STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PATRICK QUERCIOLI,

Petitioner,

vs. Case No. 16-6585

FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice to all parties, the final hearing was conducted in this case on March 23, 2017, in Ocala, Florida, before Administrative Law Judge ("ALJ") R. Bruce McKibben of the Division of Administrative Hearings ("DOAH").

APPEARANCES

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For Respondent: M. Lilja Dandelake, Esquire
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STATEMENT OF THE ISSUES

The issue in this case is whether Respondent, Department of Corrections ("DOC" or the "Department"), engaged in

discriminatory practices against Petitioner, Patrick Quercioli, on the basis of his disability; and, if so, what relief should be granted.

PRELIMINARY STATEMENT

Petitioner's employment with DOC was terminated on or about August 4, 2016. At that time, Petitioner had taken extensive leave under the Family Medical Leave Act ("FMLA") and the Employee Assistance Program ("EAP") due to an incident arising during his employment with the Department. As a result of the incident, Petitioner had developed Post Traumatic Stress Disorder ("PTSD"). Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations ("FCHR"), which issued a Determination: Reasonable Cause on October 15, 2016. Based upon that determination, Petitioner filed a Petition for Relief from Discriminatory Employment Practices with FCHR. FCHR transferred the Petition to DOAH, where it was assigned to the undersigned ALJ. A hearing on the Petition was held on the date and time set forth above.

At the final hearing, Petitioner testified on his own behalf and called three other witnesses: Marjorie Elisabeth Maharaj, d/b/a Beth Robinson (referred to herein as "Mrs. Robinson"), a mental health professional--accepted as an expert in therapy, including the area of PTSD; Elisabeth Wilkerson, retired chief of personnel for DOC; and Angela

Gordon, DOC Region I Director (and former warden of Lowell Correctional Institution). Petitioner's Exhibits 1 through 12 and 14 through 22 were admitted into evidence. The Department did not call any witnesses during its case in chief. DOC Exhibits 1 and 2 were admitted into evidence.

The parties advised that a transcript of the final hearing would be ordered. By rule, the parties have ten days from the date the transcript is filed to file proposed recommended orders ("PROs"). The Transcript was filed on April 14, 2017; the PROs were due on April 24, 2017. However, Respondent requested and was granted an extension of time until May 5, 2017, for the parties to file their PROs. The parties each timely filed their PRO. Each party's PRO was duly considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner is a 53-year-old Caucasian male. From approximately November 19, 2004, until August 4, 2016, Petitioner was employed by the Department as a Correctional Officer. He was promoted to the rank of Correctional Officer Sergeant on July 28, 2006. At all times relevant hereto, Petitioner was working at the Annex section of the Lowell Correctional Institution ("Lowell") located in Marion County. Lowell is a maximum security prison for female inmates; it has an average daily count of approximately 2,800 prisoners.

2. The Department is an agency of the State of Florida, created pursuant to section 20.315, Florida Statutes, and is responsible for, inter alia, hiring and monitoring all employees engaged in operations at a state prison.

3. Petitioner was separated from his employment with DOC due to the fact that he could not "perform the essential functions of his job." That determination was based on a report from Petitioner's therapist, Mrs. Robinson, and her opinion that Petitioner could not effectively perform his duties in the presence of inmates. Inasmuch as all Correctional Officer Sergeant positions require contact with inmates, DOC terminated Petitioner's employment.

4. The facts leading to the ultimate termination of Petitioner's employment are anything other than ordinary. A discussion of those facts follows.

5. In October 2014, a female inmate at Lowell was found dead in her cell. Petitioner was named as a suspect in the death, despite the fact that at the time of death he was on vacation with his family, i.e., he was not working at the prison. Local and national news outlets began reporting about the death, and Petitioner was named numerous times as a suspect and possible participant. Apparently, Petitioner's name had been provided to the inmate's family prior to her death as

someone who had been harassing her. Nonetheless, Petitioner's character and reputation were impugned by the news stories.

