

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JENNIFER L. LANDRESS,

Petitioner,

vs.

Case No. 21-1408

FORT WALTON BEACH MEDICAL CENTER,

Respondent.

_____ /

RECOMMENDED ORDER

On August 2, 2021, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (DOAH), conducted an evidentiary hearing pursuant to section 120.57(1), Florida Statutes (2019), in Tallahassee, Florida, via Zoom conference.

APPEARANCES

For Petitioner: Jennifer L. Landress
7758 Ramona Drive
Navarre, Florida 32566

For Respondents: Cymoril M. White, Esquire
Ford & Harrison LLP
Suite 900
101 East Kennedy Boulevard
Tampa, Florida 33602

STATEMENT OF THE ISSUES

Whether Respondent, Fort Walton Beach Medical Center (FWBMC), engaged in employment discrimination and, thus, violated the Florida Civil Rights Act(FCRA), section 760.10, *et seq.*, Florida Statutes, by: (a) failing to accommodate Petitioner, Jennifer L. Landress, because of her alleged

disability; (b) subjecting Ms. Landress to a hostile work environment on the basis of her sex; (c) constructively discharging Ms. Landress from employment; and (d) retaliating against Ms. Landress, and, if so, the appropriate penalty.

PRELIMINARY STATEMENT

On September 29, 2020, Ms. Landress filed a charge of discrimination with the Florida Commission on Human Relations (FCHR), alleging that Respondent discriminated and retaliated against her, in violation of the FCRA. Ms. Landress's charge stated:

I believe I have been discriminated against pursuant to Chapter 760 of the Florida Civil Rights Act, and/or Title VII of the Federal Civil Rights Act, and/or the Age Discrimination in Employment Act, and/or the Americans with Disabilities Act as applicable for the following reason(s): Complainant (CP), began her employment with Respondent in 10/2005 and held the position of CV Services Specialist. CP was subjected to disparate treatment, retaliation, different terms and conditions of employment because of her sex-female and disability. CP's sexual harassment and other events started in 2013, but what she experienced lasted through October 4, 2019. CP was on medical leave due to sexual harassment from June 2019 – October 4, 2019, when she resigned as her short-term disability had run out. CP was subjected to sexual harassment at the hands of Dr. Al-Dehneh and subjected to harassment at the hands of, but not limited to, Chuck Hall the President of National Group at HCA, Rob Grant, Andrea Oliver and Nurse Daria (Al-Dehneh girlfriend). Mr. Hall followed CP into Victoria's Secret and his comment to Al-Dehneh was, CP would not be on the market long, because she had "a rocking body." Dr. Al-Dehneh stated he was planning to request CP's husband sell her for 5,000. That incident was witnessed by Teri Parks who worked in Cath Lab, He requested CP meet him for sex, and when she didn't, he stated "you are dead to me," Dr. Al-Dehneh frequently stated, "you will marry me," and had CP followed from 2018-2019.

Dr. Al-Dehneh states having CP followed because her husband does not care about her and he would often kick walls between offices and reading rooms stating, “I can’t let you live.” CP was on short-term disability and was denied a reasonable accommodation to work by Diane Ristom; Ms. Ristom also denied CP a promotion. Due to the ongoing sexual harassment and hostile work environment she was left with no choice but to resign. CP states that harassment is still ongoing.

On March 26, 2021, FCHR issued a “Notice of Determination of No Cause,” finding that there was no reasonable cause to believe that Respondent had committed unlawful discrimination on the bases of disability, sex, and retaliation against Ms. Landress.

On April 23, 2021, Ms. Landress filed a Petition for Relief with FCHR, again alleging that Respondent had engaged in employment discrimination against her. FCHR transmitted the Petition to DOAH and assigned the undersigned Administrative Law Judge (ALJ) to conduct an evidentiary hearing.

