STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

HASSAN HABIBI,

Petitioner,

vs. Case No. 17-0018

AUTO CLUB GROUP,

Respondent.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2016),[1/] on March 23, 2017, by video teleconference with sites in Tallahassee and Orlando, Florida.

APPEARANCES

For Petitioner: Hassan Sarfraz Habibi, pro se
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For Respondent: Christine E. Howard, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner, Hassan Habibi, was subject to an unlawful employment practice by Respondent, Auto Club Group,

based on his race, religion, or national origin in violation of the Florida Civil Rights Act.

PRELIMINARY STATEMENT

On May 12, 2016, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (the "Commission") alleging that Respondent, Auto Club Group (the "Auto Club"), violated the Florida Civil Rights Act by discriminating against him based on his race, religion, or national origin.

On December 6, 2016, the Commission notified Petitioner that no reasonable cause existed to believe that the Auto Club had committed an unlawful employment practice.

On January 3, 2017, Petitioner filed a Petition for Relief with the Commission alleging a discriminatory employment practice. The Commission transmitted the Petition to the Division of Administrative Hearings ("DOAH") to conduct a chapter 120 evidentiary hearing.

The final hearing was held on March 23, 2017. At the final hearing, Petitioner testified on his own behalf. Petitioner's Exhibit 1 was admitted into evidence. The Auto Club presented the testimony of Sherry Latour, Jami Mieser, Amy Thornhill, and Jeanette Wieland. Auto Club Exhibits 1 through 19 were admitted into evidence.

A two-volume Transcript of the final hearing was filed on May 1, 2017. At the close of the hearing, the parties were

advised of a ten-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. Both parties timely filed Proposed Recommended Orders which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Auto Club is affiliated with the American Automobile Association ("AAA"), a national not-for-profit organization that provides its members with benefits relating to travel, emergency roadside assistance, and insurance coverage.

2. Petitioner initiated this matter alleging that the Auto Club discriminated against him based on his race, religion, or national origin. Petitioner was born in Pakistan. He is a Muslim.

3. On April 21, 2015, the Auto Club hired Petitioner as a temporary employee through Randstad, a third-party employee staffing firm.

4. The Auto Club placed Petitioner in the position of a Membership Service Representative at its membership services call center in Heathrow, Florida. Generally, a Membership Service Representative is responsible for handling, processing, and resolving incoming calls from Auto Club members.

5. Petitioner's last day of work for the Auto Club was May 14, 2015, three and a half weeks after he began his job.

6. Petitioner spent his first two weeks with the Auto Club in a training class learning how to properly handle and respond to service calls from Auto Club members. Petitioner's training class consisted of approximately 15 people. His instructor was Amy Thornhill. Petitioner reported to Jeanette Wieland, Manager of the Membership Service Customer Interaction Center.

7. At first, Petitioner sat in the back of his training classroom. However, he soon requested to relocate after he became increasingly distracted by the clicking of a pen by another trainee. Ms. Thornhill facilitated Petitioner's request and moved him to the front of the room. She also advised the class to be respectful of the other trainees.

8. On May 13, 2015, Petitioner was scheduled to leave the training class and begin handling live calls on the services call center floor. However, Petitioner called in sick that day and did not report to work.

9. While he was out, Petitioner composed an e-mail for Ms. Wieland. Petitioner wrote that he believed problems that he had experienced at a job he recently held at Aon Hewitt had followed him to the Auto Club.

10. In an attachment to his e-mail, Petitioner listed several "bizarre things" and objectionable behavior he was experiencing at the Auto Club. Petitioner believed that on either April 21 or 22, 2015, someone from Aon Hewitt had appeared

at the Auto Club office and was "brainwashing" people to harass and intimidate him (the same way he was harassed at Aon Hewitt). Petitioner advised that this person might have been seeking revenge against him.

11. Petitioner proposed that he be allowed to review the Auto Club video surveillance footage of the parking lot on April 21 and 22, 2015, with the Lake Mary Police Department, the Seminole County Sheriff's Office, and/or Auto Club security. Petitioner believed that the video would lead to the arrest and prosecution of the perpetrators who were brainwashing Auto Club employees and had damaged his car in the Auto Club parking lot.

12. Finally, Petitioner complained about how he was treated by several trainees in his training class including Sherry Latour, "Edgardo," and "Judith."

