

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TINA GAINEY,

Petitioner,

vs.

Case No. 17-4689

PARALLON ENTERPRISES LLC-HSC
ORANGE PARK,

Respondent.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted in this case on December 19, 2017, via video teleconference at sites in Tallahassee and Pensacola, Florida, before Garnett W. Chisenhall, a duly-designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Tina Gainey, pro se
5765 JV Woolley Road
Crestview, Florida 32539

For Respondent: James J. Dean, Esquire
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, Florida 32308

STATEMENT OF THE ISSUE

The issue is whether Parallon Enterprises LLC-HSC Orange Park ("Parallon") committed an unlawful employment practice against Tina Gainey by subjecting her to disparate treatment based on her national origin.

PRELIMINARY STATEMENT

Tina Gainey filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations ("the Commission") on January 17, 2017, alleging that:

I have been discriminated against based on my National Origin (Hispanic). I have not seen any Hispanics in any position of authority at this facility, except for one - and he is a man. When my Supervisor, Sue Armstrong left the company her position became available. I spoke with my Regional Director Lisa Terrell; according to the job description, I have all of the qualifications and experience to fill this position (especially since I have been here over 5 years). I was worried [that] having an open Worker Comp case would disqualify me, but she assured me that she "checked into it" and such was not the case. I emailed my resume, cover letter, transfer form, etc. as requested to Ms. Terrell, along with completing the online application as required. I did not obtain the position, and my current Director Karen Truelove has less experience and less qualifications. She is [a] White female, same as the Supervisor before her and the Regional Director, Ms. Terrell. I was informed by Ms. Terrell that she was not sure if I met the qualifications, so she personally held my resume back and therefore I was not considered for the job. I applied for the same position but at a different company facility, but did not receive this position either. Ms. Terrell did not allow me to be considered for promotion. I informed her that I still wanted to advance with the company. She promised me assistance with placing me in an advanced position, stating that she would "be on the lookout for a higher position" for me and promised [an] opportunity for director training and additional education that would help me

further a career with the company. I have still not received any training, and she will not contact me back regarding the subject.

More than 180 days passed without the Commission making a determination regarding the merits of Ms. Gainey's claim. Accordingly, Ms. Gainey elected on July 22, 2017, to proceed with a formal administrative hearing at DOAH.^{1/}

On August 17, 2017, the Commission received Ms. Gainey's Petition for Relief and referred this matter to DOAH for a formal administrative hearing.

Via a Notice issued on September 5, 2017, the undersigned scheduled the final hearing to occur on October 17, 2017. On September 19, 2017, counsel for Respondent filed a Motion for Continuance requesting that the final hearing be continued to November 16 or 17, 2017. Ultimately, the undersigned rescheduled the final hearing to occur on December 19, 2017.

On September 8, 2017, Parallon filed a "Motion to Dismiss Petition for Relief or, in the Alternative, Motion to Strike and Exclude Evidence" ("the Motion to Dismiss"). In support thereof, Parallon described how Ms. Gainey had filed a Complaint in federal court on approximately December 28, 2016, alleging that Parallon had violated the Americans with Disabilities Act and interfered with Ms. Gainey's rights under the Family Medical Leave Act. However, Parallon and Ms. Gainey executed a

settlement agreement on approximately February 24, 2017, resulting in dismissal of Ms. Gainey's complaint. A paragraph within the settlement agreement stated that Parallon agreed to pay Ms. Gainey a sum of money "in exchange for a full release [and] a dismissal [with] prejudice of her suit in Federal Court." Another paragraph within the settlement agreement stated that "[t]his agreement in no way affects the Plaintiff's pending workers compensation claim which remains pending."^{2/} According to Parallon, Ms. Gainey's claims in the instant case were barred by the aforementioned settlement agreement.

Parallon argued alternatively in the Motion to Dismiss that Ms. Gainey intended to raise certain claims that were not included in her Complaint of Discrimination.

