. [sic] Vensamoye who says he will address the issue.

33. Soon thereafter, Jacqueline Chung (the lead person in the EEO Office) learned of Ms. Eagle's allegations and spoke to her. However, Ms. Eagle stated that she did not want to file a formal complaint. Instead, her visit to the EEO Office was merely a way for her to explore her options.

34. Ms. Chung discussed Ms. Eagle's concerns with the IT Department's management.

35. Because of her visit to the EEO Office, Ms. Eagle asserts that the IT Department began to retaliate against her by not assigning her to work on high-level projects. According to Ms. Eagle, her work for the remainder of 2012 was limited to desktop support and only one "project."

36. On or about Christmas of 2012, Ms. Eagle was seriously injured in a car accident and did not return to work until March 10, 2013.

37. According to Mr. Vensamoye, Ms. Eagle had not completely recovered from the car accident upon her return to work. As a result, Mr. Vensamoye assigned Ms. Eagle to "light duty" tasks which would not require her to lift heavy objects or walk long distances.

38. At the beginning of 2013, Ms. Eagle began to feel isolated at work. She alleges that her work orders decreased and that she was only allowed to observe others doing high-level work. Ms. Eagle would have preferred that she be allowed to do that work with someone watching and providing feedback. Ms. Eagle further alleges that she was slowly being removed from field work.

39. Another issue arose when Ms. Eagle was allegedly asked to "groom" William Martinez. This was supposedly communicated to her via an e-mail dated May 14, 2013, in which Kenny Shore (the person who usually assigned work to Ms. Eagle and others in the IT Department) asked Ms. Eagle to rebuild a computer from scratch. Along with other instructions, Mr. Shore stated that "we want Billy Martinez to observe/assist with this project. Use him as much as you can to assist you with things like

updates, backing up the data, whatever you think. Want to get Billy up to date with this kind of a project.”

40. The IT Department was not providing any preferential treatment to Mr. Martinez.

41. Mr. Martinez began working for the IT Department 19 years ago as a support technician on the help desk.

42. At some point after he was unsuccessful in obtaining the network specialist position that was ultimately offered to Ms. Eagle, Mr. Martinez concluded that he would have to take matters into his own hands in order to earn a promotion.

43. Mr. Martinez’s first step in earning a promotion involved handling help desk calls that could not be handled over the phone. As mentioned above, the help desk personnel typically forwarded such calls to the network team, and a member of the network team then went out into the field in order to resolve the problem. However, rather than forwarding such calls, Mr. Martinez handled them himself, and he was doing so based on his own initiative.

44. Members of the network team came to respect Mr. Martinez’s abilities. They allowed Mr. Martinez to watch them perform high-level network tasks, and they eventually allowed him to perform such tasks. He ultimately earned a promotion to senior support technician.

45. As a result of the issues described above, Ms. Eagle asserts that she visited Mr. Vensamoye's office on September 30, 2013, and was ready to immediately tender her resignation. According to Ms. Eagle, Mr. Vensamoye responded to her concerns by offering her a part-time schedule.

46. Ms. Eagle signed and submitted a letter to Mr. Vensamoye on September 30, 2013, stating the following:

Due to extenuating circumstances dealing with the daily care of my children, I am formally requesting a reduction of my work schedule in order to accommodate the needs of my family. Upon approval, I am requesting to change my schedule to 8:30am-12:30pm, Monday through Friday effective at the earliest convenience. I understand my salary will be adjusted accordingly to this reduced working schedule.

I certainly appreciate all the assistance you may provide to this request.

47. A memorandum dated October 1, 2013, and signed by Mr. Vensamoye and Ms. Eagle indicates that her request to work part-time was approved, and she began working 20 hours a week on October 7, 2013.

48. The IT Department prides itself on resolving its clients' problems as quickly as possible and providing prompt customer service. Witnesses from the IT Department persuasively testified that it is efficient to have a single person or group of persons working continuously to resolve a problem. Under such circumstances, the problem is typically solved much faster

than it would be if assigned to someone working a part-time schedule.

49. Therefore, the IT Department did not assign any complex tasks to Ms. Eagle while she was on a part-time schedule. Her tasks were limited to those that could be handled relatively quickly.

