STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANGELA WRIGHT,

Petitioner,

vs. Case No. 20-2126

FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY,

Respondent.
_____/

RECOMMENDED ORDER

On November 9, 2020, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted an evidentiary hearing pursuant to section 120.57(1), Florida Statutes (2018), in Tallahassee, Florida, via ZOOM web-conference.

APPEARANCES

For Petitioner: Angela Michelle Wright, pro se
4102 Greensboro Highway
Quincy, Florida 32351

For Respondent: Brandon W. White, Esquire
Department of Economic Opportunity
Caldwell Building, MSC 110
107 East Madison Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

Whether Respondent Florida Department of Economic Opportunity (the Department or DEO) engaged in discriminatory practices, concerning Petitioner's disability, 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 July 31, 2019, Petitioner, Angela Wright (Petitioner or Ms. Wright) completed a Technical Assistance Questionnaire for Employment Complaints with the Florida Commission on Human Relations (FCHR), alleging that DEO discriminated against her based upon a disability, harassed her based upon a disability, and retaliated against her based upon a disability, in violation of the FCRA. On February 20, 2020, after more than 180 days elapsed since filing her complaint of discrimination, and with FCHR not having completed its investigation of the complaint of discrimination, Ms. Wright executed an Election of Rights in which she elected to file a Petition for Relief with the Division. On April 28, 2020, Ms. Wright filed a Petition for Relief, which stated:

> I constantly complained to upper management on several occasions advising them that I was being harassed mainly by Sharon Lampkin in HR and a previous supervisor Ayman Youssef concerning my timesheet, Leave Without Pay (LWOP), On-Demand Pay and cancellation of my health insurance. This was a violation because it created a hostile work environment in which I had to endure because I needed my job.
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> The retaliation that occurred was HR placing me on LWOP. I was on FMLA intermittently as needed; therefore, I should have remained in regular pay status. Also, HR paid me On Demand which caused my health insurance to be cancelled several times. Although my employer allowed me to take FMLA, they still interfered with the way the leave was administered which constitutes a violation of my FMLA rights.
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> Upper Management advised my co-worker Charlie Davis that he could not donate me anymore sick leave because they know he was my main source for donation of sick leave when needed. The year of 2017 was very tough because I had to use a lot of

LWOP once I exhausted accumulated leave for the month. Gail Howell in HR was very helpful with advising me of my overpayments and the process of repaying them through Salary Refund. This was a violation because it interfered with my right to use donated sick leave for FMLA.

Sharon Lampkin had been out on retirement and returned to HR in 2017. In October of 2017, she cancelled my regular payment and paid me through On Demand pay. A Salary Refund in the amount of $947.40 for the months of July, August and September was deducted and left me with a net balance of $145.57 for the month of October. I assume she didn't stop the payment in time, so, the normal $1500 was deposited into my First Florida Credit Union savings account. I had started paying my bills as usual; however, on 11/02/17, HR did a Withdrawal of Check in the amount of $1500 which left my savings account with a negative balance (-723.73). This really caused me a financial hardship because I was already struggling trying to pay co-payments, pay for medications and handle other financial obligations. This happened again in June 2018. My gross pay for the month was $1,340.82 minus the Salary Refund in the amount of $741.26 which left me with a net pay of $136.46. As, I stated earlier, paying me On Demand was retaliation which is a violation of my ADA rights. Also, trying to discourage me from using FMLA is a violation of my FMLA rights.

In June 2018, I was advised to submit a new reasonable accommodation request which was denied by the Office of Civil Rights because it would cause the agency an undue hardship. This was a violation of my ADA rights because Stephen Huddleston did not get in touch with me to begin the reasonable accommodation interactive process as stated in the email. They also tried to deter me from exercising my FMLA rights because I was already working the request schedule.

> In August 2018, I resigned from my employer because I worked in an intimidating, hostile environment that was attributable to my medical condition; and, I complained about it repeatedly to no avail. I applied for Reemployment Assistance with DEO, and, I was denied benefits on 09/18/18. They stated I quit because the employer refused to change the work schedule which was agreed upon at the time of hire. However, I had an Appeals Telephone Hearing on 10/23/18 which also was denied stating I voluntarily quit because my request to begin work after 10:30 AM but before 12:00 PM was denied; and, I could not be at work as scheduled at 10:30 due to fatigue and my work commute. This was a violation of my ADA rights because my employer did not take the appropriate action to stop the harassing, intimidating behavior that created the hostile work environment. Therefore, I feel as though I had no chose but to resigned [sic] due to my health.

