

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RUSTY SANTANGELO,

Petitioner,

vs.

Case No. 17-1312

ACE STAFFING,

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 (2017),^{1/} on July 21, 2017, in Orlando, Florida.

APPEARANCES

For Petitioner: Rusty Santangelo, pro se
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For Respondent: Nikhil N. Joshi, Esquire
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STATEMENT OF THE ISSUE

Whether Petitioner, Rusty Santangelo, was subject to an unlawful employment practice by Respondent, Ace Staffing, based

on his disability (handicap) in violation of the Florida Civil Rights Act.

PRELIMINARY STATEMENT

On February 18, 2016, Petitioner filed a Charge of Discrimination with the Florida Commission on Human Relations (the "Commission") alleging that Respondent, Ace Staffing, violated the Florida Civil Rights Act ("FCRA") by discriminating against him based on his disability (handicap).

On February 20, 2017, the Commission notified Petitioner that no reasonable cause existed to believe that Ace Staffing had committed an unlawful employment practice.

On February 27, 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 initially scheduled for May 4, 2017. Following a motion from Respondent, the final hearing was continued to July 21, 2017, and was held on that date.

At the final hearing, Petitioner testified on his own behalf. Petitioner also called Prity Patel (Owner of Ace Staffing), Ray Patel (Office Manager of Ace Staffing), Janice Mullendore, and Rich Patel as witnesses. Petitioner's Exhibits 1 through 23, 25, 29, 31, 35, 37, 39, and 41 were admitted into

evidence.^{2/} Respondent also called Petitioner, Ray Patel, Prity Patel, Ms. Mullendore, and Rich Patel as witnesses. Respondent's Exhibits 1 and 2 were admitted into evidence.

A court reporter recorded the final hearing. Neither party requested a transcript. At the close of the hearing, the parties were advised of a ten-day timeframe following the final hearing to file post-hearing submittals. Ace Staffing requested an extension of the filing deadline, which was granted. Ace Staffing subsequently moved for an additional ten-day extension to file its post-hearing submission, which was also granted.^{3/} Both parties timely filed Proposed Recommended Orders which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Ace Staffing is a temporary employment agency. Ace Staffing works mostly with day laborers in the construction industry.

2. Petitioner is a former temporary worker with Ace Staffing. Petitioner worked for Ace Staffing from 2007 through 2015.

3. Generally, when an Ace Staffing customer requests temporary employees, the customer completes a Purchase Order ("PO") indicating the date(s) for which employees are needed, the number of employees requested, and a description of the work to

be performed. Ace Staffing then contacts its list of available employees and offers them job assignments.

4. If an employee accepts the assignment, Ace Staffing provides that employee with a "ticket" for the customer to complete. The customer is to record the hours the employee worked, as well as the rate of pay on the ticket. After the employee performs the job, the employee returns the completed ticket to Ace Staffing along with the PO which the customer signs. Ace Staffing then collects information from the ticket to generate a paycheck for the employee. Ace Staffing typically pays employees on the day they worked. Thereafter, Ace Staffing bills the customer.

5. Occasionally, Ace Staffing places a temporary employee in a long-term job assignment. In these circumstances, Ace Staffing considers the employee to be working a "steady" or "open" ticket. The customer still prepares a PO for Ace Staffing to record how many workers the customer employed for each work day.

6. When working on a "steady" or "open" ticket, Ace Staffing requires the employee to provide his or her work hours to the customer at the worksite. The customer then reports the time to Ace Staffing (on a ticket or by e-mail). Ace Staffing, in turn, issues the paycheck to the employee.

7. All Ace Staffing temporary employees are hired for specific jobs as requested by customers. Employees are never guaranteed constant work or a permanent assignment. Either Ace Staffing, the employee, or the customer may terminate the job at any time.

8. Petitioner began working for Ace Staffing in September 2007.

9. In 2011, Ace Staffing sent Petitioner to fill a temporary job assignment with Owens, Renz & Lee Company, Inc. ("Owens"). Owens provided janitorial and maintenance services for the Amway Arena (the "Arena") in Orlando, Florida. Ace Staffing did not have a formal contract with Owens for its staffing services. Either Ace Staffing or Owens could end their business relationship at any time.

10. Petitioner generally worked for Owens at the Arena performing custodial services. Petitioner worked in a part-time capacity and typically only when the Arena hosted events, such as music concerts and sporting events.

