

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

TEQUILLA Y. LOCKWOOD,

Petitioner,

vs.

Case No. 20-4114

STATE OF FLORIDA DEPARTMENT OF
JUVENILE JUSTICE,

Respondent.

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RECOMMENDED ORDER

A duly-noticed final hearing was conducted in this matter on November 17, 2020, via Zoom conference, before Suzanne Van Wyk, an Administrative Law Judge with the Division of Administrative Hearings (“Division”).

APPEARANCES

For Petitioner: Tequilla Y. Lockwood, pro se
351 Carter Road
Quincy, Florida 32351

For Respondent: Debora E. Fridie, Esquire
Department of Juvenile Justice
2737 Centerview Drive, Suite 3200
Tallahassee, Florida 32399-3100

STATEMENT OF THE ISSUE

Whether Respondent, Department of Juvenile Justice (“Respondent” or “Department”), is liable to Petitioner, Tequilla Lockwood (“Petitioner”), for

employment discrimination in violation of the Florida Civil Rights Act of 1992, sections 760.01-760.11, Florida Statutes (2019).¹

PRELIMINARY STATEMENT

On November 18, 2019, Petitioner filed a Complaint of Discrimination (“Complaint”) with the Florida Commission on Human Relations (“Commission”) alleging that Respondent violated chapter 760, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act; and the Americans with Disabilities Act. Petitioner alleged that, as a Black person over the age of 40, she was discriminated against in terms of her compensation. Petitioner alleged that she accepted a pay cut when she began employment with the Department in February 2007; that she never received additional compensation, which she was promised; and that younger, White employees with the same qualifications have been hired by the Department at higher starting salaries than she received.

On August 11, 2020, the Commission issued a Determination: No Reasonable Cause, and a Notice of Determination: No Reasonable Cause, determining there was no reasonable cause to believe that unlawful discrimination occurred in this matter. On September 10, 2020, Petitioner filed a Petition for Relief (“Petition”) with the Commission, which was transmitted to the Division on September 16, 2020, for assignment of an Administrative Law Judge to conduct a final hearing.

The final hearing was scheduled for November 17, 2020, and commenced as scheduled. At the final hearing, Petitioner testified on her own behalf and offered Petitioner’s Exhibits 1 through 6, which were admitted into evidence.

¹ Except as otherwise noted, all references to the Florida Statutes herein, are to the 2019 version, which was in effect when Petitioner’s Complaint was filed.

Respondent presented the testimony of Aldrin Sanders, the Department's former Equal Employment Opportunity ("EEO") Officer; and Gwen Steverson, Northwest Regional Director for the Department's Office of Probation and Community Intervention. Respondent's Exhibits 1 through 6 were admitted into evidence.

Upon Respondent's Motion for Official Recognition, the undersigned officially recognized the Department's "Classification Policy," "Classification Procedures," and the State Personnel System "Classification and Compensation Program Manual."

The proceedings were recorded and a one-volume Transcript of the Final Hearing was filed with the Division on November 30, 2020. Petitioner filed a Proposed Recommended Order ("PRO") on December 7, 2020, and Respondent timely filed a PRO on December 8, 2020. On December 14, 2020, Respondent filed a Motion to Strike Allegations in Petitioner's PRO, which was granted. The undersigned has considered both post-hearing filings in preparation of this Recommended Order, except those portions of Petitioner's PRO which were stricken.

FINDINGS OF FACT

1. The Department is a criminal justice agency of the State of Florida, whose mission is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services, designated to strengthen families and turn around the lives of troubled youth. *See* § 20.316, Fla. Stat.

2. Petitioner is a Black female, age 61,² who has been employed by the Department as a secretary specialist, in career service, in the Office of

² Respondent's age is as stated in her Petition filed on September 10, 2020.

