

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ROBERT F. CAMERON,

Petitioner,

vs.

Case No. 20-2495

OSCEOLA COUNTY,

Respondent.

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RECOMMENDED ORDER

The final hearing in this matter was conducted before J. Bruce Culpepper, Administrative Law Judge of the Division of Administrative Hearings, pursuant to sections 120.569 and 120.57(1), Florida Statutes,<sup>1</sup> on August 5 and 7, 2020, by Zoom conference in Tallahassee, Florida.

APPEARANCES

For Petitioner: Robert Finley Cameron, pro se  
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St. Catharines, Ontario, Canada L2S 2-P3 C

For Respondent: Frank M. Townsend, Esquire  
Osceola County Attorney's Office  
1 Courthouse Square, Suite 4700  
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STATEMENT OF THE ISSUE

Whether Petitioner, Robert F. Cameron, was subjected to an unlawful employment practice by Respondent, Osceola County, based on his disability, race, or national origin in violation of the Florida Civil Rights Act.

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<sup>1</sup> All statutory references are to Florida Statutes (2020), unless otherwise noted.

PRELIMINARY STATEMENT

On or about November 1, 2019, Petitioner filed a charge of discrimination with the Florida Commission on Human Relations (the "Commission") alleging that Respondent, Osceola County (the "County"), violated the Florida Civil Rights Act ("FCRA") by discriminating against him based on his disability (handicap), race, and national origin.

On April 23, 2020, the Commission notified Petitioner that no reasonable cause existed to believe that the County committed an unlawful employment practice.

On May 27, 2020, Petitioner filed a Petition for Relief with the Commission alleging a discriminatory employment practice. The Commission transmitted the Petition to the Division of Administrative Hearings ("DOAH") to conduct a chapter 120 evidentiary hearing.

The final hearing was held on August 5 and 7, 2020. At the final hearing, Petitioner testified on his own behalf. Petitioner also called Damaris Morales, Sharon Chauharjasingh, Maria Colon, Robert Morales, Fatima Lozano, and Tammy Barton as witnesses. Petitioner's Exhibits A through D were admitted into evidence. The County's Exhibits A through C, E, G, H, and J through O were admitted into evidence. The County did not call any additional witnesses.

A three-volume Transcript of the final hearing was filed on September 8, 2020. At the close of the hearing, the parties were advised of a ten-day timeframe following receipt of the hearing transcript at DOAH to file post-hearing submittals. Following receipt of the Transcript, Petitioner twice requested additional time to file a proposed recommended order. Finding

good cause, Petitioner's requests were granted.<sup>2</sup> The Proposed Recommended Orders for both parties (including Petitioner's revised Proposed Recommended Order) were duly considered in preparing this Recommended Order.<sup>3</sup>

#### FINDINGS OF FACT

1. Petitioner brings this action alleging that the County discriminated against him based on his disability, race (white), and national origin (Canadian). Specifically, Petitioner asserts that the County failed to provide him a reasonable accommodation to allow him to participate in the application and selection process for a County job.

2. The County is a political subdivision of the State of Florida and under the governance of the Osceola County Board of County Commissioners.

3. At the final hearing, Petitioner testified that he is a disabled individual with at least seven disabilities. Pertinent to this matter, Petitioner stated that he is partially deaf in one ear which limits his ability to hear.<sup>4</sup> In addition, Petitioner relayed that his disability(ies) affect his normal life in that he has frequent medical appointments and requires an increased number of restroom breaks.

4. On October 15, 2019, Petitioner, who is from Canada, applied for the position of Budget Analyst II (the "Analyst Position") with the County. The Analyst Position falls within the County's Office of Management and Budget Department ("OMB"). The OMB is responsible for preparing the County's

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<sup>2</sup> By requesting a deadline for filing a post-hearing submission beyond ten days after the filing of the hearing transcript, the 30-day time period for filing the Recommended Order was waived. *See* Fla. Admin. Code R. 28-106.216(2).

<sup>3</sup> Petitioner filed a revised version of his post-hearing submittal on October 9, 2020, which the undersigned considered as Petitioner's Proposed Recommended Order in writing this Recommended Order.

<sup>4</sup> At the final hearing, Petitioner initially strenuously objected to identifying his specific disability, asserting that his right to privacy protects him from having to disclose personal medical information, except as requested by a medical professional.

annual budget, as well as analyzing and evaluating budget transfers for the County Commissioners.

5. The County initiated the recruitment process for the Analyst Position by posting the opening on the website *www.governmentjobs.com* on October 14, 2019. Petitioner found the posting on the website and submitted his application through the same. A total of 15 individuals applied for the position, including Petitioner.

6. The application window for the Analyst Position closed on October 21, 2019. Thereafter, the County's Human Resources Department screened the 15 applications to ensure the interested persons met the minimum qualifications for the job. Eleven applicants, including Petitioner, possessed the required qualifications. The Human Resources Department forwarded those 11 applications to the OMB for consideration.

7. The OMB reviewed the 11 applications and selected three individuals to interview. These applicants included Petitioner (a white male), Lizette Rivera (a Hispanic female), and Sean Lower (a white male). Thereafter, the Human Resources Department set up a panel of five County employees to interview the candidates.

8. Petitioner learned that he was being considered for the job on Thursday, October 24, 2019. That morning, the County called Petitioner at his home in Canada to inquire whether he was available for an interview the next day, Friday, October 25, 2019. Damaris Morales, an administrative assistant in the OMB, made the call.

9. This case centers around what was said during that morning phone call. Petitioner and Ms. Morales left the conversation with vastly different impressions of what transpired.