On December 4, 2017, Parallon filed a "Supplement to [the] Motion to Dismiss and/or Strike and Exclude Evidence" ("the Supplement"). Through the Supplement, Parallon noted that Ms. Gainey alleged in her Complaint of Discrimination that she had unsuccessfully applied for the same position at a different Parallon facility. According to Parallon, the aforementioned allegation should be stricken because "[t]he Respondent in this proceeding, Parallon Enterprises, LLC - HSC Orange Park, had no involvement with any decision-making regarding any application Ms. Gainey may have made for a [Health Information Management]

Director position to work at a facility other than Twin Cities Hospital and would have had no involvement with any position for a facility outside of Florida.”

Via an Order issued on December 5, 2017, the undersigned denied the Motion to Dismiss but specified that:

[t]he allegations at issue in the instant case shall be limited to allegations set forth in the “Employment Complaint of Discrimination” filed by Petitioner with the Florida Commission on Human Relations on January 17, 2017. With regard to Petitioner’s allegation that she “applied for the same position but at a different company facility, but did not receive this position either,” the undersigned reserves ruling until the final hearing as to whether this particular allegation is at issue. At this point in time, it is unclear whether Petitioner intends for that allegation to serve as context for her primary allegation or as a separate basis for relief.

(emphasis added).^{3/}

The undersigned concludes that there is no need to strike the allegation at issue because it was never offered as a separate or alternative basis for relief during the final hearing.

On October 3, 2017, Parallon filed a “Motion for Protective Order, Order in Limine and/or to Quash Subpoenas” (“the Motion to Quash”). In support thereof, Parallon asserted that Ms. Gainey had provided a list indicating that she intended to call 33 witnesses during the final hearing in this matter.

According to Parallon, only one of the 33 witnesses could provide any relevant information. Therefore, Parallon requested an order precluding Ms. Gainey from obtaining subpoenas for the remaining 32 witnesses until: (a) she filed a proffer of those witnesses' anticipated testimony; and (b) obtained pre-authorization from the undersigned for any subpoenas.

After conducting a telephonic hearing regarding the Motion to Quash, the undersigned issued an Order on October 18, 2017, providing that:

1. For every witness that Petitioner intends to subpoena, Petitioner shall provide notice to Respondent's counsel prior to issuance of any subpoenas. This requirement is intended to ensure that counsel for Respondent has notice of which witnesses will receive a subpoena and an opportunity to file a motion to quash if counsel for Respondent is of the opinion that a particular witness lacks any relevant information.
2. The Motion to Quash is denied without prejudice to Respondent filing renewed motions to quash in response to subpoenas.

On December 14, 2017, Ms. Gainey filed a "Motion for Protective Order, Order in Limine and/or to Quash Subpoenas" ("the Motion in Limine"). Through the Motion in Limine, Ms. Gainey asserted that Parallon filed its witness list on December 12, 2017. However, Ms. Gainey argued that Parallon should be precluded from presenting any testimony from the

witnesses on that list because: (a) Parallon did not disclose its witnesses in a timely manner; and (b) none of Parallon's witnesses have relevant testimony. In a separate argument, Ms. Gainey took issue with the fact that Parallon employees and Parallon's attorney did not assist her with obtaining the contact information of potential witnesses employed by Parallon.

With regard to the argument pertaining to Parallon's witnesses, the Order of Pre-hearing Instructions issued on September 5, 2017, mandated that each party was to provide the other party with a list of its prospective witnesses "[n]o later than 7 days before the final hearing . . ." The witness list filed by Parallon on December 12, 2017, has a certificate of service indicating that it was e-mailed to Ms. Gainey on December 12, 2017. Therefore, because Parallon complied with the portion of the Order of Pre-hearing Instructions pertaining to the disclosure of witnesses, there is no merit to Ms. Gainey's assertion that Parallon failed to timely disclose its witnesses.

During the course of the final hearing, Parallon presented several witnesses. While some of the witnesses gave testimony that was far more relevant than the testimony of other witnesses, the undersigned cannot conclude that any of the testimony should be stricken.

As for Ms. Gainey's argument that Parallon employees and Parallon's attorney did not assist her with obtaining the contact information of potential witnesses employed by Parallon, Ms. Gainey never sufficiently described the substance of this expected testimony or how that testimony was relevant to the allegations in her Complaint of Discrimination. Accordingly, the Motion in Limine is denied.

The final hearing was commenced as scheduled on December 19, 2017.

Parallon's Exhibits 1 through 9 were admitted into evidence without objection.