Probation and Community Intervention (“Probation”), Northwest Region, Circuit 2, since February 9, 2007. Petitioner was hired as a secretary specialist, in Position No. 80019949, at an initial salary of \$20,734.74, or \$797.49 biweekly.

State Personnel System

3. The Department is a state agency in the State Personnel System (“SPS”), which is the employment system for the Executive Branch of state government and its applicable pay plans. Section 110.2035, Florida Statutes, authorizes the SPS classification and compensation program for positions in the career service, selected exempt service, and senior management service. In addition, Florida Administrative Code Rule 60L-31, Classification Plan, addresses management of the classification system, and rule 60L-32, Compensation and Benefits, addresses management of salary and other benefits.

4. “Compensation” within the SPS is governed by section 110.2035, as is the classification system. In addition, rule 60L-32 establishes the policies and procedures applicable to all occupations in the SPS.

5. In the broadband system of the SPS, pay is determined through a salary range or pay band. Pay bands establish the lowest base pay and the highest base pay for a particular class code.

6. The pay band for a Department secretary specialist is \$797.49 to \$1,379.66 biweekly, or an annual salary from \$20,734.74 to \$35,871.09.

7. Upon appointment, a state agency sets an employee’s base rate of pay within the pay band for the broadband level to which appointed. *See Fla. Admin. Code R. 60L-32.001.*

8. An agency may increase an employee’s base rate of pay within the established pay band at any time, based upon documented justification, provided funds are available for the increase, and the increase is not specifically prohibited by law. *See Fla. Admin. Code R. 60L-32.0011.*

9. Pursuant to the “DJJ Delegation of Pay Authority,” effective July 1, 2016, and the “DJJ Spending Guidelines for FY 2019-2020,” effective July 1, 2019, Respondent authorizes increases to an employee’s rate of pay for a variety of reasons, including added duties and responsibility, receipt of a competitive job offer, and merit.

10. A position with a Competitive Area Differential (“CAD”) designation is one that has been approved by the Department of Management Services (DMS) and the Legislature to receive a pay additive which is designed to attract and retain workers in geographical areas where other employers pay comparatively more for similar jobs. *See Fla. Admin. Code R. 60L-32.0012(1)(h).*

Allegation of Paycut

11. Prior to her employment with the Department, Petitioner was employed by the Department of Children and Families (“DCF”) as a data entry operator, at a salary of \$20,478.38, or \$787.63 biweekly.

12. When Petitioner was hired by the Department, although she was hired at the lowest base pay for a secretary specialist, she received a slight increase in salary (\$256.36) from her prior position with DCF.

Allegation of Failure to Increase Compensation

13. During her employment, the Department has increased Petitioner’s annual salary.

14. On October 1, 2013, her salary was increased to \$22,134.84.

15. On October 1, 2017, her salary was increased to \$23,534.94.

16. As of January 10, 2020, Petitioner’s base rate of pay was \$905.19 biweekly.

17. As of October 1, 2020, Petitioner’s base rate of pay is \$943.66 biweekly.

18. Based upon a biweekly base pay of \$943.66, paid 26 times in a year, Petitioner’s current annual salary is \$24,535.16.

Allegation of Discrimination in Starting Salary

19. At the time Petitioner filed her Complaint alleging that younger, White secretary specialists were being hired at a greater rate of compensation, Petitioner offered no comparators. As a result, the EEO Officer, Aldrin Sanders, conducted a statewide data comparison for Department secretary specialists.

20. As of January 9, 2020, the Department had 84 employees in secretary specialist positions. Of those employees, one was Asian, 41 were Black, nine were Hispanic, and 33 were White.

21. Mr. Sanders determined that Petitioner's salary was higher than all secretary specialists hired after her, with the exception of four—one Black and three White—whose salaries were equal to that of Petitioner.

