STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BONIA BAPTISTE,

Petitioner,

vs. Case No. 21-1406

DEPARTMENT OF JUVENILE JUSTICE,

Respondent.
_____/

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 (2021),[1] on June 30 and July 30, 2021, by Zoom video conference, from Tallahassee, Florida.

APPEARANCES

For Petitioner: Paul Middle Platte, Esquire
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For Respondent: Debora E. Fridie, Esquire
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[1] All statutory references are to Florida Statutes (2021), unless otherwise noted.

STATEMENT OF THE ISSUE

Whether Petitioner, Bonia Baptiste, was subject to an unlawful employment practice by Respondent, the Florida Department of Juvenile Justice, in violation of the Florida Civil Rights Act.

PRELIMINARY STATEMENT

On October 2, 2020, Petitioner filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations (the "Commission") alleging that Respondent, the Florida Department of Juvenile Justice (the "Department"), violated the Florida Civil Rights Act ("FCRA") by discriminating against her based on her sex, age, race, and national origin, as well as in retaliation for her practice of an activity protected by the FCRA.

Petitioner's Complaint of Discrimination followed a Technical Assistance Questionnaire for Employment Complaint ("TAQ") that Petitioner filed with the Commission on August 31, 2020.

On March 31, 2021, the Commission notified Petitioner that no reasonable cause existed to believe that the Department had committed an unlawful employment practice.

On April 23, 2021, 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 June 30 and July 30, 2021. At the final hearing, Petitioner testified on her own behalf. The Department presented the testimony of Darrell Furuseth, Dixie Fosler, Rodney Goss, Vincent Vurro, and Adrian Mathena. Petitioner's Exhibit 12 was admitted into evidence. The

Department's Exhibits 1 through 13 and 15 were admitted into evidence. In addition, following the Department's motion, the undersigned took official recognition of Detention Services Statewide Facility Operating Procedure 5.06, as well as the Department's "Sexual Harassment and Discrimination Policy," FDJJ-1003.22, and "Sexual Harassment and Discrimination Procedures," FDJJ-1003.22P.

A two-volume Transcript of the final hearing was filed on July 22, 2021, and August 16, 2021. 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 (second) Transcript, Petitioner twice requested additional time to file a proposed recommended order, both of which were granted.[2] Both parties timely filed Proposed Recommended Orders, which were duly considered in preparing this Recommended Order.

FINDINGS OF FACT

1. The Department is the Florida executive agency responsible for "planning, coordinating, and managing the delivery of all programs and services within the juvenile justice continuum." As described in section 20.316(1)(b), Florida Statutes, the "juvenile justice continuum" includes:

> [A]ll children-in-need-of-services programs; families-in-need-of-services programs; other prevention, early intervention, and diversion programs; detention centers and related programs and facilities; community-based residential commitment and nonresidential programs; and delinquency institutions provided or funded by the department.

[2] 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).

2. The Department's statutory mission is to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen families and turn around the lives of troubled youth. § 985.01, Fla. Stat. Pursuant to this mission, the Department's Office of Detention Services operates 21 detention centers throughout the State of Florida. These detention centers provide for the care, custody, and control of youth who are taken into custody and placed into detention care. *See* § 985.255, Fla. Stat.

3. Florida statutes establish a specific criterion for determining whether juveniles (persons under the age of 18, or any person who is alleged to have committed a violation of law, which occurred prior to the time that person reached the age of 18) are housed in a detention center. Upon placement in a facility, juveniles are held during all stages of the juvenile justice process, including while awaiting a court adjudication or disposition, or placement in a residential facility. §§ 985.03(7), 985.03(18), 985.03(19), 985.24, and 985.255, Fla. Stat., and Fla. Admin. Code R. 63G-2.014.

4. Petitioner is currently employed with the Department as a Juvenile Justice Detention Officer II ("Detention Officer"). Petitioner is assigned to the Collier Regional Juvenile Detention Center ("Collier Detention Center") located in Naples, Florida. The Collier Detention Center contains 40 beds and houses juveniles detained by the surrounding Florida circuit courts.

5. Petitioner is a Black female, who was born and raised in Haiti. At the time of the final hearing, Petitioner was 45 years old.

6. Petitioner was initially hired by the Department on December 8, 2017, as a Detention Officer I. She was promoted to Detention Officer II, with the rank of Corporal, effective November 9, 2018.

7. As a Detention Officer, Petitioner is responsible for the direct supervision of the juveniles in the Collier Detention Center. Petitioner explained that the Collier Detention Center houses troubled youth, who have

violated Florida law. Petitioner relayed that her primary responsibility is to ensure the youth are safe and secure in the detention facility.

8. Petitioner alleges that she experienced unlawful discrimination and sexual harassment while she worked at the Collier Detention Center. Petitioner's complaint focuses on the alleged actions of Major Rodney Goss, the Superintendent of the Collier Detention Center. Petitioner asserts that Major Goss subjected her to sexual harassment, unlawful discrimination, and retaliation based upon her sex, age, race, and national origin.

9. Petitioner claims that she had no problems working at the Collier Detention Center until she rejected Major Goss's unwelcome sexually suggestive and demeaning comments, intimidation, jokes, and offensive touching. During the final hearing, Petitioner specifically described the following incidents:

a. Staff Christmas Party:[3] Petitioner testified that she first experienced sexual harassment at a Christmas staff cookout that took place in December 2018. Petitioner alleges that during that gathering, Major Goss commented about her physical appearance. Petitioner explained that she was not on duty that day. Therefore, she wore a dress to the party, instead of her uniform. Petitioner voiced that when Major Goss saw her in her outfit, he announced that he would "catch a PREA [Prevention Rape Elimination Act] for that ass."

b. Offensive Touching: On February 6, 2019, Petitioner went to Major Goss's office to discuss the actions of another Detention Officer, which Petitioner found objectionable. According to Petitioner, after she walked into his office, Major Goss told her to close the door. As she was closing the door, Major Goss touched her breasts with his hands. At the final hearing, Petitioner declared that Major Goss's "hand always has to get into my boobs."