13. Petitioner returned to work the next day on May 14, 2015. He reported to the call center floor for his first day taking live customer service calls. Unfortunately, Petitioner found his work shift extremely disconcerting. After he began handling phone calls, a man named "Terrance" sat next to him. Petitioner recounted that Terrance began loudly conversing with a nearby friend in such a disruptive and distracting manner that Petitioner could not hear the customers speaking over the telephone. Petitioner became very concerned that his quality assurance scores would decrease.

14. Petitioner recounted that Terrence never spoke directly to him. However, Petitioner was alarmed to hear Terrance mention the e-mail that he had sent to Ms. Wieland the previous day. Terrance ignored Petitioner's pleas for quiet.

15. At the final hearing, Petitioner proclaimed that Terrance was intentionally placed next to him to prevent him from doing his job. Petitioner accused Ms. Wieland of deliberately using Terrance in retaliation for the complaints he raised in his May 13, 2015, e-mail. Petitioner alleged that Ms. Wieland directed Terrance to be so disruptive that Petitioner would be too scared to return to work the next day.

16. Petitioner met with Ms. Wieland on May 14, 2015, around 5:00 p.m. during his mid-shift break. During their meeting, Petitioner repeated that he strongly believed that someone from Aon Hewitt had been brainwashing Auto Club employees to harass and intimidate him. Petitioner also complained that this person had damaged his car in the Auto Club parking lot. Petitioner again requested that he be allowed to review the Auto Club surveillance video of the parking lot to try and identify the individual.

17. Petitioner also complained that on several occasions while he was in the Auto Club cafeteria, Edgardo and Judith threw plastic knives at his feet. Petitioner emphasized that this behavior occurred so much that Edgardo and Judith must have been

acting out on purpose. Petitioner stressed that someone from Aon Hewitt was putting them up to it.

18. Ms. Wieland advised Petitioner to go the Lake Mary Police Department if he felt threatened. In the meantime, she would check with Auto Club security regarding the surveillance videos. Ms. Wieland also requested that he let her know immediately if anything else occurred while he was working at the Auto Club.

19. The next day, May 15, 2015, Petitioner called Randstad and explained that he had encountered several problems at the Auto Club. Consequently, he did not believe it was worth continuing his employment there. Shortly thereafter, a Randstad representative called Ms. Wieland and relayed that Petitioner did not feel safe at the Auto Club. Therefore, he would not be returning to work.

20. On May 21, 2015, Petitioner e-mailed Ms. Wieland again. Petitioner expressed that the people who committed the "egregious acts" against him needed to be punished. Petitioner beseeched Ms. Wieland to provide him Ms. Latour's last name so that he could file civil charges against her. Petitioner further contended that a former Randstad employee named "Victoria" may have been involved in Ms. Latour's objectionable actions. Petitioner also indicated that two other male employees threw plastic knives and forks at his feet in the cafeteria in addition

to Edgardo and Judith. Petitioner wanted these people to be punished. Finally, Petitioner declared that when he used the restroom at the Auto Club, two male employees would come into the restroom and do exactly the same thing an employee at Aon Hewitt would do.

21. At the final hearing, Petitioner summarized the alleged discriminatory incidents that he endured during his tenure with the Auto Club to include the following:

a. On several occasions, Petitioner encountered Ms. Latour outside the men's restroom. Petitioner believed that she intentionally positioned herself to block his exit. Petitioner surmised that Ms. Latour was attempting to have him commit unwanted physical contact with her.

b. On several occasions, Ms. Latour, Edgardo, and Judith stared at Petitioner while he was in the parking lot and watched him enter the office building.

c. Ms. Latour once asked Petitioner where Edgardo and Judith were sitting on the call center floor.

d. Ms. Latour and Ms. Thornhill held a secretive conversation of which Petitioner believed he was the subject.

e. Edgardo did not shut the bathroom stall while he was using the restroom (just like the people at Aon Hewitt).

f. In the Auto Club cafeteria, Edgardo and Judith dropped plastic forks and knives in front of Petitioner as he walked by.

Petitioner believed that they intentionally threw the utensils at his feet to intimidate and provoke him. Petitioner believed that someone from Aon Hewitt put them up to it.

g. An extremely noisy fan was placed next to Petitioner on the call center floor which distracted him from his customer service calls.

h. On several occasions, a sports utility vehicle parked too close to his car in the parking lot which made opening his car door difficult. (A similar incident occurred while Petitioner worked at Aon Hewitt.)

i. Someone scratched the bumper of his car while he was parked in the parking lot, perhaps to provoke him.