6. Petitioner was placed on administrative leave pending further review by the Department. Meanwhile, the Florida Department of Law Enforcement ("FDLE") commenced its own extensive investigation into the death of the inmate. The investigation focused quite heavily on Petitioner and one other correctional officer, but FDLE ultimately concluded that there was no evidence to prove either of the men had taken part in the inmate's death. The inmate's death, in fact, was ruled to be from natural causes.[1/] The FDLE investigation was concluded on January 21, 2015.

7. The Department did not issue a particular statement concerning Petitioner's vindication, nor did it publish a notice about the FDLE findings. Petitioner takes great umbrage at this perceived failure by DOC, but cited to no requirement that the Department do so. The Department acknowledges that it did not make any effort to make public the findings of the FDLE investigation.

8. During the FDLE investigation and while Petitioner's alleged involvement in the incident was being broadcast by the news services, Petitioner began receiving threats against his life and the lives of his family members. Who made such threats or why such threats may have been made was not made clear at

final hearing. Whether it was family and friends of the inmate, concerned citizens who perceived Petitioner as some kind of monster, or someone else making the threats, Petitioner was concerned for his safety. He was especially worried for his daughter, who had been living part-time with Petitioner on a split schedule with his ex-wife. When the news stories began to appear, the ex-wife refused to allow the daughter to visit with Petitioner. While he wanted to see his child, Petitioner knew that it was better for her to stay away from him until the situation improved.

9. As a result of the publicity, the threats, and the stress on him and his family, Petitioner developed PTSD. The Department approved Petitioner for participation in EAP on March 6, 2015. EAP paid for counseling sessions with Petitioner's chosen therapist, Mrs. Robinson. Petitioner had about 12 sessions with Mrs. Robinson while he was covered by EAP. After his EAP coverage expired, Petitioner met with Mrs. Robinson for two more sessions paid for as part of his FMLA leave.

10. Mrs. Robinson identified Petitioner's condition at the beginning of their sessions as quite extreme. He suffered from nightmares, crippling fear, paranoia, and unwillingness to leave his home. He had dark circles under his eyes and was obviously distraught. Mrs. Robinson began to work with Petitioner to help

him view his fears and concerns differently. She taught him to utilize mindfulness meditation techniques. He was shown how to perform activities of daily life without being reminded of the trauma he had experienced. The number of sessions he spent with Mrs. Robinson was not sufficient for her to fully address his needs, however. She was able to diagnose his PTSD and began treatment for that condition, but their relationship ended before she could do much for him. By the time her treatment of Petitioner was concluded, they were working toward Petitioner's acceptance of some inmates in his workplace, as long as they were not "general population inmates." Ms. Robinson reiterated that Petitioner should not work within the prison compound, i.e., within the perimeter, at this time. She believed that with further assistance, Petitioner may one day be able to do so.

11. By letter dated March 13, 2015, Mrs. Robinson notified the Department that, concerning Petitioner, "It is recommended that he does not return to work until further notice due to the hostility he has faced from the public, his co-workers and other inmates that he would be responsible for which could trigger further de-compensation and contribute to greater emotional disturbance. Mr. Quercioli is open to learning positive coping skills for improved feelings management as well as the treatments necessary for recovering from PTSD." For about three

months, the Department attempted to determine whether Petitioner would be able to return to work as a Correctional Officer Sergeant.

12. On June 9, 2015, DOC notified Petitioner that his FMLA leave had been exhausted and he needed to talk to his supervisor, Major Patterson, about when he could come back to work. Mr. Patterson contacted Petitioner and basically said he would need to come back to work at the Lowell Annex, i.e., return to his old job.

13. Meanwhile, the Department, by letter dated June 16, 2015, asked Mrs. Robinson for her opinion regarding whether Petitioner could work as a Correctional Officer Sergeant. The parties to this matter characterize the tone of that letter quite differently. It is therefore quoted here in its entirety for the purpose of objectivity:

> Dear Mrs. Robinson:
>
> The above employee [Petitioner] is a Correctional Office Sergeant with the Florida Department of Corrections at Lowell Correctional Institution. Your opinion regarding Mr. Quercioli's medical status while working in a potentially dangerous environment will assist management in their decision to retain Mr. Quercioli in his current position.
>
> In order for us to determine whether or not Mr. Quercioli can safely perform his duties as a Correctional Officer Sergeant, we request that you complete this questionnaire as to his ability to perform the duties and