[3] The Department asserts that the incidents that allegedly took place before August 31, 2019, are not actionable because they occurred outside the 365-day statutory time limit. The undersigned, however, is considering these alleged incidents in this Recommended Order. *See* para. 58 below.

c. Comment Regarding Petitioner's Haitian Accent: Petitioner alleged that her immediate supervisor once made fun of her accent, which reflects her Haitian background. On May 9, 2019, Petitioner met with Major Goss to discuss the incident. During this meeting, Petitioner asserted that Major Goss remarked that her accent is "sexy," and she should not worry about her supervisor. Petitioner was very disappointed at Major Goss's indifferent attitude. She felt that the comment was a serious matter. Major Goss, however, took no action against Petitioner's supervisor.

d. Physical Contact: Petitioner complained that in or around August 2019, Major Goss pushed her against a wall and moved so close to her body that she felt his private parts.

e. Work Schedule Modification: On September 20, 2019, Petitioner asked Major Goss about adjusting her work schedule so that she could have Sundays and Mondays off. Petitioner told Major Goss that she "would do anything" to get those two days off (such as extra work). Petitioner testified that when Major Goss heard her plea, he replied, "You will do anything?" He then laughed, walked to a white board in his office, and drew a picture of female and a male having sex. Upon seeing Major Goss's drawing, Petitioner expressed, "that's how you look at me?" She then called him a foul name and left his office. Major Goss did not modify Petitioner's work schedule.

f. COVID Protective Equipment: On August 3, 2020, Major Goss failed to respond to Petitioner's email regarding working with a COVID-19 positive youth. Petitioner specifically requested Major Goss provide her with Personal Protective Equipment ("PPE"). At the final hearing, Petitioner conceded that Major Goss did, eventually, supply her with adequate PPE.

g. Verbal Harassment: On August 28, 2020, Petitioner encountered Major Goss at work, where she claims he announced, "Are you still here? I'm working on firing you." Major Goss allegedly made this statement in front of other detention facility staff. (Major Goss did not fire Petitioner.)

h. Request for Uniform: In September 2020, Petitioner requested a uniform from Major Goss. She claims that he never gave her a new uniform, purportedly because she rejected his sexual advances.

i. Application for a Registered Behavior Technician Position: On August 3, 2020, Petitioner applied to become a Registered Behavior Technician ("RBT") for the Collier Detention Center. She was not selected for the position. Instead, the job was given to a younger Black person. Additional RBT positions were given to two white males. Petitioner believed that she was qualified to become an RBT, as well as had seniority over the other two employees who were selected for the opening.

j. Application for Facility Training Coordinator: Later, Petitioner applied to be a Facility Training Coordinator ("FTC") for the Collier Detention Center. The FTC position required a Detention Officer to assume additional duties and responsibilities. It also awarded a five-percent raise. Petitioner testified that Major Goss selected a Department employee (a Black female) from another detention facility as the Collier Detention Center FTC. Petitioner believes that she was more qualified than the other employee. Petitioner contends that Major Goss purposefully did not to promote her to either the RBT or FTC positions in retaliation for her refusal to have sex with him.

k. Detention Officer Promotions: Petitioner testified that she suspected that the Collier Detention Center staff had to perform sexual favors for promotions. To support this allegation, Petitioner reported that she heard about a specific incident in May or June 2020 when another Detention Officer danced provocatively in front of Major Goss. Major Goss then linked arms with her, and they walked together into the detention facility breakroom.

l. Workers' Compensation Injury: At the final hearing, Petitioner described a disturbance at the Collier Detention Center on May 4, 2020, in which she injured her knee interceding in a fight between two youths. Petitioner immediately made a First Report of Injury or Illness to initiate a

workers' compensation claim. On May 9, 2020, when she reported her workers' compensation-related injury to Major Goss, Petitioner alleges that he told her that she was faking it, and there was nothing wrong with her knee. He also exclaimed that she was "just too old." Petitioner voiced that Major Goss's comment about "faking" her knee injury was retaliation for rejecting his desire to have sex with her. Despite Major Goss's alleged statements, the Department, by letter dated May 13, 2020, placed Petitioner on alternate duty status. Petitioner was expected to perform duties, "which have been assigned within the current physical restrictions outlined by your physician." On June 30, 2020, Major Goss was notified that Petitioner had reached maximum medical improvement, with a zero-percent impairment rating.

10. In addition to the above specific incidents, Petitioner testified that she was "always afraid" of Major Goss. He caused her anxiety and stress. She expressed that she felt threatened by him because she feared that whenever he came near her, he would talk about sex or ask her for sex. She feels that he looked at her like a sex object. Petitioner expressed that she wants to succeed at her job, and "not have to sleep with anyone to get there." Consequently, she tried to avoid Major Goss at work.

11. Petitioner further declared that her work environment was full of sexual incidents involving other Department employees. Petitioner alleged that Major Goss touched her breasts on "multiple" occasions, then would tell her that it was an accident.

12. Finally, Petitioner claimed that in the summer of 2020, she went to Major Goss and threatened to report him "to Tallahassee." Major Goss, however, dismissed her pronouncement stating, "Who are they going to believe?" Petitioner asserts that her reprimands only occurred after she rejected Major Goss's sexual advances.

13. On August 28, 2020, Petitioner filed a formal sexual harassment complaint with the Department.

14. Currently, Petitioner still works as a Detention Officer at the Collier Detention Center. However, Petitioner declared that Major Goss's actions have severely, adversely affected her ability to perform her job.

15. Petitioner also believes that the Department has discredited or outright ignored her complaints of discrimination and harassment. Petitioner testified that she did not report the incidents of harassment before August 2020 because she was afraid that she would lose her job or be punished at work. But now that she has notified the Department, Petitioner is very frustrated that the Department has not made any adjustment or change to her job duties or status based on her complaints against Major Goss. At the final hearing, Petitioner pleaded that she simply cannot work under Major Goss anymore. She asserted that the Department is setting her up for failure.

16. Petitioner also wants the Department to be held accountable for Major Goss's unacceptable behavior. Petitioner declared that no women who work at the Collier Detention Center should feel threatened based on their sex.

17. Despite her tense working relationship with Major Goss, Petitioner testified that she is a good worker. As proof of her effectiveness, Petitioner produced her performance evaluation for 2019-2020, in which she was given an overall rating of "Commendable." In the evaluation, Major Goss specifically commented, "Cpl. Baptiste is an exceptional employee within the department," and that she "is always reliable [and] does more than just get by." Petitioner's direct supervisor, Captain Samuel Sainval, added that Petitioner "has the capability to perform at a high level. [Petitioner] is reliable and shows up to work as scheduled." Petitioner was awarded either an "above expectation" or "meets expectation" in all five rating categories.

