STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

YOANDRA LOPEZ GARCIA,

Petitioner,

vs. Case No. 20-2271

PARSEC, INC.,

Respondent.
_____/

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge ("ALJ") Brittany O. Finkbeiner of the Division of Administrative Hearings ("DOAH"), on September 2 and 3, 2020, via Zoom conference.

APPEARANCES

For Petitioner: Javier A. Basnuevo, Esquire
Roberts, P.A.
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For Respondent: Jennifer A. Schwartz, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent, Parsec, Inc. ("Respondent" or "Parsec"), is liable to Petitioner, Yoandra Lopez Garcia ("Petitioner" or "Ms. Lopez Garcia"), for discrimination based on pregnancy.

PRELIMINARY STATEMENT

Petitioner filed a complaint with the Florida Commission on Human Relations ("Commission") on June 11, 2019, alleging that Respondent discriminated against her pursuant to chapter 760, Florida Statutes, the Florida Civil Rights Act ("FCRA"), on the basis of her pregnancy.

The Commission conducted an investigation and, on April 9, 2020, issued a determination that there was no reasonable cause to conclude that an unlawful employment practice occurred.

On May 11, 2020, Petitioner timely filed a Petition for Relief ("Petition"), asserting that, after she announced her pregnancy in the workplace: 1) her alleged promotion was rescinded; and 2) she was constructively discharged. The Commission referred the Petition to DOAH on May 13, 2020, for the assignment of an ALJ to conduct a formal administrative hearing under section 120.57, Florida Statutes.

The final hearing occurred on September 2 and 3, 2020. Ms. Lopez Garcia testified on her own behalf and presented the testimony of Cindy Johnson, Jeffrey Bladen ("Mr. Bladen"), and Dr. Sidiq Aldabbagh. Petitioner's Exhibits 4, 6 through 10, and 12 through 15 were admitted into evidence. Respondent presented the testimony of Cindy Johnson, Jeffrey Bladen, Joan Fardales ("Mr. Fardales"), Amaurys Garcia ("Mr. Garcia"), and Lisandra Ochoa Granado ("Ms. Ochoa"). Respondent's Exhibits 1, 6, 7, 9, 14 through 23, 25, 26, 30, and 31 were admitted into evidence.

The five-volume Transcript was filed with DOAH on December 3, 2020. Based on their joint motion for an extension of time, the parties were given until January 12, 2021, to file their proposed recommended orders. The parties' proposed recommended orders were timely filed in conformity with

the extended deadline; both were duly considered in the preparation of this Recommended Order.

All references to the Florida Statutes refer to the 2017 version, unless otherwise stated.

FINDINGS OF FACT

Based on the demeanor and credibility of the witnesses, the documentary evidence admitted, and the record as a whole, the following facts are found:

The Parties and Complaint Allegations

1. Parsec is an intermodal transportation operator that contracts with railroads to load and unload shipping containers.

2. Parsec hired Ms. Lopez Garcia on November 18, 2013, as an administrative clerk. At all times relevant to this proceeding, Petitioner held the position of Administrative Manager at Parsec's Miami Terminal.

3. On June 11, 2019, Petitioner filed a complaint, under penalty of perjury, with the Commission. Petitioner's complaint claims, in its entirety:

> I am a female. I was discriminated against because of my gender (pregnancy). I began working for Respondent on November 23, 2013, as an Administrative Manager. I was given a promotion after being discriminated against. When I complained to the Regional Manager that individuals with no knowledge or seniority were given positions that I had applied for and I was never given an interview, the Regional Manager "offered" me the position. While I was in training and had fully trained someone else in my old position, I found out that I was pregnant. My supervisor, (Terminal Manager) demoted me without telling me and brought in a family member to occupy my position for no reason other than the fact that I was pregnant. I went out on maternity leave and my supervisor asked me if I was going to come back to work in my old position. I told him

> "no" and I felt I had no other choice but to quit my job.

Parsec's Structure

4. Aside from Petitioner's administrative position, the duties of which she performed inside the office, Parsec's Miami Terminal also employed Gate Inspectors and Load Out Clerks, which were also categorized as office positions. Parsec's operations also required a number of outdoor, or "yard" positions, including Ground Person/Tie-Down, Hitch Verifier, Driver, and Crane Operator. Finally, Parsec's Miami Terminal had the following supervisory positions: Lead Man, Yard Supervisor, and Terminal Manager.

