

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

LUCINDA HAWKINS,

Petitioner,

vs.

Case No. 18-5335

ALLIED UNIVERSAL SERCURITY  
SERVICES,

Respondent.

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RECOMMENDED ORDER

On December 6, 2018, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted a duly-noticed hearing in Tallahassee, Florida.

APPEARANCES

For Petitioner: Lucinda Hawkins, pro se  
Apartment 14308  
2626 East Park Avenue  
Tallahassee, Florida 32301

For Respondent: David C. Hamilton, Esquire  
Martenson, Hasbrouck, & Simon LLP  
Suite 400  
3379 Peachtree Road  
Atlanta, Georgia 30326

STATEMENT OF THE ISSUE

Whether Respondent engaged in discriminatory employment practices or retaliated against Petitioner, in violation of the

Florida Civil Rights Act (FCRA), as alleged in the Petition for Relief; and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On February 13, 2018, Petitioner Lucinda Hawkins (Hawkins) filed a Complaint with the Florida Commission on Human Relations (FCHR), alleging that Respondent Allied Universal Security Services (Allied Universal), retaliated against her when it reduced her pay, issued her written discipline, and did not provide her with "hurricane relief" pay. Hawkins also alleged that Allied Universal further retaliated against her when Hawkins's supervisor called the desk phone at Hawkins's worksite, and when her supervisor asked her to complete Allied Universal forms and documents.

The FCHR investigated Hawkins's claims, and, on August 2, 2018, issued a Determination stating that no reasonable cause existed to believe that an unlawful practice had occurred. Thereafter, on October 5, 2018, Hawkins filed a Petition for Relief, alleging as follows:

The Commission's determination does not consider the testimony of witnesses and other pertinent information and documentation which shows there is a basis for this complaint. I have been wrongfully denied wages and work hours during the time of my illness, which I have medical reports to clearly document my circumstances. I have witnesses to attest that I worked in a very hostile work environment where I was harassed, intimidated, threatened, and retaliated

against during the time when I was under the doctor's care and given doctor's [o]rders regarding my work hours and other activities. My evidence, including the testimony of witness [sic] will prove that I am a very dependable and responsible security officer when I am performing my duties. I am well-liked and well-respected at my post. Even the highest level of management at the agency where I am assigned has given high praise and compliments regarding my service. However, despite the exemplary performance and high quality of personality I demonstrated while at work, I continued to face hostility, especially during my illness. This has caused me pain and suffering which I feel should be properly addressed though my efforts of filing this complaint with the Florida Commission on Human Relations Petition for Relief.

The FCHR transmitted the Petition for Relief to the Division on October 5, 2018.

Prior to the final hearing, Allied Universal filed a motion to dismiss, contending that Hawkins's failed to timely file her Petition for Relief within the 35-day time period required under section 760.011(7), Florida Statutes (2018). Allied Universal argued that FCHR issued its "Notice of Determination: No Reasonable Cause" on August 2, 2018 (FCHR Notice), and Hawkins waited until October 5, 2018, to file her Petition for Relief, some 64 days after FCHR's determination. At the final hearing, the undersigned noted that one of the documents that FCHR transmitted to the Division was a letter, dated September 18, 2018, from the United States Postal Service (USPS)

to Hawkins, verifying that the USPS failed to deliver or misdelivered a notice. Hawkins verified that this letter concerned the USPS's failure to deliver the FCHR Notice, and further testified that she eventually received the FCHR Notice at some point in August 2018. Based on these circumstances, the undersigned orally denied Allied Universal's motion to dismiss at the final hearing, as it is possible that Hawkins timely filed her Petition for Relief.<sup>1/</sup>

Hawkins testified on her own behalf and called no other witnesses. Petitioner's Exhibits 1 through 4 were received into evidence without objection. Allied Universal called James Goodman and Bobby Owens as its witnesses. Respondent's Exhibits 1 through 14 were received into evidence without objection.

The one-volume Transcript of the hearing was filed with the Division on January 4, 2019. On January 14, 2019, Allied Universal timely submitted a Proposed Recommended Order, which the undersigned has considered in the preparation of this Recommended Order. Hawkins did not submit a proposed recommended order.

All statutory references are to the 2018 codification of the Florida Statutes unless otherwise indicated.