18. The Department denies that Major Goss, or any other Department employee, subjected Petitioner to unlawful employment practices based upon her sex, age, race, or national origin, or in retaliation. At the final hearing,

the Department maintained that it does not condone or tolerate sexually offensive or harassing behavior by its employees.

19. The Department initially called Major Goss to testify. As Superintendent of the Collier Detention Center, Major Goss is responsible for the operation, safety, and security of the detention facility. In his role, Major Goss is the ultimate supervisor for all Detention Officers and Department employees at the Collier Detention Center, including Petitioner.

20. Major Goss has worked for the Department since 2011, when he was hired as a Detention Officer I. He steadily advanced through the Department ranks until he was promoted to Superintendent of the Collier Detention Center in January 2019. Major Goss is also Black.

21. At the final hearing, Major Goss firmly denied Petitioner's allegations of discrimination and sexual harassment. Regarding Petitioner's specific charges:

a. Comment Regarding Petitioner's Haitian Accent: Major Goss recalled Petitioner's complaint that a staff member had belittled her Haitian accent. Major Goss stated that he elected to handle the incident internally as a "management" concern. Major Goss testified that he addressed Petitioner's issues with the direct supervisor who allegedly made the disparaging comment. Major Goss expressed that they reviewed how to act professionally, as well as properly interact with subordinates in the work environment. In addition, Major Goss arranged for a meeting between Petitioner and her supervisor to discuss her discomfort with his actions. Major Goss relayed that he elected not to reprimand or remove Petitioner's supervisor. Major Goss testified that he did not believe that the supervisor's comment rose to the level of discrimination against Petitioner's national origin. Major Goss further denied that he personally ever discriminated against Petitioner because of her accent or national origin.

b. COVID Protective Equipment: Major Goss remembered that Petitioner once emailed him with concerns regarding possible exposure to youth with

COVID in the facility. Major Goss explained that he maintains the PPE for the detention facility in a central location. Major Goss testified that he promptly brought PPE to Petitioner following her request. Therefore, he believed that he adequately resolved the issue.

c. Request for Uniform: Major Goss acknowledged that Petitioner emailed him in September 2020 regarding her uniform. To the best of his memory, Petitioner had not been wearing the proper uniform pants. Therefore, she was out of compliance. Major Goss stated that he was able to requisition the appropriate pants for Petitioner. Accordingly, he believed he resolved her issue.

d. Detention Officer Promotions: Major Goss admitted that on one occasion he walked arm-in-arm with a Detention Officer into the Collier Detention Center breakroom. Major Goss urged that there was nothing sexual about their actions, and at no point were they outside the sight of other Department employees. At most, Major Goss represented that they were simply joking around.

22. Major Goss staunchly refuted Petitioner's accusations regarding the following alleged incidents. He roundly stated that they "never happened."

a. Staff Christmas Party: Major Goss denied that he made any comments about Petitioner's appearance or attire during the staff Christmas party in December 2018.

b. Offensive Touching: Major Goss denied that he inappropriately touched Petitioner in his office on February 6, 2019, or at any other time.

c. Work Schedule Modification: Major Goss denied Petitioner's allegation that he drew a picture of two people having sex on the dry erase board in his office.

d. Verbal Harassment: Major Goss denied that he had any conversation with Petitioner in which he announced that he was firing her. Neither did he ever ask her, "Why are you still working here?"

e. Workers' Compensation Injury: Major Goss admitted that he was aware that Petitioner suffered a knee injury in May 2020. Major Goss denied that he had a follow-up discussion with Petitioner in which he told her that she was "too old."

23. Vincent Vurro is Chief, Detention Services South Region, for the Department. In this role, Mr. Vurro oversees the administration and operation for the Detention Services South Region, including personnel issues and day-to-day support. Chief Vurro relayed that the South Region includes seven detention facilities, including the Collier Detention Center.

24. Chief Vurro testified regarding several disciplinary actions that the Department took against Petitioner in 2020. Chief Vurro relayed that, per Department procedures, requests to discipline Detention Officers are routed from the detention facility superintendents up to the South Regional office. Therefore, Chief Vurro was personally aware of, and able to testify regarding, the following disciplinary actions against Petitioner:

25. Oral Reprimand, January 2, 2020:

a. Chief Vurro relayed that Petitioner received an oral reprimand on January 2, 2020. The reprimand was based on a report that Petitioner engaged in a verbal argument with a co-worker during a shift change briefing. Chief Vurro explained that, prior to shift changes at detention facilities, Detention Officers meet to discuss the upcoming day, as well as share pertinent information. Chief Vurro asserted that the oral reprimand was warranted because Petitioner's "unprofessional" conduct was disruptive and could have affected staff performance. Chief Vurro stated that Petitioner's actions violated Facility Operating Procedure 1.05, which requires employees to be "courteous, considerate, respectful and prompt in dealing with and serving the public and co-workers."

b. Major Goss reiterated Chief Vurro's testimony on the importance of orderly shift changes. Major Goss voiced that the Collier Detention Center is manned 24 hours a day. Therefore, he must ensure that Detention Officers

properly coordinate any work issues when starting their duty days. Major Goss explained that each of the three work shifts at his facility overlaps by approximately 30 minutes. During this time, Detention Officers discuss any outstanding concerns. Consequently, he felt compelled to reprimand Petitioner based on the disruption she caused during the shift change. He believed that the oral reprimand was necessary and proper.

26. Written Reprimand, May 7, 2020: Chief Vurro relayed that Petitioner received a written reprimand on May 7, 2020, for failing to timely radio in a "Code White" after she observed a youth who threatened to intentionally harm herself.[4] Following his review of a video of the encounter, Chief Vurro determined that Petitioner did not instantly act to assist the youth in danger. Petitioner lost sight of the youth when she decided to use a phone to call for assistance, instead of her Department-issued radio that should have been carried on her belt.

27. Written Reprimand, May 29, 2020: Chief Vurro testified that, on May 29, 2020, Petitioner was given a written reprimand based on her failure to carry her Department-issued radio while on duty. The discipline was based on an incident that occurred when Petitioner was conducting eight-minute checks through her area of the facility. Petitioner encountered a youth who was exhibiting suicidal behavior. Petitioner, however, had removed her radio from her belt and left it some distance away. Therefore, Petitioner had to request another youth call for assistance with her radio while she responded to the situation. Petitioner was disciplined for inefficiency or inability to safely perform assigned duties and failure to have immediate access to a radio.

28. Upon questioning, Chief Vurro conceded that he never personally discussed with Petitioner the circumstances behind the above incidents.