#### The Phone Call According to Petitioner

10. Petitioner testified that Ms. Morales called him at a most inopportune time. His home phone rang at 8:44 a.m. At that moment, Petitioner was rushing out of his apartment to reach a 9:00 a.m. doctor's appointment. In

fact, Petitioner had already started his car with an automatic starter, and it was running in his driveway. After he heard his phone ring, however, he turned back to answer the call.

11. Petitioner answered the phone and greeted the caller. The caller identified herself as "Tamaris" from Osceola County.<sup>5</sup> Ms. Morales then informed Petitioner that she was calling to set up an interview for the Analyst Position.

12. Petitioner initially expressed to Ms. Morales that her call was "great" news. He then explained that he was running out the door to a medical appointment. Therefore, he asked if she would email him details about the interview, and he would respond to her as soon as he returned home. Ms. Morales informed Petitioner that the interviews would take place the next day (Friday). Petitioner was alarmed at the short notice. He explained to Ms. Morales that he was currently at home in New York state and could not travel to Florida for an in person interview the next day. Ms. Morales replied that she could arrange a telephone interview. Petitioner then asked Ms. Morales when the interview on Friday was scheduled. Ms. Morales relayed that she would email him the specific information when she obtained the time from her manager. Petitioner stated that he would "clear my schedule tomorrow for that interview." Petitioner then signed off saying, "Thank you. I do have to run. Sorry." Ms. Morales hung up the phone first. The conversation lasted 1 minute and 30 seconds.

13. As Petitioner left for his doctor's appointment, he was under the impression that Ms. Morales would email him imminently regarding available times for the Friday telephone interview.

#### The Phone Call According to Ms. Morales

14. At the final hearing, Ms. Morales described a vastly different conversation with Petitioner. As further discussed below, Ms. Morales's

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<sup>5</sup> At the final hearing, Petitioner testified that he heard Damaris Morales state her name as "Tamaris."

initial impressions of Petitioner from that phone call ultimately led the OMB to decide not to interview Petitioner for the Analyst Position.

15. When Petitioner answered the phone, Ms. Morales testified that Petitioner's "aggressive" tone quite startled her. In a "loud" voice, Petitioner declared, "Yeah. What do you want? I don't have time to talk right now. I've got to be somewhere." Ms. Morales was not expecting such an abrupt and jarring reception. After a few seconds of stunned silence, Ms. Morales explained to Petitioner that she was calling about his application for the Analyst Position.

16. Continuing in his harsh tone, Petitioner replied, "I have somewhere I need to be right now. Send me all the information via email. I am in Niagara Falls, New York." Petitioner then hung up the phone first without providing Ms. Morales his availability for a Friday interview. The whole conversation took less than 30 seconds.

17. At the final hearing, in response to Ms. Morales's testimony, Petitioner suggested that she may have overheard an exchange between him and his son, Stewart, with whom he lives. Petitioner explained that, as he was leaving his apartment, his son called out from his bedroom asking whether the bathroom was free. Petitioner yelled back, "What do you want, Stewart? I am leaving." Petitioner explained that his phone may have malfunctioned and engaged Ms. Morales' call without him actually picking up the receiver. Petitioner strongly denied that he directed the comment "what do you want?" at Ms. Morales.

18. Petitioner also theorized that if he spoke in a loud tone with Ms. Morales, it may have been due to his disability. As indicated above, Petitioner testified that he is deaf in one ear. Petitioner explained that Ms. Morales was talking very fast during their phone call. In responding to her questions, Petitioner was not trying to be abrupt or argumentative. However, he was in a rush to reach his appointment and was frustrated at the delay.

19. Continuing with Petitioner's story, after the phone call, as Thursday morning progressed into Thursday afternoon, Petitioner did not receive an email back from Ms. Morales. Therefore, around 2:15 p.m., Petitioner called the County to speak with her. He was forwarded to her office phone, where he left a voicemail. In his message, Petitioner expressed that he was available for an interview any time the next day (Friday). He also left his Skype contact information.

20. Time continued to pass on Thursday. With no response over the next two hours, at 4:14 p.m., Petitioner again called for Ms. Morales. This time, he was able to reach her. Petitioner inquired about his interview time for Friday. Ms. Morales momentarily demurred, telling Petitioner that she had to check with her manager. After several minutes, Ms. Morales came back on the line. She then told Petitioner that the Friday interviews were "full up." When Petitioner asked about an interview on another day, Petitioner claims that Ms. Morales promptly "slammed the phone down in my ear."

21. Ms. Morales, on the other hand, testified that after she informed Petitioner that no interview times were available on Friday, Petitioner got angry and threatened her with a "legal matter." Petitioner then hung up on her.

22. Petitioner was not content to let the matter drop. Therefore, on Friday morning at 9:47 a.m., he emailed the County Manager, Don Fisher, to complain about the County's Human Resources Department and the OMB. In his email, Petitioner summarized the events from the previous day. Petitioner focused on the fact that Ms. Morales told him that she would provide him an interview time. Then, when he contacted her Thursday afternoon, Ms. Morales informed him that the interviews were "full up," and he would not be offered an opportunity to interview for the Analyst Position.

23. Petitioner sent Mr. Fisher follow-up emails at 10:01 a.m. and 10:03 a.m. In the first follow-up email, Petitioner stated:

I am disabled and covered under the ADA Act. I make this request for accommodation under the ADA Act.

24. At 10:10 a.m., Petitioner sent an email to another County employee, Maria Colon, the Director of the Human Resources Department and the County's Americans with Disability Act ("ADA") coordinator. In this email, Petitioner stated:

You are the designated ADA Act Coordinator, but you are discriminating against me and denying my ADA rights to accommodation under the ACT and Title VII.

I formally ask for this interview to be rescheduled and Oscola [sic] County to stop this discrimination.

