

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VERONICA BELL OGBEIFUN,

Petitioner,

vs.

Case No. 16-6584

ONE HOPE UNITED,

Respondent.

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RECOMMENDED ORDER

Administrative Law Judge, John D. C. Newton, II, of the Division of Administrative Hearings (DOAH), conducted the final hearing in this matter on April 4, 2017, by video conference at sites in Tallahassee and Lakeland, Florida.

APPEARANCES

For Petitioner: Veronica Bell Ogbeifun, pro se  
1012 Kentucky Street  
Haines City, Florida 33844

For Respondent: Andrew R. Lincoln, Esquire  
Jackson Lewis  
Suite 2200  
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STATEMENT OF THE ISSUES

A. Did Respondent, One Hope United (One Hope), discriminate against Petitioner, Veronica Bell Ogbeifun, on account of her race?

B. Did One Hope retaliate against Ms. Ogbeifun for filing a complaint of discrimination with the Florida Commission on Human Relations (Commission)?

PRELIMINARY STATEMENT

By Charge of Discrimination dated January 13, 2016, and amended March 14, 2016, Ms. Ogbeifun charged One Hope with discriminating against her in employment on account of her race and sex. She also charged One Hope with retaliating against her for filing an earlier Charge of Discrimination with the Commission. The Commission issued a Determination of No Cause. Ms. Ogbeifun filed a Petition for Relief from an Unlawful Employment Practice. The petition claimed One Hope discriminated against her on account of her race and retaliated against her for filing an earlier charge. The petition did not claim sex discrimination. The Commission transmitted the petition to DOAH to conduct a final hearing. The undersigned conducted the final hearing on April 4, 2017.

Ms. Ogbeifun testified on her own behalf. She presented no other witnesses. Ms. Ogbeifun's Exhibits 1 through 4, 6 through 11, part of Exhibit 12, and Exhibit 13 were admitted into evidence. One Hope presented the testimony of Muriah Davis-Deuth, Rebecca Kampman, Michelle Ramirez, Gail Werley, and Cristina Villazan. One Hope's Exhibits 9, 10, and 12 through 23 were admitted into evidence. The parties timely filed proposed

recommended orders. They have been considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

##### Ms. Ogbeifun's Employment with One Hope

1. One Hope provides a variety of community-based services for families and children. They include: early childhood education, intervention, child development programs, child placement and residential care. One Hope has several offices in Florida and operates in many states. Its headquarters are in Chicago, Illinois.

2. Ms. Ogbeifun began working for One Hope as a Program Specialist on July 6, 2009. At the time she began work, Ms. Ogbeifun went by the name Veronica Bryan Bell. One Hope records identified her by that name. Ms. Ogbeifun worked in Circuit 10, which consists of Highlands and Hardee counties in Florida.

3. The services that One Hope's Circuit 10 office provides include foster care; in-home services for abused, abandoned and neglected children; and other services for families and children. Ms. Ogbeifun was responsible for staffing cases and implementing permanency planning for the families and children in the system of care. She was a salaried employee, paid for an entire day if she worked at least one hour per day.

4. Ms. Ramirez, the Director of Programs for Circuit 10, was Ms. Ogbeifun's supervisor. Ms. Ogbeifun reported directly to Ms. Ramirez. Ms. Ogbeifun's employment obligations included providing her schedule to Ms. Ramirez each week and advising Ms. Ramirez if she was going to deviate from the schedule. This duty included advising Ms. Ramirez if she was leaving work before the scheduled quitting time of 5:00 p.m. or not coming to work.

Claimed Violation of Conflict of Interest Agreement

5. Ms. Ogbeifun also owned and operated a business called Restoration Family Services. The business conducted adoption home studies. Restoration Family Services and One Hope provided related services and served similar clients. One Hope permitted Ms. Ogbeifun to operate her business.

6. To protect against conflicts of interest, Ms. Ogbeifun and One Hope executed a conflict of interest agreement. The conditions included: (1) Ms. Ogbeifun would not provide services to prospective adoptive parents in Circuit 10 or for children or parents outside of Circuit 10 but served by One Hope or Kids Hope United<sup>1/</sup>; (2) referral sources could not be generated from business relationships of One Hope or Kid's Hope United; and (3) Ms. Ogbeifun could not perform work for her business during her One Hope working hours or use One Hope equipment.

7. The specific requirements about One Hope's equipment and performing Restoration Family Services work during One Hope work hours are:

Work or [sic] on behalf of Restoration Family Services, Inc., cannot be done during hours required of your employment with Kids Hope United, which could include non-traditional hours as needed.

Work for or on behalf of Restoration Family Services, Inc. cannot be done during time in which you are also compensated by Kids Hope United.