[4] Facility Operating Procedure 5.06 establishes color codes for Detention Officers to use to announce emergencies during radio communications. A "Code White" represents "Cut Down; Knife for Life required." Chief Adrian Mathena explained that in civilian parlance, "Code White" stands for a medical emergency, and "Cut Down" means a suicide attempt.

Instead, he decided that the reprimands were warranted based on the evidence presented to him, which primarily consisted of video recordings of the May 7 and May 9 incidents.

29. Application for Registered Behavior Technician:

a. Chief Vurro was also involved in Petitioner's application to be an RBT. Chief Vurro described an RBT as an officer who would assist in a detention facility's behavior modification program. Chief Vurro explained that he did not consider the RBT position to be a promotion. He testified that the job did not award a salary increase or bonus. Instead, the applicant selected for the position would simply receive a certification.

b. Major Goss further detailed that the Collier Detention Facility had created three RBT positions, one for each work shift. He also proclaimed that he did not directly select which Detention Officers were to fill the RBT openings. Instead, he simply reviewed names submitted to him from the immediate supervisors, then signed off on their recommendations. Major Goss stated that he did not have any information as to why the supervisors did not recommend Petitioner for one of the three RBTs. Further, like Chief Vurro, Major Goss did not consider the RBT position to be a promotion because it did not entitle a Detention Officer to more pay or rank. Rather, the Detention Officer merely participated in an RBT certification course. At that point, the Detention Officer would be prepared to use their RBT training to perform additional duties.

30. Application for Facility Training Coordinator:

a. Regarding Petitioner's application to be an FTC, Chief Vurro testified that Major Goss selected the Detention Officers who were to be considered for the position, then he (Chief Vurro) approved the pick. As for the specific reason Petitioner was not selected, Chief Vurro stated that, to qualify as an FTC, the Detention Officer must have served as a Detention Officer II for at least three years. Chief Vurro asserted that, at the time Petitioner applied, she had less than the required time in grade. Therefore, she did not qualify

for the opening. On the other hand, the Detention Officer who he ultimately chose for the role did have the required service time.

b. Major Goss repeated Chief Vurro's testimony that he did not select who filled the FTC position. Instead, Major Goss gathered the applications, then forwarded them to Chief Vurro as the regional director. Major Goss maintained that he did not have personal knowledge as to why Chief Vurro did not choose Petitioner as the Collier Detention Center FTC. Major Goss offered that he heard that some of the applicants did not have sufficient time in grade to qualify for the position. Major Goss further acknowledged that the FTC position came with a five-percent raise.

31. Adrian Mathena is the Chief of Policy Development and Planning for Detention Services for the Office of Detention Services. In his role, Mr. Mathena has knowledge of the mission and duties of the Department's detention services, specifically regarding the budget, operation, and management of juvenile detention facilities. Chief Mathena is also involved in detention facility personnel decisions.

32. Chief Mathena expressed that Detention Services exists to make a positive impact on juveniles in custody. Accordingly, Detention Services endeavors to provide a safe, secure, and humane environment to the youth entrusted to Department supervision.

33. Regarding Petitioner's written reprimands in May 2020, Chief Mathena explained that the Department requires Detention Officers to maintain their radios on their persons at all time. Chief Mathena explained that Detention Officers must have immediate access to their radios in case they need to call for assistance.

34. Regarding Petitioner's application for the FTC position, Chief Mathena concurred with Chief Vurro's testimony that the Department required three years of Detention Officer II experience prior to acceptance into the program. Chief Mathena professed that the FTC program is "highly selective." Chief Mathena also echoed Chief Vurro's testimony that the

program required the Detention Officer to assume additional responsibilities, which would bestow a five-percent boost in pay.

35. Regarding Petitioner's application to be an RBT, Chief Mathena relayed that, when the program initially started, the Department envisioned one technician in every detention facility. However, this arrangement soon proved problematic. Consequently, at this time, the Department no longer offers the RBT certification or position.

36. Department Investigation:

a. Following Petitioner's formal complaint of sexual harassment to the Department on August 28, 2020, the Department opened an internal investigation into Petitioner's allegations against Major Goss. To describe and explain the Department's investigation process and conclusions, the Department called several witnesses from the Department's Office of Inspector General ("OIG").

b. Darrell Furuseth is Chief of Investigations for the OIG. In his role, Chief Furuseth coordinated and supervised the investigation into Petitioner's allegations of sexual harassment and unlawful discrimination.

c. Chief Furuseth began his testimony by explaining that Petitioner's complaint, like all sexual harassment allegations and complaints within the Department, was channeled through the Department's Central Communication Center (the "CCC"). Chief Furuseth relayed that, on August 28, 2020, the CCC received a phone call reporting sexual harassment by a Department employee. The Reporting Person (the caller) was Bonia Baptiste (Petitioner), and she identified Rodney E. Goss (Major Goss) as the subject of her complaint. As supporting background information, Petitioner declared that Major Goss "made comments about her breasts." She further accused him of embarrassing her "in front of the other staff by threatening to terminate her," and once "pushing [her] into a corner as he walked by." Petitioner also stated that she suspected that staff at the Collier Detention Center were "performing sex acts in exchange for advancement." Finally,

Petitioner questioned the selection of another Detention Officer for employee of the month.

d. Thereafter, the OIG initiated an investigation into Petitioner's allegations. Specifically, the OIG investigated Major Goss for "Improper Conduct; Sexual Harassment (staff on staff)." As part of the investigation, the OIG interviewed both Petitioner and Major Goss. The OIG further interviewed Petitioner's direct supervisor (CPT Sainval), as well as six of Petitioner's fellow Detention Officers from the Collier Detention Center.

e. Upon completion of the investigation, on October 9, 2020, the OIG convened an EEO Resolution Panel to determine whether "cause" existed to substantiate Petitioner's complaint. The Resolution Panel concluded that "there was 'No Cause' to believe alleged sexual harassment occurred."

f. Chief Furuseth, who served on the Resolution Panel, explained that the Resolution Panel looked for specific corroborating evidence or witnesses to confirm Petitioner's complaint. They found none.[5] Neither did the investigation uncover any photographs or videos supporting Petitioner's allegations. Chief Furuseth urged that in reaching its conclusion, the Resolution Panel objectively looked at the totality of the investigation and considered all the witness statements.

g. On October 20, 2020, the OIG prepared a written Report of Investigation stating, "Based on the lack of evidence, it was determined that a subsequent investigation was not warranted."