25. Attached to this email, Petitioner included a copy of his Ontario Disability Support Program Certificate of Disability ("ODSP Certificate"). At the final hearing, Petitioner explained that the ODSP Certificate, which was determined in 2013, is proof of his disability. Petitioner's certificate states:

Your file with the Disability Adjudication Unit has been adjudicated and you have been found to be a person with a disability as defined in the Ontario Disability Support Program Act. 1997.

26. At the final hearing, Petitioner expounded on the reasons for his request, explaining that he sought an accommodation to enable him to conduct a telephonic interview because his disability prevented him from driving from Canada to Florida to interview in person. Furthermore, as a disabled person, he needed more time to prepare and participate in the recruitment process. The specific accommodation he desired was to be allowed to interview by telephone on Monday, October 28, 2019.

27. Not hearing a response from Ms. Colon by Friday afternoon, at 3:03 p.m., Petitioner dispatched another email to her. He again attached his ODSP Certificate. In this email, Petitioner wrote that "your staff member



Tamaris" refused to schedule an interview and then "hung up the phone on me." Petitioner also repeated that he was "requesting reasonable accommodation for the Budget Analyst II position."

28. Ms. Colon called Petitioner shortly after his second email. During this call, Petitioner informed Ms. Colon that he was disabled, and he needed a telephone interview for the County job opening. Petitioner added that he was located out of state, and he could not travel to Florida in time for an in-person interview. Petitioner further declared that the County was discriminating against him because of his disability and his national origin. Ms. Colon advised Petitioner that she would look into his concerns and get back to him. Petitioner claims that Ms. Colon ended this conversation by slamming the phone in his ear.

29. During this call, despite Ms. Colon's request, Petitioner refused to identify his specific disability. At the final hearing, Petitioner asserted that the law protects those with disabilities from having to disclose their actual medical conditions. He said that, to safeguard their privacy, the disabled do not have to reveal their disability, except to the limited extent necessary to relate the disability to the requested accommodation.

30. At 6:01 p.m. on Friday evening, Ms. Colon emailed Petitioner stating, "Per our phone conversation, I will look into your concerns and get back with you on Monday."

31. By late Monday morning, October 28, 2019, however, Petitioner had not heard from Ms. Colon. Therefore, he sent her two emails. At 11:43 a.m., Petitioner wrote, "When is my interview? I am not available tomorrow."

32. With no response to this first email, at 3:48 p.m., Petitioner wrote, "As per your reply above, you indicated my accommodation request under the ADA and interview time would be dealt with today. It is 4 pm EST. Please respond." Petitioner then signed off, "I am available for an interview 10am to 11 am tomorrow and then on Wednesday, Thursday or Friday."

33. Petitioner received a response from Ms. Colon at 6:10 p.m., Monday evening. In her email, Ms. Colon wrote:

I had the opportunity to look into your concerns. To be honest, customer service is very important in the Budget Analyst II role, and we're assessing those skills in every contact with candidates. The OMB Department had concerns about the way you handled the call and treated the employee that contacted you on October 24th for the purpose of scheduling an interview. Therefore, the Department has moved forward with other candidates.

34. Petitioner was most displeased at Ms. Colon's email, and at 6:54 p.m., he responded:

I did nothing except indicate I was available for an interview. Regardless none of this over-rides the ADA and my rights to employment and accommodation. I will be discussing your actions, the "OMB" in denying my constitutional and ADA rights, my Title VII rights with [a County attorney] tomorrow. If they fail to resolve this, then I will be suing you personally, Tamaris, the OMB and the County on a substantial indemnity basis for well in excess of \$500g.

Petitioner ended the email with "See you soon in court."

35. Six minutes later, at 7:01 p.m., Petitioner sent another email to Ms. Colon. In this message, Petitioner stated:

I must commend you for trying to deflect the egregious violation of my rights through trying to claim my rights to an interview are somehow superceded [sic] by this department withdrawing an interview based on race, geography, nationality and disability ... in a call in which this Tamaris said and I quote – "we are full up" ... . I asked her to leave my interview time through an email. If that qualifies as "poor customer service" then you have a very BIG legal problem using that as a diversion for blantant [sic] discrimination based on race, color, nationality, and disability.

Petitioner ended this email with, "I will be happy to take you to Federal Court not the Courthouse right across the street. See you soon in court."

36. Petitioner wrote Ms. Colon once more at 7:03 p.m. In this email, Petitioner accused Ms. Colon of "a blatant discrimination of interest in applying the ACT. Your superiors told you to deny me my rights under the ADA and you did so." Petitioner then declared that he was going to "sue you personally. ... Trust me on that."

37. After Monday, October 28, 2019, Petitioner never heard back from Ms. Morales or Ms. Colon regarding his application for the Analyst Position. Consequently, Petitioner claims that the County, by refusing to respond to his request for a telephone interview, denied him his rights under the FCRA and the ADA.

38. At the final hearing, Petitioner vehemently denied that he was rude to Ms. Morales or during his call with Ms. Colon. Petitioner professed that he was perfectly polite to Ms. Morales. In addition, he asserted that Ms. Morales's testimony that he hung up the phone on her is totally false. Petitioner also contended that he did not threaten Ms. Colon with legal action as a means of intimidation. He was just exercising his rights as a disabled person.

39. Petitioner further charged that the County's excuse for removing him from consideration was based on a misconstrued comment overheard during a brief phone call. Petitioner insists that his single utterance, "What do you want (Stewart)," cannot and should not justify the County's discriminatory action.