FCHR thereafter transmitted the Petition to the Division and assigned the undersigned Administrative Law Judge (ALJ) to conduct an evidentiary hearing.

The undersigned originally noticed this matter for final hearing on August 27, 2020. On July 29, 2020, DEO filed a Motion in Limine, to which Ms. Wright filed a response. DEO's Motion in Limine sought to preclude testimony and evidence related to (a) alleged Family Medical Leave Act (FMLA) violations and retaliation, (b) acts that occurred more than one year prior to the date Ms. Wright filed her complaint with FCHR, and (c) acts associated with Ms. Wright's Reemployment Assistance application and appeal. The undersigned conducted a telephonic hearing on August 14, 2020. On August 18, 2020, the undersigned entered an Order Granting, In Part, And Denying, In Part, Respondent's Motion In Limine, which excluded all evidence or testimony concerning alleged FMLA violations and Ms. Wright's claim for Reemployment Assistance. However, the undersigned also held:

> DEO's Motion is DENIED, without prejudice, to the extent it seeks to exclude alleged acts that occurred more than 365 days prior to July 31, 2019, which is the date Ms. Wright filed her charge with FCHR. The undersigned notes that in Ms. Wright's filings with FCHR, she references a hostile work environment. In her Response, Ms. Wright contends that the undersigned may consider acts that occurred more than 365 days prior to her filing date under the "continuing violations" doctrine, as enunciated in *National Railroad Passenger Corporation v. Morgan,* 536 U.S. 101 (2002). As Ms. Wright's charge references a hostile work environment, it is possible that the continuing violations doctrine may be applicable in this matter to consider older acts that Ms. Wright may allege are part of the same unlawful practice. The undersigned will entertain objections and argument from DEO as to whether these older acts are admissible at the final hearing.

On August 24, 2020, DEO filed a Motion to Continue Final Hearing, which the undersigned granted, resetting the final hearing for September 29 and 30, 2020. On September 14, 2020, the parties filed a Stipulated Motion for Continuance, which the undersigned granted, resetting the final hearing for November 9 and 10, 2020.

The undersigned conducted the final hearing on November 9, 2020, by Zoom web-conference. Petitioner testified on her own behalf, and presented the testimony of Deidra Milton, Tieka Wright, and Natasha Williams. The undersigned admitted Petitioner's Exhibits P2 through P9, P11, and P12 into evidence. Sharon Lampkin, Donna Pottle, Kendric Marche Leonard, and Stephen Huddleston testified on behalf of Respondent. The undersigned admitted Respondent's Exhibits R1 through R13 into evidence.

The two-volume Transcript of the final hearing was filed with the Division on December 14, 2020. On December 28, 2020, DEO timely submitted its

proposed recommended order, which the undersigned has considered in the preparation of this Recommended Order. Ms. Wright 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. Ms. Wright was an Employment Program Specialist with the Department's Reemployment Assistance Division. Although she primarily worked in the Special Programs Child Support unit, she was also assigned to the Benefit Records unit during her employment with the Department.

2. Ms. Wright testified that her issues with the Department started in 2014, and continued until her resignation on August 15, 2018.

3. In 2014, Ms. Wright began experiencing serious medical issues, including bowel and bladder trouble, fatigue, and fibromyalgia. In September 2014, she took a month of leave from her employment because of these medical issues. Upon her return, Ms. Lampkin, who worked in DEO's human resources department (HR), primarily focused on payroll, and Ms. Wright's then-supervisor, Ayman Youseff, instructed her to use "leave without pay" for additional absences.

4. Ms. Wright testified that after her return in 2014, Mr. Youseff began harassing her after she took another leave from employment, in the form of requiring her to provide additional supporting medical documentation for the leave. When Ms. Wright informed Mr. Youseff that his request was incorrect, he apologized and advised his supervisors of the mistake.