5. The Terminal Manager position was the highest-level position at Parsec's Miami Terminal.

6. Mr. Bladen was Parsec's General Manager. Mr. Fardales was the Regional Manager for Parsec's Florida locations. Mr. Fardales had also worked as Parsec's Terminal Manager in the Miami Terminal.

7. At Parsec, it was not uncommon for employees to train for other positions in addition to their present job duties. If an employee voiced an interest in a different position or a promotion within the company, additional training was commonly accommodated.

Petitioner's Desired Promotion and Training

8. In her role as Administrative Manager, Petitioner was the highest-level administrative employee in Parsec's Miami terminal. However, because it was an administrative position inside the office, the Administrative Manager position was not eligible for promotion to higher-level supervisory positions at Parsec, which required training outdoors, or "in the yard."

9. The Terminal Manager position at the Miami Terminal required overseeing all of the operations and personnel in the terminal, including office, gate, and yard operations. Additionally, the Terminal Manager had to have the necessary training, skill, and ability to physically perform the duties of all other positions in the yard.

10. In order to sufficiently master all of the duties that were supervised and performed by the Terminal Manager, at least two years of experience in the yard was necessary.

11. Around April of 2017, Petitioner went to lunch with Mr. Bladen and Mr. Fardales. During that lunch, Petitioner expressed her desire to become the Terminal Manager. Mr. Bladen and Mr. Fardales agreed to allow Petitioner to train in the yard to give her the opportunity to acquire the yard experience she would need to move up within the company. At that time, there was an open Yard Supervisor position at the Miami Terminal. Mr. Fardales intended to consider Petitioner for the Yard Supervisor position if she completed the requisite training.

12. Petitioner was not promoted to, or offered, the Terminal Manager position. Her job classification of Administrative Manager at Parsec never changed. Petitioner was, however, allowed to train in the yard to give her the opportunity to earn a promotion in the future.

13. In August of 2017, Parsec hired Ms. Ochoa, whom Petitioner recommended for the position, to assist Petitioner with her job duties in the office, thereby allowing Petitioner to train in the yard.

Petitioner's Pregnancy and Cessation of Training

14. In September of 2017, Ms. Lopez Garcia learned that she was pregnant. Her testimony as to when she informed Mr. Fardales of her pregnancy was inconsistent. During the hearing, Petitioner first testified that she informed Mr. Fardales of her pregnancy in November, then she testified that she told him in the beginning of December, or a few days before he allegedly removed her from the training program.

15. On October 6, 2017, an email was sent from Petitioner's email account to Mr. Fardales, wherein Petitioner informed Mr. Fardales that she was changing her shift because she had an appointment for an ultrasound. Mr. Fardales testified credibly that he knew by that time that Petitioner was pregnant and assumed that the ultrasound was related to her pregnancy.

Ms. Lopez Garcia testified that she may not have been the sender of the email, although it was from her account. Ms. Lopez Garcia also suggested that the ultrasound referenced in the email may not have been related to her pregnancy, but instead related to a completely different medical issue affecting her leg. Petitioner's obstetrician, Dr. Aldabbagh, however, testified that Petitioner had an appointment with him on the date of the email, which included an abdominal ultrasound. Petitioner's testimony on this topic was not persuasive when balanced with other, more credible, contradictory evidence.

16. Ms. Lopez Garcia testified that Mr. Fardales called her into his office and told her that she would no longer be training in the yard, but would instead return to her duties inside the office. Petitioner further testified that Ms. Ochoa overheard the conversation, and when Petitioner left Mr. Fardales's office, Petitioner and Ms. Ochoa both cried. Ms. Ochoa, however, testified that this event never took place and that she would have recalled it if it had. Ms. Lopez Garcia's testimony on this topic is rejected to the extent that it conflicts with the testimony of Ms. Ochoa.