## FINDINGS OF FACT

1. Allied Universal provides security officers to various locations. It currently employs Hawkins as a sergeant (and formerly, as a security professional). Allied Universal has assigned Hawkins to serve at the Florida Department of Revenue's (DOR), offices in Tallahassee, Florida. Her duties include maintaining access control, performing regular surveillance patrols, and providing security over persons and property.

2. Previously, Hawkins served as a security professional for Universal Protection Services, LP, at the DOR location. In August 2016, Universal Protection Services, LP, merged with AlliedBarton Security Services, LLC, to form Allied Universal.

3. In May 2016 (prior to the merger), Bobby Owens (Owens), an operations manager for Universal Protection Services, LP, and now Allied Universal, recommended to Tallahassee Branch Manager James Goodman (Goodman) that Hawkins be promoted to Sergeant and receive a raise in pay. Goodman, who did not have the authority to do so, requested approval from higher-level managers. Universal Protection Services, LP, promoted Hawkins to Sergeant, and increased her wages from \$8.35 to \$8.50 per hour, effective May 13, 2016.

4. Hawkins, Owens, and Goodman remained in their positions with Allied Universal after the merger.

5. Goodman testified that in 2017, he met, via conference call, with a regional vice president and southeast president of Allied Universal, concerning "market erosion." Goodman explained that "market erosion" was "profit loss that we were losing based on officers that were working at a higher pay rate than what was contracted with individual clients." Goodman's superiors tasked him with identifying any employees who were being paid "out of profile," i.e., higher than the contracted rate, and reducing their wages accordingly.

6. Goodman testified that he reviewed the salaries of over 375 officers under his supervision, and identified 17 who he determined were "out of profile." Hawkins was one of those officers he determined was "out of profile." Goodman testified that these 17 "out of profile" officers included individuals who were white, African American, male, female, over the age of 40, and under the age of 40.

7. Goodman testified that Allied Universal reduced the salaries of these 17 officers, including Hawkins. Allied Universal reduced Hawkins's salary from \$8.50 per hour to her previous salary of \$8.35 per hour (\$0.15 per hour), effective December 2017. Goodman noted that other officers received a greater reduction in pay than Hawkins.

8. In November 2017, Allied Universal issued Hawkins a "Coaching - Counseling - Disciplinary Notice" for failure to

follow Allied Universal's attendance policy. Hawkins reported to work two-and-a-half hours late. She testified that she informed a DOR employee, Sam Omeke, that she had a doctor's appointment that morning, but did not inform anyone with Allied Universal.

9. In December 2017, Hawkins requested that Allied Universal provide or assist her with "hurricane relief" pay for the week in September 2017, that the State of Florida closed her worksite because of Hurricane Irma. She testified that she was not sure if Allied Universal offered such a program, and further testified that she ultimately never applied for any type of compensation lost as a result of Hurricane Irma.

10. Later in December 2017, Allied Universal implemented Hawkins's pay reduction. Thereafter, in January 2018, Hawkins sent an e-mail to several employees with Allied Universal, stating her concerns about the pay decrease. Owens testified that he received the e-mail, which was encrypted, and called Hawkins to discuss, but she did not answer her phone. They spoke the next day, and Owens directed Hawkins to speak with another Allied Universal employee to discuss the pay decrease.

11. In early 2018, Allied Universal implemented a new timekeeping system for its employees called "Team Time," which required employees to record their time via telephone. Owens testified that because multiple sites encountered difficulties with "Team Time" on its first day, he called all of the worksites

he supervised to determine whether those employees had experienced issues with it. Owens testified that he called Hawkins more than one time that day, and that she did not answer.

12. Owens testified that, on two separate occasions, he visited Hawkins's worksite and asked her to sign Allied Universal documents, including the "Employee Handbook Receipt and Acknowledgement," and the "Job Safety Analysis Acknowledgement." Owens testified that on these two separate visits, Hawkins refused to sign them. Hawkins was the only Allied Universal employee in Tallahassee who refused to sign these documents. Allied Universal did not discipline Hawkins for her refusal to sign these documents.

13. In her Charge of Discrimination, Petition for Relief, and at the final hearing, Hawkins contends that the actions detailed in paragraphs 7 through 12, above, constituted retaliation. Prior to filing the Charge of Discrimination with FCHR in February 2018, Hawkins never complained to Allied Universal about retaliation, harassment, or discrimination.

