

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SONYA D. RUTTLEN,

Petitioner,

vs.

Case No. 16-7588

WASHINGTON REHABILITATION AND
NURSING CENTER SERVICES,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held March 14 and 15, 2017, in Chipley, Florida, before Yolonda Y. Green, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("Division").

APPEARANCES

For Petitioner: Sonya D. Ruttlen, pro se
109 Pace Lane
Dothan, Alabama 36305

For Respondent: Helen Price Palladeno, Esquire
Ogletree, Deakins, Nash,
Smoak & Stewart, P.C.
100 North Tampa Street, Suite 3600
Tampa, Florida 33602

STATEMENT OF THE ISSUE

Whether Respondent subjected Petitioner to an unlawful employment practice on the basis of her religion in violation of section 760.10, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner, Sonya Ruttlen ("Ms. Ruttlen" or "Petitioner"), filed a Complaint of Employment Discrimination with the Florida Commission on Human Relations ("FCHR") on October 27, 2015. The complaint alleged that Respondent, Washington Rehabilitation and Nursing Center ("Washington Center" or "Respondent"), discriminated against her on the basis of religion by not granting her an interview for a chaplain position and hiring an external applicant following her comment that "[s]he needed to anoint herself with oil before entering the building, to avoid all the negativity." Following its investigation of the allegations, FCHR issued a determination of "No Reasonable Cause" regarding Petitioner's complaint on November 23, 2016.

On December 23, 2016, Petitioner filed a Petition for Relief requesting an administrative hearing regarding FCHR's "No Reasonable Cause" determination pursuant to section 760.11(7).

FCHR referred the matter to the Division on December 23, 2016, and on December 27, 2016, this matter was assigned to the undersigned. The undersigned issued a Notice of Hearing, setting the final hearing for February 21, 2017. On January 13, 2017, Petitioner filed a Motion to Continue Final Hearing. The undersigned granted the motion and scheduled the final hearing for March 14 and 15, 2017. Respondent's Second Motion to Continue Final Hearing was denied for lack of good cause.

Prior to the hearing, Petitioner filed two Motions to Amend her Petition to Add Evidence and a Motion to Amend Evidence. Respondent did not oppose Petitioner's motions. On February 9, 2017, the undersigned granted Petitioner's motions.

The final hearing convened on March 14, 2017, and concluded on March 15, 2017. At hearing, Petitioner testified on her own behalf and offered six witnesses: Lanice Bonds, former Chaplain of a nursing facility in Graceville, Florida; Savannah Fredrick, former Chaplain of Washington Center; Shauna Gibson, former employee of Washington Center; Jane Giles, former employee of Washington Center; Hannah (Brewer) Williams, former employee of Washington Center; and Kim Salter Pothoff, former Director of Nursing of Washington Center. Petitioner offered Exhibits P-1, P-2b, P-2c, P-3, P-4, P-6, P-6b, P-7, P-8b, P-8c, P-9, P-11, P-11b, P-12b, and P-13. All of Petitioner's offered exhibits were admitted in evidence.

Respondent offered the testimony of three witnesses: Alice Finch, Human Resources Director of Washington Center; Bret Brown, Administrator of Washington Center; and Jeremy Clifton, Chaplain of Washington Center. Respondent offered Exhibits R-1, R-2, R-4 through R-16, R-18, and R-22, which were admitted.

The proceeding was recorded by a court reporter but neither party ordered a written transcript of the final hearing. The parties timely filed Proposed Recommended Orders, which have been

carefully considered in the preparation of this Recommended Order. Petitioner filed a motion regarding service of Respondent's Proposed Recommended Order upon Petitioner. Finding no violation of the undersigned's instructions, the motion is denied.

All statutory citations are to Florida Statutes (2014), when the alleged discriminatory act occurred, unless otherwise indicated.

FINDINGS OF FACT

1. At all times relevant to this matter, Ms. Ruttlen worked and still works for Washington Center. Ms. Ruttlen identifies as Christian, has practiced Pentecostal beliefs, and serves as a member and minister at Greater Beulah Baptist Church in Dothan, Alabama.

2. Ms. Ruttlen has been employed at Washington Center since 2003. During her employment, she has been employed as a Certified Nursing Assistant ("CNA") and Activities Assistant.