17. Although Petitioner claims that Mr. Fardales removed her from the training program against her will because of her pregnancy, she testified that she never asked him for an explanation. Additionally, Petitioner never notified Parsec's human resources department to complain about her removal from training. Parsec had anti-discrimination policies in place, which included a reporting procedure for employees. There is no evidence in the record that Petitioner mentioned alleged discriminated to anyone prior to filing her complaint with the Commission. Mr. Fardales testified that Petitioner left the training program voluntarily, but he did not remember her specific reasons. Parsec's Corporate Representative testified that Petitioner asked to stop training in the yard because of complications with her pregnancy. The evidence did not conclusively establish why Petitioner stopped training. The evidence also did not establish exactly when Petitioner

stopped training in the yard, but the evidence did establish that she had ceased training by December 2017.

18. After she stopped training in the yard, Petitioner continued performing her duties in the office.

19. In February of 2018, Petitioner went on maternity leave due to complications with her pregnancy.

20. Parsec approved Petitioner's request for leave under the Family and Medical Leave Act ("FMLA"), from February 26, 2018, through May 20, 2018.

21. Parsec approved Petitioner's request for non-FMLA medical leave from May 21, 2018, through June 20, 2018.

Hiring of New Terminal Manager

22. In December of 2017, Mr. Fardales hired Mr. Garcia as the Terminal Manager at Parsec's Miami Terminal. Mr. Garcia first began working for Parsec, in a yard position, in 1997. Subsequently, Mr. Garcia spent years in other yard positions at Parsec, including six months as a Tie-Down Person and four years as a Crane Operator. He also drove tractors and held the position of Lead Man for Parsec. Mr. Garcia performed similar duties for another intermodal company for ten years, between 2002 and 2012; again at Parsec from 2012-2013; and at a different company as a railcar inspector from 2013-2017. Mr. Fardales hired Mr. Garcia for the Terminal Manager position, having determined that he was the most qualified for the position based on his experience. Mr. Fardales testified credibly that he is not related to Mr. Garcia. Petitioner did not present any evidence that Mr. Garcia was related to Mr. Fardales, although a familial relationship was alleged in her complaint to the Commission.

23. Several other individuals applied for the Terminal Manager position, including Ms. Lopez Garcia. Ms. Lopez Garcia was not selected for the position because she did not have the requisite qualifications.

24. The other individuals whom Mr. Fardales interviewed for the Terminal Manager position, but were not selected, include: Jorge Fernandez,

Raciel Crespo, Lazaro Paredes, Ariel Peraza, and Jorge Torres. All of the other applicants for the Terminal Manager position were non-pregnant and male.

25. Jorge Fernandez worked at Parsec for approximately ten years and had experience as a Gate Inspector, Load Out Clerk, Ground Person, and Driver. Mr. Fardales did not select him for the Terminal Manager position.

26. Raciel Crespo had over ten years of experience working for Parsec, including working as a Gate Inspector, Ground Person, Driver, and Crane Operator. Mr. Fardales did not select him for the Terminal Manager position.

27. Lazaro Paredes had over twenty years of experience in Parsec's industry. He had experience in load-out, grounding, driving, and supervisory duties in the yard. Mr. Fardales did not select him for the Terminal Manager position.

28. Ariel Peraza had between eight and ten years of experience in Parsec's industry. He had worked as a Gate Inspector, Ground Man, Driver, And Crane Operator. Mr. Fardales did not select him for the Terminal Manager position.

29. Jorge Torres had between three and five years of experience in Parsec's industry. He had worked as a Ground Man, Driver, Lead Man, and Supervisor. Mr. Fardales did not select him for the Terminal Manager position.

Alleged Discriminatory Comments

30. Ms. Lopez Garcia testified that Mr. Fardales made comments to her or in her presence on a number of occasions that were generally disparaging to women in the workplace; and specifically with respect to pregnancy, motherhood, and sexual orientation. Petitioner did not identify other witnesses to Mr. Fardales's alleged discriminatory comments, nor did any witness in this case corroborate her testimony on the comments. Mr. Fardales denied ever making any of the alleged disparaging comments about women in the workplace. Given the totality of the evidence, or lack thereof, about the

negative comments about women, Petitioner's testimony on the subject lacks credibility and is rejected.