> responsibilities of a Correctional Officer Sergeant to full capacity. Please bear in mind that Correctional Officer Sergeants must be able to work split, rotating or fixed shifts, weekends, holidays and overtime possibly without notice as required. Overtime may include double shifts and working on off duty days. In order to assist you in making this determination, I am enclosing a position description and a list of essential functions for the Correctional Officer Sergeant position held by Mr. Quercioli. Also, please bear in mind that Mr. Quercioli's job does require that he be able to possess a firearm. Furthermore, he could at any time be placed in a situation where the use of physical force, including deadly force may be necessary, to control violent inmates or prevent imminent threat to life. We ask that you provide information regarding how Mr. Quercioli can treat and control his condition in a correctional environment. In addition, we need to know what precautionary measures are required to ensure his physical condition is not exacerbated when he is involved in a highly dangerous situation with inmates or volatile situations with supervisors and/or co-workers.
>
> In rendering your opinion, if you determine Mr. Quercioli can perform some duties but not others, please specify which duties cannot be performed and the reason why. Additionally, if there is anything that can be done to allow him to perform these duties, please provide this information.

14. In the letter making this request, the Department included a job description and a brief questionnaire to be filled out by the therapist. The questionnaire asked, "After reviewing the position description of Correctional Officer

Sergeant, can Mr. Quercioli perform the duties of a Correctional Officer Sergeant with no restrictions?" The questionnaire went on to ask for any reasons that the question was answered in the negative.

15. Mrs. Robinson replied that "No," Petitioner could not perform the duties without restrictions. She went on to say that, "With 100% supervision of inmates as his primary duties and his constellation of PTSD symptoms, Mr. Quercioli would be at risk of decompensation. A job with no inmate contact may be possible in the future." Mrs. Robinson had previously, in response to a Medical Certification request from FCHR, listed a few alternative jobs that Petitioner may be able to do, including: "administration away from inmates; staff security away from general population inmates; key keeper or arsenal maintenance away from general population inmates." The evidence is unclear as to whether the Department was aware of her suggestions regarding those potential jobs for Petitioner.

16. At final hearing, Ms. Robison reiterated her concern about Petitioner being asked to work in an area where general population inmates might be present. Her testimony, in part, was as follows:

> Q: "[W]ould he have been able to perform the required functions of his employment position based on what you read in his personnel description, the essential functions of his position, had the

department considered or approved any request for accommodations Mr. Quercioli made on the department?

A: The current job description, position description for a sergeant as a correctional officer, he couldn't do that job.

Q: Could he do others?

A: He could do other jobs and we were working towards limited, you know, his acceptance and, you know, with the cognitive behavioral therapy helps you think different about things and he was opening up to the idea that yes, there will be inmates around but they're at a lower level of risk, and so he was open to that and for trying to work in a different position.

* * *

Q: So, earlier or a few moments ago when you said he couldn't perform under [sic] the position of a correctional sergeant, that's not a hundred percent accurate, correct?

A: Right, that was the job description, that is what he was doing in general population, supervising inmates. He can't supervise inmates and that has a hundred percent by it, supervision of male or female inmates. That what he -- the part of his job that he couldn't do.

Q: Uh-huh, but with an accommodation, he could do that?

A: Yes. In another job, other than supervising his primary one hundred percent duties of supervising male or female inmates.

Tr., pp. 48-50.

17. Exactly what duties Petitioner could perform without difficulty is unclear. It is certain he could not supervise inmates 100 percent of the time. Whether he could work around inmates in an environment separated from the prison compound is not certain. Whether he could respond to an emergency situation inside the compound is extremely doubtful.[2/]

18. Petitioner's attorney submitted a letter to DOC dated June 26, 2015. The letter requested accommodations that might make it possible for Petitioner to perform one or more jobs at Lowell. The letter suggested part-time or modified work schedules, job restructuring, and other possibilities. The letter also stated, in part, "Instead of requiring Sergeant Quercioli to once again re-live the nightmares arising from his previous duty in the Lowell Annex, the Department could instead assign him to a less stressful desk job." DOC responded that a less stressful desk job is not a feasible accommodation because a person in that position would not be able to perform the essential duties of a Correctional Officer Sergeant. The attorney responded to the Department that his previous request for an accommodation was not meant to be limited to a "desk job" only; he meant to include any reasonable accommodations. Though the two conversants used different terminology, it is obvious they were both addressing alternative jobs that did not require Petitioner to work within the prison compound, whether that

meant literally sitting at a desk or not. Petitioner intimated, but did not conclusively prove, that there were certain jobs in the administration offices, i.e., outside the compound, that he might be capable of filling. No evidence was presented concerning the exact nature of those jobs, the responsibilities attached thereto, or Petitioner's qualifications to fill them.