3. Respondent is one of the largest employers in Washington County and employed at least 15 persons at all times relevant to this matter. The Washington Center is one of several facilities owned by Signature HealthCare, LLC ("Signature").

4. The crux of this case rests with a comment Ms. Ruttlen made during a meeting, and Washington Center's Administrator not granting her an interview for a vacant chaplain position.

5. Bret Brown is a Christian and attends First Baptist Church Chipley, a large church with more than 700 members located in Chipley, Florida. He has been employed as the Administrator of the Washington Center for more than six years. His job responsibilities include overseeing residential care, compliance with federal regulations, and supervising department managers (which includes the only chaplain position).

6. In late 2014 and/or early 2015, Washington Center launched a new resident program called the "Holistic Care Program." Overall, the Program was designed to put more staff on the floor caring for residents.

7. Before the Program was implemented, a resident would have a CNA, an activities employee, and a housekeeper all taking care of the resident's needs. The CNA would be in charge of personal care, vital signs, serving meals, and setting up medical equipment; the activities employee would do activities with the resident; and the housekeeping employee would ensure the resident's room was clean and in order.

8. Under the Holistic Care Program the housekeeping staff and activities employees would be trained to become CNAs (if needed), and each resident would be assigned a CNA to perform all the tasks. Mr. Brown testified that CNAs getting to know the residents and having more hands on care is better for the

residents. Ms. Finch testified the upside was that a resident would have more one-on-one care and the CNA would be assigned fewer residents.

9. Mr. Brown testified that as a result of the Holistic Program everyone at Washington Center, including the administrators, would be trained to assist in resident care and everyone would be responsible for it. He admitted he was not a trained CNA yet.

10. After some time had passed, it became clear that the staff were unhappy with the Holistic Program. Staff complained that the number of residents assigned to each CNA increased instead of decreased. The leadership staff was not trained to be CNAs as initially promised.

11. Ms. Gibson, a CNA who worked at Washington Center for five years, testified that staff members complained about the Holistic Program because everyone was not helping with resident care as previously discussed with staff.

12. These inconsistencies created tension in the facility. The circumstances reached a boiling point when a CNA asked an administrator in training to answer a resident's call light, a request that went unheeded.

13. In an effort to quell the growing tension at the facility, in January or February 2015, Mr. Brown held staff meetings to address the specific duties of staff and managers

under the Holistic Program, set the expectations for everyone, and tried to end the negativity in the facility.

14. During the first staff meeting, Mr. Brown asked if anyone had something to say, and Ms. Ruttlen responded to Mr. Brown with "[T]here's so much negativity in the building, it's sad," and "because of it, I have to anoint myself every day to cover myself so that the negativity won't rub off on me and I become part of it."

15. At a second staff meeting for the 3:00 p.m.-11:00 p.m. shift (where Ms. Ruttlen was not present), Mr. Brown stated "If you think our building is so negative that you have to anoint yourself with oils to come to work, why would you work here? Why would you put yourself through that?"

16. Mr. Brown testified that Ms. Ruttlen's comment that Washington Center was a "negative place" bothered him; not the fact that she anointed herself with oil.

17. In January 2015, Savannah Fredrick told Mr. Brown she intended to retire by March 2015. Despite Mr. Brown's efforts to convince her to stay, Ms. Fredrick's last day was in March 2015.

18. Ms. Ruttlen testified that she spoke to Mr. Brown on or about January 19, 2015, about her desire to be the new chaplain when Ms. Fredrick retired and that she would be licensed on

August 16, 2015. Mr. Brown denies this, stating that the first he heard of Ms. Ruttlen's desire to be the chaplain was when she signed up for the open position in early March 2015.

19. Ms. Ruttlen sent a contemporaneous text message to her then supervisor advising that she spoke to Mr. Brown about the position, which is consistent with her testimony at hearing. Therefore, Ms. Ruttlen's account of this point is found to be more credible.

20. On March 9, 2015, at the request of Mr. Brown, Ms. Finch posted two internal job posting sign-up sheets for the chaplain position; one by each time clock.^{1/} Ms. Finch stated that she typically posted the internal postings and also removed them but sometimes managers would remove the posting.