22. Finally, Petitioner asserted that the Auto Club engaged in a "massive and elaborate effort" to cover up and conceal the discriminatory acts of Ms. Latour. Petitioner claimed that Ms. Latour was trying to blackmail or provoke him so that the Auto Club would fire him. Petitioner was also frustrated that the Auto Club would not produce video surveillance from the restroom hallway which he asserted would support his claim.

23. Although Petitioner objected to the conduct of several individuals who worked at the Auto Club, at the final hearing, he specifically identified Ms. Latour as the only person who discriminated against him. However, Petitioner acknowledged that he never specifically complained to anyone that he was being

harassed based on his race, religion, or national origin during the time he worked at the Auto Club. Neither did Petitioner ever accuse Ms. Latour, Edgardo, or Judith of discriminating against him.

24. Petitioner never informed anyone working for the Auto Club that he was born in Pakistan. On the other hand, Petitioner did recall a conversation with one co-worker (not Ms. Latour, or Edgardo, or Judith) during which he mentioned that he was Muslim.

25. At the final hearing, Petitioner explained that he did not realize that he was being illegally harassed until after he left the Auto Club. Petitioner asserted that Ms. Latour's objectionable behavior must have been based on his race because he was the only person in his training class who was of Asian and Pakistani origin or a Muslim. Petitioner explained that Ms. Latour did not harass anyone else in their training class.

26. Amy Thornhill testified at the final hearing. Ms. Thornhill stated that she had no knowledge of Petitioner's race, religion, or national origin during the time he worked for the Auto Club. Ms. Thornhill further claimed that she never heard anyone make any comments about Petitioner's race, religion, or national origin.

27. Ms. Thornhill recalled that Petitioner complained about a fellow trainee who was tapping a pen during his training class. She believed that she properly addressed the situation when she

allowed Petitioner to move to the front of the classroom. She also cautioned the class to be mindful of their classmates.

28. Ms. Thornhill was aware that Ms. Latour was also in Petitioner's training class. Ms. Thornhill testified that she never observed Ms. Latour behave inappropriately towards Petitioner. Neither did she and Ms. Latour ever discuss Petitioner's race, religion, or national origin. Ms. Thornhill did not remember Petitioner complaining to her about discrimination or harassment.

29. Ms. Latour, who is still employed with the Auto Club, testified at the final hearing. Ms. Latour first met Petitioner in their 2015 training class. Ms. Latour denied ever making any improper or offensive actions or comments to Petitioner. Ms. Latour denied that Edgardo or Judith encouraged her to provoke him. Ms. Latour also asserted that she did not know Petitioner's race, religion, or national origin while he worked at the Auto Club.

30. Ms. Latour further declared that she never blocked Petitioner's exit from the men's restroom. She reported that the women's restroom is directly across the hallway from the men's restroom and surmised that perhaps that was the reason Petitioner encountered her in the hallway. Ms. Latour also relayed that Auto Club employees routinely congregate in the hallway near the training area and the elevators. Ms. Latour denied that she

participated in a conversation with Ms. Thornhill about Petitioner. Ms. Latour also rejected Petitioner's allegation that she purposefully watched him in the parking lot.

31. Despite the fact that Petitioner did not return to work after May 14, 2015, the Auto Club continued to investigate his complaints. Jami Mieser, a Senior Employee Relations Specialist for the Auto Club, testified at the final hearing. Ms. Mieser looked into the concerns Petitioner raised in his e-mails to Ms. Wieland in May 2015. Ms. Mieser did not find any evidence substantiating Petitioner's claims that Auto Club and Aon Hewitt employees were intentionally provoking or discriminating against him. Ms. Mieser did not notify Petitioner of the results of her investigation in 2015. Petitioner had left the Auto Club by the time she had completed her investigation.

32. Ms. Mieser also testified regarding the video surveillance of the Auto Club parking lot. She explained that Auto Club security only maintained the video for approximately 90 days. Therefore, the videos are no longer available to help determine whether an individual purposefully damaged Petitioner's car in April 2015.

33. Ms. Wieland testified at the final hearing and acknowledged that she did ask a man named Terrance to sit next to Petitioner on his first day on the call center floor. Ms. Wieland explained that she routinely places an experienced

Membership Service Representative next to a trainee to assist the new employee with any issues. However, she denied instructing Terrance to disrupt Petitioner from doing his job or scare him away from the Auto Club. Ms. Wieland also stated that Petitioner never complained about Terrence during their May 14, 2015, meeting.