11. Soon, Petitioner's assignment with Owens became a "steady" or "open" ticket. When Owens needed an employee for the Arena, Ace Staffing allowed Owens to contact Petitioner directly to schedule the job. Ace Staffing instructed Petitioner to simply show up at the Arena when Owens offered him work.

12. Regarding payment for his work for Owens, Ace Staffing instructed Petitioner that he was responsible for ensuring Owens completed the PO and the ticket for his work hours. Therefore, when Owens hired him, Petitioner was required to report his time to Owens. Specifically, Petitioner was to record the time he reported in, and when he left, the Arena. Typically, Petitioner would "punch in" with a time card when he checked in at the Arena. Owens would provide Petitioner's recorded work hours to Ace Staffing on Petitioner's ticket or via e-mail. Petitioner would drop off his ticket at the Ace Staffing office once a week. Ace Staffing would then provide Petitioner a ticket for Owens to complete the following week.

13. This process enabled Ace Staffing to accurately prepare Petitioner's paycheck. Ace Staffing paid Petitioner based on the work hours Owens reported on the ticket (or by e-mail). Ace Staffing issued Petitioner's paycheck on a weekly basis.

14. Petitioner very much enjoyed his job at the Arena. Similarly, the evidence indicates that Owens considered Petitioner a good and reliable worker. Petitioner worked steadily at the Arena averaging ten to 20 events a month. Petitioner began to envision that he could work for Owens as long as he wanted.

15. Periodically, however, Petitioner complained to Ace Staffing that he was not being paid for all the hours he worked

at the Arena. Petitioner's pay issues came to a head in October 2015.

16. On October 2, 2015, Petitioner appeared at the Ace Staffing office to discuss his pay shortage. Petitioner met with Prity Patel, the Owner of Ace Staffing. Petitioner told Ms. Patel that he had not been paid for approximately 45 hours that he had worked the previous fall in September and October 2014.

17. Ms. Patel testified at the final hearing that the October 2, 2015, incident was not the first time Petitioner had complained about not being paid for all the hours he worked for Owens. She relayed that in April 2014, Petitioner told her that he had not been paid for several events he worked during December 2013. Both Ace Staffing and Owens investigated Petitioner's claim. Owens subsequently confirmed that Petitioner had worked more hours than were recorded on his ticket. Thereafter, Ace Staffing paid Petitioner for the missing time and billed Owens accordingly.

18. Subsequently, in May 2014, Petitioner again reported to Ace Staffing that he had worked several jobs for Owens for which he had not received compensation. This time, Petitioner identified one day in January 2014, and 12 days in March 2014. Once again, both Ace Staffing and Owens reviewed their respective records, and Owens was able to confirm that Petitioner worked the

additional hours for which he claimed he was not paid. Ace Staffing paid Petitioner for all of the missing time.

19. After Petitioner's second complaint in May 2014, Ms. Patel instructed Petitioner to regularly check his paystub to ensure that he was properly paid for all the hours he worked. Ms. Patel specifically cautioned Petitioner not to wait weeks (or longer) to advise Ace Staffing of any error in his paycheck.

20. However, despite Ms. Patel's instructions for Petitioner to conscientiously record his work hours with Owens, on October 8, 2014, and again on November 8, 2014, Petitioner sent two e-mails to Owens declaring that he was missing pay for hours worked in September and October 2014. Then, almost a year later on September 11, 2015 (evidently because Owens never satisfactorily responded to his initial requests), Petitioner sent another e-mail to Owens about his missing time. At that point, on September 24, 2015, Owens sent an e-mail to Ray Patel (Ace Staffing's office manager) informing him that Petitioner was complaining that he had not been paid for work in September and October 2014.

21. Based on Petitioner's history of pay issues, when Ms. Patel learned on October 2, 2015, that Petitioner was again complaining about missing pay, she became upset. She was frustrated that Petitioner had failed to follow her instructions to ensure that Owens accurately recorded his work hours.

Ms. Patel was further irritated that Petitioner was bemoaning pay discrepancies that were over a year old. She was also distressed that, upon receiving each paycheck over the last year, Petitioner had assured her that the amount of his paycheck was accurate.

22. Ms. Patel explained that reconstructing Petitioner's work hours was intensive and time-consuming for both Ace Staffing and Owens. Petitioner was asking to be paid for hours that Owens had not submitted to Ace Staffing. Therefore, tracking down Petitioner's work days and hours required checking with each of Petitioner's supervisors at Owens on the specific event to verify whether Petitioner did, indeed, work on the date he claimed. This process was complicated by the fact that Owens employed hundreds of workers. Consequently, reviewing the jobs Petitioner worked was burdensome on both Ace Staffing and Owens.