5. Ms. Wright and her former co-worker, Ms. Milton, both testified that Mr. Youseff was rude and unprofessional. Ms. Milton testified that Mr. Youseff also had issues with Ms. Wright concerning her absences due to illnesses, and with other employees donating leave to Ms. Wright.

6. Ms. Wright also testified that Mr. Youseff made her turn in her timesheets to him directly, as opposed to HR. Ms. Wright testified that she viewed this request, as well as requests from HR to use donated sick leave after she had exhausted all other remaining leave, and ultimately to use leave without pay—which she acknowledged were prompted by her absences from work during this time period—as harassment.

7. In February 2015, Ms. Wright requested a transfer back to a previous unit within DEO, under a supervisor she liked, because she felt she was being harassed. DEO granted her transfer request in less than two weeks. Ms. Wright's new supervisor was Mr. Leonard.

8. However, after her transfer, Ms. Wright's medical conditions did not go away. In September 2016, she submitted a request for a modified schedule accommodation to Mr. Huddleston, in DEO's Office for Civil Rights, which noted that she had issues in the mornings because of her medical condition. DEO granted this request, and changed Ms. Wright's work schedule to 10:30 a.m. through 6:30 p.m.

9. Beginning in early 2017, DEO overpaid Ms. Wright several times because she failed to complete her timesheet and failed to timely document her use of leave without pay. In August 2017, Ms. Wright took a one-month absence from employment because of her medical issues, and was frequently absent from work during the following few months. During this time period, an HR employee accepted Ms. Wright's incorrect timesheets for those time periods, and recouped each month's overpayment from the following month's pay. This became an issue for DEO because Ms. Wright utilized leave without pay for most of the month of August; however, the resulting lack of funds owed to her precluded DEO from immediate recoupment.

10. Ms. Lampkin, who had left her employment with DEO but returned to her position in August 2017, recognized the payment issue with Ms. Wright. Ms. Lampkin testified that, because of Ms. Wright's submittal of timesheets that utilize leave without pay after the payroll deadline for correcting

timesheets, DEO's HR department began paying Ms. Wright "on-demand," *i.e.,* payment for hours that she actually worked, to avoid overpaying Ms. Wright month after month.

11. DEO introduced into evidence the Bureau of State Payroll Manual (Manual), which governs DEO's handling of payroll issues. With respect to salary overpayment, the Manual states that "**Agencies** are responsible for identifying and preventing salary overpayments. . . ." Although Ms. Wright contends that this switch from recoupment (which resulted in salary overpayment) to payment on-demand was evidence of harassment based on her disability, she also testified, on cross-examination, that "it's verified in [the Manual] that it could be done that way."

12. Ms. Lampkin also credibly explained an issue that arose with Ms. Wright's allegation that DEO canceled her insurance benefits, which Ms. Wright considered additional harassment. Ms. Lampkin testified:

> The term canceled is kind of an overstatement. There is a glitch in their insurance if I have to cancel their check and pay them on demand, because that means that the payment doesn't go over when the regular payroll runs, and it gets paid on supplemental, and it's usually on the same date that their payday is, but then it's—the payment to the insurance companies would be sent at a later date than the other ones. It would be a lag time there.
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> * * *
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> If I canceled their monthly paycheck, that stops payment going to any pretax deductions; it would stop them. And then by paying them on demand, that would create the payment and send it over, but the difference in an on-demand and the regular payroll is processed approximately one week before payday. And on-demand is processed three days before payday. Technically two days, because the

> third day is when they get paid so—so it's that lag time from a week to down to three days.

13. Ms. Wright also testified that DEO engaged in harassment in discouraging other employees from donating sick leave to her. For example, in 2018, Ms. Wright testified that DEO hindered Charlie Davis, a DEO management level employee, from donating hours to her.

14. DEO presented evidence that Ms. Wright was the recipient of many sick leave donations during her employment; all told, she received and used over 1,000 hours between 2014 and her resignation. Although Mr. Davis had donated sick leave hours to Ms. Wright previously, Ms. Pottle, who was Ms. Lampkin's supervisor in DEO's HR Department, explained that DEO employees in a supervisory or management position "are highly discouraged from donating to employees because it – it could be construed as favoritism." Ms. Wright testified that she discussed Mr. Davis's intention to donate additional sick leave hours with another DEO employee, and Mr. Davis was ultimately permitted to donate sick leave to Ms. Wright.

