STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FRANCESCA THOMAS,

Petitioner,

vs. Case No. 19-3195

SMA BEHAVIORAL HEALTH, INC.,

Respondent.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before W. David Watkins, Administrative Law Judge of the Division of Administrative Hearings (DOAH), pursuant to sections 120.569 and 120.57(1), Florida Statutes (2019), on October 9, 2019.

APPEARANCES

For Petitioner: Kevin G. Thomas, Esquire
Kevin Thomas Law Firm, P.A.
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Sunny Isles Beach, Florida 33160

For Respondent: Brett Purcell Owens, Esquire
Fisher & Phillips, LLP
101 East Kennedy Boulevard, Suite 2350
Tampa, Florida 33602

STATEMENT OF THE ISSUE

Whether Petitioner, Francesca Thomas, was subject to an unlawful employment practice by Respondent, SMA Behavioral Health, Inc., based on her alleged handicap/disability in

violation of the Florida Civil Rights Act, section 760.01, Florida Statutes.

PRELIMINARY STATEMENT

Petitioner, Francesca Thomas (Petitioner), filed a Charge of Discrimination against Respondent on or about September 28, 2018, alleging handicap/disability, race, age, and sex discrimination in violation of the Florida Civil Rights Act, sections 760.01, et seq. (FCRA).

The Florida Commission on Human Relations (Commission) issued a "no reasonable cause" determination on May 7, 2019.

Petitioner filed a Petition for Relief on June 11, 2019. Petitioner only sought review of her handicap/disability claim. Petitioner is alleging she was discriminated against because she was not provided reasonable accommodations and for receiving a disciplinary report due to conditions caused by her disability.

Pursuant to notice, the final hearing in this matter was held on October 9, 2019. The parties presented the testimony of Petitioner, Treeca Lewis, Deborah Loyd, and Jennifer Stephenson. Petitioner's Exhibit 10 was received in evidence. Respondent's Exhibits 1, 2, 5, 8, 10, and 13 were received in evidence.

Petitioner claims that Respondent failed to provide her a reasonable accommodation for her mental disability, described by Petitioner as "anxiety/panic attacks." Respondent asserts that Petitioner was not a qualified individual with a

handicap/disability with or without accommodation because she does not have an impairment that substantially limits a major life activity.

A one-volume Transcript of the final hearing was filed on October 21, 2019. At the close of the hearing, the parties were advised of a 10-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. Following Respondent's request, the parties agreed to a deadline for filing post-hearing submissions more than 10 days after the filing of the hearing Transcript. On November 18, 2019, Petitioner filed a Motion for Extension of Time for Petitioner to file her proposed recommended order. The motion represented that counsel for Petitioner had "contacted the attorney for Respondent for his position and the attorney is waiting on a response from his client." Respondent filed its Proposed Recommended Order on November 20, 2019. Thereafter, on November 26, 2019, prior to the deadline for a response in opposition to Petitioner's Motion for Extension of Time, Petitioner filed her Proposed Recommended Order. There being no objection of record to the filing of Petitioner's Proposed Recommended Order, both parties' post-hearing submittals have been duly considered in the preparation of this Recommended Order. All statutory references are to the 2019 version of the Florida Statutes, since the relevant provisions of chapter 760

have been unchanged since 2015, prior to any allegedly discriminatory acts.

FINDINGS OF FACT

Based upon the credibility of the witnesses and evidence presented at the final hearing, and on the entire record of this proceeding, the following Findings of Fact are made:

1. Petitioner is a Family Intensive Therapeutic Team (FITT) counselor for Respondent. She provides substance abuse and mental health counseling with the goal of reuniting her clients with their children. Petitioner has worked for Respondent for 15 years, and was described by one of her supervisors as "professional." During the course of her employment with Respondent, Petitioner has received multiple promotions, presumably indicative of the quality of her work for Respondent.

2. FITT counselors are responsible for providing counseling services to 10 to 12 clients that are referred by child welfare. The program is designed for FITT counselors to see their clients at the clients' homes or out in the community.

3. Respondent provides a laptop and cell phone for each FITT counselor for use in the field. FITT counselors rely upon electronic medical records and use their laptops to communicate with clients and manage their caseloads. Occasionally there are some hard copy documents used by the FITT counselors, but

Respondent has policies and procedures in place to manage the security of these documents. Hard copy documents are required to be secured in locked bags or in the trunks of the FITT counselor's cars.