Parallon presented the testimony of Milagros Bonilla, Lisa Terrell, Kimberly Baker, Charlie Robinson, and Karen Truelove.

Ms. Gainey testified on her own behalf but did not offer any exhibits into evidence.

The Transcript from the final hearing was filed with DOAH on January 11, 2018. As a result, the parties' proposed recommended orders were due to be served on January 22, 2018.

On January 12, 2018, Parallon requested that the due date for the proposed recommended orders be extended to January 31, 2018. The undersigned issued an Order on January 16, 2018, granting Parallon's request.

Both parties filed timely Proposed Recommended Orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing and the entire record in this proceeding, the following Findings of Fact are made:

The Parties

1. Parallon is a business based in Orange Park, Florida, that contracts with 22 hospitals to provide health information management ("HIM") services.

2. HIM is a term used to describe the process by which a health care facility secures and maintains a patient's medical record from admittance to discharge.

3. Parallon's main purpose is to ensure that a patient's medical record is complete and accurate upon discharge.

4. Rather than employing nurses, physicians, or other providers of direct patient care, Parallon employs the hospital staff members involved with HIM operations.

5. Ms. Gainey is Hispanic and began working for Parallon in April of 2011 as a health information technician at the Twin Cities Hospital in Niceville, Florida.

6. Ms. Gainey has held the position of health information technician during her entire tenure at Parallon.

7. Ms. Gainey works the night shift and is usually the only HIM employee present at that time.

8. HIM work during the night shift is less complex than HIM work during the day. The nighttime work involves gathering the records of discharged patients, ensuring that all of those records can be traced to a particular patient, and preparing those records for delivery to a document imaging center.

9. Upon beginning her employment with Parallon, Ms. Gainey had high hopes of enjoying a long tenure there.

10. Because she was told that a degree in the HIM field would enable her to advance within Parallon, Ms. Gainey geared her education toward a specialization in HIM.

The HIM Director Position at Twin Cities Hospital Opens

11. Ms. Gainey's previous supervisor, the HIM Director at Twin Cities Hospital, relocated to a different position in approximately March of 2016.

12. A HIM Director with Parallon has a great deal of responsibility. In addition to being a supervisor and responsible for every medical record in a hospital, a HIM Director investigates every unauthorized release of protected health information.

13. Ms. Gainey was interested in the HIM Director position and communicated her interest to Lisa Terrell.

14. Ms. Terrell is one of Parallon's HIM Regional Directors and oversees Parallon's operations at eight health care facilities in Florida, including Twin Cities Hospital.

15. Ms. Terrell interviews qualified candidates for vacant HIM Director positions and recommends which candidates will be interviewed by Parallon's upper management.

16. Ms. Terrell told Mr. Gainey to send her the necessary documentation and Ms. Terrell would then forward that documentation to the appropriate person.

17. Ms. Gainey followed Ms. Terrell's instructions and provided her with the necessary documentation, an internal transfer form and a resume, via an e-mail transmitted on May 4, 2016.

18. On May 4, 2016, Ms. Terrell forwarded Ms. Gainey's e-mail to Kimberly Baker, a human resource generalist at Parallon's headquarters in Orange Park during the time in question.

19. Ms. Baker did not account for that e-mail by adding Ms. Gainey to the list of applicants for the HIM Director position at Twin Cities Hospital.

20. Ms. Baker should have recognized this e-mail as an application for the open HIM Director position because the subject line read "FW: Application for HIM Director position." Moreover, the line below the subject line indicates two files were attached to the e-mail. Those files were named "Internal Transfer Form rev 9.3.14.doc" and "Tina Gainey Management Resume 2016.docx."

21. Ms. Baker can only speculate as to why she failed to account for Ms. Gainey's application.

22. Ms. Baker was on vacation in May of 2016, and she left Parallon at the end of that month. Thus, it is possible that Ms. Terrell's e-mail was overlooked in a mass of e-mails that accumulated in Ms. Baker's in-box while she was gone.

23. Also, Ms. Gainey did not follow the formal process established by Parallon for existing Parallon employees to apply for transfers to open positions.

24. Parallon requires existing employees to apply for open positions by transmitting an e-mail to a particular human resource employee such as Ms. Baker.

