STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MAURICE HARGROVE,

Petitioner,

vs. Case No. 19-4490

HONDA OF BAY COUNTY/VOLKSWAGEN
OF PANAMA CITY ,

Respondent.
_____/

RECOMMENDED ORDER

An administrative hearing was conducted in this case on October 21, 2019, by video teleconference at locations in Tallahassee and Panama City, Florida, before James H. Peterson III, Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Maurice Hargrove
1672 Sunny Hills Boulevard
Chipley, Florida 32428

For Respondent: Russell F. Van Sickle, Esquire
Beggs & Lane
Post Office Box 12950
Pensacola, Florida 32591

STATEMENT OF THE ISSUE

Whether Honda of Bay County/Volkswagen of Panama City (Respondent), violated the Florida Civil Rights Act of 1992, sections 760.01-760.11, Florida

Statutes,[1] by discriminating against Maurice Hargrove (Petitioner) because of his disability and race.

PRELIMINARY STATEMENT

Petitioner filed an Employment Complaint of Discrimination dated February 2, 2019, with the Florida Commission on Human Relations (the Commission or FCHR), which was assigned FCHR No. 201915501 (Complaint). The Complaint alleged that Respondent discriminated against Petitioner by failing to hire him because of his disability and race.

After investigating Petitioner's allegations, the Commission's executive director issued a Determination on July 23, 2019, finding that "no reasonable cause exists to believe that an unlawful practice occurred." An accompanying Notice of Determination notified Petitioner of his right to file a Petition for Relief for an administrative proceeding within 35 days of the Notice. On August 16, 2019, Petitioner timely filed a Petition for Relief, and the Commission forwarded the petition to the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a hearing.

The case was assigned to the undersigned and was scheduled for an administrative hearing to begin October 21, 2019. During the hearing, which was held as scheduled, Petitioner testified on his own behalf, and called Respondent's service manager, Michael Boatwright, as a witness. Petitioner offered two exhibits, received into evidence as Exhibit P-1 (a doctor's letter dated August 7, 2018 - a copy of which Petitioner filed, with permission, after the hearing on November 4, 2019), and Exhibit P-2 (Petitioner's Petition for

[1] Unless otherwise indicated, all references to the Florida Statutes, Florida Administrative Code, and federal laws are to the current versions, which have not substantively changed since the time of the alleged discrimination.

Relief, which is part of a larger exhibit marked Exhibit P-3; only those pages of P-3 containing Exhibit P-2 were received into evidence). Respondent's case was presented through cross-examination of Petitioner and Mr. Boatwright. No further witnesses were called and Respondent did not introduce any exhibits into evidence.

The proceedings were recorded and a transcript was ordered. The parties were given 30 days from the filing of the transcript to submit their proposed recommended orders. The filing of the one-volume Transcript of the hearing was delayed until February 5, 2020. Thereafter, the parties timely filed their respective Proposed Recommended Orders, which have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. Petitioner, Maurice Hargrove, is an individual of African-American descent, who resides in Chipley, Florida.

2. Respondent, Honda of Bay County and Volkswagen of Panama City are automobile dealerships located in Panama City, Florida.

3. Petitioner alleges that he was not hired by Respondent because of his race and because of a disability.

4. Petitioner's alleged disability relates to his wearing a supportive brace on one of his legs at the time he applied for the job position with Respondent.

5. Petitioner first made contact with Respondent's business after seeing a "now hiring" sign in front of Respondent's facility in Panama City. According to Petitioner, after seeing the sign, he walked into the building and filled out a job application. Petitioner could not recall when this occurred, but he believed it was sometime prior to Hurricane Michael, which struck the Panama City area in October 2018.

6. Exact time frames and sequence of events as to what happened after Petitioner initially filled out the application are less than clear because

Petitioner repeatedly changed his testimony during the final hearing. Nevertheless, the findings set forth below, derived from the combined testimonies of Petitioner and Respondent's manager, Mr. Boatwright, detail the pertinent facts.

7. Petitioner initially inquired about a job as a service technician working on vehicles at the dealership. When Petitioner met with Respondent's manager, however, Mr. Boatwright told Petitioner that he did not need a service technician at the time. Further, Petitioner had no prior experience working on vehicles.

8. Mr. Boatwright further informed Petitioner that, although he did not need a service technician, he needed a shuttle driver for the dealership. According to Petitioner, because of his conversation with Mr. Boatwright, he marked through "service tech" on the job application and wrote in "driver."

9. Mr. Boatwright's testimony, and sometimes Petitioner's testimony, was that when Mr. Boatwright first met Petitioner, Mr. Boatwright noticed a brace on Petitioner's leg and asked Petitioner what was the situation with the brace. Petitioner told Mr. Boatwright that he had injured his leg in a workplace fall for which he received workers' compensation, but that he was no longer on workers' compensation. [2] Mr. Boatwright asked Petitioner to obtain a note from a doctor clearing Petitioner to work, to which Petitioner agreed.