15. On February 6, 2018, in response to Ms. Wright's expressed concerns, individuals in Ms. Wright's supervisory chain and Ms. Lampkin, met with Ms. Wright to discuss two options she could use in an attempt to resolve her leave and payroll issues: (a) be paid on-demand early, with the balance paid after she finalized her timesheet at the end of the month; or (b) remain on automatic pay, but provide donated leave hours and any necessary medical certification supporting their use by the 15th of each month.

16. Following the February 6, 2018, meeting, Ms. Wright began providing medical certifications, which stated that she needed time off from work intermittently to attend medical appointments. Ms. Wright testified that she believed that these medical certifications allowed her to arrive for work as late as she felt necessary due to her medical condition. Ms. Wright, during a June 5, 2018 meeting with Mr. Leonard, expressed this belief; Mr. Leonard, in an email to Ms. Wright that same day, asked her "to provide supporting

documentation regarding the need to arrive at work after 10:30 a.m. since the most recent documentation reflects a schedule of 10:30 a.m. to 6:30 p.m."

17. Mr. Leonard also testified about his team's experience covering for Ms. Wright when she was absent. He stated that Ms. Wright cross-trained other members of this team to complete her work in her absence. However, when covering for Ms. Wright, these team members would then have work duties above and beyond their regular work duties.

18. On June 8, 2018, Ms. Wright submitted a request to Mr. Huddleston in DEO's Office for Civil Rights requesting a flexible, part-time schedule that would allow her to arrive for work between 10:30 a.m. and noon, and end her workday at 6:30 p.m. (Second Accommodation Request). With this Second Accommodation Request, Ms. Wright also submitted a letter from her physician stating that she was unable to arrive to work and do her job before 10:30 a.m., and would benefit from the flexible schedule she requested.

19. At the time of Ms. Wright's Second Accommodation Request, DEO's Reemployment Assistance program was undergoing a significant reorganization. Ms. Wright worked in the Special Programs unit of DEO's Reemployment Assistance program at that time.

20. Mr. Huddleston testified that, after receiving Ms. Wright's Second Accommodation Request, DEO decided to deny it. In an email dated July 11, 2018, Mr. Huddleston wrote:

> After reviewing your request, at this time, your request, to modify your accommodation of a flexible part-time work schedule is denied. Currently your accommodation allows you to work at 10:30 AM instead of your regularly scheduled start time of 8:00 AM. Your new accommodation request asks that you be allowed to arrive at work after 10:30 AM but before 12:00 PM. In making this decision our office has spoken with your management team and has determined that this modification would cause an undue hardship. This modification to your existing accommodation would also require a

> lowering of performance or production standards. Based on these two factors, we have determined that you would not be able to perform the essential functions of your position if this modification were to be put into place. The Equal Employment Opportunity Commission states that essential functions are basic job duties that an employee must be able to perform, with or without a reasonable accommodation. These duties must be performed to achieve the objectives of the job.
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> As part of this, and all accommodation request reviews, our office analyzed your position to determine its purpose and essential functions, consulted with your management team, and researched and explored accommodation options to assess the effectiveness of the accommodation. During this interactive process we explored the possibility of reassigning you to another position that was as close as possible to your current position in status and pay; however, we were unable to find a suitable position. There are no part-time positions currently available and the essential functions of your position can not be completed working the hours you requested.
>
> Our office would be more than happy to meet with you to discuss this further and to explore other accommodation options that you and/or your medical professional come up with.

21. However, on July 10, 2018—the day before Mr. Huddleston sent the email denying the Second Accommodation Request—Ms. Wright went on another month-long leave of absence from her employment because of her worsening medical condition. Ms. Wright testified that she believed that DEO would approve of her Second Accommodation Request and that, after returning to work, she would start the new schedule.