25. An internal transfer form and the employee's resume should be attached to the e-mail.

26. That requirement serves multiple purposes. First, Parallon's human resources department is able to verify that an application is complete. Then, the human resources department screens a particular applicant to ensure that he or she is eligible to apply for the position in question.

27. Parallon also requires that applications be sent to a particular human resources employee because the employee responsible for managing the process for filling a particular opening must track which applicants are interviewed and which receive offers.

28. If the human resources department finds that a particular applicant is eligible, then the human resources department notifies the hiring director that an internal candidate has applied for the position in question.

29. A list of open positions within Parallon on March 29, 2016, indicates that existing employees should have transmitted an e-mail and the required attachments to Ms. Baker.

30. Ms. Baker believes that she would have been more likely to have added Ms. Gainey to the list of applicants for the HIM Director position if Ms. Gainey had followed the established procedure.

31. Nevertheless, Ms. Baker should have recognized Ms. Terrell's e-mail as an application for the open HIM Director position.

Parallon Offers the HIM Director Position to Karen Truelove

32. Karen Truelove was employed by Parallon and working at the Fort Walton Beach Medical Center ("FWB Medical Center") in Fort Walton Beach, Florida, in May of 2016.

33. Ms. Truelove was also interested in the HIM Director position at Twin Cities Hospital. She transmitted an e-mail to Ms. Baker on March 30, 2016, with an internal transfer form and her resume attached thereto.

34. Ms. Truelove has over 20 years of experience in the HIM field.

35. From March of 1996 through December of 2000, Ms. Truelove worked for Contra Costa County Health Services in Martinez, California, where she: (a) developed and implemented policies and procedures for medical record maintenance; (b) worked with outlying county medical clinics to ensure proper medical record procedures; and (c) completed and processed workers' compensation, state disability, social security, and private insurance forms.

36. From January of 2001 to October of 2001, Ms. Truelove worked at the Oasis Sports Medical Group in San Diego, California, where she: (a) prepared charts for daily outpatient visits; (b) requested MRIs, EMGs, and medical records; and (c) proofread medical record dictation.

37. Ms. Truelove was next employed from April of 2002 through July of 2003 at the Rehabilitation Hospital of the Pacific in Hawaii, where she conducted insurance verifications, processed referrals, and scheduled patients.

38. Ms. Truelove's next position was based at the Queens Medical Center in Honolulu, Hawaii, from July of 2003 through December of 2004, where she reviewed discharged patient medical records for completeness and accuracy.

39. Ms. Truelove has worked for Parallon at the FWB Medical Center since February of 2005. She began her employment with Parallon as an HIM Operations Supervisor for the evening

shift. In that position, Ms. Truelove was responsible for:

(a) staffing the evening shift; (b) ensuring that the evening shift met productivity and quality goals; (c) preparing charts; and (d) reviewing charts for completeness and accuracy.

40. Ms. Truelove held the HIM Operations Supervisor position until February 21, 2006. She then became the Lead HIM Technician at the FWB Medical Center for issues pertaining to incomplete medical records and patient charts.

41. At some point in 2007, Ms. Truelove became a tumor registrar at FWB Medical Center.

42. A tumor registrar analyzes patient charts for cancer diagnoses. The information is then reported to the American College of Surgeons so that national treatment guidelines for cancer can be developed.

43. In order to hold this position, Ms. Truelove earned a certification from the National Cancer Registrar's Association.

44. In addition to working full-time, Ms. Truelove is currently pursuing a two-year degree in HIM and hopes to eventually take an examination in order to become a registered health information technician.

45. Because she had visited the FWB Medical Center for department meetings, Ms. Terrell already knew Ms. Truelove prior to her application for the HIM Director position and had a very high opinion of her work.

46. Ms. Truelove's direct supervisor at the FWB Medical Center gave Ms. Truelove a strong recommendation.

47. As a result, Ms. Terrell considered a face-to-face interview with Ms. Truelove to be unnecessary and interviewed her over the phone on April 17 or 18, 2016.

48. Afterwards, Ms. Terrell recommended that Ms. Truelove be interviewed by Parallon's upper management.

49. Even if Ms. Gainey's application had been processed by Ms. Baker, Ms. Terrell would have considered Ms. Truelove to be a better candidate for the HIM Director position.