23. Therefore, upon hearing Petitioner's latest complaint, Ms. Patel instructed Petitioner not to return to Owens until she could straighten out his back pay. Ms. Patel expressed to Petitioner that she would investigate the issue, and he could return to the Arena after the matter was resolved.

24. Ms. Patel testified that she spent a considerable amount of time in October and early November 2015 accounting for and reconciling the time Petitioner insisted that he worked for Owens in September and October 2014. Ms. Patel voiced that she was ultimately unable to independently confirm the hours

Petitioner claimed. Instead, she had to rely on Petitioner's personal calendar, which he used to track the days and events he worked at the Arena.

25. Ace Staffing paid Petitioner for all the missing hours (44.25 hours) he claimed he worked. On November 30, 2015, Petitioner received a call from Ms. Patel informing him that the final amount of all his missing back pay from 2014 would be deposited in his bank account. Ace Staffing did not bill Owens for Petitioner's missing time.

26. As a direct consequence of the complications Petitioner's pay issues caused, Ms. Patel decided to end Ace Staffing's business relationship with Owens. Petitioner was the only Ace Staffing employee working for Owens, and the account had simply become too troublesome to administer.

27. As a result, after October 2, 2015, Ace Staffing no longer placed any temporary employees with Owens or the Arena. On November 30, 2015, Ray Patel formally notified Owens that Petitioner would no longer be working for them.

28. On the other hand, Petitioner, after he met with Ms. Patel, was quite anxious to return to work at the Arena. He was fully prepared to report back to Owens as soon as Ace Staffing resolved his pay discrepancy. Petitioner believed that Ace Staffing and Owens were not communicating with each other, and the clerical error that led to his pay issue could be

resolved with minimal coordination between the two companies. Petitioner had been prepared to work at the Arena on Friday, October 3, 2015, for the start of basketball season. Petitioner represented that Owens had also scheduled him for additional events over the next two weeks. Further, Owens indicated that it was willing to continue employing Petitioner despite the pay dispute.

29. After October 2, 2015, Ace Staffing continued to offer Petitioner temporary job assignments. Prior to and during the years Petitioner worked for Owens, Ace Staffing regularly sent Petitioner on day labor jobs. These jobs included work as a flagman, a sign holder, and distributing flyers. Ms. Patel, Rich Patel (an Ace Staffing manager and secretary), and Janice Mullendore (Ace Staffing's office assistant) all persuasively testified that during October and November 2015, they contacted Petitioner and presented him with similar work. Ms. Patel explained that she only intended not to send Petitioner (or anyone) back to Owens. But, Ace Staffing always had jobs to provide to her temporary employees, including Petitioner.

30. Petitioner, however, turned down every assignment Ace Staffing offered. He expressed to Ace Staffing that he already had a job he liked--working for Owens at the Arena. Ace Staffing advised Petitioner that the assignments at the Arena were no

longer an option. Petitioner pronounced that he did not want any other jobs but to work for Owens at the Arena.

31. Ms. Mullendore testified that after Petitioner rejected several temporary assignments, she removed him from her list of available employees. She did not want to spend time calling someone who was not interested in working on the jobs she offered. Ms. Patel echoed Ms. Mullendore's statement saying that after Petitioner turned down three to four job offers, Ace Staffing simply stopped calling him about available temporary work.

32. Ace Staffing did not offer Petitioner another temporary job after November 2015.

33. As a result of the fallout from his meeting with Ms. Patel on October 2, 2015, Petitioner asserts that Ace Staffing unjustly "terminated" him based on his disability. Petitioner felt that Ace Staffing punished him for complaining about his missing pay and for being "slow." Petitioner asserts that he tried his best to keep up with the hours he worked for Owens. He may have been "slow," but he was determined.

34. Ms. Patel denied that Ace Staffing terminated Petitioner's employment. She emphasized that the reason Ace Staffing halted Petitioner's assignment with Owens was due to his multiple failures to accurately and timely report his work hours to Owens (and Ace Staffing). Ms. Patel stressed that

Petitioner's failure to dutifully record his hours at the time he worked at the Arena placed an extreme and unnecessary administrative burden on Ace Staffing. Reconciling Petitioner's pay discrepancies required hours of extra work for both Ace Staffing and Owens. Further, Petitioner's actions placed Ace Staffing in the uncomfortable position of having to request its customer (Owens) review its own work records to verify Petitioner's work hours. Ms. Patel felt that the situation resulted solely from Petitioner's inattentiveness. The October 2015 complaint was Petitioner's third incident involving unpaid work hours, which Ms. Patel determined was unacceptable.