34. Based on the competent substantial evidence in the record, the preponderance of the evidence does not establish that the Auto Club discriminated against Petitioner based on his race, religion, or national origin. Accordingly, Petitioner failed to meet his burden of proving that the Auto Club discriminated against him in violation of the Florida Civil Rights Act.

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to sections 120.569, 120.57(1), and 760.11(7), Florida Statutes. See also Fla. Admin. Code R. 60Y-4.016.

36. Petitioner brings this matter alleging that the Auto Club discriminated against him based on his race, religion, or national origin in violation of the Florida Civil Rights Act of 1992 ("FCRA"). The FCRA protects individuals from discrimination and retaliation in the workplace. See §§ 760.10 and 760.11, Fla. Stat. Section 760.10 states, in pertinent part:

> (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.

37. The burden of proof in this administrative proceeding, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue. Dep't of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981); see also Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996)("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."). See also Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009) (citing Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 253, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981))(the ultimate burden of proving discrimination rests at all times with the plaintiff).

38. The preponderance of the evidence standard is applicable to this matter. See § 120.57(1)(j), Fla. Stat.

39. The FCRA is patterned after Title VII of the Civil Rights Act of 1964, as amended. Accordingly, Florida courts hold 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, 18 So.

3d at 21; and Fla. State Univ. v. Sondel, 685 So. 2d 923, 925 n.1 (Fla. 1st DCA 1996).

40. Based on allegations and testimony Petitioner presented at the final hearing, Petitioner asserts a hostile work environment claim. A hostile work environment under Title VII is established "upon proof that the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Miller v. Kenworth of Dothan, Inc., 277 F.3d 1269, 1275 (11th Cir. 2002).

41. In the absence of direct or statistical evidence of discriminatory intent (there is none here), Petitioner must rely on circumstantial evidence of discrimination to prove his case. For discrimination claims involving circumstantial evidence, Florida courts follow the three-part, burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and its progeny. See also Valenzuela, 18 So. 3d at 21-22; and St. Louis v. Fla. Int'l Univ., 60 So. 3d 455, 458 (Fla. 3d DCA 2011).

42. Under the McDonnell Douglas framework, a petitioner bears the initial burden of establishing, by a preponderance of the evidence, a prima facie case of discrimination. McDonnell Douglas, 411 U.S. at 802-04; see also Burke-Fowler v. Orange

Cnty., 447 F.3d 1319, 1323 (11th Cir. 2006). Demonstrating a prima facie case is not difficult, but rather only requires the petitioner "to establish facts adequate to permit an inference of discrimination." Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997).

43. To establish a prima facie claim for a hostile work environment, Petitioner must show that: (1) he belongs to a protected group; (2) he was subjected to unwelcome harassment; (3) the harassment was based on the protected characteristic (his race, religion, or national origin); (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of his employment and create a discriminatorily abusive working environment; and (5) the employer is responsible for such environment under a theory of either vicarious or direct liability. Mitcham v. Univ. of S. Fla. Bd. of Trs., 71 F. Supp. 3d 1306 (M.D. Fla. 2014); Miller, 277 F.3d at 1275.

44. The "severe or pervasive" element contains both a subjective and an objective component. The employee must "'subjectively perceive' the harassment as sufficiently severe and pervasive to alter the terms or conditions of employment, and this subjective perception must be objectively reasonable." Mendoza v. Borden, Inc., 195 F.3d 1238, 1246 (11th Cir. 1999).

45. In evaluating the objective severity of the harassment, courts consider four factors: "(1) the frequency of the conduct;

(2) the severity of the conduct; (3) whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and (4) whether the conduct unreasonably interferes with the employee's job performance." Id. "Courts should examine the conduct in context, not as isolated acts, and determine under the totality of the circumstances whether the harassing conduct is sufficiently severe or pervasive to alter the terms or conditions of the plaintiff's employment and create a hostile or abusive working environment." Id.

46. However, it is a "bedrock principle that not all objectionable conduct or language amounts to discrimination under Title VII." Reeves v. C.H. Robinson Worldwide, Inc., 594 F.3d 798, 809 (11th Cir. 2010). Title VII is not a "general civility code." Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 583 (11th Cir. 2000). "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment." Mitcham v. Univ. of S. Fla. Bd. of Trs., 71 F. Supp. 3d 1306, 1317 (M.D. Fla. 2014); Faragher v. City of Boca Raton, 524 U.S. 775, 778, 118 S. Ct. 2275, 2283, 141 L. Ed. 2d 662 (1998). Harassment constitutes employment discrimination only if the "workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work

environment." Harris v. Forklift Sys. Inc., 510 U.S. 17, 21 (1993); see also Perry v. Harris Chernin, Inc., 126 F.3d 1010, 1013 (7th Cir. 1997)("The workplace that is actionable is the one that is hellish.").