50. At some point in 2014, Mr. Vensamoye became concerned with certain aspects of Ms. Eagle's behavior at work. Accordingly, he met with her on June 9, 2014, and issued the following "memorandum of understanding" which stated:

As a follow up to our conversation today, we have agreed to take the following actions:

- Your schedule will remain 8:30 to 12:30 Monday to Friday as we agreed on October 7th, 2013.
- You are expected to be on time for assignments and meetings. Do not leave team meetings without express permission.
- Every Monday morning you will meet with Kenny Shore to review the list of tasks assigned to you and to plan your assignments for the week.
- On a daily basis, Victor Paul will follow up the progress of tasks assigned to you and he may make any necessary changes to your work load as priorities change.
- You must communicate immediately with Victor or me if you have any type of concerns that may affect your job performance.

- Limit the personal use of the phone calls during your assigned work schedule. Please be sure your cell phone bill is in good standing to avoid disruptions in service. The County will not be able to reimburse you for cell phone services for the month disruption of services occurs.

- Do not spend extended periods of time in consultation with Orin Yaw during your work day. You are disrupting his tasks and yours. If you need to consult on any technical issues, please refer to a member of the network team.

51. After receiving the memorandum of understanding, Ms. Eagle returned to the EEO Office on June 17, 2014, to complain about the memorandum. Ms. Eagle also reported that nothing had changed since her last visit to the EEO Office in January of 2012.

52. Ms. Eagle believed that the counseling memorandum was further retaliation for her initial visit to the EEO office.

53. Ms. Eagle also thought that the IT Department was beginning to retaliate against her through other means. For example, Ms. Eagle was supposed to begin taking the lead on certain assignments in June or July of 2014. However, she had to complete a background check beforehand. Ms. Eagle saw no need for a background check when she had spent the last six years working for Alachua County.

54. Ms. Eagle further claims that the IT Department retaliated against her by closely monitoring her time and assigning her to work with interns.

55. Ms. Chung met again with Ms. Eagle for about two hours on July 21, 2014. In a July 22, 2014, e-mail, Ms. Chung summarized Ms. Eagle's concerns as follows:

- Process for work order assignments (not being given work and hearing that others are getting assignments)
- Departmental assignments (not given certain depts [sic] even after being trained on their system)
- Computer builds (part of your position responsibilities, not given to interns)
- Being told to assist interns and others on assignments instead of being given the lead.
- The perception that others are being groomed/their futures considered, but you are not able to work on a full-time basis.

56. On July 23, 2014, Ms. Chung sent an e-mail to Ms. Eagle notifying her that she was going to meet with Mr. Vensamoye that day about the concerns listed above. Ms. Chung also stated that she intended to schedule a follow-up meeting with herself, Ms. Eagle, and the management of the IT Department because it would "be helpful to have all parties at the table as we discuss a game plan to move forward."

57. Ms. Eagle, Ms. Chung, the County's Human Resources Department, and the IT Department met in September of 2014, to address Ms. Eagle's concerns. However, Ms. Eagle became frustrated with Ms. Chung and the Human Resources Department and essentially dismissed them from the meeting. Ms. Eagle made it known that she only wanted to deal with the IT Department from that point forward.

58. Toward the end of 2014, management within the IT Department became concerned that Ms. Eagle's position would be eliminated or that it would be permanently converted into a part-time position. Therefore, Ms. Eagle was asked to return to full-time status, and she did so on January 12, 2015.

59. Upon her reinstatement to full-time status, Ms. Eagle's assignments were no longer limited to issues that could be resolved in a short time frame.

60. Ms. Eagle asserts that the past pattern of retaliation or disparate treatment continued after she returned to full-time status. According to Ms. Eagle, she only received 24 work orders for the entire year of 2015.

61. Ms. Eagle resigned on October 2, 2015, and her resignation letter read as follows:

Please accept this letter as my formal  
resignation from the Alachua County  
Information Service Department Network  
Specialist Position under the Network Team  
Division effective October 2, 2015. It has

been a pleasure working with all of you the last 8 years and I wish everyone here the best in the years to come. I thank all of you once again for this opportunity and I give a special thanks to those who took the time to make this opportunity special for me.

