STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BENJAMIN D. LOVE,

Petitioner,

vs. Case No. 17-0564

ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held April 4, and April 18, 2017, by video teleconference in Pensacola and Tallahassee, Florida, before Yolonda Y. Green, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("Division").

APPEARANCES

For Petitioner: Benjamin David Love, pro se
Post Office Box 1132
Gonzalez, Florida 32560

For Respondent: Meredith D. Crawford, Esquire
Escambia County Board of
County Commissioners
Suite 430
221 Palafox Place
Pensacola, Florida 32502

STATEMENT OF THE ISSUE

Whether Respondent subjected Petitioner to an unlawful employment practice on the basis of religion; or in retaliation

to his engagement in a lawful employment activity, in violation of section 760.10, Florida Statutes.

## PRELIMINARY STATEMENT

Petitioner, Benjamin D. Love ("Mr. Love" or "Petitioner"), filed a Complaint of Employment Discrimination with the Florida Commission on Human Relations ("Commission") on January 25, 2016. The complaint alleged that Respondent, Escambia County Board of County Commissioners ("Escambia County" or "Respondent"), discriminated against him on the basis of religion. Following its investigation of the allegations, FCHR issued a determination of "No Reasonable Cause" regarding Petitioner's complaint on December 21, 2016.

On January 24, 2017, Petitioner filed a Petition for Relief requesting an administrative hearing regarding the Commission's "No Reasonable Cause" determination pursuant to section 760.11(7).

The Commission referred this matter to the Division on January 24, 2017, and on January 25, 2017, this matter was assigned to the undersigned. The undersigned issued a Notice of Hearing, setting the final hearing for April 4, 2017. On March 28, 2017, Respondent filed a Motion to Dismiss, which was denied after a telephonic motion hearing. The parties filed a pre-hearing stipulation wherein they stipulated to certain facts

which, to the extent relevant, have been incorporated into the Findings of Fact below.

On April 4, 2017, during preliminary matters, the undersigned heard Respondent's motion to compel discovery, motion for sanctions, and second request for extension of time. The motion, which was related to incomplete answers to interrogatories, was granted, in part, and denied, in part. Pursuant to Respondent's request to depose Petitioner, the hearing was recessed to allow Respondent to take the deposition of Petitioner to obtain responses to the incomplete interrogatories. Following the deposition, the final hearing convened and was partially held. The hearing reconvened on April 18, 2017, until completion.

At hearing, Petitioner testified on his own behalf and offered no other witnesses. He offered Exhibits 1a, 1b, 2a through 2h, 3a through 3x, 4, 10, 10c, and 10h, which were admitted in evidence. Petitioner also offered Exhibit 8, which was not admitted.

Respondent offered the testimony of four witnesses: Mary Elizabeth Bush, Escambia County, Public Works Department, Construction and Bridge Program manager; James Duncan, Escambia County, Public Works Department, Deputy Division Manager; Joy Jones, Escambia County, Public Works Department, Division Manager; and Sharon Johnson, Blue Arbor contract employee.

Respondent offered Exhibits 9, 11, 14, 15, 19, 20, 23 through 30, and 32 through 40, which were admitted.

The two-volume Transcript was filed on May 1, 2017. The parties timely filed Proposed Recommended Orders, which have been carefully considered in the preparation of this Recommended Order.

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

## FINDINGS OF FACT

1. Respondent, Escambia County, is a political subdivision of the state of Florida that is authorized to carry out county government, pursuant to section 125.01, Florida Statutes (2016).

2. Escambia County is an employer as that term is defined by the Florida Civil Rights Act 1992.

3. Petitioner, Mr. Love, was employed by Blue Arbor, Inc., a staffing agency. Blue Arbor had a contract with Escambia County for temporary labor services. Blue Arbor assigned Mr. Love to a temporary job with Escambia County, Public Works Department, Office of Engineering and Construction, as an engineering project coordinator. The assignment was for one year. Petitioner was assigned to the job from May 26, 2014, until his termination.

4. On January 26, 2015, Escambia County terminated Petitioner's temporary employment contract.

5. Petitioner was an employee of Escambia County as that term is defined by the Florida Civil Rights Act of 1992.

6. Mr. Love is a Christian.

7. Petitioner timely filed a complaint with the Commission alleging Respondent engaged in an unlawful employment practice by terminating Petitioner on the basis of his religion.