4. All of the progress notes that FITT counselors prepare are paperless. Additionally, the discharge notes, communications, and child welfare records are paperless. Over the course of a case, the majority of the documents are paperless.

5. FITT counselors only have to come into the office if they have meetings with their supervisor or have documents in hard copy format. If they so choose, they can work on their case notes and communicate with clients from the office. They can also connect to the internet, work on their case notes, and communicate with clients remotely.

6. In all, 70 to 80 percent of Petitioner's work is performed outside of the office. Some of the FITT counselors perform the majority of their work at home. This is accomplished via their company issued laptop and WiFi delivered through their phone. Respondent has a Virtual Private Network (VPN) system that allows FITT counselors to work remotely and securely from their homes. Petitioner's position was designed so she would not be tethered to a desk. As noted, she has the ability to connect to WiFi through a WiFi hotspot that is

available on the phones issued by Respondent, which essentially allows her to work from anywhere.

7. Prior to February 2018, the FITT counselor's offices were located in the Cantley Center, in Daytona Beach, Florida. The work stations provided to the counselors at this location were very small offices (approximately 8 ft. by 8 ft.) with doors, as opposed to work cubicles. Some FITT counselors shared offices with other counselors, while some counselors, including Petitioner, had their own offices. The workspace was described by one counselor as a "cave" since it was located in the lower level of the building, there were no windows, and the small offices had low ceilings.

8. For reasons not reflected in this record, sometime in early 2018 the decision was made to relocate Respondent's operations to a new location. On or around February 27, 2018, Petitioner went to Respondent's new offices to examine where she would be working. Petitioner's department was one of the first to move into the new building.

9. At the new location, the FITT counselors were to be assigned to cubicles, rather than offices. Although Petitioner's previous office was very small, when Petitioner saw her new work space she shouted loudly "I can't do this. I can't do this," and began suffering a panic attack. When Petitioner then requested that she be assigned to a different cubicle,

based upon her seniority, her supervisor informed her that all the work spaces were already assigned by the Program Management and Facilities departments.

10. In November 2017, Petitioner informed Respondent that she occasionally suffers from panic attacks. However, it was not until March 1, 2018, that Petitioner told her supervisors that she was claustrophobic. Her supervisors told her that they were unaware of her being claustrophobic and did not recall her ever saying that she was claustrophobic.

11. Petitioner received a Performance Notice due to her exchange with her supervisors on February 27, 2018. As a consequence of this Performance Notice, Petitioner was placed on 90 days probation.

12. On March 14, 2018, Petitioner asked to schedule a meeting with her supervisor to discuss her Performance Notice. She did not ask about a reasonable accommodation in her March 14th email to her supervisor, BranShonda Levine.

13. On March 19, 2018, Petitioner again exchanged emails with Ms. Levine regarding a meeting to discuss her Performance Notice. On that same date, Petitioner also exchanged emails with Jennifer Stephenson, senior director of Outpatient Services, that were related to her Performance Notice. Ms. Stephenson understood Petitioner’s email to only be focused

on appealing the issuance of the Performance Notice that Petitioner received.

14. In the e-mail exchange, Petitioner indicated she wanted to meet with Ms. Stephenson and Deborah Loyd, Respondent's vice president of Human Resources, to discuss her Performance Notice.

15. Ms. Stephenson scheduled a meeting with Ms. Loyd in response to Petitioner's March 19th email regarding her Performance Notice. Petitioner submitted a rebuttal to her Performance Notice on March 20, 2018, stating that she did not feel that the issuance of the Performance Notice was warranted.

16. At a meeting on March 20 or 21, 2018, Petitioner expressed for the first time that she may need a reasonable accommodation. At this meeting, Ms. Stephenson learned for the first time that Petitioner claimed she has claustrophobia. Likewise, Ms. Stephenson did not know Petitioner was seeking a reasonable accommodation until this meeting.

17. In a follow-up email dated March 21, 2018, Ms. Stephenson recommended Petitioner work with Respondent's Human Resources Department regarding her claustrophobia and panic attacks. Ms. Stephenson acknowledged that if they were documented conditions, Respondent would make a reasonable accommodation for Petitioner.