22. Mr. Sanders further determined that all 34 secretary specialists whose salaries were higher than Petitioner's—18 of whom were Black, five Hispanic, and 11 White—were hired before Petitioner. Furthermore, five of those with higher salaries were part of the 2010-2011 Statewide Workforce Reduction efforts and were demoted from other positions to the secretary specialist position, and one was a voluntary demotion with a five percent decrease in salary pursuant to spending guidelines.

23. Additionally, the data obtained by Mr. Sanders indicated that, on average, secretary specialists who are 40 years of age or older made \$63.45 more than their counterparts who are 39 and under; and Black secretary specialists, on average, made \$8.09 more than their non-Black counterparts.

24. At the final hearing, Petitioner identified particular Department secretary specialists as comparators for her claims of unlawful discrimination. She highlighted specific positions from the spreadsheet listing the Department's secretary specialists statewide, which was included as a part of Mr. Sanders' report. Petitioner also submitted into evidence screenshots about employee salaries from the website, "Florida has a Right to Know," https://www.floridahasarighttoknow.myflorida.com/search_state_payroll.

25. The secretary specialist in Position No. 80004540 is a Black female, 26 years old, who was hired by the Department on November 9, 2018, at a starting base pay rate of \$877.24 biweekly. That rate is higher than Petitioner's starting base pay rate of \$797.49 biweekly in 2007. That position is in Probation Circuit 11, Dade County, as of November 7, 2020. According to the screenshot from "Florida Has a Right to Know," the secretary specialist in that position has an annual salary of \$25,077.26, higher than Petitioner's current salary of \$24,535.16.

26. The secretary specialist in Position No. 80048017 is a Black female, 37 years old, who was hired by the Department on August 16, 2019, at a base pay rate of \$877.24 biweekly. The secretary specialist in that position was initially hired by the State of Florida on December 7, 2007, but the evidence is insufficient to determine which agency previously employed her, her position title, or her salary. That position is in Probation Circuit 17, Broward County, as of September 5, 2018. According to the screenshot from "Florida Has a Right to Know," the secretary specialist is reported as having a current annual salary of \$24,077.04, which is lower than Petitioner's current annual salary.

27. The secretary specialist in Position No. 80002854 is a Black female, 37 years old, who was hired by the Department on November 9, 2018, at a base pay rate of \$877.24 biweekly. That position is in Probation Circuit 15, Palm Beach County, as of November 6, 2018. According to the screenshot from "Florida Has a Right to Know," the secretary specialist is reported as having an annual salary of \$24,077.04, which is lower than Petitioner's current annual salary.

28. According to a screenshot from "Florida Has a Right to Know," a secretary specialist in Position No. ***002456, by the name of Kenneth David Devilling, assigned to Department Community Interventions & Service, purportedly earns \$29,050.84. That position is not in Probation. Petitioner

introduced no competent evidence on which to base a finding of either the race or age of that particular secretary specialist.

29. When an employee is hired, they negotiate their salary with the hiring manager. Determining an employee's salary is a subjective process. Managers can adjust starting salaries within the pay bands based on consideration of many factors, including the type of appointment; the knowledge, skills, and abilities ("KSAs") required of the position; the KSAs possessed by the employee; difficulty in recruitment for the position; geographic location of the position; years of service and experience of employees; licensure; certification and registration requirements; collective bargaining agreements; layoff, etc. These factors are not to be considered all-inclusive, and each appointment or employment decision may vary because of the different factors from one situation to another.

Regional Structure of Probation

30. Probation is divided into North, Central, and South regions. Probation North region is further divided into Northeast and Northwest regions. The Northwest region encompasses judicial circuits 1, 2, 3, and 14.

31. Gwen Steverson has served as Northwest Regional Director for Probation since March 2019. Ms. Steverson reports directly to Assistant Secretary Paul Hatcher, who supervises and manages Probation statewide.

32. Ms. Steverson's duties and responsibilities include assisting the assistant secretary in directing and operating all activities within the Probation Northwest region; ensuring that Probation's programs are administered in accordance with applicable laws, rules, and regulations; managing her assigned circuits; and managing all human resource decisions.

