

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

BRENDA GREEN,

Petitioner,

vs.

Case No. 19-5061

SARASOTA SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

RECOMMENDED ORDER

Administrative Law Judge Hetal Desai of the Division of Administrative Hearings (DOAH) held the final hearing in this matter by video teleconference with sites in Tallahassee and Sarasota, Florida on January 15, 2020.

APPEARANCES

For Petitioner: No Appearance

For Respondent: Robert K. Robinson, Esquire  
Kirk Pinkerton  
240 South Pineapple Avenue, 6th Floor  
Sarasota, Florida 34236-6014

STATEMENT OF THE ISSUE

Whether Respondent, Sarasota County School Board (School Board), discriminated against Petitioner, Brenda Green, on the basis of her handicap in violation of section 760.10, Florida Statutes (2018).<sup>1/</sup>

PRELIMINARY STATEMENT

On October 15, 2018, Petitioner filed an Employment Complaint of Discrimination (Complaint) with the Florida Commission on Human Relations (FCHR). The Complaint asserts Respondent discriminated against her on the basis of "Disability/Handicap." Specifically, Petitioner alleges, "Respondent failed to provide reasonable accommodations due to my disability and unjustly terminated my employment."

On August 9, 2019, FCHR notified Petitioner of its determination that no reasonable cause existed to believe that Respondent engaged in an unlawful employment practice under chapter 760, also known as the Florida Civil Rights Act of 1992 (FCRA). On September 10, 2019, Petitioner filed a Petition for Relief with FCHR and requested an administrative hearing. The Petition erroneously listed the School Board's representative (instead of Petitioner's representative) as "Dr. Genise Pennant" but Dr. Pennant was treated by FCHR as Petitioner's representative and was included in FCHR's service list. On September 19, 2019, FCHR referred this matter to DOAH, where it was assigned to the undersigned to conduct a formal evidentiary hearing.

On October 7, 2019, the School Board filed a unilateral response to the Initial Order which stated: "Efforts were made to contact Petitioner, but no response was received." Because

Petitioner had not filed a response or coordinated with the School Board, and because it was unclear why Dr. Genise Pennant was listed as Petitioner's representative, the undersigned issued an Order to Show Cause and noticed a telephonic pre-hearing conference to be held on October 25, 2019. Petitioner did not respond to the Order to Show Cause or attend the October 25, 2019, hearing.

On October 28, 2019, the undersigned issued another Notice of Telephonic Pre-hearing Conference notifying the parties of the date, time, and call-in directions to participate in a pre-hearing teleconference. Similarly, for the final hearing, the undersigned issued a Notice of Hearing by Video Teleconference notifying the parties of the date, time, and location of the final hearing, and other pertinent procedures.

All Notices and Orders issued by the undersigned and sent by DOAH were mailed to Petitioner's address of record on file with FCHR and with DOAH. There was no indication Petitioner failed to receive these Notices and Orders.

Meanwhile, DOAH staff attempted to contact Petitioner to verify her address, but did not receive a response. The undersigned issued a Second Order to Show Cause to ensure Petitioner was aware of the final hearing date. On December 23, 2019, Petitioner filed an ex parte Response to the Show Cause

Request, indicating that she was aware of the final hearing, she was receiving the pleadings, and she was seeking counsel.

Petitioner failed to participate in the duly noticed pre-hearing telephone conference on January 8, 2020. At that hearing, Respondent's representative indicated he had attempted to confer with Petitioner but was unable to make contact. Moreover, the School Board had not received any exhibits or a witness list from Petitioner. Petitioner did not file any exhibit or witness lists with DOAH, nor did she provide any copies of exhibits she intended to use at the final hearing, as indicated in the Notice of Hearing.

On January 14, 2020, Petitioner filed an ex parte Motion for Summary Judgment and Remedy in Equity. This motion was denied by an Order issued January 16, 2020.

Petitioner did not appear at the final hearing on January 15, 2020. The hearing was delayed for approximately 10 to 15 minutes while DOAH staff attempted to reach Petitioner at her only known phone number, but she did not answer. DOAH staff also verified Petitioner was not in the building of the hearing site in Sarasota.

Respondent proffered exhibits 1 through 29 at the final hearing. The final hearing was recorded, but no transcript was ordered, nor has a transcript of the proceedings been filed with DOAH.