40. The County ultimately hired Lizette Rivera for the Analyst Position. Petitioner alleges that the decision to hire Ms. Rivera is evidence of the County's female employees working together to eliminate white, male candidates. Petitioner maintains that Ms. Morales, a Hispanic female, favored another Hispanic (nondisabled) female (Ms. Rivera) for the Analyst

Position. Consequently, Petitioner claims that Ms. Morales rigged the process and discriminated against Petitioner.

41. At the final hearing, the County did not dispute that, while the OMB initially considered Petitioner for the Analyst Position, it quickly decided not to interview him for the job. The County also confirmed that the OMB did interview, and ultimately hire, Ms. Rivera to fill the Analyst Position.

42. Regarding the County's decision not to interview Petitioner, after the initial phone call, Ms. Morales testified that she was quite startled by Petitioner's rude and unprofessional conduct. She immediately reported the conversation to her supervisor, Sharon Chauharjasingh, who is the Director of the OMB. Ms. Morales expressed to Ms. Chauharjasingh how shocked she was by Petitioner's behavior. Ms. Morales further relayed that because Petitioner was "in a rush," he did not provide her his availability for a telephone interview. Consequently, she had no information which would allow her to schedule him for an interview on Friday.

43. Ms. Morales's testimony describing the telephone interaction with Petitioner was credible and is credited. Petitioner admitted to parts of Ms. Morales's versions, including that fact that he was in a rush and that he yelled, "what do you want?"

44. Other than the two phone calls with Petitioner on Thursday, October 24, 2019, Ms. Morales was not involved in the OMB's decision not to interview Petitioner or to hire Ms. Rivera. (Those decisions belonged to Ms. Chauharjasingh.) Ms. Morales did not participate on the interview panel for either Ms. Rivera or Mr. Lower.

45. Ms. Morales further testified that at no time during her phone calls with Petitioner did he inform her that he had a disability, or that he needed an accommodation to participate in the interview process.

46. Ms. Chauharjasingh also testified at the final hearing. Ms. Chauharjasingh initially explained that the OMB is tasked with preparing the County's annual budget of approximately \$1 billion. The

person who fills the Analyst Position will work in the OMB. The duties of the Analyst Position include reviewing the budgets of the different County departments, as well as assisting those departments with budget questions and preparation related tasks. The Analyst Position will also review budgetary impacts and projections, and be prepared to personally discuss these issues with County representatives. In addition, the Analyst Position will interact daily with other staff members and occasionally contact outside companies and the public.

47. Regarding the hiring of Ms. Rivera, Ms. Chauharjasingh disclosed that, because she oversees the OMB, she was responsible for selecting the person to fill the Analyst Position. For this opening, Ms. Chauharjasingh was the individual who narrowed down the applicants to the shortlist of three individuals including Petitioner, Ms. Rivera, and Mr. Lower. In selecting these candidates, Ms. Chauharjasingh looked at each applicant's past experience as a budget analyst, as well as their aptitude to efficiently assume the job duties. Based on their resumes, Ms. Chauharjasingh believed that each finalist was qualified for the Analyst Position.

48. After selecting the three candidates, Ms. Chauharjasingh asked her assistant, Ms. Morales, to call each applicant and set up an interview. Ms. Chauharjasingh asked Ms. Morales to schedule the interviews for either Friday, October 25, 2019, or Monday, October 28, 2019. At the final hearing, Ms. Chauharjasingh represented that the County routinely interviews job applicants by telephone.

49. Ms. Chauharjasingh further testified that the decision not to continue the interview process with Petitioner was hers. Ms. Chauharjasingh recounted that on Thursday morning, October 24, 2019, Ms. Morales came into her office looking "shaken up." Ms. Morales reported that she had just spoken to Petitioner, and he yelled at her and was rude and unprofessional.

50. Ms. Chauharjasingh had never heard of a job candidate reacting the way Ms. Morales described. Ms. Morales has never complained to her about

any other applicant. Based on Ms. Morales's interaction with Petitioner, Ms. Chauharjasingh immediately decided to remove Petitioner from consideration for the Analyst Position. She therefore directed Ms. Morales to "move on" from Petitioner and not to communicate with him any further. Instead, Ms. Morales was to only schedule interviews with the other two candidates (Ms. Rivera and Mr. Lower).

51. The County's panel of five interviewers, which included Ms. Chauharjasingh, conducted an in-person interview of Ms. Rivera on Friday, October 25, 2019, at 11:30 a.m. Mr. Lower was interviewed, in person, on Monday morning, October 28, 2019, at 9:30 a.m. Following the interviews, the panel ranked the candidates, and then sent the list to Ms. Chauharjasingh. Ms. Chauharjasingh extended the offer of employment to Ms. Rivera, who was the top-ranked candidate.

52. Ms. Chauharjasingh concluded her testimony by asserting that Petitioner's disability played no role in her decision not to interview him. Ms. Chauharjasingh explained that, at the time she decided to terminate the interview process with him, neither she nor Ms. Morales had any knowledge or information regarding Petitioner's disability.

53. Instead, the sole basis for removing Petitioner from the shortlist was Ms. Morales' interaction with him during her initial phone call. Ms. Chauharjasingh testified that, based on the specific responsibilities of the Analyst Position, personal traits such as good communication skills, decorum, and telephone etiquette are very important. For example, the Detailed Job Posting for the Analyst Position includes a Physical Demand Requirement of "Expressing or exchanging ideas by spoken word or perceiving sound by ear." Consequently, upon hearing Ms. Morales's description of Petitioner's attitude and behavior during the telephone call, Ms. Chauharjasingh decided that the County did not need to consider Petitioner's application any further.

54. In her testimony, Ms. Colon expressed that she had no part in the OMB's decision not to interview Petitioner. She became involved in this

matter only after she received Petitioner's email, addressed to her as the County's ADA coordinator, on Friday morning, October 25, 2019.