33. Ms. Steverson has three counterparts: Jill Wells, regional director for Probation Northeast; Cathy Lake, regional director for Probation Central; and Wydee'a Wilson, regional director for Probation South. Each regional director has ultimate responsibility for the Probation regions, and the judicial circuits therein, to which they are assigned.

34. Secretary specialist positions in the South Region are subject to a CAD to account for cost-of-living differences in that region, compared with Central and North. The record does not contain competent evidence to determine the amount of the differential.

35. Ms. Steverson has ultimate management authority only in Probation Northwest for recruitment, selection, hiring, and salary offers to job candidates and pay raises to employees. She has no management authority in the other Probation regions or in any other Department program areas with respect to job candidates and employees. Likewise, other Department managers have no authority concerning job candidates and employees in Probation Northwest.

36. Petitioner is employed as the sole secretary specialist in Probation Northwest, Circuit 2, Gadsden County Office, in Quincy, Florida. There are other secretary specialist positions in Circuit 2, and the Northwest Region more broadly, but the evidence was insufficient to determine how many positions and to which circuits they are assigned.

37. Petitioner's duties and responsibilities as secretary specialist include the following: managing the office; serving as a receptionist for Probation Circuit 2 by receiving and routing all incoming calls; receiving and directing visitors; ensuring that office supplies are maintained and stocked; performing background juvenile records checks for law enforcement and/or other agencies; running monthly caseloads and distributing daily court dockets to supervisors; performing data entry tasks, including maintaining required tracking logs, such as Pre-Disposition Reports (PDS) and Rep-Release Notification (PRN) logs, and entering "at larges" in the Juvenile Justice Information System (JJIS); and performing other duties as assigned.

38. Ms. Steverson has management authority over Juvenile Probation Officers ("JPOs") in the Probation Northwest Region.

39. The duties and responsibilities of a JPO differ greatly from those of a secretary specialist. Key JPO duties are case management of a youth and

their family, including understanding the court process; attending court for a youth that has been arrested; arranging for all assessments, whether mental health or substance abuse, to determine the needs of the youth and the family; making referrals to Department contract providers, based upon the results of the assessments; ensuring that all court-ordered sanctions are completed by the youth; filing violations of probation; conducting face-to-face visits; working with the schools; and carrying the youth through the process.

40. The qualifications for JPOs differ from those for a secretary specialist. A JPO must have a bachelor's degree; successfully complete the JPO Academy Certification process within the first 180 days of employment; obtain certifications in Protective Action Response (PAR), Cardiopulmonary Resuscitation (CPR), and First Aid; and be trained in the Detention Risk Assessment Instrument (DRAI).

41. A secretary specialist in Probation is required to have a high school diploma and is not required to successfully complete the trainings or obtain the certifications required for a JPO.

42. Petitioner complained that she was performing the functions of a JPO, for which additional compensation was due her, such as interpreting arrest affidavits, "at larges," entering charges in the Department system for four counties, documenting status of prior cases in the case notebook, etc. However, Petitioner did not prove that these tasks were outside of her assigned job duties.

43. Ms. Steverson testified, credibly, that Petitioner has not been working "out of class," that is, Petitioner has not been performing job duties above and beyond those in her position description.

CONCLUSIONS OF LAW

44. The Division has jurisdiction over the parties to and the subject matter of this case pursuant to sections 120.569(2) and 120.57(1), Florida Statutes (2020).

45. Petitioner has the burden of proving, by a preponderance of the evidence, that Respondent committed an unlawful employment practice. *See St. Louis v. Fla. Int'l Univ.*, 60 So. 3d 455 (Fla. 3d DCA 2011); *Fla. Dep't of Transp. v. J.W.C. Co.*, 396 So. 2d 778 (Fla. 1st DCA 1981).

46. Petitioner can meet her burden of proof with either direct or circumstantial evidence. *See Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17 (Fla. 3d DCA 2009).