### FINDINGS OF FACT

1. The final hearing was officially convened at 9:15 a.m., on January 15, 2020.

2. Respondent's counsel and a School Board representative appeared at the final hearing. Petitioner did not appear.

3. Although Petitioner attached documentation to the Motion for Summary Judgment and Remedy in Equity filed the day before the hearing, this documentation was not identified as exhibits for the hearing, provided to opposing counsel, or accompanied by an affidavit. As such, it was not considered in lieu of sworn testimony, admissible evidence, or Petitioner's appearance at the final hearing.

4. Respondent's counsel confirmed the School Board had received the Notice of Hearing and was aware of the date, time, and location of the final hearing. Counsel also confirmed he had not received Petitioner's Motion for Summary Judgment and Remedy in Equity filed on January 14, 2020.

### CONCLUSIONS OF LAW

5. 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(6) and (7), Florida Statutes. See Fla. Admin. Code R. 60Y-4.016; and McElrath v. Burley, 707 So. 2d 836, 841 (Fla. 1st DCA 1998)(finding the FCRA

on its face satisfies the right to due process by providing for an administrative hearing followed by judicial appellate review).

6. The FCRA protects individuals from discrimination in the workplace. 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.

7. Because the FCRA is patterned after federal anti-discrimination laws, such as the Americans with Disabilities Act (ADA), courts rely on ADA cases when analyzing handicap or disability claims brought pursuant to the FCRA. See Gonzalez v. Wells Fargo Bank, N.A., 2013 U.S. Dist. LEXIS 139916, at \*19 (S.D. Fla. Sep. 27, 2013) ("The analysis of a disability discrimination claim under the FCRA is identical to that employed under the Americans With Disabilities Act").<sup>2/</sup>

8. Petitioner has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. See Valenzuela v. GlobeGround N. Am., LLC, 18 So. 3d 17, 22 (Fla. 3d DCA 2009); and § 120.57(1)(j), Fla. Stat. "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, Petitioner 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).

9. To establish a prima facie case of disability discrimination under the FCRA, Petitioner must show: (1) she has a disability or handicap; (2) she is a qualified individual; and (3) she was subjected to unlawful discrimination by the School Board because of her handicap. See Fagan v. Palm Beach Cty. Sheriff's Off., 2019 U.S. Dist. LEXIS 147572, at \*4 (S.D. Fla. Aug. 27, 2019)(citing Holly v. Clairson Indus., L.L.C., 492 F.3d 1247, 1255-56 (11th Cir. 2007)).

10. By failing to appear at the final hearing, Petitioner failed to present any evidence to meet her burden of proof for any type of discrimination. There was no evidence of any of the elements related to the prima facie case for handicap discrimination under a failure to accommodate or wrongful termination theory. Consequently, Petitioner has not proven the School Board discriminated against her.

#### RECOMMENDATION

It is RECOMMENDED that the Florida Commission on Human Relations issue a final order finding Petitioner, Brenda Green, did not prove Respondent, Sarasota County School Board, committed

an unlawful employment practice under the FCRA based on her alleged handicap, and dismissing the Petition in its entirety.

DONE AND ENTERED this 22nd day of January, 2020, in Tallahassee, Leon County, Florida.



---

HETAL DESAI  
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 22nd day of January, 2020.

#### ENDNOTES

<sup>1/</sup> All references to the Florida Statutes and Florida Administrative Code Rules are to the 2018 versions (the versions in effect at the time of the alleged discrimination) unless otherwise noted.

<sup>2/</sup> Whereas the FCRA prohibits discrimination in employment on the basis of "handicap," the ADA prohibits discrimination on the basis of "disability." For the purposes of employment discrimination, the FCRA does not define "handicap," but the statute conforms to the ADA definition of "disability," and the terms are interpreted under the same analysis. See Byrd v. BT Foods, Inc., 26 So. 3d 600 (Fla. 4th DCA 2010).



COPIES FURNISHED:

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

Arthur S. Hardy, Esquire  
Matthews Eastmoore  
1626 Ringling Boulevard, Suite 300  
Sarasota, Florida 34236-6815  
(eServed)

Dr. Genise Pennant  
Apartment 157  
1135 Southeast 41st Drive  
Gainesville, Florida 32641-8462

Robert K. Robinson, Esquire  
Kirk Pinkerton  
240 South Pineapple Avenue, 6th Floor  
Sarasota, Florida 34236-6815  
(eServed)

Brenda Green  
Apartment 157  
1135 Southeast 41st Drive  
Gainesville, Florida 32641-8462

Brenda C. Green  
4482 Arley Road  
North Port, Florida 34288-7396

Cheyenne Costilla, General Counsel  
Florida Commission on Human Relations  
4075 Esplanade Way, Room 110  
Tallahassee, Florida 32399-7020  
(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.