14. Hawkins remains an employee of Allied Universal at the DOR location in Tallahassee.

15. Hawkins presented no persuasive evidence that Allied discriminated against her because she opposed an unlawful employment practice, or because she made a charge, testified, assisted, or participated in any manner in an investigation,



proceeding, or hearing under the FCRA. There is no competent, persuasive evidence in the record, direct or circumstantial, upon which the undersigned could make a finding of unlawful retaliation.

#### CONCLUSIONS OF LAW

16. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569, 120.57(1), and 760.11(7), Florida Statutes. See also Fla. Admin. Code R. 60Y-4.016 (providing that upon a petition for relief from an unlawful employment practice, a hearing shall be conducted by an administrative law judge).

17. The FCRA protects individuals from discrimination in employment as a result of retaliation. See §§ 760.10 and 760.11, Fla. Stat. Section 760.10(7) states, in pertinent part:

(7) 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.

18. Because the FCRA is patterned after federal anti-discrimination laws, such as Title VII of the Civil Rights Act of 1964 (Title VII), courts rely on federal Title VII cases when analyzing race discrimination and retaliation claims brought pursuant to the FCRA. See Ponce v. City of Naples, 2017 U.S.

Dist. LEXIS 169635, at \*11 (M.D. Fla. Oct. 13, 2017); Harper v. Blockbuster Entm't Corp., 139 F.3d 1385, 1387 (11th Cir. 1998) (finding that the complaint fails for the same reasons under Title VII and the FCRA); Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 21 (Fla. 3d DCA 2009).

19. The burden of proof in an administrative proceeding is on Hawkins as the complainant. See 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."). To show a violation of the FCRA, Hawkins must establish, by a preponderance of the evidence, a prima facie case of retaliation. See St. Louis v. Fla. Int'l Univ., 60 So. 3d 455, 458-59 (Fla. 3d DCA 2011) (reversing jury verdict awarding damages on FCRA racial discrimination and retaliation claims where employee failed to show similarly situated employees outside his protected class were treated more favorably). A "prima facie" case means it is legally sufficient to establish a fact or that a violation happened unless disproved.

20. The "preponderance of the evidence" is the "greater weight" of the evidence, or evidence that "more likely than not" tends to prove the fact at issue. This means that if the undersigned found the parties presented equally competent substantial evidence, Hawkins would not have proved her claims by

the "greater weight" of the evidence, and would not prevail in this proceeding. See Gross v. Lyons, 763 So. 2d 276, 289 n.1 (Fla. 2000).

#### Retaliation

21. To establish a prima facie case of retaliation, Hawkins must show that: (1) she was engaged in statutorily protected expression or conduct; (2) she suffered an adverse employment action; and (3) there is a causal relationship between the two events. Holifield v. Reno, 115 F.3d 1555, 1566 (11th Cir. 1997).

22. In order to satisfy the "statutorily protected expression or conduct" requirement, Hawkins must establish that her opposition to unlawful employment practices was sufficient to communicate to Allied Universal that she believed that Allied Universal was engaged in unlawful discriminatory conduct. See Murphy v. City of Aventura, 616 F. Supp. 2d 1267, 1279 (S.D. Fla. 2009); Webb v. R&B Holding Co., Inc., 992 F. Supp. 1382, 1389 (S.D. Fla. 1998).

23. If Hawkins establishes a prima facie case of retaliation, the burden then shifts to Allied Universal to articulate a legitimate, non-discriminatory reason for its action. See Addison v. Fla. Dep't of Corr., 683 Fed. Appx. 770, 774 (11th Cir. 2017); Sierminski v. Transouth Fin. Corp., 216

F.3d 945, 950 (11th Cir. 2000). This burden is a very light one. See Holifield, 115 F.3d at 1564.

24. If Allied Universal meets this burden, the burden then shifts back to Hawkins, to show that Allied Universal's proffered reason is mere pretext. See James v. Total Sols., Inc., 691 Fed. Appx. 572, 574 (11th Cir. 2017); Quigg v. Thomas Cnty Sch. Dist., 814 F.3d 1227, 1237 (11th Cir. 2016).

25. Hawkins contends that Allied Universal retaliated against her when: (a) it reduced her pay; (b) it issued the "Coaching - Counseling - Disciplinary Notice" for failing to follow Allied Universal's attendance policy; (c) it failed to provide, or assist her with seeking, "hurricane relief"; and (d) when various supervisory employees either called or visited her worksite.