22. Ms. Wright testified that she did not know the status of her Second Accommodation Request until she returned to work (after her month-long

leave of absence) on August 13, 2018, and read Mr. Huddleston's email. She sent him the following email response later that afternoon:

> Thanks for reviewing my request to modify my work schedule. I understand that there is no part-time positions available; but I was referring to me working at least 30 hours per week. When I met with my supervisor Marche and Joel in June concerning me arriving later than my scheduled time 10:30 AM, I advised them that I needed to request a modification to my previous work schedule because I moved back home with my mom which is outside of Quincy due to my health. I also advised them that it was impossible for me to arrive to work at 10:30 AM due to the distance I had to travel and the medications I take. I informed them that 11:15 or 11:30 would work better for me because I understand that my job consists of duties that must be performed in order to achieve the objectives outlined for the job.
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> Please let me know when there's a good time for us to meet. Thanks again for your help concerning this matter.

23. Rather than wait for Mr. Huddleston's response, Ms. Wright resigned on August 15, 2018, by a letter that she left in a co-worker's chair. This resignation letter does not identify any reason for her resignation.

24. On August 20, 2018, Mr. Huddleston—unaware of Ms. Wright's resignation—actually responded to Ms. Wright's August 13, 2018, email, inviting her to meet with him about her concerns.

25. Ms. Wright testified that she has not sought out employment after her resignation from DEO because of her medical condition.

26. Ms. Wright presented no persuasive evidence that DEO's actions subjected her to harassment based on her disability, or that such actions were sufficiently severe or pervasive to alter the terms and conditions of her employment to create a hostile work environment. There is no competent,

substantial evidence in the record upon which the undersigned could make a finding of unlawful disability harassment or hostile work environment.

27. Ms. Wright presented no persuasive evidence that, at the time of her resignation, her working conditions were so intolerable that a reasonable person in her position would have felt compelled to resign.

CONCLUSIONS OF LAW

28. 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(8), Florida Statutes, and Florida Administrative Code Rule 60Y-4.016.

29. The FCRA protects individuals from discrimination and retaliation 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 discriminate 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.
>
> (b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status.
>
> * * *
>
> (7) It is an unlawful employment practice for an employer, an employment agency, a joint labor-management committee, or a labor organization 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.

30. Because the FCRA is patterned after federal anti-discrimination laws, such as Title VII of the Civil Rights Act of 1964, as amended (Title VII), Florida courts rely on federal Title VII cases when considering claims under the FCRA. *See 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).

31. Specifically regarding disability discrimination, the FCRA is construed in conformity with the Americans With Disability Act (ADA), found in 42 U.S.C. § 1201, *et seq*. *See 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 Inds., LLC,* 492 F.3d 1247, 1255 (11th Cir. 2007)(holding that FCRA claims are analyzed under the same standards as the ADA).

32. The burden of proof in an administrative proceeding is on Ms. Wright as the complainant. *See Dep't of Banking & Fin., Div. of Sec. & Inv. 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, Ms. Wright must establish, by a preponderance of the evidence, a prima facie case of discrimination, retaliation, harassment, or hostile work environment. *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.

33. The "preponderance of the evidence" standard 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, Ms. Wright 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).

Ms. Wright's Actions Are Time-Barred From Consideration

34. To establish a prima facie case of harassment or hostile work environment, Ms. Wright must show that she: (a) is a qualified individual with a disability under the ADA; (b) was subject to unwelcome harassment; (c) the harassment was based on her disability; (d) the harassment was sufficiently severe or pervasive to alter the conditions of her employment and to create an abusive working environment; and (e) that the Department knew or should have known of the harassment and failed to take prompt remedial action. *See Razner v. Wellington Reg'l Med. Ctr., Inc.,* 837 So. 2d 437, 440-41 (Fla. 4th DCA 2002).

35. The Department appears to concede in its Proposed Recommended Order that Ms. Wright is a qualified individual under the ADA. Although the FCRA does not define the word "handicap," the Fifth District Court of Appeal has looked to the Florida Fair Housing Act, which defines the term as meaning that "[a] person has a physical . . . impairment which substantially limits one or more life activities, or he or she has a record of having, or is regarded as having, such physical . . . impairment[.]" *Greene v. Seminole Elec. Co-Op, Inc.,* 701 So. 2d 646, 647 (Fla. 5th DCA 1997); § 760.22(3)(a), Fla. Stat. The record evidence establishes that Ms. Wright is a qualified individual under the ADA.