[Ms. Ogbeifun may not] [u]tilize Kids Hope United equipment for or on behalf of Restoration Family Services, Inc.

8. One Hope claims that Ms. Ogbeifun performed Restoration Family Services work while compensated by One Hope or using One Hope equipment for Restoration Family Services. It claims this was one reason for terminating Ms. Ogbeifun. The evidence to support this claim is too flimsy to be persuasive.

9. Ms. Davis-Death says she saw what she thought were Restoration Family Services files on Ms. Ogbeifun's desk. If the witness was correct that the files she saw were Restoration Family Services files, there is no evidence that Ms. Ogbeifun was working on them.

10. On February 18, 2016, Ms. Ogbeifun filed corporate papers for her business while on leave. Interpreting the agreement to prohibit working on Restoration Family Services

business while on leave is not a reasonable interpretation of the agreement.

11. A witness testified that Ms. Ogbeifun had files for some of her permitted work for clients from another circuit in One Hope's statewide database with a time stamp showing entry in the database during what should have been Ms. Ogbeifun's work hours. The testimony does not indicate that the witness actually saw the information. It begins "There was a time that there were some home studies found in our statewide database. . . ." The testimony is hearsay. The evidence does not prove that Ms. Ogbeifun entered the files in the system.

12. This fact would have been easy enough to prove if One Hope had presented copies of the date-stamped documents in its database. The failure to do so is significant.

13. One Hope relies on testimony of Ms. Ramirez that other employees reported to her that they saw Ms. Ogbeifun completing home studies at the One Hope office. The hearsay testimony, short on details, cannot support a finding of fact. The people who allegedly made the reports were One Hope employees who One Hope could easily have produced to testify. One, Ms. Davis-Death, did testify. And she did not testify that she saw Ms. Ogbeifun working on the files.

14. On February 3 and 17, 2016, Ms. Ogbeifun took leave. Each time she e-mailed Ms. Ramirez before 7:00 a.m. to advise her

that we could not make it in because of family matters. One Hope argues that these facts support an inference that Ms. Ogbeifun was taking off to work on her other business. The evidence does not support the inference.

15. The claim that One Hope terminated Ms. Ogbeifun for violating the conflict of interest agreement is not credible. It relies upon uncorroborated hearsay. It advances alleged facts that One Hope could easily have proved through its own documents and employees. Failure to do so undermines the credibility of the claims.

16. The claim that violation of the conflict of interest agreement had something to do with Ms. Ogbeifun's termination is recently crafted for this proceeding. One Hope's statement of position submitted to the Commission makes no mention of this claim. Perhaps this explains the fact that One Hope did not include in its exhibits the termination documents to which the statement of position refers. This contributes to finding the evidence does not support the claim.

#### Earlier Complaint

17. Ms. Ogbeifun filed a complaint of discrimination with the Commission on January 13, 2016. It described a number of ways in which she believed that Ms. Ramirez had discriminated against her and other African-American employees. The complaint identifies Veronica Ogbeifun as the complainant.

18. The Commission forwarded the complaint to One Hope's corporate offices in Chicago. At the time of the discharge that is the subject of this proceeding, the managers in One Hope's District 10 office did not know of the complaint.

Confrontation with Ms. Kampman

19. One Hope employees in the Highlands County office often hold interoffice events that included food and beverages. The employees prepare and serve some items in the breakroom, which is also a kitchen. The employees conduct the events in a conference room or the breakroom. Employees are supposed to clean up after an event.

20. Ms. Ogbeifun organized an event in the Highlands County office to celebrate Valentine's Day and "Cultural Day." Ms. Ogbeifun organized Cultural Day as part of Black History month. She and fellow employees held the combination Valentine's and Cultural Day event on Monday, February 15, 2016. They did not clean the breakroom.

21. On February 18, 2016, Ms. Davis-Deuth, a fellow employee, sent an e-mail to all employees in Circuit 10 about the messy, unclean condition of the breakroom. The e-mail stated that dishes had been left in the sink since Monday, the day of the Cultural Day event, and were causing the building to smell.



Ms. Davis-Deuth's e-mail asked the people who left the dishes in the sink to take care of them. It observed that all participants in an event have a responsibility to clean up.

22. Employees held a baby shower in the breakroom on February 23, 2016. The participants did not clean up.

23. February 25, 2016, Ms. Kampman, a Case Manager Supervisor, sent an e-mail to all Circuit 10 employees about the dirty breakroom. The first paragraph described the dirty dishes and food left in the breakroom after the shower and the Valentine Day/Cultural Day event. The e-mail described the cleaning event participants should conduct and described the reasons people should fulfill their clean-up responsibilities. It concluded by reminding employees that the cleaning crew did not clean up food and that she or "Rebecca B." would make sure dish soap and other cleaning items were available in the breakroom.