47. Petitioner failed to meet his burden of proving that the objectionable conduct he experienced at the Auto Club was sufficiently severe or pervasive so as to alter the terms or conditions of his employment. While Petitioner clearly, subjectively perceived the alleged harassment to be "severe and pervasive," the evidence in the record does not demonstrate that his working environment was objectively hostile or abusive.

48. Petitioner undoubtedly did not appreciate encountering Ms. Latour in the hallway outside the men's restroom. Petitioner was disturbed by the plastic utensils that were dropped in the cafeteria. Petitioner was frustrated with the parking situation. Petitioner objected to the volume with which Terrence talked on the call center floor. However, the evidence did not establish that these isolated incidents were so "severe or pervasive" that they created a serious or material change in the terms or conditions of Petitioner's job as a Membership Service Representative. No evidence demonstrates that Petitioner was physically threatened or humiliated. Neither did any of these episodes unreasonably interfere with his ability to perform his responsibilities in the service call center. Furthermore, when

given the opportunity, the Auto Club demonstrated that it was willing to address and accommodate his grievances.

49. At most, the disagreeable conduct amounted to a personality clash between co-workers (mostly from Petitioner's perspective). Such interoffice strife is not sufficient to establish a hostile work environment claim under the FCRA or Title VII. See e.g., McCollum v. Bolger, 794 F.2d 602, 610 (11th Cir. 1986)("Title VII prohibits discrimination; it is not a shield against harsh treatment at the work place. Personal animosity is not the equivalent of sex discrimination. . . . The plaintiff cannot turn a personal feud into a sex discrimination case. . . ."). Consequently, the undersigned concludes that an objective, reasonable person would not find the conduct about which Petitioner complains created a hostile or abusive working environment. Accordingly, Petitioner's allegations do not substantiate a hostile work environment claim under the FCRA.

50. Further, Petitioner's discrimination claim fails because he did not produce sufficient evidence that the alleged harassment was based on his protected class (race, religion, or national origin). It is well-established that Title VII "does not prohibit harassment alone, however severe and pervasive. Instead, Title VII prohibits discrimination, including harassment that discriminates based on a protected category. . . ." Reeves, 594 F.3d at 809; see also Baldwin v. Blue Cross/Blue Shield of

Ala., 480 F.3d 1287, 1301–02 (11th Cir. 2007)("Title VII does not prohibit profanity alone, however profane. It does not prohibit harassment alone, however severe and pervasive. Instead, Title VII prohibits discrimination, including harassment that discriminates based on a protected category.").

51. The evidence and testimony in the record does not identify any objectionable action or communication on the part of the Auto Club that was based on Petitioner's race, religion, or national origin. At the final hearing, Petitioner denounced Ms. Latour as the individual who discriminated against him. However, Petitioner never revealed his religion to Ms. Latour. Neither did he tell her that he was born in Pakistan. Petitioner offers that he was the only Asian, Pakistani, or Muslim in his training class. However, this fact alone is not enough to sustain a hostile work environment claim based on discrimination.

52. Regarding Petitioner's retaliation claim, to establish a prima facie case of retaliation, Petitioner must demonstrate that: (1) he engaged in statutorily protected activity; (2) he suffered a materially adverse employment action; and (3) there was a causal connection between the protected activity and the adverse employment action. Kidd v. Mando Am. Corp., 731 F.3d 1196, 1211 (11th Cir. 2013); Webb-Edwards v. Orange Cnty. Sheriff's Off., 525 F.3d 1013, 1028 (11th Cir. 2008). An action is "materially adverse" if it might have dissuaded a

reasonable worker from making or supporting a charge of discrimination. Chapter 7 Trustee v. Gate Gourmet. Inc., 683 F.3d 1249, 1258-59 (11th Cir. 2012).

53. As with his hostile work environment claim, Petitioner fails to prove a claim of retaliation. Initially, no evidence establishes that Petitioner engaged in statutorily protected activity during his interactions with Ms. Wieland in May 2015. Petitioner did not express to her his objection to an unlawful employment practice. While Petitioner wrote the term "harassment" in his e-mail on May 13, 2015, he did not specifically link his complaint to some discriminatory activity that was based on his race, religion, or national origin.