19. Following the exchange of letters between DOC and Petitioner (through his attorney), the Department notified Petitioner via letter dated July 9, 2015, that a "personnel action" was being contemplated by DOC which could result in his dismissal from employment. The basis for a personnel action was that Petitioner's therapist said he was "currently unable to perform the duties of . . . a Correctional Officer Sergeant." Petitioner was given the opportunity to attend a pre-determination conference with DOC personnel to provide oral or written statements in regards to the personnel action. A conference was held on July 23, 2015. The Department was represented by Warden Gordon and Colonel Edith Pride. A teamster representative, Michael Riley, accompanied Petitioner to the conference. Petitioner's attorney, Mr. Bisbee, attended the conference via telephone. Petitioner did not bring his therapist, Ms. Robinson, to the meeting because "it never crossed my mind" that she should attend. At the conference, Petitioner reiterated his desire to return to work, but stated

he would rather not interact with inmates, even though he believed he might be able do so. His belief was inconsistent with his therapist's determination and contrary to his attorney's representations.

20. It is unclear whether DOC could have assigned Petitioner to a position that did not involve some contact with inmates. There were a few jobs mentioned that take place in the prison's administration building, outside the perimeter. Some of the "trustee" type inmates working within the administration building may have been much less threatening to Petitioner than general population inmates. But because every Correctional Officer Sergeant is deemed to be on call to attend to disturbances within the prison compound, regardless of their job or workplace, Petitioner could be subject to having close contact with the general population inmates.

21. Petitioner identified one specific job in administration that he thought he might be able to handle despite some inmate contact. That job, in the area of training, was filled by another Correctional Officer Sergeant. Petitioner did not ever formally apply for the job.

22. Subsequent to the predetermination conference, the Department issued a letter to Petitioner advising him that "You will be dismissed from your position as a Correctional Officer Sergeant effective August 4, 2015." The letter gave Petitioner

the right to grieve the action or to appeal it to the Public Employees Relations Commission. Petitioner did not avail himself of either of those options. Instead, he filed a claim with FCHR, resulting ultimately in the present action.

23. DOC based its decision to terminate Petitioner's employment on the fact that his own therapist had opined that he could not perform the essential functions of a Correctional Officer Sergeant. That is because persons in that position--no matter what duties they were performing--must be able at a moment's notice to react personally to any emergency situation that may arise within the inmate population. A correctional officer working in the motor pool, for example, may have to drop what he is doing, pick up a firearm, and rush into the compound to quell a disturbance. A sergeant who is performing training for other officers may have to cease her training and immediately report to duty inside the compound to respond to inmate unrest. There is no job under the Correctional Officer Sergeant umbrella that is immune from contact with inmates at any given time. There was, in short, no reasonable accommodation the Department could offer Petitioner.

24. Two pertinent quotes from the record explain concisely the basis of the Department's position in this case:

> As a general rule, we don't "accommodate" correctional officers because the accommodations requested generally include

> exemption from the essential functions. We provide alternate duty for those officers who are temporarily unable to perform the duties of their position because of a work related injury. However, while on alternate duty, they do not wear a uniform, nor do they perform the duties of a [Correctional Officer].
>
> * * *
>
> Quercioli's therapist, Beth Robinson, stated he was not able to perform the duties of his position, although a job with no inmate contact may be possible in the future. There are no correctional officer positions, regardless of rank, whose essential functions do not include dealing with inmates.

Exhibit 4 to Petitioner Exhibit 1, email from Patricia Linn, human resources analyst.