8. As an engineering project coordinator, Petitioner's job responsibilities included: management of complex projects, ability to prioritize work, and ability to exercise good interpersonal skills with co-workers, supervisors, and the public.

9. Mr. Love earned a Bachelor of Science in Engineering Technology and Construction degree in December 2013. Mr. Love had no prior drainage or roadway experience before working for Escambia County.

10. Mr. Love began working for Escambia County following a storm that was declared a disaster. Due to the disaster, staff was expected to be flexible and able to perform job duties without refusal or hesitation.

11. Respondent asserts that it terminated Petitioner's contract due to his inability to perform job responsibilities

without objection or hesitation, work performance, and disruptive behavior.

12. Mr. Love had multiple supervisors during his eight month tenure at Escambia County. While working at Escambia County, Mr. Love's supervisors had issues with his work performance and his behavior.

13. Mary Bush, a construction manager, supervised Mr. Love in 2014. Ms. Bush had issues with Mr. Love's file storage practices and behavior. Ms. Bush testified that Mr. Love saved all his work on a personal computer and was told several times to save his work in the shared folder. Mr. Love refused to save his work on the shared drive on the basis that the documents were his work.

14. During the time Ms. Bush supervised Mr. Love, she experienced two incidents with Mr. Love involving outbursts. On one occasion, Mr. Love was in Ms. Bush's office seeking review of Mr. Love's work. Mr. Love stated in a raised voice, "you need to review the report so I can do my job." On another occasion, Ms. Bush directed Mr. Love to identify his documents using a certain description and explained the importance of the practice. Mr. Love objected on the basis that the practice was an asinine process.

15. Mr. Love was reassigned to another supervisor due to the outbursts involving Ms. Bush. At no point did Mr. Love

state that his objection to following directions was based on his religion.

16. Chris Curb, an engineering manager for stormwater, also supervised Mr. Love during his tenure at Escambia County. Despite the direction from Ms. Bush, the file-sharing issue continued. On December 30, 2014, Chris Curb notified Mr. Love by email that his file saving was a "problem." Mr. Curb advised Mr. Love that his file folder was not a standard subfolder and he needed to save all files in the proper shared subfolders. He explained that file sharing is important so Escambia County could comply with state regulations and records requests. He further explained that Mr. Love was not the sole owner of a project record because other employees would need access to the work. He concluded his email with instructions for Mr. Love to use designated file folders.

17. A third supervisor, Jim Duncan, also had issues with Mr. Love's work performance and behavior. Similar to his practice under prior supervisors, Mr. Love refused to save his files to the shared file folder.

18. Mr. Love also repeatedly refused to attend mandatory meetings without a direct command. For example, on multiple occasions Mr. Love's supervisor had to locate and direct him to attend the weekly department meetings. Mr. Love testified that

he was reluctant to attend the meetings because he believed they "were unproductive and take up too much time."

19. Similar to other supervisors, Mr. Love engaged in an outburst with Mr. Duncan. Mr. Duncan was a construction manager when he supervised Mr. Love and thus, was responsible for directing Mr. Love to advance projects from conception to completion. One such project was ENG Flood 414-85, which was also referred to as the Beulah Road at Helms Intersection project ("Beulah-Helms project"). Mr. Love was the project coordinator for the project.

20. In October 2014, Roads, Inc., a construction company, submitted a bid for the Beulah-Helms project. Brett Moylan is the vice-president and chief operating officer of Roads, Inc.

21. The project was a pricing agreement contract. Pricing agreement contracts are contracts where prices are established for a period of one year and are adopted by the Escambia County prior to the award of any specific pricing agreement contract. Pricing agreements have a blackout period and bidding process that also takes place prior to acceptance of the pricing agreement.

22. In December 2015, Mr. Love was in the final stages of the procurement process for the Beulah-Helms project. Roads, Inc. was the lowest bidder on the project. Mr. Love corresponded with Mr. Moylan regarding the documents necessary

to approve the project. Mr. Love requested a construction schedule and MOT plan for the project before the work order could be approved. Mr. Moylan asserted in an email that the construction schedule would begin after the purchase order is issued. Mr. Moylan later submitted the MOT plan and signed the work order.