Petitioner's Resignation

31. Ms. Ochoa testified that she knew Petitioner planned to leave Parsec prior to Petitioner's resignation. Ms. Ochoa declined to pursue another job opportunity to remain at Parsec based on her belief that Petitioner would not be returning, thereby allowing Ms. Ochoa to remain in Petitioner's previous position permanently. Ms. Ochoa believed that Petitioner resigned because she had a daughter; she had her whole life in front of her; she had another business to take care of, specifically, a beauty salon; and Parsec was no longer important to her.

32. On her 2019 tax return, Petitioner listed herself as the proprietor of a beauty salon. Petitioner testified, however, that the tax return was inaccurate in this respect and she did not know how such a mistake could have been made, because her taxes were done by an accountant. Ms. Lopez Garcia's denial of any accountability for, or knowledge of, the information contained in her tax return was not believable, and therefore undermined her credibility.

33. On May 30, 2018, while she was still out on maternity leave, Ms. Lopez Garcia called Mr. Fardales. Although Ms. Lopez Garcia and Mr. Fardales recalled different accounts of their phone conversation, both agreed that Petitioner resigned from Parsec during the call. Ms. Lopez Garcia testified that she resigned because Mr. Fardales refused to let her resume training in the yard when she returned from maternity leave. Mr. Fardales, however, denies that they discussed Petitioner's training status at all during the conversation. Further, Petitioner testified that although she resigned, she told Mr. Fardales that she would reconsider contingent on him changing his mind about removing her from training in the yard. The details of the content of the conversation were not conclusively established.

34. Mr. Fardales documented Petitioner's verbal resignation in an email dated May 30, 2018. On the same day, Ms. Ochoa drafted a separation letter regarding Petitioner's employment to send to Parsec's corporate office in Cincinnati. She did so at the direction of Mr. Fardales.

35. When Petitioner resigned, Parsec's human resources department did not record the resignation as being effective immediately in order to afford Petitioner the continued coverage of her short-term disability benefits for the remainder of her maternity leave. Petitioner's medical certification from her physician indicated that Petitioner could return to work on Wednesday, June 20, 2018. Human Resources made the decision to deem Petitioner's resignation effective on Friday, June 22, 2018, so that she would receive short-term disability benefits for a full week.

CONCLUSIONS OF LAW

36. DOAH has personal and subject matter jurisdiction in this proceeding pursuant to sections 120.569 and 120.57(1).

37. In considering the proof offered to establish the facts of this case, the undersigned is bound by the limitations on the use of hearsay evidence in administrative proceedings, as set forth in section 120.57(1)(c), which states, "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

38. Findings of Fact were made, however, with respect to the non-hearsay statements and conversations that relate to potential discrimination. Such statements or conversations were admitted as verbal acts having independent legal significance in proving, or disproving, Petitioner's claim of discrimination. Because the determination of whether certain verbal acts occurred in this case, as part of the factual predicate underlying the claim against Respondent, they have independent legal significance and were not offered for the truth of the matters asserted. *See A.J. v. State*, 677 So. 2d 935

(Fla 4th DCA 1996); C*ephas v. State Dep't. of HRS*, 719 So. 2d 7 (Fla. 2d DCA 1998).

Timeliness of Petitioner's Complaint

39. Parsec asserts that Ms. Lopez Garcia's claim is time-barred because she filed her complaint with the Commission beyond the statutory deadline.

40. A person aggrieved by a violation of the FCRA "may file a complaint with the [C]ommission within 365 days of the alleged violation." § 760.11(1), Fla. Stat.

41. "[D]iscrete discriminatory acts are not actionable if time-barred, even when they are related to acts alleged in timely filed charges." *Nat'l R.R. Passenger Corp., v. Morgan*, 536 U.S. 101, 102 (2002). Failure to promote and denial of training are both discrete acts of discrimination. *Id.* at 115. A time-barred act cannot justify filing a complaint for an act of termination that was not independently discriminatory. *Id*. at 113.