55. Ms. Colon stated that after she read Petitioner's email, she did not immediately respond because she first wanted to determine what exactly had transpired between Petitioner and Ms. Morales the previous day. Ms. Colon spoke with both Ms. Morales and Ms. Chauharjasingh on Friday. From these conversations, Ms. Colon heard that Petitioner was "rude" during Ms. Morales's first telephone call. Further, Petitioner was so "abrupt" that Ms. Morales was not able to offer him an interview time. Ms. Morales also informed Ms. Colon that Petitioner did not mention a disability or request an accommodation during either of their calls.

56. Regarding her own phone call with Petitioner on Friday afternoon, Ms. Colon described an experience very similar to Ms. Morales's. Ms. Colon testified that the conversation was "not pleasant." As with Ms. Morales, Ms. Colon recounted that Petitioner was "agitated," loud," and "extremely unprofessional." During the exchange, Petitioner also threatened to sue her and the County.

57. Regarding her email to Petitioner on Monday evening, October 28, 2019, in which she wrote that, "The OMB Department had concerns about the way you handled the call and treated the employee that contacted you on October 24th," Ms. Colon stated that the decision not to schedule Petitioner for an interview was made on October 24, 2019. Specifically, after talking with Ms. Morales and Ms. Chauharjasingh, Ms. Colon learned that Ms. Chauharjasingh had decided not to interview Petitioner immediately after Ms. Morales reported to her regarding Petitioner's rude and unprofessional interaction with her during their first phone call.

58. As a final witness, Ms. Fatima Lozano testified regarding her participation on the interview panel for the Analyst Position. Ms. Lozano described herself as a Human Resources "generalist" with the County. Ms. Lozano has taken part in a number of interviews of applicants for County

employment. She relayed that the County routinely conducts telephonic interviews.

59. Ms. Lozano repeated that, when hiring employees, the department responsible for the position sets up the interviews and selects the winner. For the Analyst Position, the OMB selected the applicants who would interview for the job.

60. Regarding scheduling the interviews for the Analyst Position, Ms. Lozano testified that, on October 21, 2019, she received a calendar invite requesting her availability. The interviews then took place on Friday, October 25, 2019, at 11:30 a.m. and Monday, October 28, 2019, at 9:30 a.m.

61. While the above findings chronical the key aspects of Petitioner's discrimination claim, Petitioner also raised several other complaints against the County. Petitioner was exceedingly frustrated by the County's failure to schedule his interview through the *www.governmentjobs.com* website. At the final hearing, Petitioner elicited testimony from several County employees that, although the County pays a hefty annual fee to recruit employees through *governmentjobs.com*, the County only uses the website to solicit applications. Petitioner was "shocked" to learn that the County did not take advantage of the website's functions to schedule interviews with candidates.

62. Petitioner was also "stunned" at the County's attempt to schedule his interview with less than one day's notice. Petitioner found the practice unprofessional and unacceptable. Petitioner represented that the standard process used by *governmentjobs.com* is to email a notification to the job applicant at least four to seven days prior to the agreed interview time.

63. Based on the competent substantial evidence in the record, the preponderance of the evidence does not establish that the County discriminated against Petitioner based on his disability (handicap), race, or national origin. Instead, the credible evidence establishes that the decision not to interview Petitioner was made without knowledge of his disability prior to his request for an accommodation, and without regard to his race or



national origin. The decision to not interview Petitioner was based solely on his own behavior, considered rude and unprofessional, effectively disqualifying him from the job. Accordingly, Petitioner failed to meet his burden of proving that the County committed an unlawful employment practice against him in violation of the FCRA.

#### CONCLUSIONS OF LAW

64. 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(7), Florida Statutes. *See also* Fla. Admin. Code R. 60Y-4.016.

65. Petitioner brings this action alleging that the County discriminated against him during the hiring process for employment with the County. Petitioner specifically charges that the County discriminated against him based on a disability (handicap), in that the County failed to fulfill Petitioner's request for a reasonable accommodation, which would have enabled him to fairly participate in an interview for the Analyst Position.<sup>6</sup>

66. The FCRA protects individuals from disability discrimination in the workplace. *See* §§ 760.10 and 760.11, Fla. Stat. Section 760.10 states, in pertinent part:

(1) It is an unlawful employment practice for an employer:

(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex,

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<sup>6</sup> At various points during the course of this matter, Petitioner also asserted that the County discriminated against him based on his race (white), sex (male), and national origin (Canadian). However, no evidence or testimony in the record supports Petitioner's allegations on these classifications. Instead, based on his testimony at the final hearing, Petitioner's claim primarily focuses on allegations that the County failed to accommodate his request for a reasonable accommodation.

pregnancy, national origin, age, handicap, or marital status.

67. Section 760.11(7) permits a party for whom the Commission determines that there is not reasonable cause to believe that a violation of the FCRA has occurred to request an administrative hearing before DOAH. Following an administrative hearing, if the Administrative Law Judge ("ALJ") finds that a discriminatory act has occurred, the ALJ "shall issue an appropriate recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including back pay." § 760.11(7), Fla. Stat.

68. The burden of proof in administrative proceedings, absent a statutory directive to the contrary, is on the party asserting the affirmative of the issue. *Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981); see also *Sec'y, U.S. Dep't of Hous. & Urban Dev. ex rel. Herron v. Blackwell*, 908 F.2d 864, 870 (11th Cir. 1990); and *Dep't of Banking & Fin., Div. of Sec. & Investor Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996)("The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue."). The hearing is de novo. § 120.57(1)(k) Fla. Stat. The preponderance of the evidence standard is applicable to this matter. § 120.57(1)(j), Fla. Stat.