36. Ms. Wright raised numerous actions and events that occurred over the four years that led up to her resignation as proof of harassment and a hostile work environment. As noted previously, the Department previously filed a Motion in Limine that asked the undersigned, *inter alia,* to exclude evidence of any alleged actions that occurred more than 365 days prior to July 31, 2019, which was the date she filed her charge of discrimination, pursuant to section 760.11(1). *See also Greene,* 701 So. 2d at 648 (holding that section 760.11(1) operates as a statute of limitations, and any claim for damages arising out of acts occurring more than one year prior to the date the Petitioner files the charge is barred).

37. The undersigned, in the August 18, 2020, Order Granting, in Part, and Denying, in Part, Respondent's Motion in Limine, deferred ruling on DEO's motion because Ms. Wright's contentions concerning actions that occurred prior to July 31, 2018, *could* be considered under the "continuing violations doctrine," as enunciated in *National Railroad Passenger Corporation v. Morgan*, 536 U.S. 101 (2002). The undersigned notes that the Department restated its objection to the consideration of the pre-July 31, 2018, evidence at the beginning of the final hearing, then did so again after Petitioner rested, and did so again after it rested. The undersigned again deferred ruling on this objection, directing the parties to address this issue in their proposed recommended orders. The undersigned has reviewed the evidence presented to "determine whether the acts about which [Ms. Wright] complains are part of the same actionable hostile work environment practice, and if so, whether any fact falls within the statutory time period." *Id.* at 120.

38. The Eleventh Circuit has construed *Morgan* to allow "courts to view allegations of a hostile work environment as a single unlawful employment practice[,]" concluding that "if the smallest portion of that 'practice' occurred within the limitations period, then a court should consider it as a whole." *Stewart v. Jones Util. & Contracting Co., Inc.*, 806 Fed. App'x 738, 741 (11th Cir. 2020) (citing *Shields v. Fort James Corp.*, 305 F.3d 1280, 1281-82 (11th

Cir. 2002)). The Eleventh Circuit has further held that, in order to be part of the same unlawful employment practice claim for hostile work environment, the portion which occurred within the limitations period must be "the same type of 'discriminatory intimidation, ridicule, and insult' which characterized the employee's untimely hostile-work environment allegations." *Chambless v. Louisiana-Pacific Corp.*, 481 F.3d 1345, 1350 (11th Cir. 2007)(quoting *Harris v. Forklift Sys., Inc.,* 510 U.S. 1, 21 (1993)).

39. Here, Ms. Wright introduced evidence that pre-dated July 31, 2018, including: (a) issues between Ms. Wright and Mr. Youseff, a former supervisor; (b) issues she encountered with HR upon a return from a medical leave of absence that resulted in a change in the method the Department issued her paycheck.; (c) the temporary delay in Mr. Davis being allowed to donate sick leave to Ms. Wright; (d) the Department's requests for medical documentation and certifications; and (e) the Department's denial of Ms. Wrights Second Accommodation Request.

40. Although the underlying, unifying theme between these issues described above is Ms. Wright's declining medical condition, she has not established that *any* of the pre-July 31, 2018, events were part of a single unlawful employment practice, or that they were part of some other, similar type of discriminatory behavior that includes intimidation, ridicule, or insult, that occurred after July 31, 2018.

41. The evidence Ms. Wright presented concerning issues Ms. Wright encountered with Mr. Youseff in 2014, established that Mr. Youseff acted rudely and unprofessionally toward her and a co-worker. Ms. Wright did not present evidence that Mr. Youseff's unprofessional behavior was based on Ms. Wright's disability, or that the Department was aware of this unprofessional behavior, until Ms. Wright requested a transfer (which the Department granted).

42. The evidence Ms. Wright presented concerning her interactions with HR—regarding her timesheets, overpayments, recoupments, and lapse in

insurance in 2017—were not based on Ms. Wright's disability, but rather, were based on a uniform and correct application of the Manual.