47. Direct evidence is evidence that, if believed, would prove the existence of discrimination without the need for inference or presumption. *See Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003). “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.*, 196 F.3d 1354, 1358-59 (11th Cir. 1996).

48. “[D]irect evidence of intent is often unavailable.” *Shealy v. City of Albany, Ga.*, 89 F.3d 804, 806 (11th Cir. 1996). For this reason, those who claim to be victims of intentional discrimination “are permitted to establish their cases through inferential and circumstantial proof.” *Kline v. Tenn. Valley Auth.*, 128 F. 3d 337, 348 (6th Cir. 1997).

49. Because Petitioner introduced no direct evidence of unlawful discrimination, Petitioner must prove her allegations by circumstantial evidence. Circumstantial evidence of discrimination is subject to the burden-shifting framework established in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802 (1973). Under this well-established model of proof, the complainant bears the initial burden of establishing a prima facie case of discrimination.

50. If the charging party is able to make out a prima facie case, the burden shifts to the employer to offer a legitimate, non-discriminatory reason for the adverse employment action. *See Dep't of Corr. v. Chandler*, 582 So. 2d 1183 (Fla. 1st DCA 1991). If the employer meets that burden, the presumption disappears and the employee must prove that the legitimate

reasons were a pretext. *See Valenzuela*, 18 So. 3d at 17. Facts that are sufficient to establish a prima facie case must be adequate to permit an inference of discrimination. *Id.*

Age Discrimination

51. Section 760.10 provides, “[i]t is an unlawful employment practice for an employer ... to discriminate against an individual with respect to compensation ... because of such individual’s ... age.” § 760.10(1)(a), Fla. Stat.

52. Chapter 760, Part I, is patterned after Title VII of the Civil Rights Act of 1964, as amended, as well as the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. § 623. When “a Florida statute is modeled after a federal law on the same subject, the Florida statute will take on the same constructions as placed on its federal prototype.” *Brand v. Fla. Power Corp.*, 633 So. 2d 504, 509 (Fla. 1st DCA 1994); *see also Valenzuela*, 18 So. 3d at 17. Federal case law interpreting Title VII and the ADEA applies to cases arising under the Florida Civil Rights Act of 1992 (“FCRA”). *Brown Distrib. Co. of W. Palm Beach v. Marcell*, 890 So. 2d 1227, 1230 n.1 (Fla. 4th DCA 2005).

53. In cases alleging age discrimination under section 760.10(1)(a), the Commission has concluded that, unlike cases brought under the ADEA, the age of 40 has no significance in the interpretation of the FCRA. *See Lopez v. Wal-Mart Stores E., L.P.*, Case No. 18-0297 (Fla. DOAH Oct. 25, 2018), rejected in part, Case No. 2017-410 (Fla. FCHR Jan. 17, 2019). The Commission has determined that to demonstrate the last element of a prima facie case of age discrimination under Florida law, it is sufficient for Petitioner to show that she was treated less favorably than similarly situated individuals of a “different” age as opposed to a “younger” age. *See Torrence v. Hendrick Honda Daytona*, Case No. 14-5506 (Fla. DOAH Feb. 26, 2015), rejected in part, Case No. 2014-303 (Fla. FCHR May 21, 2015), and cases cited therein. The Commission cites its own final orders as the only basis for this interpretation.

54. The Commission has repeatedly rejected and modified the conclusions of law in the Division’s recommended orders construing section 760.10 to apply “protected class” status to individuals over age 40 for the purposes of demonstrating a prima facie case of age discrimination. *See, e.g., Downs v. Shear Express, Inc.*, FCHR Order No. 06-036 (May 24, 2006); *Boles v. Santa Rosa Cty. Sheriff’s Off.*, FCHR Order No. 08-013 (Feb. 8, 2008); *Grasso v. Ag. for Health Care Admin.*, FCHR Order No. 15-001 (Jan. 14, 2015); *Cox v. Gulf Breeze Resorts Realty, Inc.*, FCHR Order No. 09-037 (Apr. 13, 2009); *Toms v. Marion Cty. Sch. Bd.*, FCHR Order No. 07-060 (Nov. 7, 2007); and *Stewart v. Pasco Cty. Bd. of Cty. Comm’rs*, FCHR Order No. 07- 050 (Sept. 25, 2007).