Specific Findings Regarding Ms. Eagle's Allegations of Disparate Treatment and Retaliation

62. In her filings with the Commission and during the course of the final hearing, Ms. Eagle made several allegations about how she was the victim of disparate treatment during her tenure with the IT Department. Furthermore, she alleges that the IT Department's management retaliated against her when it learned that she had visited the EEO Office. The following findings specifically address each of those allegations.

63. Ms. Eagle's primary allegation is that the IT Department's management did not assign her the type of work assignments that would further her professional development and prepare her for promotion to a network analyst position. In support of this allegation, Ms. Eagle asserted that Ian Van Kirk (who held the network specialist position prior to Ms. Eagle) had the opportunity to take the lead on projects and to work on servers.

64. However, Mr. Vensamoye testified Mr. Van Kirk was always under supervision. Also, while conceding that Mr. Van Kirk worked on servers during his tenure as a network

specialist, Mr. Vensamoye testified that the IT Department was short-handed at the time. In addition, Mr. Vensamoye reiterated that Mr. Van Kirk never made any final decisions.

65. Ms. Eagle also alleged that the IT Department hampered her professional development by not assigning her complex tasks and by not inviting her to participate in an adequate number of high-level projects. When she was invited to participate on such projects, her participation was allegedly limited to observation with no "hands-on" work. While not expressly saying so, Ms. Eagle clearly implies that observing others working on high-level projects did nothing to further her knowledge and professional development.

66. First of all, Ms. Eagle's own testimony indicated that she had been assisting network analysts prior to her unsuccessful interview for a network analyst position. According to Ms. Eagle, that work and her other work within the IT Department adequately prepared her to assume a network analyst's duties.

67. Moreover, there was testimony indicating that Ms. Eagle was assigned projects that were far more involved than the help desk calls typically handled by a network specialist. Those projects were opportunities for professional development.

68. For example, Jim Bledsoe (a network analyst within the IT Department) testified about a project in which the IT

Department enabled county commission meetings to be streamed over the internet. Mr. Bledsoe was the leader of that project and asked for Ms. Eagle to be assigned to it because she had expressed a desire to participate in a highly visible assignment. During the course of this project, Ms. Eagle assisted Mr. Bledsoe and was able to watch him build a server.

69. Ms. Eagle also assisted Mr. Bledsoe in connecting computers in the Alachua County Transfer Station to the County's main network via a radio frequency link.

70. Mr. Bledsoe also testified that Ms. Eagle was the point-of-contact between the IT Department and the Guardian ad Litem office. While the Guardian ad Litem Office was a small department in comparison to others, Ms. Eagle was completely responsible for that office's information technology needs.

71. Ms. Eagle had an open invitation to participate in any projects that interested her. Mr. Vensamoye testified that employees within the IT Department are encouraged to confer with more experienced co-workers and gain knowledge by assisting those co-workers with certain tasks. Chris Johnson testified that when he was a support technician, network analysts were very receptive to allowing him to watch or assist with projects.

72. Testimony during the final hearing indicated that Ms. Eagle's desire to improve her skills dramatically decreased at some point after she became a network specialist. For

example, Mr. Bledsoe testified that Ms. Eagle unexpectedly left the transfer station project before it was completed, and Mr. Johnson testified that Ms. Eagle was talking on her phone during the entire duration of the project. Mr. Johnson also testified that he stopped asking Ms. Eagle if she wanted to accompany him on projects because she no longer seemed to be interested and was difficult to locate. Finally, Victor Paul (Ms. Eagle's direct supervisor) testified that Ms. Eagle's interest in learning new skills disappeared during her final two-and-a-half years in the IT Department.

73. Also, the IT Department understandably avoided assigning Ms. Eagle complex assignments when she was working a part-time schedule. As noted above, the IT Department prides itself on providing a high level of customer service and wanted to avoid situations in which a client's problem went unresolved simply because an IT Department employee could only devote a limited amount of time to the problem.

74. Ms. Eagle also asserted that her professional development was hampered by the fact that she was not assigned to cover on-call support.

75. Mr. Vensamoye persuasively testified that the IT Department was under strict budgetary constraints at the time in question. Because Ms. Eagle was an hourly employee who would

have to be paid overtime, it was more economical for the IT Department to assign salaried employees to on-call duty.