25. It is not unusual for employees to request so-called "accommodations" from DOC relating to their duties as correctional officers. Such requests may include exceptions to the dress code, a need for ergonomic chairs, leave extensions, parking space changes, alternate work schedules, and the like. Each request is reviewed on its own merits and some are granted, some are denied.

26. In fact, Petitioner alluded to the fact that after the inmate death incident, he had been reassigned to alternate duties not having to do with inmate monitoring. His duties were related to assisting applicants for jobs at Lowell to fill out

their applications. Petitioner intimated that he did not enjoy that position.

27. Petitioner asserts that DOC made no effort to contact him to discuss possible accommodations. He did not cite to any existing policy or rule which would require the Department to do so, however. Further, Petitioner admitted that he did not attempt to initiate such conversations with the Department, either.

28. Since losing his job at Lowell, Petitioner has been unable to obtain gainful employment. Of the scores of internet applications for employment (and one in-person interview), not a single position came to fruition. As a result, Petitioner cashed out his state retirement plan, using the money to pay bills and provide for his daughter's needs.

29. Petitioner presented no evidence in this case that persons with disabilities were treated any differently by the Department when they requested accommodations.

CONCLUSIONS OF LAW

30. The Division of Administrative Hearings has jurisdiction over this matter pursuant to sections 120.569 and 120.57, Florida Statutes. Unless otherwise stated herein, all references to Florida Statutes will be to the 2016 version.

31. Petitioner claims that DOC discriminated against him in violation of the Florida Civil Rights Act of 1992 ("FCRA"),

codified in chapter 760, Florida Statutes. Specifically, section 760.10 states:

> (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, pregnancy, national origin, age, handicap, or marital status.
>
> (b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex pregnancy, national origin, age, handicap, or marital status.

32. The FRCA is patterned after Title VII of the federal Civil Rights Act of 1964, as amended. As such, Florida courts have held that federal decisions construing Title VII are applicable when considering claims under the FCRA. Harper v. Blockbuster Entm't Corp., 139 F.3d 1385, 1387 (11th Cir. 1998); Valenzuela v. GlobeGround. N. Am., LLC, 18 So. 3d 17, 21 (Fla. 3d DCA 2009).

33. Petitioner carries the burden of proving by a preponderance of the evidence that the Department, an "employer" as defined in the FRCA, discriminated against him. See Fla.

Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); § 760.02(7), Fla. Stat.

34. Claimants may prove discrimination by direct, statistical, or circumstantial evidence. Valenzuela, 18 So. 3d at 22. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent behind the employment decision without any inference or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); Holifield v. Reno, 115 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that "'only the most blatant remarks, whose intent could be nothing other than to discriminate . . .' will constitute direct evidence of discrimination." Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999)(citations omitted).

35. In this case, Petitioner did not present any direct or statistical evidence indicating discrimination by the Department. That is, he did not provide direct evidence that the Department refused to retain him in his position as Correctional Officer Sergeant due to his disability, PTSD.

36. In order to prove a prima facie case of unlawful employment discrimination under chapter 760 based on circumstantial evidence, Petitioner must establish that: (1) he is a member of the protected group; (2) he was subject to adverse employment action; (3) his employer treated similarly

situated employees outside of his protected classification more favorably; and (4) Petitioner was qualified to do the job. See, e.g., Jiles v. United Parcel Serv., Inc., 360 F. App'x. 61, 64 (11th Cir. 2010); Burke-Fowler v. Orange Cnty., 447 F.3d 1319, 1323 (11th Cir. 2006); McKenzie v. EAP Mgmt. Corp., 40 F. Supp. 2d 1369, 1374-75 (S.D. Fla. 1999).

37. Petitioner established that he is a member of a protected class by way of his disability, PTSD, about which the Department was aware. He also proved he was subjected to an adverse employment action; he was terminated from his position as Correctional Officer Sergeant.

38. Petitioner must also prove that he was "otherwise qualified" for his job in that he could perform the essential functions of that job with or without reasonable accommodation. Lucas v. W.W. Grainger, Inc., 257 F.3d 1249, 1255-56 (11th Cir. 2001); see also Wood v. Green, 323 F.3d 1309, 1312 (11th Cir. 2003)(a disabled individual is "qualified" under the ADA if he can perform the "essential functions" of his job "with or without a reasonable accommodation."). Furthermore, an accommodation can qualify as "reasonable," and thus be required by the ADA, only if it enables the employee to perform the essential functions of his existing job position. Lucas, 257 F.3d at 1255-56.