55. In its orders, the Commission reasoned that the conclusions of law being modified “are conclusions of law over which the [Commission] has substantive jurisdiction, namely conclusions of law stating what must be demonstrated to establish a prima facie case of unlawful discrimination under the [FCRA].” *Freeman v. LD Mullins Lumber Co.*, Case No. 2013-01700 (Fla. FCHR Nov. 7, 2014).

56. In 2018, the Florida Constitution was amended to create article V, section 21, which reads as follows:

Judicial interpretation of statutes and rules. — In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency’s interpretation of such statute or rule, and must instead interpret such statute or rule de novo.

57. The undersigned is not required to defer to the Commission’s interpretation of section 760.10, and declines to do so. The undersigned adopts the more persuasive legal analysis of the Eleventh Circuit Court of Appeals and Florida courts.

58. To establish a prima facie case of age discrimination under the federal ADEA, the complainant must show that she is a member of a protected age

group (i.e., over 40); she was qualified for the job; she suffered adverse employment action; and she was treated less favorably than substantially younger persons. *See McQueen v. Wells Fargo*, 2014 U.S. App. LEXIS 14387, at *7 (11th Cir. 2014) (citing *McDonnell Douglas*, 411 U.S. at 792) (adopting a variation of the *McDonnell* test in ADEA violation claims); *see also, City of Hollywood v. Hogan*, 986 So. 2d, 634, 641 (Fla. 4th DCA 2008)(establishing that a member of the protected class is a person “at least forty years of age.”).

59. Alternatively, Petitioner may establish a prima facie case “by showing by a preponderance of the evidence that age was the ‘but-for’ cause of the employer’s adverse action.” *McQueen v. Wells Fargo*, 2014 U.S. Dist. LEXIS 14387, at *7 (citing *Gross v. FBC Fin. Servs.*, 557 U.S. 167 (2009)).

60. The Findings of Fact here are not sufficient to establish a prima facie case of discrimination based on age. Petitioner did establish the first two elements: she is a member of a protected class—she is over the age of 40—and she is qualified for the position of secretary specialist. However, Petitioner did not establish the third element—that she suffered an adverse employment action.

61. Petitioner did not receive a salary reduction, demotion, or other action negatively affecting her salary or benefits. Petitioner’s salary is above the broadband minimum for a secretary specialist and her current salary is higher than that of every secretary specialist hired after her. The evidence showed that, of the 34 secretary specialists whose salaries were higher than Petitioner’s, all were hired before her.

62. Nor did Petitioner establish that she was performing job duties “out of class,” for which additional compensation is due. The job duties and responsibilities about which Petitioner testified are within the scope of her job as a secretary specialist.

63. Assuming, *arguendo*, Petitioner did establish that she suffered an adverse employment action, she still failed to prove a prima facie case

because she cannot prove the fourth element—that she was treated less favorably than substantially younger persons.

64. For purposes of proving disparate treatment, a comparator must be similar to Petitioner in “all material respects.” *See Lewis v. City of Union City, Georgia*, 918 F.3d 1213, 1217 (11th Cir. 2019). Similarity among comparators is required for the comparisons to be meaningful. *See Mac Papers, Inc. v. Boyd*, 304 So. 3d 406, 409 (Fla. 1st DCA 2020), citing *Lewis*. The comparators offered by Petitioner are not similarly-situated to Petitioner in order to be meaningful. The comparators are significantly different in both geography and temporality.