24. Ms. Ogbeifun was one of 40 employees to whom the e-mail was addressed. Nonetheless Ms. Ogbeifun concluded that the e-mail singled her out and got upset. She decided to confront Ms. Kampman.

25. Shortly after receiving the e-mail, Ms. Ogbeifun went to Ms. Kampman's office. Ms. Ogbeifun was visibly agitated and stood in the doorway. She spoke loudly enough that at least one nearby employee heard her. But she was not yelling. She repeatedly accused Ms. Kampman of singling her out. Ms. Kampman

explained several times that she sent the e-mail to all employees, mentioned two events, and addressed a repeating office-wide problem. She asked Ms. Ogbeifun to re-read the e-mail. After a while, Ms. Kampman told Ms. Ogbeifun she was not going to discuss the matter further. Ms. Ogbeifun left the doorway and returned to her office.

26. After returning to her office, Ms. Ogbeifun packed some personal belongings and left the office around 3:00 p.m. or 3:30 p.m. In the preceding days, she had removed other personal belongings, such as photographs, from her office.

27. Ms. Ogbeifun did not advise her supervisor, Ms. Ramirez, that she was leaving. She did not activate her out-of-office message.

28. Later that afternoon, the office sent Ms. Ogbeifun five e-mails.

29. The first e-mail, sent to all employees from Ms. Ramirez at 3:17 p.m., was one of three about a meeting with the new Chief Human Resource Officer and the Florida Executive Director. It reminded employees of the meeting and stated that the meeting was mandatory.

30. The second e-mail was Ms. Kampman's reply to Ms. Ramirez advising her that "849" was scheduled for staffings at the same day and time as the meetings with the resource officer and the executive director. The reply asked if the staffings would be set for a new day. Ms. Kampman copied Ms. Ogbeifun with that e-mail.

31. The third e-mail, sent by Ms. Ramirez, replied to Ms. Kampman's e-mail. Ms. Ramirez said that the staffings' times would have to be changed. Ms. Kampman copied Ms. Ogbeifun. The three e-mails only provided information. None requested a response or was the sort of communication that called for a response.

32. The fourth e-mail, sent at 4:19 p.m. by Ms. Ramirez, to Ms. Ogbeifun and two other employees, asked them to submit overdue time sheets. The e-mail did not request a response and was not of the sort that called for an immediate response.

33. Ms. Ogbeifun did not respond to the four e-mails. She also did not communicate with the office after leaving on February 25, 2016.

34. Ms. Ramirez sent the fifth e-mail. It sought suggestions about a Permanency Staffing Form. Ms. Werley sent an earlier related e-mail at 10:22 a.m., February 25, 2016, to Ms. Ogbeifun, Ms. Davis-Deuth, and Ms. Ramirez advising that the form was "FINALLY ready for review," at 4:31 p.m. Ms. Ramirez

sent the fifth e-mail of the day, a follow-up on the morning staffing form e-mail from Ms. Werley. It provided Ms. Ramirez's thoughts on the form and asked for Ms. Ogbeifun's thoughts. Neither e-mail expressed any urgency about responding. Ms. Ogbeifun did not respond.

35. Near the end of February 25, 2016, Ms. Ramirez called Ms. Villazan, Chief Human Resource Officer for One Hope. She also contacted Eva Horner, One Hope's Executive Director for Circuit 10. The three discussed the afternoon's events.

36. The three did not mention the January discrimination complaint during their discussions. Ms. Ramirez and Ms. Horne were not aware of it because it went to the Chicago office. Ms. Villazan was not aware that the Veronica Ogbeifun who filed the complaint was the Veronica Bell whom they were discussing.

37. The three decided that Ms. Ogbeifun's loud confrontation of Ms. Kampman supported termination.

#### Job Abandonment

38. They also decided that Ms. Ogbeifun had abandoned her job because she was upset and left an hour and half early, had not responded to the four e-mails that did not call for a response, and did not respond within six working hours to the fifth e-mail, which did not call for an immediate response.

39. The facts do not support this conclusion. Ms. Ogbeifun left work one and half hours early after an emotional

confrontation. She took some personal belongings home. And she did not respond to e-mails that did not require an immediate response. Concluding Ms. Ogbeifun abandoned her job from those facts is unreasonable.

40. Ms. Ogbeifun returned to work on February 26, 2016. She was informed that she had been terminated.

No Signs of Discrimination on Account of Race

41. The record does not contain evidence of racial epithets, use of racial stereotypes, comments about racial features, or any other direct evidence indicating that One Hope considered Ms. Ogbeifun's race in deciding to terminate her.