21. Ms. Finch testified she attached the job description for the chaplain position to the postings.

22. According to the chaplain job description, the relevant job requirements are:

"Bachelors Degree in Theology, Divinity, Counseling or related field; AND/OR ordained by a local ministry organization or qualified by specific educational training in the ministry field or a combination of education and related experience may be acceptable. Minimum of two (2) years related experience. Active member of community chaplain/ministerial association. . . ."

23. Both Ms. Ruttlen and Hannah Williams signed the internal job posting.

24. Neither Ms. Ruttlen nor Ms. Williams (religion unknown) were granted an interview for the position.

25. After the internal vacancy was posted, the position was then advertised by Washington Center's home office externally on various websites. This is consistent with Signature's Internal Job Posting Policy which states "When a position becomes available, a notice will be placed on the Company bulletin board or specified location for three (3) days. As deemed necessary, the position may be immediately posted externally."

26. The internal sign-up sheet was provided to Mr. Brown. Mr. Brown also collected resumes and applications from external candidates once the position was posted externally. The resumes and applications he collected were dated from March 12, 2015, to May 11, 2015.

27. Mr. Clifton submitted his application on May 3, 2015, two months after Ms. Ruttlen signed the sign-up sheet. According to his resume, Mr. Clifton earned a bachelor's degree in theology in 2003 and an associate degree in Church Administration/ Religious Education in 1999; he had five years (at the time) work experience in congregational care which included ministering in the church. Mr. Clifton lives in Chipley, Florida, near the Washington Center.

28. Ms. Ruttlen did not submit an application for the position.^{2/} However, she offered her resume at hearing.

According to her resume, Ms. Ruttlen earned her Gospel Ministry License on August 16, 2015, approximately two weeks after Mr. Brown filled the position. She had experience as a minister since January 2014, which amounted to only 20 months of relevant experience. Ms. Ruttlen lives in Dothan, Alabama.

29. Mr. Brown did not interview applicants for the vacant chaplain position until June or July 2015, approximately three months after he received the internal job posting sign-up sheet. He interviewed two of the external applicants. One of those applicants was Mr. Clifton. Mr. Brown interviewed Mr. Clifton with Tim Hill, Signature's Regional Chaplain. Mr. Brown could not recall the name of the other applicant.

30. After the interview with Jeremy Clifton, Mr. Hill recommended to Mr. Brown that Mr. Clifton be hired. Mr. Brown testified that Mr. Clifton was the best candidate for the job as he met all requirements on the job description; met Mr. Brown's preference for a local resident who knows the community; and has connections in Chipley.

31. Neither Mr. Brown nor Mr. Hill interviewed Ms. Ruttlen for the position. Mr. Hill was not informed that internal applicants were interested in the position.

32. Mr. Brown speculated that Ms. Ruttlen may not still be interested in the position after she was reclassified as a part-time employee, which occurred on April 28, 2015, since the

chaplain job was a full-time position. However, the job description did not indicate it was a full-time position. Mr. Brown testified that he attempted to persuade Ms. Fredrick to stay on part-time and Mr. Bonds, a former chaplain, testified that he was asked to work part-time as the chaplain at a Signature facility located in Graceville, Florida.^{3/} Thus, the undersigned is not persuaded that the position required the applicant to be a full-time employee.

33. Mr. Clifton started working as the Chaplain of Washington Center on July 28, 2015. Ms. Ruttlen became aware of this on the same date and was concerned that she was treated unfairly.

34. Ms. Ruttlen was aware of Washington Center's non-discrimination policy and discrimination complaint reporting procedure, which were both in the employee handbook.^{4/} In pertinent part, those policies state:

"[R]eligion, gender, sexual orientation, national origin, age, disability, marital status, amnesty, genetic information or status as covered veterans in accordance with applicable federal, state and local laws" and "Stakeholders have the right to work in a professional atmosphere . . . and prohibits discriminatory practices, including harassment, on the basis for an individual's race, color, national origin, religion, gender, sexual orientation, age, disability, status as a veteran, genetic information or any other legally protected status."

* * *

The reporting requirements and complaint procedures that include reporting offenses to the Stakeholder's supervisor, Human Resources, any ombudsman, or utilizing the CareLine (toll free hotline).