50. Parallon's Chief Executive and Chief Operating Officers then interviewed Ms. Truelove.

51. Ultimately, Parallon offered the HIM Director position to Ms. Truelove on or about May 17, 2016, and she has held that position since June of 2016.

52. Because she is much further along in her career and has more than twice as much experience with medical records, Ms. Truelove would have almost certainly been offered the job even if Ms. Gainey's application had been processed by Ms. Baker.

53. With regard to hiring and/or promotional practices, there is no persuasive evidence to support a finding that

Parallon treats similarly situated, non-Hispanic employees more favorably than Hispanic employees, such as Ms. Gainey.

Ms. Gainey Requests Training

54. On Friday, May 20, 2016, Ms. Gainey sent an e-mail to Ms. Baker inquiring about the HIM Director position:

Hi Kimberly,

I have not heard back from Lisa Terrell regarding the HIM Director position at Twin Cities in Niceville. I sent her my transfer form and resume information back on May 2, and wanted to make sure that you had received this as well.

Please contact me as soon as possible.
Thank you.

Tina M. Gainey

55. Ms. Baker responded on May 23, 2016, with the following e-mail:

Tina,

These always need to be sent to HR for consideration and processing.

I can see if Lisa receive[d] it, but unfortunately, they have already selected a candidate for an offer.

56. Ms. Gainey then spoke to Ms. Terrell about receiving training so that she could advance beyond her nighttime technician position.

57. Parallon has offered training to Ms. Gainey so that she could advance into a daytime position. However, given that

her nighttime shift ends at 1:30 a.m., it is unclear whether the training has been offered at a time during which it would be reasonable to expect that Ms. Gainey would be able to take advantage of that training opportunity.

58. There was no persuasive evidence indicating that any other Parallon employees were treated more favorably than Ms. Gainey with regard to training opportunities.

CONCLUSIONS OF LAW

59. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57, Florida Statutes (2016),^{4/} and Florida Administrative Code Rule 60Y-4.016(1).

60. The State of Florida, under the legislative scheme contained in sections 760.01-760.11 and 509.092, Florida Statutes, known as the Florida Civil Rights Act of 1992 ("the FCRA"), incorporates and adopts the legal principles and precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e, et seq.

61. Section 760.10 prohibits discrimination "against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race,

color, religion, sex, national origin, age, handicap, or marital status.” § 760.10(1)(a), Fla. Stat.

62. 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).

63. Ms. Gainey alleged in her Complaint of Discrimination that she has experienced disparate treatment at Parallon because of her national origin. As a result, Ms. Gainey has the burden of proving by a preponderance of the evidence that Parallon discriminated against her. See Fla. Dep’t of Transp. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981).

64. Discrimination may be proven by direct, statistical, or circumstantial evidence. Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009). Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent behind the employment decision without any inference or presumption. Denney v. City of Albany, 247 F.3d 1172, 1182 (11th Cir. 2001); Holifield v. Reno, 115 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that "'only the most blatant remarks, whose intent could be nothing other than to discriminate . . .'" will constitute direct evidence of

discrimination." Damon v. Fleming Supermarkets of Fla., Inc., 196 F.3d 1354, 1358-59 (11th Cir. 1999) (citations omitted).

65. Ms. Gainey presented no direct evidence that Parallon discriminated against her because of her national origin.

66. Without direct evidence of discriminatory intent, Ms. Gainey must rely on circumstantial evidence of discrimination to prove her case. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

67. Petitioners such as Ms. Gainey bear the initial burden of establishing, by a preponderance of the evidence, a prima facie case of discrimination. In order to establish a prima facie case for failing to promote, a petitioner must demonstrate that she: (a) belongs to a protected class; (b) she applied for and was qualified for the position or promotion; (c) she was not hired or promoted despite her qualifications; and (d) other equally or less qualified candidates who were not members of the protected class were hired or promoted. Marable v. Marion Military Inst., 595 Fed. App'x. 921, 926 (11th Cir. 2014).

68. Demonstrating a prima facie case is not difficult. A petitioner need only "establish facts adequate to permit an inference of discrimination." Holifield, 115 F.3d at 1562.

69. If a petitioner establishes a prima facie case, then there is a presumption of discrimination. At that point, the burden shifts to the employer to articulate a legitimate, non-

discriminatory reason for taking the adverse action.