23. On January 22, 2015, Mr. Love sent an email to Mr. Moylan requesting the construction schedule and another signed work order with the appropriate dates. Mr. Love advised Mr. Moylan that he would not begin the project until Mr. Moylan submitted the construction schedule. Although Mr. Moylan explained that he usually did not submit a construction schedule, he ultimately provided the construction schedule to Mr. Love indicating that the project would begin the following Monday and "be substantially complete within 60 days of commencement, and have a completion date within 90 days." The construction schedule provided by Mr. Moylan was an acceptable schedule.

24. For a reason that was not addressed at hearing, Mr. Love asked Mr. Moylan for the construction schedule again, despite receiving it. Mr. Moylan advised Mr. Love to accept the next lowest bidder.

25. As a result of the email exchange with Mr. Moylan, Mr. Love planned to send Mr. Moylan a follow-up email about

accepting the next highest bidder, which would purportedly cost Escambia County an additional $20,000 for the project. Before Mr. Love drafted the email, he called Mr. Moylan to discuss the issues referenced in the email. Mr. Love testified that before he called Mr. Moylan he "drove around the block a couple of times, before he could call Mr. Moylan because [he] knew that the conversation was going to get heated." Mr. Love described the conversation as heated, and they "cut each other off" during the conversation.

26. Mr. Moylan contacted Mr. Duncan to complain about Mr. Love's behavior related to the Beulah-Helms project. Mr. Duncan approached Mr. Love to discuss the exchange between Mr. Love and Mr. Moylan. Mr. Duncan directed Mr. Love to award the Beulah-Helms project to Roads, Inc.

27. Mr. Love objected to awarding the contract to Roads, Inc. He testified that his objection was based on his religion because "[he] had an obligation to utilize his moral and ethical judgment which is inherent to [his] religion." Mr. Love stated that the religious accommodation was based on his request for additional information before he could feel comfortable awarding the project to Roads, Inc.

28. Mr. Love testified that he told Mr. Duncan that he refused to award Roads, Inc., without the construction schedule "based on a matter of principal." Mr. Love did not say he

refused to approve the project based on his religion. He did not say he needed an accommodation for his religion.

29. Mr. Duncan directed Mr. Love not to take any further action until they discussed Mr. Love's objection with the department manager, Joy Jones. During the conversation, Mr. Love became angry and yelled at Mr. Duncan.

30. Sharon Johnson, a project coordinator, witnessed the exchange between Mr. Love and Mr. Duncan. Specifically, Ms. Johnson observed Mr. Love and Mr. Duncan having the discussion about the Beulah-Helms project. Ms. Johnson described Mr. Love's demeanor as unhappy and upset. She testified that he raised his voice and yelled at Mr. Duncan. At the same time, Mr. Duncan attempted to calm Mr. Love. Ms. Johnson could not recall the substance of the discussion, but she testified without hesitation that Mr. Love did not mention anything about his religion. Ms. Johnson's testimony is found to be credible.

31. On January 26, 2015, Escambia County terminated Petitioner's contract.

32. Joy Jones, the Engineering Department manager, made the final decision to terminate Mr. Love's contract. Although Ms. Jones did not directly supervise Mr. Love, she was aware of the issues concerning his work performance and behavior through complaints from her staff who directly supervised Mr. Love.

After several complaints of angry outbursts, difficulty meeting deadlines, failure to save critical documents to the shared drive, inability to move projects in the process without reluctance, and inability to work with several supervisors, Ms. Jones made the decision to terminate Mr. Love's contract. Based on the evidence, Respondent has demonstrated that Mr. Love's termination was based on a legitimate business decision due to poor work performance and disruptive behavior.

33. Approximately one year after his termination, Mr. Love sent an email to the Escambia County Administrator, Jack Brown. The email complained of perceived damage to Mr. Love's reputation, credibility, and career. Mr. Love did not mention any complaint of religious discrimination or retaliation. In his response to Mr. Love, Mr. Brown explained that "in the project coordinator position staff must examine and thoroughly understand applicable process. Refusal and hesitation to perform job duties affect production, grant reimbursement deadlines, and citizen expectations."

34. Mr. Love did not explicitly mention anything about his religion or religious discrimination to any of his supervisors before he was terminated from Escambia County.

## CONCLUSIONS OF LAW

35. 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.