18. As of March 30, 2018, Petitioner remained focused on the two disciplinary actions[1/] she had received in early 2018, and her request to have those reviewed and removed from her personnel file. As of this date, Petitioner was working in her assigned cubicle, and made no mention of having any issue working in the cubicle.

19. Respondent has adopted Policy HR102, titled "Accommodation of Individuals with Disabilities or with Communications Barriers." Consistent with this policy, if an employee needs an accommodation, they must participate in the interactive process with Respondent, including filling out and submitting the American with Disabilities Act (ADA) Accommodation Questionnaire. The employee and their physician are required to document the disability and accommodation request. Respondent then reviews the completed interactive process paperwork and schedules a meeting to discuss the same with the employee. This is to determine the accommodation that is being requested and if Respondent is able to provide the requested accommodation, or whether other alternatives could be provided.

20. Petitioner submitted her reasonable accommodation paperwork to Respondent on April 25, 2018. Petitioner's reasonable accommodation paperwork stated that she did not have an impairment that substantially limited a major life activity

as compared to most people in the general population. However, Petitioner did state that her impairment "limits patient breathing, talking, thinking."

21. During the interactive process, Petitioner requested a more open space to avoid panic attacks that might occur due to claustrophobia.

22. On May 14, 2018, Petitioner submitted a letter solely focused on the Performance Notice relating to her exchange with her supervisors on February 27, 2018. No mention was made of Petitioner being unable to work successfully in her assigned cubicle.

23. Respondent attempted to schedule a meeting with Petitioner on May 30, 2018, to discuss her request for a reasonable accommodation. However, on May 31, 2018, Petitioner rescheduled the meeting because she injured her eye.

24. On June 1, 2018, Petitioner rescheduled the meeting again, this time to take place on June 4, 2018. The purpose of the meeting would be to discuss Petitioner's interactive process paperwork.

25. Prior to the June 4, 2018 meeting, Ms. Loyd met with Ms. Stephenson to review what options would be available to meet Petitioner's request for an accommodation.

26. The June 4, 2018 meeting was held as scheduled and was attended by Petitioner, Ms. Stephenson, and Ms. Loyd. At the

meeting, Ms. Loyd and Ms. Stephenson discussed the accommodation request with Petitioner and advised her of what accommodations Respondent would be able to offer her. Specifically, they informed Petitioner she could work from home or use the conference room in her immediate work area. As to Petitioner's desire to be reassigned to a different cubicle or an office, Ms. Stephenson and Ms. Loyd explained that the other cubicles were already previously assigned, and that other departments were utilizing the offices in the building. Moreover, the physical offices in the building were not a part of Petitioner's department.

27. In an e-mail Petitioner sent to Ms. Loyd following their meeting, Petitioner inquired as to whether the wall on the right side, and the front wall of her assigned cubicle, could be taken down. This option was explored by Respondent and it was determined that the walls at issue could not be moved or reconfigured.

28. Petitioner insisted that she should be permitted to use offices in the building instead of being permitted to work from home or in a conference room. Accordingly, Petitioner did not accept either of the accommodations offered by Respondent and ceased engaging in the interactive process with Respondent.

29. Petitioner would not have been subject to increased duties if she chose to work from home. Respondent also examined

whether the cubicle walls could be removed. However, it was not feasible to reconfigure or move the cubicle walls.

30. After the meeting, Petitioner emailed Ms. Loyd but did not state that she believed the conference room accommodation, or working from home, would be inappropriate. At hearing, Ms. Stephenson could not recall Petitioner ever speaking with her again about additional accommodation requests.

31. Respondent reasonably determined that the nearby conference room would be an open space for Petitioner to work, thereby reducing the likelihood that Petitioner would suffer from claustrophobia. Petitioner agreed the conference room Respondent offered to her is an open space.

32. As noted previously, it is a common practice for counselors who work in the field to work from home, as well as from other locations. The FITT counselor's hard copy files are in filing cabinets that are in a separate area away from the cubicles. Therefore, Petitioner would not need to store her files in the conference room.

33. Petitioner worked in the original cubicle she was assigned for seven months. In November 2018, an employee who worked out of a different cubicle left the company and Respondent offered Petitioner a new cubicle. Petitioner accepted the same, and as of the date of the hearing Petitioner continues to be employed by Respondent.[2/]

CONCLUSIONS OF LAW

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(4)(b) and (6), Florida Statutes. See also Fla. Admin. Code R. 60Y-4.016.