26. With respect to Hawkins's allegation that Allied Universal retaliated against her when it reduced her pay, Hawkins has failed to allege that she engaged in statutorily protected expression or conduct. Hawkins testified that she never complained to Allied Universal concerning retaliation, harassment, or discrimination. Although Hawkins complained, via e-mail, about the reduction in her pay, this complaint does not rise to the level of statutorily protected expression or conduct. Additionally, Goodman credibly testified that the pay reduction

was a legitimate business decision, equally applied to 17 total employees, regardless of race, gender, or age.

27. With respect to Hawkins's allegation that Allied Universal retaliated against her in the form of the "Coaching - Counseling - Disciplinary Notice," Hawkins received this form of discipline in November 2017, before she made complaints concerning her pay reduction in January 2018 (and before Allied Universal made the ultimate decision to reduce her pay). Hawkins testified that she did not inform Allied Universal of her absence from her assigned post, which forms the basis for this discipline. The undersigned concludes that Hawkins cannot establish a prima facie case of retaliation with respect to this discipline.

28. With respect to Hawkins's allegation that Allied Universal failed to provide, or assist her with seeking, "hurricane relief," Hawkins failed to provide any evidence that required Allied Universal to pay her for time she did not work because of Hurricane Irma, or any obligation to assist Hawkins to seek compensation for such missed pay. Additionally, Hawkins testified that she never sought compensation as a result of Hurricane Irma.

29. With respect to Hawkins's allegation that Allied Universal retaliated against her when supervisory employees called or visited her worksite, the undersigned construes such

allegations as retaliatory harassment, which "requires proof of harassing acts so severe or pervasive that they altered the terms and conditions of [Hawkins's] employment." Bozeman v. Per-Se Techs., Inc., 456 F. Supp. 2d 1282, 1345 (N.D. Ga. 2006). This requirement "to prove that the harassment was severe and pervasive ensures that Title VII does not become a 'general civility code.'" Id. (citing Faragher v. City of Boca Raton, 524 U.S. 775, 788, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998)).

30. Hawkins alleges that the retaliatory harassment consisted of Owens calling her and visiting her worksite, when he requested that Hawkins sign Allied Universal documents, including the "Employee Handbook Receipt and Acknowledgement," and the "Job Safety Analysis Acknowledgement," which she refused to sign, and for which Allied Universal never disciplined her. Hawkins testified that she received no more than two or three calls from Owens in a particular day. The undersigned concludes that, rather than "severe or pervasive harassing acts," these complained-of acts are the type of conduct one would normally expect of a supervisor. As Hawkins has failed to establish that Allied Universal engaged in "severe or pervasive harassing acts," her retaliatory harassment claim must fail as a matter of law.

#### RECOMMENDATION

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

Relations issue a final order finding that Petitioner, Lucinda Hawkins, did not prove that Respondent, Allied Universal Security Services, committed unlawful employment practices, or retaliated against her, and dismissing her Petition for Relief from unlawful employment practices.

DONE AND ENTERED this 25th day of January, 2019, in Tallahassee, Leon County, Florida.



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ROBERT J. TELFER III  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 25th day of January, 2019.

ENDNOTE

<sup>1/</sup> The undersigned concludes that the doctrine of equitable tolling applies to Hawkins's late-filed Petition for Relief. See Machules v. Dep't of Admin., 523 So. 2d 1132 (Fla. 1988) (applying the equitable tolling doctrine in administrative proceedings). Equitable tolling applies when a petitioner "has been misled or lulled into action, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum." Id. at 1134. Further, the equitable tolling doctrine "focuses on the plaintiff's excusable ignorance of the limitations period and on [the] lack of prejudice to the defendant." Brown v. Dep't of Fin. Servs., 899 So. 2d 1246, 1247 (Fla. 4th DCA 2005) (quoting Machules, 523 So. 2d at 1134). The undersigned finds that the USPS's failure to

deliver the FCHR Notice prevented Hawkins from exercising her rights in a timely fashion. The undersigned further concludes that consideration of Hawkins's Petition for Relief, which she may have filed within 35 days of actually receiving the FCHR Notice, does not prejudice Allied Universal.

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.