35. Ray Patel also testified that Ace Staffing did not terminate Petitioner. Ace Staffing simply stopped offering Petitioner temporary assignments after November 2015. Mr. Patel further testified that Ace Staffing's decision to remove Petitioner from its list of available workers was not related to any disability from which he suffered. Ace Staffing's decision was based on Petitioner's unwillingness to take any job assignment other than with Owens.

36. Petitioner vehemently challenged Ace Staffing's representation that it presented him additional work after October 1, 2015. Petitioner recounted that, according to his phone records, Ace Staffing called him seven times between October 5, 2015, and November 30, 2015. Of these seven calls,

Petitioner believed that only one call concerned additional temporary work. This call came from Rich Patel who offered him an assignment passing out flyers.

37. At the final hearing, Petitioner described a number of mental and physical ailments he experienced during his time working for Ace Staffing.^{4/} In 2000, Petitioner was diagnosed with human immunodeficiency virus ("HIV"), which caused Petitioner several lingering side effects including chronic muscle pain and fatigue. Since March 2011, Petitioner has received regular treatment for bipolar disorder. Petitioner was Baker Acted in June 2011 due to depression and an attempted suicide. In 2011 and 2012, Petitioner experienced several anxiety attacks while working at the Arena. In 2011 and 2014, Petitioner underwent surgery related to an umbilical hernia from which he still endures complications. Petitioner continues to be treated for depression with psychotic features. In addition, Petitioner suffers from asthma, sleep apnea, and plantar fasciitis in both feet.

38. Ace Staffing does not dispute that Petitioner suffered from disabilities during the time he worked for them.^{5/}

(Petitioner concedes that Ace Staffing had no knowledge of his HIV or foot issues.) Ace Staffing was aware that Petitioner was limited in the types of work he was able to perform. Ace Staffing tried to accommodate Petitioner's limitations by

offering him job assignments Petitioner indicated he could execute. Despite all his medical conditions, Ace Staffing readily placed Petitioner with Owens at the Arena.

39. Based on the competent substantial evidence in the record, the preponderance of the evidence does not establish that Ace Staffing discriminated against Petitioner based on his disability (handicap). Accordingly, Petitioner failed to meet his burden of proving that Ace Staffing discriminated against him in violation of the FCRA.

CONCLUSIONS OF LAW

40. 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.

41. Petitioner brings this action alleging that Ace Staffing discriminated against him based on his disabilities (handicap) in violation of the FCRA. The FCRA protects individuals from disability discrimination 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.

42. Section 760.11(7) permits a party for whom the Commission determines that there is not reasonable cause to believe that a violation of the FCRA has occurred to request an administrative hearing before DOAH. Following an administrative hearing, if the Administrative Law Judge ("ALJ") finds that a discriminatory act has occurred, the ALJ "shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay." § 760.11(7), Fla. Stat.

43. The burden of proof in an 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."). The preponderance of the evidence standard is applicable to this matter. See § 120.57(1)(j), Fla. Stat.

44. 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 v. GlobeGround N. Am., LLC, 18 So. 3d 17, 21 (Fla. 3d DCA 2009); and Fla. State Univ. v. Sondel, 685 So. 2d 923, 925 n.1 (Fla. 1st DCA 1996).

45. Specifically regarding disability discrimination, the FCRA is construed in conformity with the Americans with Disabilities Act ("ADA") found in 42 U.S.C. § 12112(a). Cordoba v. Dillard's, Inc., 419 F.3d 1169, 1175 (11th Cir. 2005) (citing Wimberly v. Secs. Tech. Grp., Inc., 866 So. 2d 146, 147 (Fla. 4th DCA 2004)) ("Because Florida courts construe the FCRA in conformity with the ADA, a disability discrimination cause of action is analyzed under the ADA."). See also Holly v. Clairson Indus., L.L.C., 492 F.3d 1247, 1255 (11th Cir. 2007) (FCRA claims are analyzed under the same standards as the ADA.).

46. Employees may prove discrimination by direct, statistical, or circumstantial evidence. Valenzuela, 18 So. 3d at 22. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent without resorting to inference or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); Holifield, 115 F.3d at, 1561.

47. Petitioner did not present direct evidence of disability discrimination on the part of Ace Staffing.

Similarly, the record in this proceeding contains no statistical evidence of discrimination related to Ace Staffing's decision to cancel Petitioner's assignment with Owens or discontinue offering Petitioner temporary jobs.