69. The FCRA is patterned after Title VII of the Civil Rights Act of 1964, as amended. Accordingly, Florida courts hold that federal decisions construing Title VII are applicable when considering claims under the FCRA. *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998); *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 21 (Fla. 3d DCA 2009); and *Fla. State Univ. v. Sondel*, 685 So. 2d 923, 925 n.1 (Fla. 1st DCA 1996).

70. Specifically regarding disability discrimination, the FCRA is construed in conformity with the ADA found in 42 U.S.C. § 12101 *et seq.* *Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1175 (11th Cir. 2005)(citing *Wimberly v.*

*Secs. Tech. Grp., Inc.*, 866 So. 2d 146, 147 (Fla. 4th DCA 2004))("Because Florida courts construe the FCRA in conformity with the ADA, a disability discrimination cause of action is analyzed under the ADA."). *See also Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1255 (11th Cir. 2007)(FCRA claims are analyzed under the same standards as the ADA.).

71. Discrimination may be proven by direct, statistical, or circumstantial evidence. *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009). Direct evidence of discrimination is "evidence, which if believed, proves [the] existence of [a] fact in issue without inference or presumption. ... Evidence that only suggests discrimination, ... or that is subject to more than one interpretation, ... does not constitute direct evidence." *Leme v. S. Baptist Hosp. of Florida, Inc.*, 248 F. Supp. 3d 1319, 1338 (M.D. Fla. 2017); *see also Denney v. City of Albany*, 247 F.3d 1172, 1182 (11th Cir. 2001)(Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent behind the decision without any inference or presumption.); and *Holifield v. Reno*, 115 F.3d 1555, 1561 (11th Cir. 1997). Courts have held that "'only the most blatant remarks, whose intent could be nothing other than to discriminate ...' will constitute direct evidence of discrimination." *Damon v. Fleming Supermarkets of Fla., Inc.*, 196 F.3d 1354, 1358-59 (11th Cir. 1999).

72. The record in this proceeding contains no direct evidence of discrimination regarding the County's decision not to interview Petitioner for the Analyst Position. Petitioner alleges that Ms. Morales fabricated her claim of rudeness as a ruse to exercise a preplanned scheme to eliminate white male candidates. However, other than the fact that both women have Hispanic last names, Petitioner did not offer direct evidence of a discriminatory act on the part of Ms. Morales or any other County employee.

73. Similarly, Petitioner did not present statistical evidence of disability discrimination by the County.

74. In the absence of direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence of disability discrimination to prove his case. For discrimination claims involving circumstantial evidence, Florida courts follow the three-part, burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973), and its progeny. *See also Valenzuela*, 18 So. 3d at 21-2; and *St. Louis v. Fla. Int'l Univ.*, 60 So. 3d 455, 458 (Fla. 3d DCA 2011).

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

76. If Petitioner establishes a prima facie case of disability discrimination, he creates a presumption of discrimination. At that point, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for taking the adverse employment action. *Valenzuela*, 18 So. 3d at 22. The reason for the employer's decision should be clear, reasonably specific, and worthy of credence. *Dep't of Corr. v. Chandler*, 582 So. 2d 1183, 1186 (Fla. 1st DCA 1991). The employer has the burden of production, not persuasion, to demonstrate to the finder of fact that the decision was non-discriminatory. *See Wilson v. B/E Aerospace, Inc.*, 376 F.3d 1079, 1087 (11th Cir. 2004). This burden of production is "exceedingly light." *Holifield*, 115 F.3d at 1564. The employer only needs to produce evidence of a reason for its decision. It is not required to persuade the trier of fact that its decision was actually motivated by the reason given. *See St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502 (1993).

77. If the employer meets its burden, the presumption of discrimination disappears. The burden then shifts back to the employee to prove that the employer's proffered reason was not the true reason but merely a "pretext"

for discrimination. See *Combs v. Plantation Patterns*, 106 F.3d 1519, 1538 (11th Cir. 1997); *Valenzuela*, 18 So. 3d at 25. In order to satisfy this final step of the process, the employee must "show[] directly that a discriminatory reason more likely than not motivated the decision, or indirectly by showing that the proffered reason for the employment decision is not worthy of belief." *Chandler*, 582 So. 2d at 1186 (citing *Tex. Dep't of Cmty. Aff. v. Burdine*, 450 U.S. 248, 252-56 (1981)). The inquiry on pretext centers on the employer's "good faith belief," not the employee's interpretation of the events. *Juback v. Michaels Stores, Inc.*, 143 F. Supp. 3d 1195, 1207 (M.D. Fla. 2015). The proffered explanation is "not worthy of belief" if the employee demonstrates "such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could find them unworthy of credence." *Combs*, 106 F.3d at 1538; see also *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 143, 120 S. Ct. 2097, 147 L. Ed. 2d 105 (2000). Petitioner "must prove that the reasons articulated were false **and** that the discrimination was the real reason" for the defendant's actions. *City of Miami v. Hervis*, 65 So. 3d 1110, 1117 (Fla. 3d DCA 2011)(quoting *St. Mary's Honor Ctr.*, 509 U.S. at 515: "[A] reason cannot be proved to be 'a pretext for discrimination' unless it is shown both that the reason was false, and that discrimination was the real reason."

78. Despite the shifting burdens of proof, "the ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." *Burdine*, 450 U.S. at 253, 101 S. Ct. at 1089, 67 L. Ed. 2d 207; *Valenzuela*, 18 So. 3d at 22. In other words, regardless of whether a petitioner presents direct evidence or relies on the *McDonnell Douglas* presumption to establish a discrimination claim, Petitioner "always has the burden of demonstrating that, more probably than not, the employer took an adverse employment action against him on the basis of a protected personal characteristic." *Leme*, 248 F. Supp.