42. "[T]he limitations period begins running at the time the employee is notified that the decision was made to engage in the discriminatory employment practice, not when the effects of the decision began." *Del. State Coll. v. Ricks*, 449 U.S. 250, 259, (1980). The pendency of a grievance, or another method of collateral review of an employment decision, does not toll the limitations period. *Id.* at 251. According to Petitioner's testimony, she was removed from training by December 2017; then Mr. Fardales confirmed that decision during their conversation on May 30, 2018. Even if Petitioner's version of events were credible, she could not revive a claim by reiterating her request for training where it had already been denied. Petitioner's complaint was still untimely because the June 11, 2019, filing of her complaint is more than 365 days from Mr. Fardales's purported May 30, 2018, comments.

43. Because it is undisputed that Petitioner left, or was removed from, the training program in December of 2017, and Petitioner did not file her complaint with the Commission until June 11, 2019, her claim is time-barred.

The alleged discriminatory act occurred outside of the 365-day period, making it immaterial to the resolution of this case, whether or not Petitioner was awaiting a decision on Parsec's intention to allow her to return to the training program at the time her employment officially ended.

44. Even if Ms. Lopez Garcia's complaint were timely, her claim would still fail on the merits, based on the following analysis.

Merits of Petitioner's Claim

45. The burden of proof in this proceeding is on Ms. Lopez Garcia as the petitioner. See *Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996). To prove a violation of the FCRA, Ms. Lopez Garcia must establish 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). A preponderance of the evidence is defined as "the greater weight of the evidence," or evidence that "more likely than not" tends to prove a certain proposition. *S. Fla. Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014).

46. The FCRA prohibits discrimination in the workplace. Among other things, the FCRA makes it unlawful 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(1)(a), Fla. Stat.

47. The FCRA, as amended, is patterned after Title VII of the Civil Rights Act of 1964 and 1991 ("Title VII"). Thus, federal decisional authority interpreting Title VII is applicable to cases arising under the FCRA. *Johnson v. Great Expressions Dental Ctrs. of Fla., P.A.*, 132 So. 3d 1174, 1176 (Fla. 3d DCA 2014).

48. A plaintiff can establish a *prima facie* case for discrimination either by direct or circumstantial evidence. Direct evidence requires actual proof that the employer acted with a discriminatory motive when making the employment decision in question. *Scholz v. RDV Sports, Inc.,* 710 So. 2d 618, 624 (Fla. 5th DCA 1998). Circumstantial evidence, on the other hand, requires a petitioner to satisfy the four-prong test established in *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973). Here, Petitioner's claim is based entirely on circumstantial evidence.

49. "An individual pregnant worker who seeks to show disparate treatment through indirect evidence may do so through application of the *McDonnell Douglas* framework." *Young v. UPS, Inc.*, 575 U.S. 206, 135 S. Ct. 1338, 1353 (2015). Based on the United States Supreme Court's analysis in *McDonnell Douglas*, in order to establish a *prima facie* case based on circumstantial evidence, Petitioner must show that she:

> 1) belongs to a protected class;
> 2) was qualified to do the job;
> 3) was subjected to an adverse employment action; and
> 4) the employer treated similarly situated employees outside the class more favorably.

McDonnel Douglas, 411 U.S. at 802-03.

50. If Petitioner were to satisfy all four prongs of the *McDonnell Douglas* framework, then the burden would shift to Respondent to produce evidence of a legitimate, non-discriminatory reason for its adverse employment action. *Id.*

51. Petitioner satisfied the first prong by a preponderance of the evidence. She established that she was part of a protected class within the meaning of the FCRA, which plainly prohibits discrimination, in pertinent part, based on "pregnancy." It is undisputed that Petitioner was pregnant at the time she ceased training in the yard at Parsec.

52. Petitioner satisfied the second prong by a preponderance of the evidence. Where a petitioner presents evidence to show that she has satisfied a respondent's objectively verifiable qualifications, then it is incumbent on the respondent to introduce its subjective evaluation in rebuttal to eliminate this prong. *Vessels v. Atl. Indep. Sch. Sys.*, 408 F. 3d 763 (11th Cir. 2005). The evidence established that Ms. Lopez Garcia was not qualified for the Terminal Manager position, which she sought. However, a preponderance of the evidence shows that she was qualified simply to be *trained* for a promotion, which is relevant because Petitioner's claim is based, in part, on her removal from training in furtherance of becoming qualified for a future promotion. Demonstrating a *prima facie* case is not onerous. *See Samedi v. Miami-Dade Cty*, 134 F. Supp. 2d 1320, 1345 (S.D. Fla. 2001); *Wexler v. White's Fine Furniture, Inc.*, 317 F. 3d 564 (6th Cir. 2003)(At the *prima facie* stage of an employment discrimination action, based on circumstantial evidence, the inquiry should focus on criteria such as demonstrated possession of the required general skills). Based on Parsec's general policy of accommodating employees who voiced an interest in a different position, or a promotion within the company through on-the-job training, the evidence shows that Petitioner was qualified for the training program.