48. In the absence of direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence of disability 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).

49. Under the McDonnell Douglas framework, 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 "onerous," but rather only requires Petitioner "to establish facts adequate to permit an inference of discrimination." Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997).

50. To state a prima facie claim for disability discrimination, Petitioner must show that 1) he is disabled;

2) he was a "qualified individual"; and 3) he was discriminated against because of his disability. See Lucas v. W.W. Grainger, Inc., 257 F.3d 1249, 1255 (11th Cir. 2001); and Frazier-White v. Gee, 818 F.3d 1249, 1255 (11th Cir. 2016). An individual is "qualified" if he, with or without reasonable accommodation, can perform the essential functions and job requirements of the position the individual holds. Earl v. Meryns, Inc., 207 F.3d 1361, 1365 (11th Cir. 2000); Se. Cmty. Coll. v. Davis, 442 U.S. 397, 406, 99 S. Ct. 2361, 2367, 60 L. Ed. 2d 980 (1979).

51. If Petitioner establishes a prima facie case for disability discrimination, he creates a presumption of discrimination. At that point, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for taking the adverse employment action. Valenzuela, 18 So. 3d at 22. The reason for the employer's decision should be clear, reasonably specific, and worthy of credence. Dep't of Corr. v. Chandler, 582 So. 2d 1183, 1186 (Fla. 1st DCA 1991). The employer has the burden of production, not persuasion, to demonstrate to the finder of fact that the decision was non-discriminatory. See Wilson v. B/E Aerospace, Inc., 376 F.3d 1079, 1087 (11th Cir. 2004). This burden of production is "exceedingly light." Holifield, 115 F.3d at 1564. The employer only needs to produce evidence of a reason for its decision. It is not required to persuade the trier of fact that its decision was actually

motivated by the reason given. See St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

52. If the employer meets its burden, the presumption of discrimination disappears. The burden then shifts back to the employee to prove that the employer's proffered reason was not the true reason but merely a "pretext" for discrimination. See Combs v. Plantation Patterns, 106 F.3d 1519, 1538 (11th Cir. 1997); Valenzuela, 18 So. 3d at 25. In order to satisfy this final step of the process, the employee 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." Chandler, 582 So. 2d at 1186 (citing Tex. Dep't of Cmty. Aff. v. Burdine, 450 U.S. 248, 252-256 (1981)). The proffered explanation is "not worthy of belief" if the employee demonstrates "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, 106 F.3d at 1538; see also Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 143, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000). Petitioner "must prove that the reasons articulated were false **and** that the discrimination was the real reason" for the defendant's actions. City of Miami v. Hervis, 65 So. 3d 1110, 1117 (Fla. 3d DCA 2011) (citing

St. Mary's Honor Ctr., 509 U.S. at 515 (“[A] reason cannot be proved to be ‘a pretext for discrimination’ unless it is shown both that the reason was false, and that discrimination was the real reason.”)).

53. Despite the shifting burdens of proof, “the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.” Burdine, 450 U.S. at 253, 101 S. Ct. at 1089, 67 L. Ed. 2d 207; Valenzuela 18 So. 3d at 22.

54. Turning to the facts found in this matter, Petitioner failed to establish a prima facie case of discrimination based on his disability. Ace Staffing does not dispute that Petitioner suffers from a disability that substantially limits one or more of his major life activities. Neither does Ace Staffing contest that Petitioner was a “qualified individual” who was able to perform the essential functions of his temporary job assignments. However, Petitioner did not set forth sufficient evidence that Ace Staffing discontinued his work at the Arena because he was a disabled person.

55. While establishing a prima facie case is not difficult, Petitioner is required to produce facts “adequate to permit an inference of discrimination.” The competent substantial evidence presented at the final hearing, however, does not support an inference that Ace Staffing took an adverse employment action

against Petitioner because he is disabled. Petitioner did not produce evidence establishing that his disabilities played any role in Ace Staffing's decision not to continue his temporary assignment with Owens. Conversely, Ace Staffing witnesses credibly and persuasively testified that Ace Staffing cancelled Petitioner's job at the Arena based on the administrative demands that arose from managing Petitioner's "steady" ticket with Owens (i.e., tracking Petitioner's work hours). The evidence and testimony further shows that the reason Ace Staffing stopped offering Petitioner temporary jobs after November 2015 was because Petitioner repeatedly turned down the opportunity for additional work.