See Valenzuela, 18 So. 3d at 22.

70. The reason for the employer's decision should be clear, reasonably specific, and worthy of credence. See Dep't of Corr. v. Chandler, 582 So. 2d 1183, 1186 (Fla. 1st DCA 1991). The employer has the burden of production, not the burden of persuasion, to demonstrate to the finder of fact that the decision was non-discriminatory. See Flowers v. Troup Cnty., 803 F.3d 1327, 1336 (11th Cir. 2015).

71. 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, 113 S. Ct. 2742, 125 L. Ed.2d 407 (1993).

72. If the employer meets its burden, the presumption of discrimination disappears. The burden then shifts back to the petitioner 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).

73. In order to satisfy this final step of the process, the 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 . . . 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, 252-56 (1981)).

74. The proffered explanation is unworthy of belief if the petitioner 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.

75. The petitioner must prove that the reasons articulated were false and that the discrimination was the real reason for the action. City of Miami v. Hervis, 65 So. 3d 1110, 1117 (Fla. 3d DCA 2011).

76. 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.

77. With regard to the instant case, Ms. Gainey established by a preponderance of the evidence that she is Hispanic and thus belongs to a protected class.

78. However, Ms. Gainey did not prove by a preponderance of the evidence that: she was qualified for the HIM Director position; she was not hired or promoted despite her

qualifications; or that Ms. Truelove was equally or less qualified for the HIM Director position.

79. So far, Ms. Gainey's work for Parallon has consisted of working the night shift at Twin Cities Hospital where she is usually the only HIM employee on duty. Also, the testimony indicated that her work was primarily clerical in nature.

80. In contrast, the HIM Director position is supervisory in nature, and that person has wide-ranging responsibilities that include being responsible for every medical record at a health care facility.

81. As a result, Parallon filled that position with Ms. Truelove. As noted above, Ms. Truelove has 20 years of experience in HIM and has filled a wide variety of roles in that field. Therefore, the undersigned cannot conclude that Parallon hired a candidate who was equally or less qualified than Ms. Gainey. Instead, Ms. Truelove's experience indicates she was more qualified for the HIM Director position than Ms. Gainey.

82. Even Ms. Gainey appears to have recognized that she is not yet qualified for such a position. After she learned that Parallon had offered the HIM Director position to Ms. Truelove, Ms. Gainey approached Ms. Terrell about obtaining training that would enable her to advance to higher positions with Parallon.

83. As for Ms. Gainey's assertion that she has been denied training opportunities, there was no persuasive evidence indicating that any other Parallon employees were treated more favorably than Ms. Gainey with regard to the provision of training opportunities.

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 Tina Gainey's Petition for Relief from an unlawful employment practice.

DONE AND ENTERED this 5th day of March, 2018, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

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

Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 2018.

ENDNOTES

^{1/} Section 760.11(8), Florida Statutes (2016), provided that "[i]n the event that the commission fails to conciliate or determine whether there is reasonable cause on any complaint

under this section within 180 days of the filing of the complaint, an aggrieved person may then proceed under subsection (4), as if the commission determined that there was reasonable cause." Section 760.11(4) stated that if the Commission "determines that there is reasonable cause to believe that a discriminatory practice has occurred" then the aggrieved person may bring a civil action or request a formal administrative hearing.

^{2/} Due to another work-related injury, Ms. Gainey has not performed any work for Parallon since March of 2017.

^{3/} During her testimony at the final hearing and in her Proposed Recommended Order, Ms. Gainey alleged that she has been subjected to disparate treatment because other Parallon employees have had a much easier time achieving resolution of their workers' compensation claims. Ms. Gainey also alleged that she has been the victim of a hostile work environment. Because those allegations were not set forth in her Complaint of Discrimination, the undersigned will make no findings regarding the merit of those claims.

^{4/} All statutory references will be to the 2016 version of the Florida Statutes unless indicated otherwise.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
Room 110
4075 Esplanade Way
Tallahassee, Florida 32399-7020
(eServed)

Tina Gainey
5765 JV Woolley Road
Crestview, Florida 32539
(eServed)

James J. Dean, Esquire
Messer, Caparello & Self, P.A.
2618 Centennial Place
Tallahassee, Florida 32308
(eServed)

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

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.