65. All the female³ secretary specialists that Petitioner proffered as comparators were under the age of 40, but none was employed in the Probation North region. The specific positions singled out by Petitioner were located in the South region, specifically Miami-Dade, Broward, and Palm Beach counties, where a CAD applies to those salaries. The fact that those three secretary specialists were hired at a higher base pay rate is insufficient evidence from which the undersigned can infer age discrimination.

66. Further, those positions are not comparable because a supervisor other than Ms. Steverson made the decisions regarding hiring and starting salary for those positions.

67. Finally, the comparators were hired by the Department 11 and 12 years after Petitioner. As these hires are not contemporaneous, they are insufficiently comparable to draw an inference of discrimination based on age. If younger secretary specialists hired contemporaneously with Petitioner were hired at significantly higher rates, that might support an inference of discrimination. The undersigned cannot rely upon comparators whose

³ The final secretary specialist Petitioner identified as a comparator was likely male, based solely on his name, but no credible evidence was presented as to that secretary specialist’s age or race.

beginning salaries were determined years after Petitioner's when inflation alone may account for higher starting salaries.

68. Moreover, even if the particular secretary specialists were adequate comparators, the evidence demonstrated that Petitioner's annual salary exceeds two out of three of the proffered comparators. Despite them having been hired at higher pay rates than Petitioner, she currently has a higher salary than two of those secretary specialists. The fact that one secretary specialist in Probation statewide, who is younger than, and hired later than, Petitioner, is insufficient evidence for the undersigned to infer age discrimination.

69. Petitioner introduced no competent evidence to refute Mr. Sanders' testimony that, based on his research, Department secretary specialists who are 40 years of age or older made, on average, \$63.45 more than their counterparts who are 39 and under.

70. Petitioner failed to prove discrimination in compensation based on her age.

Racial Discrimination

71. Section 760.10 provides, "[i]t is an unlawful employment practice for an employer ... to discriminate against an individual with respect to compensation ... because of such individual's race[.]" § 760.10(1)(a), Fla. Stat.

72. To establish a prima facie case of unlawful discrimination based on her race, Petitioner must show that: (1) she is a member of a protected class; (2) she was qualified for the position held; (3) she was subjected to an adverse employment action; and (4) other similarly-situated employees, who are not members of the protected group, were treated more favorably than Petitioner. *See McDonnell-Douglas*, 411 U.S. at 802.

73. Petitioner met the first two elements: she is a member of a protected class, Black; and is qualified for the position of secretary specialist.

74. As with her claim of age discrimination, however, Petitioner is unable to prove the third element, that she suffered an adverse employment action.

75. Assuming, arguendo, Petitioner was subjected to an adverse employment action, she failed to prove the fourth element, that similarly-situated employees, who are not members of the protected class, were treated more favorably.

76. The three secretary specialists Petitioner offered as comparators are all Black. That evidence is insufficient to prove Petitioner's allegation that White secretary specialists were hired at higher salary rates than her own.

77. Furthermore, Petitioner did not introduce competent evidence to refute the testimony of Mr. Sanders, who, based on his research, determined that Petitioner's salary was higher than all secretary specialists hired after her, with the exception of four—one Black and three White—whose salaries were equal to that of Petitioner; and that, on average, Black secretary specialists made \$8.09 more than their non-Black counterparts.

78. Petitioner failed to prove discrimination in compensation based on her age.

RECOMMENDATION

Based upon the Findings of Fact and Conclusions of Law herein, the undersigned RECOMMENDS that the Commission issue a final order finding that the Department of Juvenile Justice did not discriminate against Petitioner, Tequilla Lockwood, based upon either age or race, and dismiss Petition for Relief No. 2020-21773.

DONE AND ENTERED this 13th day of January, 2021, in Tallahassee, Leon County, Florida.



SUZANNE VAN WYK
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Filed with the Clerk of the
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this 13th 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.