10. At some point, Petitioner returned to Respondent's dealership with a doctor's note clearing him to work with no restrictions. Mr. Boatwright interviewed Petitioner for the driver position and said he would contact

[2] Petitioner's statements regarding his leg brace were inconsistent. Petitioner testified that he wears a brace on one of his legs for support after surgery for a broken leg. Petitioner also testified that he broke his leg "just walking one day in the neighborhood, and I turned, and it just gave out on me." According to Mr. Boatwright, Petitioner told him when he was applying for the job that Petitioner had fallen off a ladder when working as a painter and received workers' compensation for a leg injury. Petitioner did not take issue with this version of the events during his questioning of Mr. Boatwright. Petitioner further testified that he did not remember the year he broke his leg, when he had surgery on his leg, or when his doctor advised him to wear the brace. Regardless of the origin of the leg condition, Petitioner testified that the leg did not restrict him in any way.

Petitioner about the job later. Both Petitioner and Mr. Boatwright believed that the interview went well. After interviewing ten candidates for the driver position, Mr. Boatwright believed that, based upon Petitioner's maturity level as compared to other applicants, Petitioner was the best candidate.

11. After Petitioner was interviewed, Mr. Boatwright's bosses decided not to fill the driver position, but, instead, decided to have the driving duties shared amongst existing employees. At the final hearing, Mr. Boatwright recalled communicating this to Petitioner, but that if he did not, he offered his apologies.

12. Petitioner first testified that Mr. Boatwright contacted him and told him that he would not be hired, describing a conversation with Mr. Boatwright in which Petitioner expressed his sadness with Mr. Boatwright about not getting the job. Later in the hearing, Petitioner said he did not ever hear back from Mr. Boatwright, and that it was Respondent's attorney who advised him that Respondent had decided not to fill the driver position.

13. Regardless of when and how Petitioner was informed that the job position was not being filled, Respondent chose not to fill the shuttle driver position. As of the date of the final hearing, well over a year after Petitioner applied for the job, Respondent had still not filled the driver position, opting instead to share driving duties amongst the existing employees.

14. Petitioner presented no evidence that his race played any part in the decision not to hire him. His sole offering on this point was the fact of his race.

15. Petitioner's disability discrimination claim was based on the facts that Mr. Boatwright noticed the brace on his leg and asked him to get a doctor's note clearing him to work. Although Petitioner testified late in the hearing that Mr. Boatwright said something to him about not feeling like he would be able to do the job, Petitioner's statement was made after several accounts of conversations with Mr. Boatwright in which Petitioner never made this

allegation. When asked about this new allegation on cross-examination, Petitioner could provide no details, quickly trailed off topic, and asked "Say what?" There was no allegation in his Charge of Discrimination or his Petition for Relief with the Division of Administrative Hearings that alleges that Mr. Boatwright suggested that Petitioner could not do the driver job. Considering these factors, as well as the inconsistency with Petitioner's prior recollection that his interview with Mr. Boatwright went well, it is found that Petitioner's late-asserted allegation that Mr. Boatwright said something to him about feeling that Petitioner could not do the job is untimely and is otherwise not credited.

16. Further, Petitioner testified that his leg did not restrict him in any way, and failed to present evidence that he had a medical condition that substantially impaired any life activity.[3]

CONCLUSIONS OF LAW

17. 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(1), Florida Statutes, and Florida Administrative Code Rule 60Y-4.016(1).

18. The state of Florida, under the legislative scheme contained in sections 760.01 through 760.11, Florida Statutes, known as the Florida Civil Rights Act of 1992 (the Act), incorporates and adopts the legal principals 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*.

[3] Petitioner testified that there was nothing that he could not do because of his leg. He stated that "the reason for the brace was to support movement, but it wasn't no restriction for me not getting a job." Petitioner admitted at the hearing that he could walk, bend, sit, and take care of himself, and that there was nothing he could not do as far as the job he was applying for with Respondent and there was not anything he could not do generally, as well. Petitioner otherwise failed to present evidence that he had any medical condition that substantially limited any life activity.

19. The Florida law prohibiting unlawful employment practices is found in section 760.10. The Act makes it an unlawful employment practice, among other things, for an employer:

> 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.

§ 760.10(b)(2), Fla. Stat.

20. Florida courts have held that because the Act is patterned after Title VII of the Civil Rights Act of 1964, as amended, federal case law dealing with Title VII is applicable. *See, e.g., Fla. Dep't of Cmty. Aff. v. Bryant*, 586 So. 2d 1205, 1209 (Fla. 1st DCA 1991).

21. As developed in federal cases, a prima facie case of discrimination under Title VII may be established by statistical proof of a pattern of discrimination, or on the basis of direct evidence which, if believed, would prove the existence of discrimination without inference or presumption. Usually, however, as in this case, direct evidence is lacking and one seeking to prove discrimination must rely on circumstantial evidence of discriminatory intent, using the shifting burden of proof pattern established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *See Holifield v. Reno*, 115 F. 3d 1555, 1562 (11th Cir. 1997).