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[5] Two interviewees whose statements are included in the Report of Investigation expressed that Petitioner complained to them that Major Goss sexually harassed her. However, the two interviewees directly denied ever having personally observed Major Goss treat Petitioner improperly or having any personal knowledge of inappropriate conduct on the part of Major Goss. These recorded accounts, while generally bolstering Petitioner's accusations of interoffice strife, are clearly hearsay in that they are out-of-court statements by two individuals who did not appear at the final hearing. Consequently, the comments are insufficiently reliable to serve as a basis for a factual finding. *See* § 120.57(1)(c), Fla. Stat. *See also Damask v. Ryabchenko*, -- So.3d --, WL 4979083 (Fla. 4th DCA Oct. 27, 2021)("Inadmissible hearsay cannot be competent, substantial evidence."); and *Mace v. M&T Bank*, 292 So. 3d 1215, 1226 (Fla. 2d DCA 2020).

37. Dixie Fosler is the Assistant Secretary for Detention Services for the Department. In her role, Ms. Fosler oversees operations for all 21 Detention Centers in Florida. Ms. Fosler testified regarding the operation and management of the detention facilities, as well as personnel policies and procedures governing detention facilities and officers. Ms. Fosler also served on the EEO Resolution Panel that investigated Petitioner's allegations of sexual harassment.

38. Ms. Fosler initially expressed that the Department will not tolerate sexual harassment, and sexual harassment by Department employees is a terminable offense. That being said, Ms. Fosler represented that the OIG's investigation into Petitioner's complaint did not uncover any evidence to corroborate Petitioner's allegations. Neither did the investigation contain any witness statements supporting Petitioner's claims.

39. On the other hand, Ms. Fosler relayed that the Resolution Panel had several concerns regarding other conduct by Major Goss. First, during the investigation, Major Goss described a recent encounter with Petitioner when she looked upon him with disgust. Reacting to her look, Major Goss uttered, "The feeling is mutual." The Resolution Panel was alarmed at Major Goss's open declaration of "disgust" at a Department employee. The Resolution Panel felt that Major Goss's expressed negative attitude towards a Detention Officer was unprofessional. Second, the Resolution Panel was troubled when it learned that Major Goss walked arm-in-arm with a subordinate into the Collier Detention Center breakroom suggesting that the two of them might engage in a romantic rendezvous – even in a joking manner. The Resolution Panel believed that Major Goss's actions were "too playful" for a supervisor to engage in.

40. Based on these accounts, the Department issued Major Goss a written reprimand, dated October 20, 2020, for "unacceptable behavior." The Department specifically determined that Major Goss's conduct was "considered a violation of law or agency rules, and unbecoming for a public

employee." The written reprimand warned Major Goss that, as Superintendent, he is "expected to always demonstrate a professional demeanor and act in a respectful manner."

41. During the final hearing, Major Goss acknowledged his written reprimand. However, he pointed out that he was not punished for any discrimination or harassment involving Petitioner. Major Goss further stated that he received no discipline beyond the written reprimand. However, he relayed that the Department required him to attend sexual harassment training. Further, the Department installed cameras in the administration area, breakroom, and the superintendent's office at the Collier Detention Center to alleviate any concerns regarding possible future misconduct.

42. Petitioner, in response to testimony describing her reprimands, asserted that the Department's disciplinary action was not proper. Instead, Petitioner declared that she was reprimanded only because she refused to have sex with Major Goss. At the final hearing, Petitioner pointed out that all the reprimands occurred after the alleged sexual harassment began.

43. Regarding the January 2, 2020, oral reprimand, Petitioner confirmed that this disciplinary action followed an argument she had with another Detention Officer during a shift change. At the final hearing, Petitioner explained that she was trying to diffuse a personal conflict with the other employee. Petitioner asserted that this reprimand was not justified because her actions did not place any youth in danger. Petitioner further commented that Major Goss "makes a problem out of everything because I won't have sex with him."

44. Regarding the May 7, 2020, written reprimand, Petitioner recounted that she had attempted to call for help during the incident, but her radio did not work. Therefore, she was forced to use a phone to call for assistance. Consequently, Petitioner contended the discipline was not warranted.

45. Regarding the May 29, 2020, written reprimand, Petitioner asserted that when she saw a juvenile at risk of harming herself, she immediately

reacted. She only requested the other youth call for help because she was struggling to manage the situation. Petitioner further stated that she had previously removed her radio from her belt because she had completed her eight-minute bed check, and all the youth were safe and secure. Petitioner added that other Detention Officers did not always carry their radios on their belts.

46. Based on the competent substantial evidence in the record, the preponderance of the evidence does not establish that the Department discriminated against Petitioner based on her race, sex, national origin, or age, or in retaliation for participating in a protected activity. The most persuasive evidence presented during the final hearing does not corroborate Petitioner's allegations of discrimination or sexual harassment. On the contrary, the testimony from the Department witnesses, in particular, Major Goss, is credible and is credited. Further, the evidence establishes that Petitioner was disciplined appropriately and not as retaliation for her complaint. Accordingly, Petitioner failed to meet her burden of proving that the Department committed an unlawful employment action against her in violation of the FCRA.

CONCLUSIONS OF LAW

47. 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.

48. Petitioner brings this matter alleging that the Department:

1) discriminated against her based on her sex in violation of the FCRA,[6]

2) created a hostile work environment through sexual harassment, and

3) retaliated against her based on her participation in a protected activity.

49. The FCRA protects individuals from discrimination in the workplace. §§ 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, pregnancy, national origin, age, handicap, or marital status.

50. The FCRA also protects employees from certain retaliatory acts. The FCRA's anti-retaliation provision is found in section 760.10(7) and states:

> It is an unlawful employment practice for an employer … to discriminate against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

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[6] Petitioner also asserted that the Department discriminated against her based on her race (Black), national origin (Haitian), and age (45 years old). However, the evidence in the record does not support a claim that the Department made any employment decisions (adverse or otherwise) or discriminated against Petitioner based on these protected classifications.

Further, to the extent that Major Goss may have expressed that Petitioner was injured because she was "too old" or that her Haitian accent was "sexy," the undersigned finds these isolated comments more accurately fall into the category of "stray remarks." *See Parris v. Keystone Foods, LLC*, 959 F. Supp. 2d 1291, 1308 (N.D. Ala. 2013)("Stray remarks in the work place ... unrelated to the decisional process itself [cannot] suffice to satisfy the plaintiff's burden."); and *Rojas v. Florida*, 285 F.3d 1339, 1343 (11th Cir. 2002)("[A]n isolated comment, unrelated to the decision to fire [the plaintiff], it, alone, is insufficient to establish a material fact on pretext.") As such, these alleged statements, alone, do not sustain an action under the FCRA.