39. The ultimate test to be satisfied in a handicap discrimination case is whether the employee "can perform the essential functions of the position in question without endangering the health and safety of the individual or others." 29 C.F.R. § 1613.702(f). As stated in Chiari v. City of League City, 920 F.2d 311, 317 (5th Cir. 1991), "[A]n individual is not qualified for a job if there is a genuine substantial risk that he or she could be injured or could injure others, and the employer cannot modify the job to eliminate that risk." According to the Department, it is necessary that all Correctional Officer Sergeants be available for inmate control in an emergency situation. Thus, the job could not modified to fit Petitioner's disability.

40. An employer is not required to accommodate an employee in any manner in which the employee desires and is not required to grant employees preferential treatment. Terrell v. USAir, 123 F.3d 621, 626 (11th Cir. 1998). Thus, the duty to provide a reasonable accommodation "does not require that an employer create a light-duty position or a new permanent position" for the employee. Van v. Miami-Dade Cnty., 509 F. Supp. 2d 1295, 1302 (S.D. Fla. 2007).

41. In this case, Petitioner did not prove that he could do the essential functions of his job. Petitioner maintains that, with accommodations, he could work in one or more jobs at

Lowell Correctional Facility. He named three or four categories of jobs or general positions that he believes he might be able to handle. When faced with the prospect that inmates may be in the vicinity, Petitioner is less sure of his ability to perform.

42. The Department, however, maintains that any of the positions could potentially require interaction with the prisoner population within the fenced-in compound. It is clear Petitioner cannot be expected to participate in an emergency that required going into the compound, so he cannot claim to be "qualified to do the job" of Correctional Officer Sergeant. The basis for termination of Petitioner's employment is therefore reasonable and legitimate. Inasmuch as Petitioner could not deal with the general population inmates inside the compound, he could not fulfill the essential functions of his job.

43. Whether DOC treated other employees who were not disabled any differently is not clear from the evidence. Petitioner failed to establish whether any Correctional Officer Sergeant, disabled or not, might be unable to respond to a prisoner disturbance within the compound. While Petitioner pointed out some limited instances where DOC granted an employee some "accommodations," those were temporary in nature and related to the employees' current medical conditions.

44. None of the general "accommodations" mentioned by Petitioner's attorney in his letters to DOC established that

Petitioner could actually perform the duties of a Correctional Officer Sergeant. Rather, the jobs suggested by Petitioner's attorney as possible alternatives were considered and rejected by DOC as untenable.

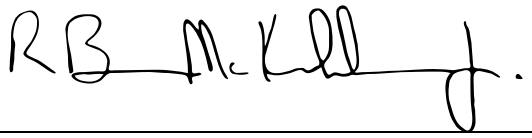
45. Petitioner failed to establish that the reasons given by the Department for terminating his employment were false, unworthy of credence, or otherwise pretextual. Accordingly, the Petition for Relief should be dismissed.

46. The Department left open the possibility of Petitioner applying for a position other than as a Correctional Officer Sergeant. Other positions may not require Petitioner to interact with prisoners. However, DOC was justified in denying Petitioner the accommodation he desires for a correctional officer position.

RECOMMENDATION

RECOMMENDED that a final order be issued by the Florida Commission on Human Relations, determining that the Department of Corrections had legitimate cause for the dismissal of employment of Petitioner, Patrick Quercioli, and that there is no evidence of discrimination.

DONE AND ENTERED this 16th day of May, 2017, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of May, 2017.

ENDNOTES

[1/] There was no evidence presented as to the other correctional officer who was charged along with Petitioner. Whether he received threats or developed a mental condition from the event is not known.

[2/] At final hearing, Petitioner presented as a quiet, pleasant individual. He is tall and muscular, but soft spoken. He seemed somewhat uncomfortable testifying, but no more so than many witnesses. From his appearance alone, it is difficult to imagine why Petitioner would have a fear of interacting with female inmates, but therein lies the gravamen of this matter.

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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.