22. Under the shifting burden pattern developed in *McDonnell Douglas*:

> First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, non-discriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance of the

> evidence that the legitimate reasons asserted by [Respondent] are in fact mere pretext.

U.S. Dep't of Hous. & Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990)(housing discrimination claim); *accord, Valenzuela v. Globe Ground N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009)(gender discrimination claim)("Under the *McDonnell Douglas* framework, a plaintiff must first establish, by a preponderance of the evidence, a prima facie case of discrimination.").

23. Therefore, in order to prevail in his claim against Respondent, Petitioner must first establish a prima facie case by a preponderance of the evidence. *Id.*; § 120.57(1)(j ("A preponderance of the evidence is 'the greater weight of the evidence,' [citation omitted] or evidence that 'more than not' tends to prove a certain proposition."). *Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)

24. Petitioner failed to establish a prima facie case of discrimination on his claim that he was denied employment on the basis of his race.

25. In order to establish a prima facie case of failure-to-hire or failure-to-promote based upon discrimination, Petitioner must establish: (1) he is a member of a protected class; (2) he was qualified for and applied for the position; (3) he was rejected despite his qualifications; and (4) others, equally or less qualified, but were not members of the protected class, were selected for the position. *Underwood v. Perry Cnty. Comm'n*, 431 F. 3d 788, 794 (11th Cir. 2005)(failure to hire); *Marable v. Marion Military Inst.*, 595 Fed. App'x. 921, 926 (11th Cir. 2014) (failure to promote).

26. Petitioner presented no evidence that anyone was ever selected for the driving position for which he applied. Rather, the evidence demonstrated that no one was hired for the position because Respondent decided not to fill the position. Therefore, Petitioner failed to present a prima facie case. Failure to establish a prima facie case of discrimination ends the inquiry. *Ratliff v.*

State, 666 So. 2d, 1008, 1013 n.6 (Fla. 1st DCA), *aff'd*, 679 So. 2d 1183 (Fla. 1996).

27. Even if Petitioner was able to establish a prima facie case of race discrimination, there was no evidence whatsoever that Respondent's decision not to fill the position was mere pretext for discrimination. As explained by the United States Eleventh Circuit Court of Appeals:

> In order to show pretext, the plaintiff must "demonstrate that the proffered reason was not the true reason for the employment decision . . . . [The plaintiff] may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256, 101 S. Ct. 1089, 1095, 67 L. Ed. 2d 207 (1981).

Jackson v. Ala. State Tenure Comm'n, 405 F.3d 1276, 1289 (11th Cir. 2001). The evidence in this case falls woefully short of demonstrating that Respondent's proffered reason for deciding not to fill the position was mere pretext for discrimination against Petitioner.

28. Petitioner also failed to establish a prima facie case of discrimination based on a disability.

29. The Act and the American Disabilities Act (ADA) prohibit discrimination against a qualified individual on the basis of disability. 42 U.S.C § 12112(a)(uses the term "disability"); § 760.10(a), Fla. Stat. (uses the term "handicap"). To establish a prima facie case of discrimination based on disability, Petitioner must prove by a preponderance of the evidence: (1) that he is a handicapped [or disabled] person within the meaning of subsection 760.10(1)(a); (2) that he is a qualified individual; and (3) that Respondent discriminated against him on the basis of his disability. *See Earl v. Mervyns*, 207 F.3d 1361, 1365 (11th Cir. 2000); *Byrd v. BT Foods, Inc.*, 948 So. 2d 921, 925 (Fla. 4th DCA 2007).

30. As to the first element, the term "handicap" in the Florida Civil Rights Act is treated as equivalent to the term "disability" in the Americans with Disabilities Act. *Byrd*, 948 So. 2d at 926.

31. "The ADA defines a 'disability' as 'a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such impairment; or being regarded as having such an impairment." 42 U.S.C. § 12102(2). "'Major life activities' include 'functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.'" 948 So. 2d at 926 (citing *Bragdon v. Abbott*, 524 U.S. 624 (1998); 45 C.F.R. § 84.3(j)(2)(ii); and 28 C.F.R. 41.31(b)(2)(1997)).

32. The evidence did not show that Petitioner had a handicap or disability. Rather, the evidence showed that Petitioner did not have a disability. The doctor's note submitted into evidence showed that Petitioner had no restrictions because of his leg, and Petitioner testified that he had no medical condition that substantially impaired any life activity.

33. Moreover, even if Petitioner had a disability, the evidence did not show that Petitioner was not hired because of that disability. Rather, the Respondent decided not to fill the position for which Petitioner applied.

34. In sum, considering the evidence adduced at the final hearing, it is concluded that Petitioner failed to prove by a preponderance of the evidence that Respondent discriminated against him based on his race or a disability in violation of the Act.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Petitioner's Complaint of Discrimination and Petition for Relief consistent with the terms of this Recommended Order.

DONE AND ENTERED this 17th day of March, 2020, in Tallahassee, Leon County, Florida.

James H. Peterson, III
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
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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.