34. Petitioner brings this action alleging that Respondent discriminated against her based on her disability in violation of the FCRA. Petitioner specifically asserts that Respondent failed to provide her a reasonable accommodation during her employment.

35. 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.

36. Section 760.11(4)(b) permits a party for whom the Commission determines that there is reasonable cause to believe that a discriminatory practice has occurred to request an administrative hearing before DOAH. Following an administrative hearing, if the Administrative Law Judge ("ALJ") finds that a

violation of the FCRA has occurred, the ALJ "shall issue an appropriate recommended order in accordance with chapter 120 prohibiting the practice and providing affirmative relief from the effects of the practice, including back pay." See § 760.11(6), Fla. Stat.

37. 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).

38. Specifically regarding disability discrimination, the FCRA is construed in conformity with the 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.).

39. The burden of proof in administrative proceedings, 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.

40. Employees may prove discrimination 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 without resorting 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). 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).

41. Petitioner presented no direct evidence of handicap/disability discrimination on the part of Respondent.

Similarly, the record in this proceeding contains no statistical evidence of discrimination related to Respondent's decision to fail to provide Petitioner a reasonable accommodation.

42. In the absence of direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence of handicap/disability discrimination to prove her 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).

43. Under the McDonnell Douglas framework, a petitioner bears the initial burden of establishing, by a preponderance of the evidence, a prima facie case of discrimination. See McDonnell Douglas, 411 U.S. at 802-04; Burke-Fowler v. Orange Cnty., 447 F.3d 1319, 1323 (11th Cir. 2006). Demonstrating a prima facie case is not difficult, but rather only requires the plaintiff "to establish facts adequate to permit an inference of discrimination." Holifield v. Reno, 115 F.3d at 1562.

44. To state a prima facie claim for disability discrimination, Petitioner must show that 1) she is disabled; 2) she was a "qualified individual"; and 3) she was discriminated against because of her 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). The employee may satisfy the third prong through showings of intentional discrimination, disparate treatment, or failure to make reasonable accommodations.[3/] Rylee v. Chapman, 316 Fed. Appx. 901, 906 (11th Cir. 2009)(citing Schwarz v. City of Treasure Island, 544 F.3d 1201, 1212 n.6 (11th Cir. 2008)).

45. To prove unlawful discrimination in a failure to accommodate claim, Petitioner must show that she was discriminated against as a result of Respondent's failure to provide a reasonable accommodation. Petitioner bears the burden both to identify an accommodation and show that it is "reasonable." Lucas, 257 F.3d at 1255. "The duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made." Gaston v. Bellingrath Gardens & Home, Inc., 167 F.3d 1361, 1363 (11th Cir. 1999).

46. A qualified individual is not entitled to the accommodation of her choice, but rather only to a "reasonable" accommodation. Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1286 (11th Cir. 1997). An accommodation is "reasonable" and, therefore, required under the ADA, only if it enables the employee to perform the essential functions of the job. LaChance v. Duffy's Draft House, 146 F.3d 832, 835 (11th

Cir. 1998). An employer need not accommodate an employee in any manner the employee desires, nor reallocate job duties to change the essential functions of the job. Earl v. Mervyns, Inc., 207 F.3d 1361, 1367 (11th Cir. 2000). The intent of the ADA is that "'an employer needs only to provide meaningful equal employment opportunities' . . . '[t]he ADA was never intended to turn nondiscrimination into discrimination' against the non-disabled." U.S. EEOC v. St. Joseph's Hosp., 842 F.3d 1333, 1346 (11th Cir. 2016)(quoting Terrell v. USAir, 132 F.3d 621, 627 (11th Cir. 1998)).

47. Furthermore, an employer is not required to provide an employee with "the maximum accommodation or every conceivable accommodation possible." Stewart, 117 F.3d at 1285. Neither is an employer required "to transform the position into another one by eliminating functions that are essential to the nature of the job as it exists." Lucas, 257 F.3d at 1260; see also Sutton v. Lader, 185 F.3d 1203, 1211 (11th Cir. 1999)(an employer is not required to create alternative employment opportunities for a disabled employee); Willis v. Conopco, Inc., 108 F.3d 282, 284-86 (11th Cir. 1997)(reassignment to a new position is required as a reasonable accommodation only if there is an available, vacant position).