54. Further, Petitioner did not establish the requisite causal connection between his complaints to Ms. Wieland and his decision not to return to work on May 15, 2015. Petitioner claims that Ms. Wieland retaliated against him when she tasked a "disruptive" employee to sit next to him on the call center floor. However, the evidence in the record does not support Petitioner's proposition that Ms. Wieland positioned Terrence next to Petitioner to make him quit his job. Consequently, Petitioner did not prove that some action on the part of the Auto Club was sufficiently adverse to establish a claim of retaliation.

55. As to a final point, the Auto Club did not terminate Petitioner's employment. Rather, Petitioner elected not to return to work on May 15, 2015. The FCRA makes unlawful an employer's actions "to *discharge* . . . or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment." (emphasis added). See § 760.10(1)(a), Fla. Stat. Consequently, to establish an adverse employment action under the FCRA, Petitioner must prove that he was "constructively discharged" from the Auto Club.

56. To prove a claim for constructive discharge, Petitioner must demonstrate that a discriminatory employer imposed working conditions that were "so intolerable that a reasonable person in [the employee's] position would have been compelled to resign." Fitz v. Pugmire Lincoln-Mercury, Inc., 348 F.3d 974, 977 (11th Cir. 2003). Petitioner must show that he "quit in reasonable response to an employer-sanctioned adverse action officially changing [his] employment status or situation, for example, a humiliating demotion, extreme cut in pay, or transfer to a position in which he would face unbearable working conditions." Pennsylvania State Police v. Suders, 542 U.S. 129, 134 (2004). Establishing a constructive discharge claim is a more onerous task than establishing a hostile work environment claim. Bryant v. Jones, 575 F.3d 1281, 1298 (11th Cir. 2009). Petitioner must

demonstrate a greater severity or pervasiveness of harassment than the minimum required to prevail on a hostile work environment claim. Hipp v. Liberty Nat'l Life Ins. Co., 252 F.3d 1208, 1231-32 (11th Cir. 2001).

57. Petitioner failed to prove that he was constructively discharged from his employment with the Auto Club. Petitioner did not show that the working conditions he experienced (i.e., co-workers' bathroom and dining etiquette, parking issues, noisy seatmates) were so intolerable that a reasonable person would have been compelled to resign. The unpleasant conduct does not meet the high burden required to establish a constructive discharge. Further, as discussed above, no evidence demonstrates that any of these actions related in any way to Petitioner's race, religion, or national origin. Consequently, Petitioner's claim of a constructive discharge must fail.

58. Finally, at the final hearing, Petitioner expressed his frustration with the Auto Club's unwillingness to punish Ms. Latour, Edgardo, and Judith, as well as its failure to produce videotapes of the hallway and the parking lot. It should be noted, however, that in a proceeding under the FCRA, the court is "not in the business of adjudging whether employment decisions are prudent or fair. Instead, [the court's] sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." Damon v. Fleming Supermarkets of Fla.,

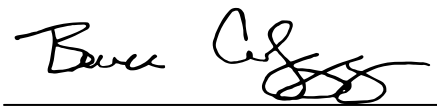
Inc., 196 F.3d 1354, 1361 (11th Cir. 1999). Not everything that makes an employee unhappy is an actionable adverse action. Davis v. Town of Lake Park, Fla., 245 F.3d 1232, 1238 (11th Cir. 2001); see also Alexander v. Fulton Cnty., Ga., 207 F.3d 1303, 1341 (11th Cir. 2000)("[I]t is not the court's role to second-guess the wisdom of an employer's decisions as long as the decisions are not racially motivated.").

59. Accordingly, the evidence on record does not substantiate Petitioner's claim that Auto Club discriminated against him because of his race, religion, or national origin. Petitioner failed to offer evidence demonstrating that the alleged harassment was sufficiently "severe or pervasive" to alter the terms and conditions of his employment or that he was subjected to unwelcomed harassment based on his membership in a protected group. Further, the evidence does not establish that the Auto Club constructively discharged Petitioner.

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 finding that Respondent, Auto Club Service Group, did not commit an unlawful employment practice against Petitioner, Hassan Habibi, and dismiss his Petition for Relief.

DONE AND ENTERED this 31st day of May, 2017, in Tallahassee, Leon County, Florida.



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Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of May, 2017.

ENDNOTE

[1/] All statutory references are to Florida Statutes (2016), unless otherwise noted.

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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.