76. Ms. Eagle also alleges that Mr. Martinez was "groomed" for advancement and that a great deal of her network specialist work was improperly diverted away from her and to Mr. Martinez. This appears to be the primary basis for her repeated assertions that she was getting "no work."

77. Given that Mr. Martinez had worked in the IT Department for 17 years prior to earning his promotion to senior support technician, one can hardly say that the IT Department's management had singled him out and was "grooming" him for promotion.

78. Instead, the testimony indicates that Mr. Martinez made a conscious decision to volunteer for extra work and earn his promotion. In fact, Mr. Shore testified during the final hearing that Mr. Martinez "worked his ass off and he was there every day" during the time period at issue.

79. In order to reach his goal of earning a promotion, Mr. Martinez was handling help desk calls that would normally be assigned to a network specialist such as Ms. Eagle. Therefore, he appears to have been filling a void that resulted from Ms. Eagle's downtime following her accident and her subsequent part-time status.

80. Furthermore, while Mr. Shore vigorously disputed any assertion that Ms. Eagle was not getting her fair share of work assignments, he testified that Ms. Eagle was difficult to locate in 2014 and 2015. Therefore, it is certainly understandable that certain assignments were shifted to Mr. Martinez when Ms. Eagle could not be located.

81. Ms. Eagle also alleges that the IT Department's management retaliated against her by subjecting her to increased monitoring, requiring her to obtain a security clearance, and by issuing the memorandum of understanding to her.

82. Mr. Vensamoye and Mr. Paul testified that the same amount of monitoring was being applied to all of the IT Department's employees. Ms. Eagle was not being singled out, and there was no evidence to the contrary.

83. With regard to the security clearance, Victor Paul (Ms. Eagle's direct supervisor) testified that obtaining such a clearance is something that must be done periodically. Therefore, asking her to do so was not an attempt at retaliation.

84. Mr. Vensamoye testified that Ms. Eagle was taking an inordinate amount of time to complete assignments in the few months preceding the memorandum of understanding's issuance. Also, it became difficult to find her during working hours and, when she was able to be located, she was often in the break room

or talking on her telephone. Accordingly, the memorandum of understanding was an effort to address those issues rather than disciplinary action.

85. Finally, Ms. Eagle alleges that she was subjected to disparate treatment when certain equipment was taken from her possession after the IT Department hired two network analysts in 2012. The equipment in question was related to the network analyst duties that Ms. Eagle was covering after the incumbent left the IT Department.

86. Ms. Eagle was very upset when she was not hired for one of the network analyst positions, and the retrieval of the equipment appears to have been "salt in the wound." However, after the two network analyst positions were filled, it was reasonable to expect that the persons hired would need that equipment.

87. As discussed below in the Conclusions on Law section, Ms. Eagle was required to prove her allegations of disparate treatment and retaliation by a preponderance of the evidence. The greater weight of the evidence demonstrates that there was no disparate treatment or retaliation.

88. Specifically, the greater weight of the evidence does not establish that Alachua County took any action which led to a serious and material change in the terms of Ms. Eagle's employment.

## CONCLUSIONS OF LAW

89. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57, Florida Statutes (2015)<sup>3/</sup>, and Florida Administrative Code Rule 60Y-4.016(1).

90. The State of Florida, under the legislative scheme contained in sections 760.01-760.11 and 509.092, Florida Statutes, known as the Florida Civil Rights Act of 1992, 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.

91. Section 760.10 prohibits discrimination "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." § 760.10(1)(a), Fla. Stat.

92. Ms. Eagle alleges that she was the victim of disparate treatment. See Reeves v. C.H. Robinson Worldwide, Inc., 594 F.3d 798, 808 n.2 (11th Cir. 2010) (en banc) ("We reiterate that disparate treatment under 42 U.S.C. § 2000e-2(a)(1) is the proper framework under which to evaluate hostile work environment claims."). The United States Supreme Court has

noted that “[d]isparate treatment . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or [other protected characteristic].” Teamsters v. U.S., 431 U.S. 324, 335 n.15 (1977). Liability in a disparate treatment case “depends on whether the protected trait . . . actually motivated the employer's decision.” Hazen Paper Co. v. Biggins, 507 U.S. 604, 610 (1993). “The ultimate question in every employment discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination.” Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 153 (2000).