48. If petitioner establishes a prima facie case, she creates a presumption of discrimination. At that point, the

burden shifts to the employer to articulate a legitimate, nondiscriminatory 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, 186 (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. 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. St. Mary's Honor Ctr. v. Hicks, 509 U.S. 502 (1993).

49. 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. 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 US 248, 252-256 (1981)). Petitioner "must prove that the reasons articulated were false and that the discrimination was the real reason" for Respondent'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.")).

50. 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.

51. Based on the competent substantial evidence in this matter, Petitioner failed to establish the first and third elements of a prima facie case for handicap/disability discrimination.

52. Petitioner's reasonable accommodation paperwork stated that she did not have an impairment that substantially limited a major life activity as compared to most people in the general population. In pertinent part, the ADA defines "disability" as a physical or mental impairment that substantially limits one or

more major life activities of such individual. U.S.C. § 12102(1)(A). Here, Petitioner's reasonable accommodation questionnaire, the only evidence Petitioner presented regarding her alleged disability, states that she does not have an impairment that substantially limits a major life activity.[4/] Therefore, Petitioner's claim for disability discrimination fails because she does not have a disability under the FCRA and therefore Respondent was not required to provide Petitioner with a reasonable accommodation.

53. Even if Petitioner was disabled under the FCRA, her claim for handicap/disability discrimination would still fail as a matter of law because Respondent offered her effective and reasonable accommodations.

54. Petitioner requested a more open space to avoid panic attacks that might occur due to claustrophobia. Respondent determined that the conference room would be an open space for Petitioner to work. Petitioner acknowledged that the conference room Respondent offered her is an open space. Respondent also offered Petitioner the opportunity to work from home because it would have allowed Petitioner to have the open space she requested. Therefore, Respondent provided Petitioner with effective reasonable accommodations. However, Petitioner chose to not accept them. Respondent also investigated whether Petitioner's cubicle walls could be removed. However, it was

determined not to be feasible to reconfigure or move the walls. While the accommodations offered to Petitioner were not optimal (at least in the view of Petitioner) they were reasonable, which is all that the law requires.

55. Even if Petitioner had established a prima facie case of disability discrimination, Petitioner's claim would fail because Respondent proffered legitimate non-discriminatory reasons for its actions. Respondent adhered to its policies in reviewing Petitioner's reasonable accommodation questionnaire and met with Petitioner to discuss the same. Petitioner requested an open space to work in and Respondent provided her two reasonable accommodations that would have allowed her to work in a more open space. The offices Petitioner wanted to use were earmarked for other programs and were not a part of Petitioner's department. Petitioner did not prove Respondent's legitimate non-discriminatory reasons for not providing her with her desired accommodation were a pretext and that the real reason for offering the conference room or the option to work from home was motivated by discriminatory intent. To the contrary, the evidence established that Respondent made a good faith effort to identify reasonable accommodations to address Petitioner's workplace concerns, and offered those accommodations to her.

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, Francesca Thomas, did not prove that Respondent, SMA Behavioral Health, Inc., committed an unlawful employment practice against her and dismiss her Petition for Relief from an Unlawful Employment Practice.

DONE AND ENTERED this 18th day of December, 2019, in Tallahassee, Leon County, Florida.

W. DAVID WATKINS
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of December, 2019.

ENDNOTES

[1/] The second Performance Notice related to Petitioner allegedly sharing a company Avatar login and password with a co-worker, in violation of company policy.

[2/] The record is silent as to whether Petitioner continues to work out of the cubicle she was given in November 2018.

[3/] The FCRA does not contain an explicit provision establishing an employer's duty to provide reasonable accommodations for an employee's handicap/disability, but by application of the principles of the ADA, such a duty is reasonably implied. Brand v. Fla. Power Corp., 633 So. 2d 504, 511, n.12 (Fla. 1st DCA 1994).

[4/] In her handwritten note below the box checked "No," Petitioner stated that the "impairment limits patient breathing, talking, thinking." While these are undoubtedly potentially serious effects of Petitioner's panic attacks and claustrophobia, Petitioner evidently did not consider them to substantially limit any of her major life activities.

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.