36. Section 760.10(1)(a), provides 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 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.

38. Escambia County meets the definition of an employer.

Religious Discrimination

39. Petitioner filed a complaint alleging Respondent discriminated against him on the basis of his religion.

40. 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 his complaint.

41. Section 760.11(7) provides that upon a determination by the Commission 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 Commission's determination of no cause, Petitioner timely filed his Petition for Relief from Unlawful Employment Practices and Request for Administrative Hearing, resulting in this hearing.

42. 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).

43. 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).

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

45. 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).

46. Petitioner did not present any direct evidence of employment discrimination based on religion.

47. Similarly, Petitioner presented no statistical evidence of employment discrimination by Respondent against Petitioner.

48. In the absence of any direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence. In McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and as refined in Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981), and St. Mary's Honor Ctr. 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.

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

50. To establish a prima facie case of religious discrimination, a 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).

51. The first, second, and third prongs of the prima facie case have been met by Petitioner. Mr. Love is Christian, he was qualified for the position, and he was terminated by Escambia County.

52. In its proposed recommended order, Respondent argued Petitioner had not met the second prong of the McDonnell Douglas framework. However, Respondent did not provide support for that position, and Petitioner was employed in the position when he was terminated. Respondent's argument is therefore rejected.

53. Petitioner did not, however, prove the fourth prong, that other similarly-situated employees were treated more favorably than he.

54. An adequate comparator for Petitioner must be "'similarly-situated' in all relevant respects." Valenzuela v. GlobeGround N. Am., 18 So. 3d at 23 (internal citations omitted); Johnson v. Great Expressions Dental Ctrs. of Fla., 132 So. 3d 1174 (Fla. 3d DCA 2014). The Johnson court explained the exacting nature of the similarly-situated comparator, as follows:

> Similarly situated employees must have reported to the same supervisor as the plaintiff, must have been subject to the same standards governing performance evaluation and discipline, and must have engaged in conduct similar to plaintiff's, without such differentiating conduct that would distinguish their conduct or the appropriate discipline for it.

Id. at 1176.

55. Petitioner has failed to prove by a preponderance of the evidence that Respondent treated similarly-situated employees outside his protected class more favorably than he. The evidence establishes that Petitioner was terminated for work performance and disruptive behavior. Petitioner did not identify any other non-Christian employees who were treated more favorably than he.

56. Thus, Mr. Love failed to prove by a preponderance of evidence a prima facie case of unlawful discrimination by Escambia County based on his religion under McDonnell Douglas.

57. If Petitioner had been able to prove his prima facie case by a preponderance of the evidence, the burden would shift to Respondent to articulate a legitimate, nondiscriminatory 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).

58. If the employer produces evidence that the decision was nondiscriminatory, 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 Texas 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.'" (emphasis added). 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.

59. 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.

60. 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).

61. Respondent presented evidence that Petitioner was terminated based on several issues including: his behavior in the work place, his inability to work with several supervisors, refusal to move projects without reluctance, and work performance. Respondent also offered evidence that inability to perform job duties without hesitation affects production, grant reimbursement deadlines, and citizen expectations. The evidence Respondent presented credibly articulated a legitimate business reason for terminating Petitioner.

62. 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.

63. Petitioner introduced no evidence to persuade the undersigned that Respondent's reasons for terminating his contract was a mere pretext.

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

Retaliation

65. A claim of retaliation involves section 760.10(7), which provides that: "It is an unlawful employment practice for an employer, . . . to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any

manner in an investigation, proceeding, or hearing under this section."

66. "Section 760.10(7), Florida Statutes, is virtually identical to its Federal Title VII counterpart, 42 U.S.C. § 2000e-3(a). The FCRA [Florida Civil Rights Act] is patterned after Title VII; federal case law on Title VII applies to FCRA claims." Hinton v. Supervision Int'l, Inc., 942 So. 2d 986, 989 (Fla. 5th DCA 2006)(citing Guess v. City of Miramar, 889 So. 2d 840, 846 n.2 (Fla. 4th DCA 2005)).