93. Discriminatory intent can be established through direct or circumstantial evidence. 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. Maynard v. Bd. of Regents, 342 F.3d 1281, 1289 (11th Cir. 2003).

94. “Direct evidence is composed of 'only the most blatant remarks, whose intent could be nothing other than to discriminate' on the basis of some impermissible factor.” Schoenfeld, supra.

95. "[D]irect evidence of intent is often unavailable." Shealy v. City of Albany, 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of intentional discrimination "are permitted to establish their cases through inferential and circumstantial proof." Kline v. Tenn. Valley Auth., 128 F.3d 337, 348 (6th Cir. 1997).

96. Those seeking to prove discriminatory intent via circumstantial evidence use the shifting burden of proof pattern established in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997).

97. Under the shifting burden pattern developed in McDonnell Douglas:

First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

U.S. Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990) (housing discrimination claim); accord, Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009) (gender discrimination claim) ("Under the McDonnell

Douglas framework, a plaintiff must first establish, by a preponderance of the evidence, a prima facie case of discrimination.").

98. Ms. Eagle did not present statistical or direct evidence of discrimination. Therefore, in order to prevail in her claim against Alachua County, Ms. Eagle must first establish a prima facie case by a preponderance of the evidence. Id.; § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure proceedings or except as otherwise provided by statute and shall be based exclusively on the evidence of record and on matters officially recognized.").

99. "Demonstrating a prima facie case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination." Holifield, 115 F.3d at 1562; cf. Gross v. Lyons, 763 So. 2d 276, 280 n.1 (Fla. 2000) ("A preponderance of the evidence is 'the greater weight of the evidence,' [citation omitted] or evidence that 'more likely than not' tends to prove a certain proposition.").

100. Ms. Eagle's discrimination claims are based on alleged disparate treatment. In order to establish a prima facie case for discrimination based on disparate treatment, Petitioner must show that (a) she belongs to a protected class; (b) she was subject to an adverse employment action; (c) her

employer treated similarly-situated employees outside her protected class more favorably; and (d) she was qualified to do the job. Holifield, 115 F.3d at 1562.

101. Petitioner's complaint also alleges retaliation.

102. In order to establish a prima facie case for retaliation, Petitioner must show that: (1) she was engaged in statutorily-protected expression or conduct; (2) she suffered an adverse employment action; and (3) there is some causal relationship between the two events. Holifield, 115 F.3d at 1566.

103. While Ms. Eagle established that she belongs to a protected class, she did not demonstrate that she suffered an adverse employment action.

104. In order to demonstrate an adverse employment action, a petitioner must establish that the action caused a serious and material change in the terms of his or her employment. Davis v. Town of Lake Park, Florida, 245 F.3d 1232, 1239 (11th Cir. 2001).

105. Ms. Eagle failed to establish that Alachua County took any action which led to a serious and material change in the terms of her employment.

#### 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 Ms. Eagle's Petition for Relief.

DONE AND ENTERED this 25th day of August, 2016, in Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of August, 2016.

ENDNOTES

<sup>1/</sup> The committee that interviewed Ms. Eagle described the interview as follows: "Excellent interview. Kalisha performed excellent on the general questions showing deep knowledge on almost all of the items, including showing a better understanding of what the [active directory] was and the relationship of the Schema. The one main term (jabbering) that she did not know; she was able to solve by demonstrate[ing] extraordinary reasoning in determining what would cause it and how to detect or correct it. Her performance in the practical, although not the most direct, was better than average and, although she initially identified and corrected the external connectivity problem by simply correcting the gateway address, implemented DHCP when asked if there was a better solution. She took the least time of all applicants in completing the practical including verifying and correcting connector problems before initial boot (no POST errors). She quickly identified visually [that] the network connection was invalid but needed to go so far as using a third cable, probably because of impatience in not waiting." Exhibit V.

<sup>2/</sup> During the time periods relevant to the instant case, Ms. Eagle was referred to as "Kalisha" or "Nikki."

<sup>3/</sup> Unless stated otherwise, all statutory references will be to the 2015 version of the Florida Statutes.

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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.