53. Petitioner did not satisfy the third prong, by a preponderance of the evidence, because the evidence did not establish that she was subjected to an adverse employment action. Although Ms. Lopez Garcia admittedly resigned from her position at Parsec, she claims that she was constructively discharged. In order to prevail on her claim of constructive discharge, Petitioner must show, under an objective standard, that Respondent "made working conditions so difficult that a reasonable person would feel compelled to resign." *Webb v. Fla. Health Care Mgmt. Corp*, 804 So. 2d 422, 424 (Fla. 4th DCA 2001)(citing *Steele v. Offshore Shipbuilding, Inc.,* 867 F.2d 1311, 1317 (11th Cir.1989); *McCaw Cellular Comm. of Fla., Inc. v. Kwiatek,* 763 So. 2d 1063, 1066 (Fla. 4th DCA 1999)). When an employee resigns, it is

presumed that the resignation was voluntary. *MacLean v. City of St. Petersburg*, 194 F. Supp. 2d 1290, 1300 (M.D. Fla. 2002). "An employee has the responsibility to act reasonably before choosing to resign, and then labeling that resignation as a constructive discharge." *Id.* (citing *Matthews v. City of Gulfport*, 72 F.Supp.2d 1328, 1338 (M.D. Fla. 1999)(citing *Garner v. Wal-Mart Stores, Inc.*, 807 F.2d 1536, 1539 (11th Cir. 1987)). In the present case, Petitioner did not present any evidence that her working conditions were objectively difficult, or that would tend to rebut the presumption that her resignation was voluntary in any way.

54. In order to satisfy the fourth prong, Petitioner must show that she was treated less favorably than similarly situated individuals outside her class, through an analysis of valid comparators. Sitting *en banc*, the Eleventh Circuit recently held that comparators must be "similarly situated in all material respects." *Lewis v. City of Union City, Ga.*, 918 F. 3d 1213, 1218 (11th Cir. 2019). A comparator analysis is necessary at the *prima facie* stage of a discrimination case because, by its very nature, "discrimination is a comparative concept." *Id.* at 1223. "It is only by demonstrating that her employer has treated 'like' employees 'differently'—*i.e.*, through an assessment of comparators—that a plaintiff can supply the missing link and provide a valid basis for inferring unlawful *discrimination*." *Id.* In the present case, Ms. Lopez Garcia did not prove that she was treated less favorably than other individuals outside her class. To the contrary, all of the applicants who were competing for the same Terminal Manager position as Petitioner were non-pregnant males. The evidence was clear on its face that Petitioner had less relevant experience than any of the other unsuccessful applicants for the position. Mr. Fardales believed that the individual he hired for the position was the most qualified. The undersigned is "not in the business of adjudging whether employment decisions are prudent or fair. Instead, [the] sole concern is whether unlawful discriminatory animus motivates a challenged employment decision." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196

F.3d 1354, 1361 (11th Cir. 1999). An analysis of Petitioner's comparators does not reveal that any decisions made by Parsec with respect to her employment were motivated by discriminatory animus.

55. Failure to establish a *prima facie* case of discrimination ends the inquiry. *Kidd v. Mando Am. Corp.*, 731 F.3d 1196, 1202 (11th Cir. 2013). Petitioner has not made a *prima facie* showing, by a preponderance of the evidence, that Respondent discriminated against her based on her pregnancy.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that FCHR enter a final order dismissing the Petition for Relief.

DONE AND ENTERED this 29th day of January, 2021, in Tallahassee, Leon County, Florida.

BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 29th 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.