43. With respect to Ms. Wright's contention that the Department engaged in behavior that resulted in a temporary delay of Mr. Davis's donation of sick leave to Ms. Wright, the Department introduced credible evidence that it had a policy of discouraging those in supervisory or management positions from donating sick leave to employees, to avoid the appearance of favoritism. However, Mr. Davis was ultimately allowed to donate sick leave to Ms. Wright. Additionally, the Department introduced evidence that Ms. Wright received and used over 1,000 hours of donated sick leave over the course of her employment. With respect to this issue, Ms. Wright failed to establish that she was subject to unwelcome harassment based on her disability that was sufficiently severe or pervasive to alter the conditions of her employment or to create an abusive working environment.

44. With respect to Ms. Wright's contention that the Department's request for medical documentation and certifications constituted harassment or a hostile work environment, the Department introduced credible evidence that it requires employees who utilize donated sick leave to request an accommodation to establish a need through providing medical documentation. While the Department's requests for such documentation were a result of Ms. Wright's medical condition, she failed to establish that they constituted unwelcome harassment, or that they were sufficiently severe or pervasive to alter the conditions of her employment or to create an abusive working environment.

45. With respect to Ms. Wright's contention that the Department's denial of her Second Accommodation Request constituted harassment or a hostile work environment, the undersigned concludes that a denial of reasonable accommodation is a separate, actionable claim that requires different elements of proof, and is not cognizable as a harassment or hostile work environment claim. *See Alboniga v. Sch. Bd. of Broward Cty.*, 87 F. Supp. 3d

1319, 1337 (S.D. Fla. 2015)("Failure to accommodate is an *independent* basis for liability under the ADA."). Accordingly, the undersigned concludes that it cannot constitute harassment or hostile work environment.

46. The only evidence Ms. Wright presented that occurred after July 31, 2018, was her August 13, 2018, email to Mr. Huddleston, and her August 15, 2018, letter of resignation. The only timely-preserved issue for consideration, therefore, is whether Ms. Wright's resignation constituted a constructive discharge, which could then possibly "connect back" to the untimely allegations previously discussed, under the continuing violations doctrine.

47. A constructive discharge occurs when "working conditions become so intolerable that a reasonable person in the employee's position would have felt compelled to resign." *Green v. Brennan*, 136 S. Ct. 1769, 1776-77 (2016)(quotations omitted)(citing *Pa. State Police v. Suders*, 542 U.S. 129, 141-43 (2004)).

48. Ms. Wright failed to establish that her working conditions were so intolerable that a reasonable person would have felt compelled to resign. The record established that Ms. Wright experienced multiple, worsening medical conditions over the course of her employment with the Department. The Department granted her an accommodation request, allowed her to receive over 1,000 hours of sick leave donations, and attempted to work with her to overcome issues with her paycheck.

49. Ms. Wright's constructive discharge claim must fail for an additional reason: she failed to give DEO an opportunity to remedy the situation. *See Webb v. Fla. Health Care Mgmt. Corp.*, 804 So. 2d 422, 424 (Fla. 4th DCA 2001)(holding that "an employer must be given an opportunity to remedy the complaints of any employee before an employee can prevail on a constructive discharge claim."). DEO presented evidence that Mr. Huddleston was actually interested in having a meeting with Ms. Wright after the denial of her Second Accommodation Request, and sent her an email to that affect after her resignation.

50. Because Ms. Wright failed to establish constructive discharge, and because the remaining issues she raised occurred before July 31, 2018, and thus more than 365 days prior to her July 31, 2019, charge of discrimination, the undersigned concludes that Ms. Wright's harassment and hostile work environment claims are time-barred. *See* § 760.11(1), Fla. Stat.; *Avila v. Childers*, 212 F.Supp.3d 1182, 1188 (N.D. Fla. 2016)(holding that discrimination claims under the FCRA must be filed within 365 days of the alleged unlawful employment practice).

51. For similar reasons, the undersigned concludes that Ms. Wright's claims of disability discrimination and retaliation, including the alleged failure to provide a reasonable accommodation, must fail, as all of the events alleged occurred more than 365 days prior to the filing of her charge with FCHR, and are thus outside of the limitations period in section 760.11(1).

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned hereby RECOMMENDS that the Florida Commission on Human Relations issue a final order dismissing Angela Wright's Petition for Relief.

DONE AND ENTERED this 19th day of January, 2021, in Tallahassee, Leon County, Florida.

ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 19th day of January, 2021.

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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.