35. Consistent with the reporting policy, on August 10, 2015, Ms. Ruttlen approached her supervisor to inquire why she was not interviewed for the chaplain position. Ms. Ruttlen's supervisor told her to ask Mr. Brown.

36. Ms. Ruttlen met with Mr. Brown on August 10, 2015. Mr. Brown explained to Ms. Ruttlen he had forgotten she signed the internal job posting.

37. Ms. Ruttlen testified she did not believe Mr. Brown, rather, she believes he did not interview her because he disapproved of her anointing herself with oils.

38. Ms. Finch, Ms. Frederick, and Ms. Potthoff all testified that Mr. Brown knew of and approved of beds and rooms in the facility being anointed with oils by Ms. Frederick and Christa Wesley (former marketing director). They did so and prayed to keep the beds full and keep Washington Center busy.

39. Dissatisfied with Mr. Brown's response, on August 10, 2015, Ms. Ruttlen called Washington Center's home office in Louisville, Kentucky, to complain of discriminatory treatment.

40. Ms. Ruttlen reported her claim of religious discrimination to Shannon Cucksey, the Signature Regional Human

Resources Consultant, and Mr. Cox. Both stated an investigation would happen.

41. On August 18, 2015, and September 1, 2015, Ms. Ruttlen sent emails to Mr. Cox, concerning her lack of interview, that she was never acknowledged during the interview process, that she felt she was treated unfairly, and she had not received a response to her emails.

42. On September 17, 2015, Ms. Ruttlen received a phone call from Billy Colly of Washington Center's home office. Mr. Colly explained the results of the investigation: that Mr. Brown had forgotten she signed up for the chaplain position.

Ultimate Finding of Fact

43. Based on the evidence offered at the hearing, Petitioner did not demonstrate by a preponderance of the evidence that Washington Center discriminated against her on the basis of her religion.

CONCLUSIONS OF LAW

44. Pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016), the Division has jurisdiction over the subject matter and parties to this proceeding.

45. Section 760.10(1)(a), Florida Statutes, makes it unlawful for an employer to take adverse action against an individual because of that employee's religion.

46. The civil rights act defines "employer" as "any person employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person." § 760.02(7), Fla. Stat.

47. Washington Center meets the definition of an employer. Ms. Ruttlen was employed by Washington Center.

48. Petitioner filed a complaint alleging Respondent discriminated against her on the basis of her religion.

49. Section 760.11(1) provides, in pertinent part, that "[a]ny person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the [FCHR] within 365 days of the alleged violation." Petitioner timely filed her complaint.

50. Section 760.11(7) provides that upon a determination by the FCHR that there is no reasonable cause to believe that a violation of the Florida Civil Rights Act of 1992 has occurred, "[t]he aggrieved person may request an administrative hearing under ss. 120.569 and 120.57, but any such request must be made within 35 days of the date of determination of reasonable cause." Following the FCHR determination of no cause, Petitioner timely filed her Petition for Relief from Unlawful Employment Practices and Request for Administrative Hearing requesting this hearing.

51. Chapter 760, Part I, is patterned after Title VII of the Civil Rights Act of 1964, as amended. When "a Florida statute is modeled after a federal law on the same subject, the

Florida statute will take on the same constructions as placed on its federal prototype.” Brand v. Fla. Power Corp., 633 So. 2d 504, 509 (Fla. 1st DCA 1994); see also Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17 (Fla. 3d DCA 2009); Fla. State Univ. v. Sondel, 685 So. 2d 923 (Fla. 1st DCA 1996); Fla. Dep't of Cmty. Aff. v. Bryant, 586 So. 2d 1205 (Fla. 1st DCA 1991).

52. Petitioner has the burden of proving by a preponderance of the evidence that Respondent committed an unlawful employment practice. See St. Louis v. Fla. Int'l Univ., 60 So. 3d 455 (Fla. 3d DCA 2011); Fla. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

53. Employees may prove discrimination by direct, statistical, or circumstantial evidence. Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d at 22.

54. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resort to 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). It is well established 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).

55. Petitioner did not present any direct evidence of employment action based on religion. The comments from Mr. Brown regarding Ms. Ruttlen anointing herself are easily construed to relate to Mr. Brown being bothered that Ms. Ruttlen believed Washington Center was a "negative place," rather than related to her religion.

56. Petitioner presented no statistical evidence of discrimination by Respondent in its personnel decisions affecting Petitioner.