3d 1319 (M.D. Fla. 2017)(citing *Wright v. Southland Corp.*, 187 F.3d 1287, 1292 (11th Cir. 1999)).

79. To establish a claim for disability discrimination under the FCRA, Petitioner must show that: (1) he had a disability; (2) he was a qualified individual; (3) the employer took an adverse employment action against him; and (4) the employer took that action because of the petitioner's disability. *Leme v. S. Baptist Hosp. of Florida, Inc.*, 248 F. Supp. 3d 1319, 1337–38 (M.D. Fla. 2017); *see also Lucas v. W.W. Grainger, Inc.*, 257 F.3d 1249, 1255 (11th Cir. 2001)(Using circumstantial evidence, "[i]n order to establish a prima facie case of discrimination under the ADA, the plaintiff must show that: (1) he is disabled; (2) he was a qualified individual at the relevant time, meaning he could perform the essential functions of the job in question with or without reasonable accommodations; and (3) he was discriminated against because of his disability;" *Frazier-White v. Gee*, 818 F.3d 1249, 1255 (11th Cir. 2016); and 42 U.S.C. § 12112(a).

80. A petitioner may pursue a disability discrimination claim on three distinct theories including intentional discrimination, disparate treatment, or failure to make reasonable accommodations. *Leme*, 248 F. Supp. 3d at 1338; *Rylee v. Chapman*, 316 Fed. Appx. 901, 906 (11th Cir. 2009). Pertinent to Petitioner's claim, "[f]ailure to accommodate is an *independent* basis for liability under the ADA." *Alboniga v. Sch. Bd. of Broward Cty.*, 87 F. Supp. 3d 1319, 1337 (S.D. Fla. 2015).

81. To prevail on a failure to accommodate claim, Petitioner must demonstrate that: (1) he was a qualified individual with a disability; (2) he made a specific request for a reasonable accommodation; and (3) the employer failed to provide the reasonable accommodation, or engage in the requisite interactive process in order to identify a reasonable accommodation. *D'Onofrio v. Costco Wholesale Corp.*, 964 F.3d 1014, 1021 (11th Cir. 2020); *see also* 42 U.S.C. § 12112(b); and *Lucas*, 257 F.3d at 1255 ("An employer unlawfully discriminates against a qualified individual with a disability

when the employer fails to provide 'reasonable accommodations' for the disability--unless doing so would impose undue hardship on the employer."). The third prong examines whether, but for Petitioner's disability, he would have been subjected to the alleged discrimination. *Alboniga*, 87 F. Supp. 3d at 1338; and *Holly*, 492 F.3d at 1263, n.17 (The petitioner "bears the burden of showing not only that [the employer] failed to reasonably accommodate his disability, but that, but for [the employer's] failure to accommodate his disability, he would not have been terminated.").

82. A petitioner is "qualified" if he, with or without reasonable accommodation, can perform the essential functions and job requirements of the position he desires. *Earl v. Meryns, Inc.*, 207 F.3d 1361, 1365 (11th Cir. 2000).

83. A qualified individual is not entitled to the accommodation of his choice, but rather, only to a "reasonable" accommodation. *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1286 (11th Cir. 1997).

84. A petitioner bears the burden both to identify an accommodation and to show that it is "reasonable." *Lucas*, 257 F.3d at 1255. "Whether an accommodation is reasonable depends on specific circumstances." *Terrell v. USAir*, 132 F.3d 621, 626 (11th Cir. 1998). An accommodation is "reasonable" and, therefore, required under the ADA, only if it enables the employee to perform the essential functions of the job. *LaChance v. Duffy's Draft House*, 146 F.3d 832, 835 (11th Cir. 1998). An employer need not accommodate an employee in any manner the employee desires, nor reallocate job duties to change the essential functions of the job. *Meryns, Inc.*, 207 F.3d at 1367. The intent of the ADA is that "'an employer needs only to provide meaningful *equal* employment opportunities' ... '[t]he ADA was never intended to turn nondiscrimination into discrimination' against the non-disabled." *United States Equal Employment Opportunity Comm'n v. St. Joseph's Hosp., Inc.*, 842 F.3d 1333, 1346 (11th Cir. 2016)(quoting *Terrell*, 132 F.3d at 627).

85. Moreover, an employer is not required to provide an employee with "the maximum accommodation or every conceivable accommodation possible." *Stewart*, 117 F.3d at 1285. Neither is an employer required "to transform the position into another one by eliminating functions that are essential to the nature of the job as it exists." *Lucas*, 257 F.3d at 1260.

86. Finally, "the duty to provide a reasonable accommodation is not triggered unless a specific demand for an accommodation has been made." *Gaston v. Bellingrath Gardens & Home, Inc.*, 167 F.3d 1361, 1363 (11th Cir. 1999).

87. Turning to the facts found in this matter regarding Petitioner's failure to accommodate claim, Petitioner proved, and County did not dispute, that he is "disabled" under the FCRA. Petitioner is disabled due to hearing loss; hearing is a "major life activity" under the ADA.<sup>7</sup>

88. Petitioner also established, and again, the County did not dispute, that he was "qualified" for the Analyst Position. Both the County's Human Resources Department and Ms. Chauharjasingh screened Petitioner's resume and found that he possessed the requisite experience and training to perform the functions of the job for which he applied.

89. Next, Petitioner showed that he made a specific request for an accommodation. On Friday morning, October 25, 2019, in an email to the County Manager, Petitioner stated, "I am disabled and covered under the ADA Act. I make this request for accommodation under the ADA Act." Moments later, Petitioner emailed Ms. Colon in the County's Human Resources Department requesting his "interview to be rescheduled." That afternoon, in a telephone call with Ms. Colon, Petitioner specifically expressed that he was disabled, and he needed a telephone interview for a job opening with the County.