51. 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 the 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.

52. The burden of proof in an administrative proceeding, 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 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."). Thus, Petitioner bears the burden of proving her allegations of discrimination or harassment. The preponderance of the evidence standard is applicable to this matter. § 120.57(1)(j), Fla. Stat.

53. 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).

54. Discrimination may be proven by direct, statistical, or circumstantial evidence. *Valenzuela*, 18 So. 3d at 22. Direct evidence is evidence that, if believed, would prove the existence of discriminatory intent behind the employment decision without any inference or presumption. *Denney v. City of Albany*, 247 F.3d 1172, 1182 (11th Cir. 2001); *see also 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)(citations omitted).

55. The record in this matter does not contain direct evidence of sex discrimination on the part of the Department. Similarly, the record in this proceeding contains no statistical evidence of discrimination by the Department.

56. In the absence of direct or statistical evidence of discriminatory intent, Petitioner must rely on circumstantial evidence to prove a claim of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and its progeny; *Valenzuela*, 18 So. 3d at 21-22; and *St. Louis v. Fla. Int'l Univ.*, 60 So. 3d 455, 458 (Fla. 3d DCA 2011).

57. The ultimate burden of persuading the trier of fact that "the [respondent] intentionally discriminated against the [petitioner] remains at all times with the [petitioner]." *Tex. Dep't of Cmty. Aff. v. Burdine*, 450 U.S. 248, 252-256 (1981); *Valenzuela*, 18 So. 3d at 22.

58. Continuing Violation Doctrine:

a. As an initial procedural concern, the Department asserts that this matter should be limited to conduct that allegedly took place no earlier than August 30, 2019. The Department bases its argument on the fact that Petitioner formally filed her discrimination complaint with the Commission (the TAQ) on August 31, 2020. Consequently, the Department contends that all discrete acts of sexual harassment, unlawful discrimination, or retaliation that occurred prior to one year from this date (August 30, 2019) must be excluded from consideration as time-barred pursuant to section 760.11(1). Section 760.11(1) states:

> Any person aggrieved by a violation of ss. 760.01-760.10 may file a complaint with the commission within 365 days of the alleged violation, naming the employer, … and describing the violation.

In light of this limited time period, the Department argues that Petitioner's allegations of Major Goss's alleged misconduct at the staff Christmas party (December 2018), the offensive touching (February 6, 2019), his comment about Petitioner's "sexy" accent (May 9, 2019), and the physical contact (August 2019) are untimely and no longer actionable.

b. The Department is correct that, ordinarily, Petitioner's complaint should be limited to alleged discrimination that occur within the 365-day period preceding the day Petitioner filed her complaint with the Commission. *Woodham v. Blue Cross & Blue Shield of Fla., Inc.*, 829 So. 2d 891, 894 (Fla. 2002)("As a prerequisite to bringing a civil action based upon an alleged violation of the FCRA, the claimant is required to file a complaint with the FCHR within 365 days of the alleged violation."); *Avila v. Childers*, 212 F. Supp. 3d 1182, 1188 (N.D. Fla. 2016) ("Discrimination claims under the FRCA [sic] must be filed within 365 days of the alleged unlawful employment practice."); and *Wolf v. MWH Constructors, Inc.*, 34 F. Supp. 3d 1213, 1222 (M.D. Fla. 2014)(a plaintiff cannot recover for discrete acts of discrimination and retaliation that occur outside the applicable statutory time period set forth in section 760.11(1), *i.e.*, 365 days). Discrete discriminatory acts, such as termination, failure to promote, etc., are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002).

c. However, the "continuing violation doctrine" offers an exception to this limitation period and allows a petitioner to assert otherwise time-barred claims where at least one violation occurred within the allowable filing period. *Hipp v. Liberty Nat'l Life Ins. Co.*, 252 F.3d 1208, 1221 (11th Cir. 2001). "In determining whether a discriminatory employment practice constitutes a continuing violation, [the court] must distinguish between the present consequence of a one-time violation, which does not extend the limitations period, and the continuation of the violation into the present,

which does." *EEOC v. Joe's Stone Crabs, Inc.*, 296 F.3d 1265, 1271 (11th Cir. 2002). A petitioner must maintain that "a pattern of discrimination or an employment practice presently exists to perpetuate the alleged wrong." *Jacobs v. Bd. of Regents*, 473 F. Supp. 663, 669 (S.D. Fla. 1979).

d. On its face, Petitioner's testimony describes an offensive work environment in which an ongoing series of sexually harassing actions and comments began in December 2018 and continued, unabated, through September 2020. Therefore, in reviewing Petitioner's allegations, the undersigned determines that all of the alleged incidents described herein flow out of the same alleged wrongful actions and motivations that fall within the applicable statutory time period. Accordingly, all of Petitioner's cognizable complaints are reviewed in the scope of this action.

59. Turning to Petitioner's specific allegations, based on the testimony presented at the final hearing, Petitioner primarily asserts a sexual harassment claim against the Department. "Sexual harassment is a form of sex discrimination prohibited by the Florida Civil Rights Act, so that an employee may assert a claim for sexual harassment under section 760.10, Florida Statutes." *Branch-McKenzie v. Broward Cnty. Sch. Bd.*, 254 So. 3d 1007, 1012 (Fla. 4th DCA 2018); and *Maldonado v. Publix Supermarkets*, 939 So. 2d 290, 293 (Fla. 4th DCA 2006). There are two types of sexual harassment cases: (1) quid pro quo, which are "'based on threats which are carried out' or fulfilled;" and (2) hostile environment, which are based on "bothersome attentions or sexual remarks that are sufficiently severe or pervasive to create a hostile work environment." *Branch-McKenzie*, 254 So. 3d at 1012 (citing *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 751 (1998)).