57. In the absence of any direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence. In McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and as refined in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981), and St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993), the United States Supreme Court established the procedure for determining whether employment discrimination has occurred when employees rely upon circumstantial evidence of discriminatory intent.

58. Under McDonnell Douglas, Petitioner has the initial burden of establishing a prima facie case of unlawful discrimination.

59. To establish a prima facie case of religious discrimination, Petitioner must demonstrate by a preponderance of the evidence that: 1) she is a member of a protected class;

2) she was qualified for the position; 3) she was subjected to an adverse employment action; and 4) her employer treated similarly-situated employees outside of her protected class more favorably than she was treated. Burke-Fowler v. Orange Cnty., 447 F.3d 1319, 1323 (11th Cir. 2006).

60. The first and third elements of the prima facie case have been met by Petitioner. Ms. Ruttlen is Christian and she was not granted an interview for the chaplain position.

61. Petitioner did not, however, prove the second and fourth elements, that she was qualified for the position and that other similarly-situated employees were treated more favorably than her.

62. Petitioner did not present sufficient evidence from which the undersigned could conclude that Petitioner possessed the basic qualifications necessary for the chaplain position. The evidence shows that at the time Ms. Ruttlen applied for the chaplain position, she had not yet earned her Gospel Ministry License and, at best, she had 20 months of ministry experience (the position required two years).

63. Petitioner also did not prove that other similarly-situated employees were treated more favorably than her. Ms. Ruttlen offered evidence regarding Hannah Williams as a similarly-situated employee. There was no evidence introduced

regarding Ms. Williams' religion. Even if her religion were known, Ms. Williams was also not granted an interview or hired for the position.

64. Petitioner has failed to prove by a preponderance of the evidence that she was qualified for the chaplain position or that Respondent treated similarly-situated employees outside her protected class more favorably than her.

65. If Petitioner had been able to prove her prima facie case by a preponderance of the evidence, the burden would shift to Respondent to articulate a legitimate, non-discriminatory reason for its employment decision. Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. at 255; Dep't of Corr. v. Chandler, 582 So. 2d 1183 (Fla. 1st DCA 1991). An employer has the burden of production, not persuasion, to demonstrate to the finder of fact that the decision was nondiscriminatory. Dep't of Corr. v. Chandler, supra. This burden of production is "exceedingly light." Holifield v. Reno, 115 F.3d at 1564; Turnes v. Amsouth Bank, N.A., 36 F.3d 1057, 1061 (11th Cir. 1994).

66. If the employer produces evidence that the decision was non-discriminatory, then the complainant must establish that the proffered reason was not the true reason but merely a pretext for discrimination. St. Mary's Honor Ctr. v. Hicks, 509 U.S. at 516-518. In order to satisfy this final step of the process, Petitioner must "show[] directly that a discriminatory reason

more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." Dep't of Corr. v. Chandler, 582 So. 2d at 1186 (citing Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. at 252-256). "[A] reason cannot be a pretext for discrimination 'unless it is shown both that the reason was false, and that discrimination was the real reason.'" Fla. State Univ. v. Sondel, 685 So. 2d at 927, citing St. Mary's Honor Ctr. v. Hicks, 509 U.S. at 515; see also Jiminez v. Mary Washington Coll., 57 F.3d 369, 378 (4th Cir. 1995). The demonstration of pretext "merges with the plaintiff's ultimate burden of showing that the defendant intentionally discriminated against the plaintiff." Holifield v. Reno, 115 F.3d at 1565.

67. In a proceeding under the Civil Rights Act, "[w]e are not in the business of adjudging whether employment decisions are prudent or fair. Instead, our sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d at 1361. As established by the Eleventh Circuit Court of Appeals, "[t]he employer may fire an employee for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." Nix v. WLCY Radio/Rahall Commc'ns, 738 F.2d 1181, 1187 (11th Cir. 1984). Moreover, "[t]he employer's stated legitimate

reason . . . does not have to be a reason that the judge or jurors would act on or approve." Dep't of Corr. v. Chandler, 582 So. 2d at 1187.

68. In determining whether Respondent's actions were pretextual, the undersigned "must evaluate whether the plaintiff has demonstrated 'such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence.'" Combs v. Plantation Patterns, Meadowcraft, Inc., 106 F.3d 1519, 1538 (11th Cir. 1997).