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<sup>7</sup> A "disability" is defined as (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(1). *See St. Joseph's Hosp., Inc.*, 842 F.3d at 1343.



90. The facts further demonstrate that Petitioner's request was "reasonable." The accommodation Petitioner sought was to participate in his interview by telephone. Over the course of his conversations with Ms. Colon, Petitioner indicated that he was available for a telephonic interview at various times every day from October 28 through November 1, 2019. Ms. Morales, Ms. Chauharjasingh, and Ms. Colon all readily agreed that the County regularly conducts interviews by telephone. In addition, the fact that the County actually interviewed one job candidate (Mr. Lower) on Monday, October 28, 2019, after Petitioner made his request, provides sufficient evidence that the County could have arranged for a phone call with Petitioner within their interview schedule.

91. Finally, it is undisputed that the County did not provide Petitioner the specific accommodation he requested.

92. However, despite the fact that Petitioner established that the County could have provided him a reasonable accommodation, Petitioner did not carry his ultimate burden of proving that the County took some action against him "because of his disability" or any other protected characteristic. Based on the facts in the record, Petitioner did not demonstrate that, but for the County's failure to accommodate his disability (hearing loss), he would have interviewed for the Analyst Position.

93. On the contrary, the competent substantial evidence does not connect the County's decision not to interview Petitioner (or set up a telephone interview) to Petitioner's disability or any other protected characteristic. Instead, the facts adduced at the evidentiary hearing demonstrate that the County did not interview Petitioner because it determined that his personality was incompatible with the role of the Analyst Position. Ms. Morales convincingly testified that, during her phone call on Thursday, October 24, 2019, she found Petitioner "aggressive," "loud," and "rude." Thereafter, Ms. Chauharjasingh credibly expressed that, based on hearing Ms. Morales's report of Petitioner's unprofessional conduct, she immediately

decided not to interview Petitioner. Ms. Chauharjasingh supported her decision by explaining that the County simply did not want to hire someone who displayed (even momentarily) such disagreeable tendencies.<sup>8</sup>

94. The evidence further shows that Petitioner fell out of consideration for the Analyst Position before the decision maker had any knowledge that he was disabled. Ms. Chauharjasingh eliminated Petitioner from contention for the job on Thursday morning, October 24, 2019. Petitioner did not convey his specific accommodation request to the County until Friday, October 25, 2019. The County, however, relied on Ms. Chauharjasingh's decision from the previous day throughout its subsequent communications with Petitioner.

95. Accordingly, Petitioner failed to prove that, but for the County's failure to accommodate his disability (by providing a telephonic interview), the County would have included Petitioner in the selection process for the Analyst Position. Conversely, the County witnesses credibly testified that the reason Petitioner was not interviewed was not related to his claimed disability or any other protected characteristic.

96. At the final hearing, Petitioner expressed his extreme frustration with the County's "egregious" decision not to schedule him for an interview for the Analyst Position. It should be noted, however, that in a proceeding under the FCRA, the court is "not in the business of adjudging whether employment decisions are prudent or fair. Instead, [the court's] 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). Not everything that makes an employee unhappy is an actionable adverse action for purposes of the FCRA. *Davis v. Town of Lake Park*, 245 F.3d 1232, 1238 (11th Cir. 2001). For example, an employer may

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<sup>8</sup> See, e.g., *Saweress v. Ivey*, 354 F. Supp. 3d 1288, 1306 (M.D. Fla. 2019) ("Negative scores during an interview for interpersonal skills, as well as personality and judgment, can also establish a legitimate reason for an employment decision."); see also *Mira v. Monroe Cty. Sch. Bd.*, 687 F. Supp. 1538, 1550–51 (S.D. Fla. 1988) (citing multiple cases finding employment decisions to be lawful when based on subjective evaluations of personality and judgment).

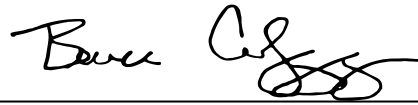
fire an employee "for a good reason, a bad reason, a reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason." *Nix v. WLCY Radio/Rahall Commc'ns*, 738 F.2d 1181, 1187 (11th Cir. 1984). An employee cannot succeed by simply quarreling with the wisdom of the employer's reasons. *Chapman v. AI Transp.*, 229 F.3d 1012 (11th Cir. 2000); *see also Alexander v. Fulton Cty., Ga.*, 207 F.3d 1303, 1341 (11th Cir. 2000)("[I]t is not the court's role to second-guess the wisdom of an employer's decisions as long as the decisions are not racially motivated."). While canceling an interview based on a single, relatively short phone call may seem extreme and unjustified to Petitioner, no evidence ties the County's decision not to interview Petitioner to his disability or any other protected characteristic.

97. In sum, the evidence on record does not support Petitioner's claim that the County discriminated against him based on his disability or any other protected characteristic. Petitioner did not show that the County's stated reason for not scheduling him for a telephonic interview for the Analyst Position was "because of his disability" or was made with discriminatory intent. Accordingly, Petitioner failed to prove, by a preponderance of the evidence, that the County took an adverse employment action against him on the basis of his disability.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations issue a final order finding that Petitioner, Robert F. Cameron, did not prove that Respondent, Osceola County, committed an unlawful employment practice against him, and dismissing his Petition for Relief from an unlawful employment practice.

DONE AND ENTERED this 12th day of November, 2020, in Tallahassee,  
Leon County, Florida.



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J. BRUCE CULPEPPER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
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this 12th day of November, 2020.

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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.