60. Quid Pro Quo:

a. Petitioner asserts that Major Goss's conduct is "classic" quid pro quo sexual harassment. According to Petitioner, Major Goss signaled to Petitioner that he wanted to have sex with her. Petitioner rejected his overtures. Thereafter, Major Goss (and the Department) imposed on Petitioner a

number of unfavorable employment actions, including several "bogus" reprimands, denying her promotion opportunities, and refusing to modify her work schedule.

b. Quid pro quo sexual harassment is evident when "the employee's refusal to submit to a supervisor's sexual demands results in a tangible employment action being taken against her." *Hulsey v. Pride Rests., LLC*, 367 F.3d 1238, 1245 (11th Cir. 2004). A tangible employment action is "a significant hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Id.*; and *Johnson v. Booker T. Washington Broad. Serv., Inc.*, 234 F.3d 501, 512 (11th Cir. 2000). An employer is liable under Title VII if "it (even unknowingly) permits a supervisor to take a tangible employment action against an employee because she refused to give in to his sexual overtures." *Hulsey*, 367 F.3d at 1245.

c. At the final hearing, Petitioner's testimony, in isolation, included sufficient information to assert quid pro quo sexual harassment. However, based on the evidence in the record, Petitioner did not carry her ultimate burden of proving either the alleged sexual advances by Major Goss, or that she suffered a tangible adverse employment action because she turned down the same. On the contrary, the competent substantial evidence does not connect (or prove a connection between) Petitioner's gender with, 1) the Department's decision not to promote her, 2) the Department's decision to issue Petitioner three reprimands in 2020, or 3) Major Goss's decision not to modify her work hours.

d. Instead, the facts adduced at the evidentiary hearing establish that the Department's decisions concerning Petitioner were not attributable to wrongful harassment or based on a discriminatory animus. Regarding the promotion decision, the Department witnesses (Vurro, Goss, and Mathena) provided cogent and logical reasons why Petitioner was not selected for either the FTC or RBT positions. Chief Vurro persuasively testified that the FTC

post required the applicant to have three years of Detention Officer II experience. (Indisputably, Petitioner did not possess that time in grade when she applied, and therefore, was not qualified for the job.) As far as the RBT position, Major Goss credibly explained that he filled the RBT jobs based on the recommendations from the detention facility supervisors. No evidence links his selection of other candidates for RBT positions with a discriminatory motive or Petitioner's sex. In addition, the Department witnesses raised a valid point that an RBT certification should not be considered a promotion because it does not represent a change in job responsibilities or a tangible employment benefit.[7] Further, Petitioner did not demonstrate that the Department's explanations of the selections for the FTC and RBT positions are false, implausible, inconsistent, or not worthy of credence.

e. Regarding Petitioner's three reprimands in 2020, the Department witnesses (Vurro, Goss, and Mathena) convincingly set forth legitimate non-discriminatory grounds why the Department disciplined Petitioner, none of which are related to an (allegedly) inappropriate interaction between Petitioner and Major Goss. Each reason (disruption of a shift change, failure to properly assist a youth in danger, and failure to properly carry her Department-issued radio on two occasions, which impacted the safety of the detention facility, as well as violated Department Facility Operating Procedures) is supported by testimony, as well as acknowledged by Petitioner. Further, Petitioner did not prove that the reasons the Department cited were false or implausible. Neither did Petitioner prove that either a protected class (her race, sex, national origin, or age) or her refusal to have sex with Major Goss were the real reasons for the discipline.

[7] Failure to promote is a distinct claim that may be asserted under the FCRA. *Denney*, 247 F.3d at 1183. However, a failure to promote claim fails for the same reason as cited above, i.e., Petitioner was not qualified for the FTC position, and Petitioner did not prove that unlawful discrimination based on Petitioner's sex was the real reason she was not awarded the RBT position.

f. Finally, regarding Petitioner's work hours, although little testimony was offered to explain why Major Goss did not adjust Petitioner's schedule, again, the evidence does not support Petitioner's allegation that Major Goss denied her request because she refused his sexual advances. Consequently, Petitioner did not present sufficient evidence to prove quid pro quo sexual harassment on the part of Major Goss or the Department.

61. Hostile Work Environment:

a. The undersigned reaches a similar conclusion regarding a hostile work environment claim. "The 'discriminat[ion]' prohibited by Title VII includes the creation of a hostile work environment." *Short v. Immokalee Water & Sewer Dist.*, 165 F. Supp. 3d 1129, 1141 (M.D. Fla. 2016); and *Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 807 (11th Cir. 2010). To establish a prima facie case of a hostile work environment under the FCRA, Petitioner must show that: (1) she belongs to a protected group; (2) she was subjected to unwelcome harassment; (3) the harassment was based on the protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of her employment and create a discriminatorily abusive working environment; and (5) her employer is responsible for such environment under a theory of either vicarious or direct liability. *Trask v. Sec'y, Dep't of Veterans Affs.*, 822 F.3d 1179, 1195 (11th Cir. 2016); *Blizzard v. Appliance Direct, Inc.*, 16 So. 3d 922, 927 (Fla. 5th DCA 2009). When an employee contends that there is sexual harassment by a direct supervisor, the employee does not have to prove the fifth element to hold the employer liable. *Branch-McKenzie*, 254 So. 3d at 1012.

b. Petitioner's hostile work environment claim fails for the same reason as her quid pro quo charge. Consistent with the above findings of fact and credibility determinations, Petitioner failed to prove by the greater weight of the evidence that she was subjected to unwelcomed harassment from Major Goss.

c. While Petitioner spoke with conviction when describing her experiences working at the Collier Detention Center, and she levied very serious accusations against Major Goss, the competent substantial evidence presented at the final hearing does not corroborate her allegations. None of the witnesses who testified observed the wrongful conduct Petitioner alleges Major Goss engaged in. Specifically, no evidence or testimony was introduced that directly substantiates Petitioner's allegation that Major Goss, 1) improperly commented on Petitioner's accent or apparel, 2) verbally harassed Petitioner, 3) wrongfully contacted or touched Petitioner, 4) unnecessarily delayed providing Petitioner PPE or uniform components, or in any other manner subjected Petitioner to a discriminatory, hostile, or a sexually harassing work environment.

d. On the contrary, the Department witnesses, in particular Major Goss, credibly explained the non-discriminatory nature of the incidents which were admitted, and persuasively denied the alleged misconduct that Major Goss refuted. Petitioner did not present convincing evidence that the Department witnesses testified untruthfully. Accordingly, in light of all the facts and testimony adduced at the final hearing, the evidence in the record is insufficient to establish that Petitioner was discriminated against or sexually harassed at the Collier Detention Center.