42. Ms. Ogbeifun advanced a theory that One Hope treated African-American employees differently and worse than it treated Caucasian employees. There is no competent, persuasive evidence in the record to support the theory.

CONCLUSIONS OF LAW

43. Ms. Ogbeifun advances two claims. First, she maintains that One Hope discriminated against her on account of her race by discharging her. Second, she claims that One Hope retaliated against her for complaining of racial discrimination.

44. Sections 120.569 and 120.57(1), Florida Statutes (2016),<sup>2/</sup> grant DOAH jurisdiction over the subject matter of this proceeding and of the parties.

Discrimination on Account of Race

45. Section 760.10(1)(a), Florida Statutes, makes it unlawful for an employer to take adverse action against an individual because of the individual's race. Section 760.10(7) makes it unlawful for an employer to discriminate against any person because that person has opposed an unlawful employment practice.

46. Section 760.11(7) permits a party who receives a no cause determination to request a formal administrative hearing before DOAH. "If the administrative law judge finds that a violation of the Florida Civil Rights Act of 1992 [Chapter 760] has occurred, he or she shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay." Id.

47. Chapter 760 is patterned after Title VII of the Civil Rights Act of 1964, as amended. Consequently, Florida courts look to federal case law when interpreting chapter 760.

Valenzuela v. GlobeGround N. Amer., LLC., 18 So. 3d 17 (Fla. 3d DCA 2009). Ms. Ogbeifun must prove her claims by a preponderance of the evidence. Id.

48. A party may prove unlawful discrimination through direct evidence of discrimination. City of Hollywood v. Hogan,

986 So. 2d 634, 641 (Fla. 4th DCA 2008). Direct evidence is something like a discriminatory statement by a supervisor that requires no interpretation or inferences to manifest the discrimination. Schoenfeld v. Babbitt, 168 F.3d 1257, 1266 (11th Cir. 1999).

49. The direct evidence does not prove that One Hope discriminated against Ms. Ogbeifun because of her race.

50. An employee may also prove a claim of discrimination by circumstantial evidence establishing that similarly situated employees, who were not in her protected class, were treated more favorably than she was. Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1087 (11th Cir. 2004).

51. Ms. Ogbeifun had theories about disparate treatment in assignments and positions. Ms. Ogbeifun attempted to prove disparate treatment based on her race by claiming that: (1) she was not allowed to work with providers directly; (2) her supervisor sabotaged her character; (3) African-American employees are required to hold higher education credentials compared to Caucasian employees; and (4) she did not receive a worksite transfer.

52. The scant evidence did not support her theories. She did not prove that similarly situated Caucasian employees were treated differently than she or other African-American employees.

53. There was no evidence that non-minority employees had not been discharged in circumstances similar to those in which One Hope discharged Ms. Ogbeifun.

54. Ms. Ogbeifun feels that she was unfairly treated. But unfair, erroneous, or irrational treatment does not equate to unlawful discrimination. Coutu v. Martin Cty. Bd. of Cty. Comm'rs, 47 F.3d 1068 (11th Cir. 1995).

#### Retaliation

55. The court in Blizzard v. Appliance Direct, Inc., 16 So. 3d 922, 926 (Fla. 5th DCA 2009), described the analysis required for a retaliation claim. The opinion says:

To establish a prima facie case of retaliation under section 760.10(7), a plaintiff must demonstrate: (1) that he or she engaged in statutorily protected activity; (2) that he or she suffered adverse employment action; and (3) that the adverse employment action was causally related to the protected activity. See Harper v. Blockbuster Entm't Corp., 139 F.3d 1385 (11th Cir.), cert. denied, 525 U.S. 1000, 119 S. Ct. 509, 142 L. Ed. 2d 422 (1998). Once the plaintiff makes a prima facie showing, the burden shifts and the defendant must articulate a legitimate, nondiscriminatory reason for the adverse employment action. Wells v. Colorado Dep't of Transp., 325 F.3d 1205, 1212 (10th Cir. 2003). The plaintiff must then respond by demonstrating that defendant's asserted reasons for the adverse action are pretextual. Id.

56. Ms. Ogbeifun established the first two elements. She did not prove the third. Her discharge could not have been because of her January complaint to the Commission because the




three people who decided to discharge her did not know of the complaint. The evidence and the facts found did not prove Ms. Ogbeifun claim of retaliation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing the Petition for Relief of Veronica Bell Ogbeifun.

DONE AND ENTERED this 1st day of June, 2017, in Tallahassee, Leon County, Florida.



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JOHN D. C. NEWTON, II  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 1st day of June, 2017.

ENDNOTES

<sup>1/</sup> The document refers to "Kids Hope United." This is an earlier name for One Hope.

<sup>2/</sup> All references to the Florida Statutes are to the 2016 codification.

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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.