56. Notwithstanding the above conclusion, even assuming, arguendo, that Petitioner did establish a prima facie case of disability discrimination, Ace Staffing articulated a legitimate, non-discriminatory reason for terminating Petitioner's assignment at the Arena. Ace Staffing's burden to refute Petitioner's prima facie case is light. Ace Staffing met its burden by providing credible testimony that its decision to stop sending Petitioner to Owens was based on Petitioner's failure to properly report his work hours on three separate occasions.

57. Completing the McDonnell Douglas burden-shifting analysis (again, assuming that Petitioner made a prima facie showing of discrimination), Petitioner did not prove that Ace

Staffing's stated reasons for any adverse employment decision were not its true reasons, but were merely a "pretext" for discrimination based on his disability. Petitioner did not produce any evidence establishing that his disabilities influenced Ace Staffing's decision not to send him back to work for Owens. After Petitioner's complaint on October 2, 2015, Ace Staffing no longer offered Petitioner work at the Arena because it had decided to end its staffing services with Owens. The impetus for the severed business relationship was Petitioner's unfortunate failure to sufficiently report all the time he worked despite Ace Staffing's instructions to the contrary. Consequently, the evidentiary record does not support a finding or conclusion that Ace Staffing's proffered explanations were false or not worthy of credence.

58. Further, the underlying evidence does not establish that Ace Staffing's decision to remove Petitioner from its list of temporary employees was based on a discriminatory animus. Ace Staffing continued to contact Petitioner regarding job assignments after October 2, 2015. The testimony establishes that Petitioner rejected every opportunity Ace Staffing offered because he only wanted to work for Owens at the Arena. Accordingly, the facts found in this matter do not support a conclusion that Ace Staffing's decision to no longer offer Petitioner work was a pretext for discrimination.

59. At the final hearing, Petitioner was very upset that Ace Staffing refused to allow him to return to work for Owens. 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). For example, an 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). An employee cannot succeed by simply quarreling with the wisdom of the employer's reasons. Chapman v. AI Transp., 229 F.3d 1012 (11th Cir. 2000); 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.").

60. In sum, the evidence on record does not support Petitioner's claim that Ace Staffing discriminated against him based on his disability. Accordingly, because Petitioner failed

to put forth sufficient evidence that Ace Staffing had some discriminatory animus motivating its employment decision, his Petition for Relief must be dismissed.

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 no unlawful employment practice and dismissing Petitioner's Petition for Relief from an unlawful employment practice.

DONE AND ENTERED this 13th day of October, 2017, in Tallahassee, Leon County, Florida.



J. BRUCE CULPEPPER
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Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of October, 2017.

ENDNOTES

^{1/} All statutory references are to Florida Statutes (2017), unless otherwise noted.

^{2/} Petitioner filed several post-hearing exhibits, many of which were related to a concurrent discrimination claim Petitioner

initiated against Owens. The facts found herein are based only on the evidence and testimony properly introduced and admitted at the final hearing in this matter.

^{3/} By requesting a deadline for filing post-hearing submissions beyond ten days after the final hearing, the 30-day time period for filing the Recommended Order was waived. See Fla. Admin. Code R. 28-106.216.

^{4/} Petitioner also recounted that in 2009, prior to his time with Ace Staffing, he was charged with assault and was found Not Guilty by reason of insanity. He was ordered to undergo psychiatric treatment.

^{5/} In mid-2011, while working for Ace Staffing, Petitioner applied for Social Security Disability Insurance Benefits. In January 2012, Petitioner was awarded Social Security Disability Benefits. In its decision, the Social Security Administration found Petitioner to be "disabled" as the term is defined in the Social Security Act.

The decision further determined that Petitioner's disability began in March 2011. Petitioner was found to have medically documented depressive syndrome, decreased energy, persistent anxiety, mood disturbance, apprehensive expectation, recurrent obsessions or compulsions, as well as intense and unstable interpersonal relationships, impulsive and damaging behavior, and memory impairment.

Petitioner's ability to work was also evaluated in 2011. Petitioner was found to be unable to perform several work-related activities on a sustained basis, including a) remembering work procedures, b) concentrating over extended periods, c) working in coordination with, or proximity to, others without being unduly distracted, d) completing a normal workday without psychological symptoms, e) accepting instructions, f) responding appropriately to criticism, g) getting along with coworkers, peers or the general public without exhibiting behavioral extremes, h) responding appropriately to changes in work assignments, i) dealing with normal work stress, or j) understanding, remembering or carrying out detailed instructions.

COPIES FURNISHED:

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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.