69. Even assuming for purposes of argument that Petitioner did establish a prima facie case of religious discrimination, Washington Center met its burden of articulating a legitimate, nondiscriminatory reason for its failure to interview and hire her.

70. Respondent offers two grounds which it asserts establishes a legitimate nondiscriminatory reason for failure to interview or hire Ms. Ruttlen. The first basis is that Mr. Brown forgot Ms. Ruttlen signed the internal posting in March 2015.

71. The second basis was that Ms. Ruttlen was not the most qualified at the time the position was filled. At the time Mr. Brown filled the chaplain position, Ms. Ruttlen did not have a Bachelor's Degree in Theology, Divinity, Counseling or related

field and had not been ordained by a local ministry organization or qualified by specific educational training in the ministry field or a combination of education and related experience as required by the job description. Ms. Ruttlen obtained a license to minister on August 16, 2015. Mr. Brown and Mr. Hill determined that Mr. Clifton's' superior qualifications, relationship with the community of Chipley, and proximity to Washington Center made him the successful candidate.

72. To meet the requirements of the pretext step, Petitioner must produce sufficient evidence for a reasonable fact finder to conclude that the employer's legitimate, nondiscriminatory reason was "a pretext for discrimination." Laincy, 520 F. App'x. 780, 781 (11th Cir. 2013) (citing Vessels v. Atlanta Indep. Sch. Sys., 408 F.3d 763, 771 (11th Cir. 2005)). "Provided that the proffered reason is one that might motivate a reasonable employer, an employee must meet that reason head on and rebut it, and the employee cannot succeed by simply quarreling with the wisdom of that reason." Id. Rather, the plaintiff must show "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons . . . that a reasonable factfinder could find them unworthy of credence." Id.

73. Petitioner introduced no evidence to persuade the undersigned that Respondent's nondiscriminatory reasons for not interviewing her were mere pretext.

74. The undersigned finds Mr. Brown's explanation that he forgot that Ms. Ruttlen was interested in the position as a weak explanation. However, the internal job posting sign-up sheet was posted on March 9, 2015, and Mr. Brown did not begin interviewing until three months later in June or July 2015. Mr. Brown admitted he misplaced the sign-up sheet when shuffling papers on and off his desk. While Mr. Brown may not have placed the sign-up sheet in a place where he could find it, his story is consistent and has not changed. Further, Mr. Clifton was more than qualified for the position.

75. Although failure to recall that Ms. Ruttlen expressed interest in the chaplain position may seem unfair to Ms. Ruttlen, it does not amount to discriminatory practice.

76. For the reasons set forth herein, Petitioner did not meet her burden to prove a prima facie case of discrimination on the basis of religion. Respondent demonstrated legitimate nondiscriminatory reasons for its actions. Respondent's legitimate nondiscriminatory reason was not a pretext.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human

Relations enter a final order dismissing Petitioner's Discrimination Complaint and Petition for Relief consistent with the Findings of Fact and Conclusions of Law of this Recommended Order.

DONE AND ENTERED this 18th day of April, 2017, in Tallahassee, Leon County, Florida.



YOLONDA Y. GREEN
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of April, 2017.

ENDNOTES

^{1/} One of the sign-up sheets for the chaplain position went missing and was never produced.

^{2/} Ms. Finch testified that employees who seek transfers to other internal jobs do not necessarily have to send in their qualifications, as the Washinton Center already knows their work background and education.

^{3/} Signature, the company that owned Washington Center, operated a facility in Graceville, Florida.

^{4/} Washington Center refers to their employees as Stakeholders.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399
(eServed)

Vaquita Doss-Bunton, Esquire
Washington Rehabilitation and
Nursing Center Services
12201 Bluegrass Parkway
Louisville, Kentucky 40299

Sonya D. Ruttlen
109 Pace Lane
Dothan, Alabama 36305
(eServed)

Helen Price Palladeno, Esquire
Ogletree, Deakins, Nash,
Smoak and Stewart, P.C.
Suite 3600
100 North Tampa Street
Tampa, Florida 33602
(eServed)

Cheyenne Costilla, General Counsel
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399
(eServed)

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.