67. In construing 42 U.S.C. § 2000e-3(a), the Eleventh Circuit has held that: The statute's participation clause "protects proceedings and activities which occur in conjunction with or after the filing of a formal charge with the EEOC." The opposition clause, on the other hand, protects activity that occurs before the filing of a formal charge with the EEOC, such as submitting an internal complaint of discrimination to an employer, or informally complaining of discrimination to a supervisor. (citations omitted). Muhammed v. Audio Visual Servs. Group, 380 Fed. Appx. 864, 872 (11th Cir. 2010). The division of section 760.10(7) into the "opposition clause" and the "participation clause" is recognized by Florida state courts. See Blizzard v. Appliance Direct, Inc., 16 So. 3d 922, 925-926 (Fla. 5th DCA 2009).

68. In explaining the difference between the two clauses, the Second District Court of Appeal has held that:

> FCRA's "opposition clause [protects] employees who have opposed unlawful [employment practices]. . . ." However, opposition claims usually involve "activities such as 'making complaints to management, writing critical letters to customers, protesting against discrimination by industry or by society in general, and expressing support of coworkers who have filed formal charges. . . .'" Cases involving retaliatory acts committed after the employee has filed a charge with the relevant administrative agency usually arise under the participation clause.

Carter v. Health Mgmt. Assoc., 989 So. 2d 1258, 1263 (Fla. 2d DCA 2008).

69. Petitioner did not introduce any direct or statistical evidence that proves Respondent retaliated against him as a result of Petitioner's opposition to acts of discrimination. Absent any direct or statistical evidence, Petitioner must prove her allegations of retaliation by circumstantial evidence. Circumstantial evidence of retaliation is subject to the burden-shifting analysis established in McDonnell Douglas.

70. To establish a prima facie case of retaliation under the opposition clause under McDonnell Douglas, a petitioner must demonstrate by a preponderance of the evidence "(1) that [he] engaged in statutorily protected expression; (2) that [he] suffered an adverse employment action; and (3) there is some

causal relationship between the two events." (citations omitted). Holifield v. Reno, 115 F.3d at 1566; see also Muhammed v. Audio Visual Servs. Group, 380 Fed. Appx. at 872; Tipton v. Canadian Imperial Bank, 872 F.2d 1491 (11th Cir. 1989).

a. Statutorily-Protected Activity

71. Petitioner did not offer sufficient evidence to prove by the preponderance of evidence that Escambia County engaged in religious discrimination. Mr. Love's claim that his objection to awarding the Beulah Helms project to Roads, Inc., as a matter of principle, and his subsequent request for information as a matter of principle, falls short of being discrimination on the basis of religion. Thus, Petitioner did not prove that he was engaged in a statutorily-protected activity.

b. Adverse Employment Action

72. Petitioner claims that Respondent terminated his contract after he requested additional information which he believed was an accommodation for his religion. Petitioner did suffer an adverse employment action when he was terminated on January 26, 2015.

c. Causal Connection

73. To prove the third element, Petitioner must demonstrate a causal connection between the protected activity and the adverse employment decision. This causal link element

is construed broadly, and may be established by a demonstration that the employer was aware of the protected conduct and that the protected activity and the adverse action were not "wholly unrelated." Farley v. Nationwide Mut. Ins., 197 F.3d 1322, 1337 (11th Cir. 1999)(internal citations omitted); Olmstead v. Taco Bell Corp., 141 F.3d 1457, 1460 (11th Cir. 1998). Moreover, for purposes of demonstrating a prima facie case, close temporal proximity may be sufficient to show that the protected activity and adverse action were not wholly unrelated. Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 590 (11th Cir. 2000).

74. Petitioner has not offered sufficient evidence to prove by a preponderance of evidence that there is a causal connection between any protected activity and the adverse employment. Therefore, Petitioner has failed to meet the third element.

75. Petitioner has failed to establish a prima facie case of retaliation.

76. Assuming Petitioner met his burden to prove a prima facie case of retaliation, Respondent met its burden to produce evidence of a legitimate nondiscriminatory reason for Petitioner's termination as explained in paragraph 61 above.

Conclusion

77. Based on the foregoing, Petitioner did not prove his Charge of Discrimination. The undersigned therefore concludes that Respondent did not violate the Florida Civil Rights Act of 1992, and is not liable to Petitioner for discrimination in employment based on religion or retaliation.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order dismissing 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 24th day of May, 2017, in Tallahassee, Leon County, Florida.

YOLONDA Y. GREEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of May, 2017.

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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.