62. Retaliation:

a. Finally, Petitioner did not meet her burden of proving that the Department retaliated against her based on her participation in an activity protected by the FCRA. Petitioner specifically alleges that the Department mistreated her after she filed a workers' compensation claim, and after she submitted her sexual harassment complaint.

b. The FCRA provides that no person shall discriminate against any individual because such individual has opposed an unlawful employment act or practice. *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir. 1997); *see also* 42 U.S.C. § 12203(a) and § 760.10(7), Fla. Stat.

c. When a petitioner produces only circumstantial evidence of retaliation (as in this matter), Florida courts use the burden shifting framework set forth in *McDonnell Douglas*. *Furcron v. Mail Ctrs. Plus, LLC*, 843 F.3d 1295, 1310 (11th Cir. 2016). To establish a prima facie case of retaliation, Petitioner must demonstrate that: (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action; and (3) a causal link exists between the protected activity and the adverse employment action. *Furcron*, *Id.*; and *Kidd v. Mando Am. Corp.*, 731 F.3d 1196 (11th Cir. 2013). The failure to satisfy any of these elements is fatal to a complaint of retaliation. *Higdon v. Jackson*, 393 F.3d 1211, 1219 (11th Cir. 2004).

d. For an action to be "adverse" in the context of retaliation, it "must be harmful to the point that [it] could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Wolf v. MWH Constructors, Inc.*, 34 F. Supp. 3d 1213, 1227 (M.D. Fla. 2014); *Burlington N. & Santa Fe Ry. Co. v. White,* 548 U.S. 53, 68 (2006); *see, e.g., Trask*, 822 F.3d at 1194 ("A work reassignment may constitute an adverse employment action when the change is 'so substantial and material that it … alter[s] the terms, conditions, and privileges of employment.'"); and *Lucas v. W. W. Grainger, Inc.*, 257 F.3d 1249, 1261 (11th Cir. 2001)(negative performance evaluations that did not result in any effect on the employee's employment did not constitute "adverse employment action.").

e. In order to establish a "causal connection," Title VII (and FCRA) retaliation claims require the petitioner to prove that the protected activity was the "but-for" cause of the adverse employment action. *Ceus v. City of Tampa*, 803 Fed. Appx. 235, 248 (11th Cir. 2020)(citing *Univ. of Tex. SW Med. Ctr. v. Nassar*, 133 S. Ct. 2517 (2013)). This standard demands "proof that the unlawful retaliation would not have occurred in the absence of the alleged wrongful action or actions of the employer." *Nassar*, 133 S. Ct. at 2533. In other words, Petitioner must demonstrate that the complained-of employment decisions would not have occurred "but-for" the Department's

actual intent to retaliate against her because she participated in the protected activity. *See Trask*, 822 F.3d at 1194.

f. While working at the Collier Detention Center, Petitioner alleges that she engaged in two actions that could serve as protected activities. First, in May 2020, Petitioner reported an on-the-job injury for which she filed a workers' compensation claim. Second, in August 2020, Petitioner formally submitted a complaint to the Department alleging sexual harassment by Major Goss. Based on the evidence in the record, however, Petitioner did not establish a prima facie case of retaliation regarding either activity.

g. Petitioner has not proven that she suffered an "adverse employment action" that is "causally connected" to either activity. The two "retaliatory" acts about which Petitioner complains include her written reprimands in May 2020 and the Department's decision not to promote her to the RBT and FTC positions. No evidence in the record shows that these "adverse employment actions" are in any way connected to Petitioner's two protected activities. Regarding her workers' compensation claim, on May 13, 2020, within days after disclosing her injury, the Department (following the advice of her physician) placed Petitioner on alternate duty. Petitioner was allowed to remain in alternate duty status until she reached maximum medical improvement in June 2020.

h. Further, the Department presented credible legitimate non-discriminatory bases for disciplining Petitioner with the written reprimands (failure to maintain her radio on her person, and relying on another youth detainee to call in the emergency), as well as legitimate non-discriminatory reasons for not promoting Petitioner (she lacked the necessary qualifications and the detention facility supervisors (not Major Goss) recommended other Detention Officers to fill the positions.) Additionally, even assuming that Petitioner established a prima facie case of retaliation, she has not shown that the Department's explanations for its actions are merely "pretext," and that its true motivations were based on her filing a workers' compensation

and a sexual harassment complaint with the Commission. Accordingly, Petitioner did not prove that the Department retaliated against her based on her exercise of a protected activity.

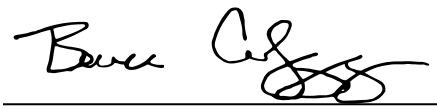
63. Petitioner clearly expressed that she experienced some form of conflict in her work environment. However, the undersigned is mindful that interoffice strife, alone, is not sufficient to establish a hostile work environment claim under the FCRA or Title VII. *See e.g.*, *McCollum v. Bolger*, 794 F.2d 602, 610 (11th Cir. 1986)("Title VII prohibits discrimination; it is not a shield against harsh treatment at the work place. Personal animosity is not the equivalent of sex discrimination … . The plaintiff cannot turn a personal feud into a sex discrimination case … ."). Title VII is not a "general civility code." *Gupta v. Fla. Bd. of Regents*, 212 F.3d 571, 583 (11th Cir. 2000). Harassment constitutes employment discrimination only if the "workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment." *Harris v. Forklift Sys. Inc.*, 510 U.S. 17, 21 (1993); *see also Gray v. City of Jacksonville*, 492 F. App'x 1, 10-11 (11th Cir. 2012)("In the contemporary American workplace, some measure of conflict between employers and employees—wrought by the personal and professional stressors that naturally occasion a group of individuals working together in close quarters—is inevitable."); and *Butler v. Ala. DOT*, 536 F.3d 1209, 1213 (11th Cir. 2008)("[N]ot every uncalled for, ugly, racist statement by a co-worker is an unlawful employment practice.").

64. In sum, the evidence and testimony presented in this matter is not sufficient to sustain a claim of sexual harassment. Consequently, Petitioner failed to meet her ultimate burden of proving that the Department discriminated against or harassed her based on her race, sex, national origin, or age, or in retaliation for protected activity. Accordingly, Petitioner's Petition for Relief must be dismissed.

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, Bonia Baptiste, did not prove that Respondent, the Florida Department of Juvenile Justice, committed an unlawful employment practice against her; and dismissing her Petition for Relief from an unlawful employment practice.

DONE AND ENTERED this 22nd day of November, 2021, in Tallahassee, Leon County, Florida.



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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.