The undersigned originally noticed this matter for final hearing on June 14, 2021. On May 25, 2021, FWBMC filed an Unopposed Motion for Status Conference, which indicated that Ms. Landress had requested a continuance of the final hearing. The undersigned conducted a telephonic status conference on June 4, 2021, and, thereafter, entered an Order Rescheduling Hearing by Zoom Conference and noticed this matter for final hearing on August 2, 2021.

The undersigned conducted the final hearing on August 2, 2021, by Zoom conference. Petitioner testified on her own behalf and presented the testimony of Dr. Eric Sandwith, Dr. Anthony Al-Dehneh, Teri Park, and

Dr. Leon Chen. The undersigned admitted Petitioner's Exhibits P1 through P6 into evidence. Julie Sanders and Dianne Ristom testified on behalf of Respondent. The undersigned admitted Respondent's Exhibits R3, R5, R7, R11, R12, and R13 into evidence.

The two-volume Transcript of the final hearing was filed with DOAH on October 15, 2021. On October 20, 2021, the parties filed a Joint Motion for Extension of Time in which they requested up to November 22, 2021, to file their proposed recommended orders. On October 21, 2021, the undersigned entered an Order Granting Extension of Time to Submit Proposed Recommended Orders, allowing the parties until November 22, 2021, to file proposed recommended orders. On November 16, 2021, Ms. Landress sent a letter to the undersigned, requesting an additional extension of time to file a proposed recommended order because of health issues and further requested the ability to submit additional evidence. On November 17, 2021, the undersigned entered an Order Granting Petitioner's Second Motion for an Extension to File Proposed Recommended Orders and Denying Request to Open Hearing Record, which allowed the parties until December 6, 2021, to file proposed recommended orders and denied Ms. Landress's request to submit additional evidence. On December 6, 2021, the parties timely submitted proposed recommended orders, which the undersigned has considered in the preparation of this Recommended Order.

All statutory references are to the 2019 codification of the Florida Statutes unless otherwise indicated.

FINDINGS OF FACT

1. FWBMC hired Ms. Landress on October 31, 2005, and employed her for approximately 14 years as a Cardiovascular Services Specialist. Ms. Landress resigned her employment with FWBMC on October 4, 2019.

2. During her employment with FWBMC, Ms. Landress reported to either Ms. Ristom, Vice President of Quality and Risk Management, or Rob Grant, the former Director of Cardiovascular Services.

3. Between August 30, 2018, and October 4, 2019, FWBMC also employed Ms. Sanders, Human Resources Business Partner, and Ms. Clark, Cardiovascular Tech.

4. FWBMC never employed Dr. Al-Dehneh (or the other physicians who testified at the final hearing—Dr. Sandwith and Dr. Chen). Dr. Al-Dehneh has privileges to use FWBMC to provide services to the patients who come to FWBMC to receive care.

5. Neither Dr. Al-Dehneh nor any of the physicians who testified at the final hearing were supervisors of Ms. Landress. Further, Dr. Al-Dehneh: never had a role in Ms. Landress’s discipline or schedule; never evaluated her performance; and did not exercise any control over Ms. Landress or affect the terms or conditions of her employment with FWBMC.

FWBMC’s Policies Concerning Discrimination and Sexual Harassment

6. FWBMC has a policy entitled “Equal Employment Opportunity/Harassment,” which is included in the employee handbook, as well as on its “HR Answers” online portal and intranet.

7. The “Equal Employment Opportunity/Harassment” policy states, in part:

Equal employment opportunities are provided to all employees and applicants for employment without regard to race, color, religion, gender, gender identity, national origin, age, disability, sexual orientation, genetic information, or protected veteran status with applicable federal, state and local laws.

This policy applies to all terms and conditions of employment, including, but not limited to, hiring,

placement, promotion, termination, layoff, transfer, leaves of absence, compensation and training.

* * *

Any form of unlawful employee harassment based on race, color, religion, gender, gender identity, national origin, age, disability, sexual orientation, protected veteran status or any other status in any group protected by federal, state or local law is strictly prohibited. Improper interference with the ability of employees to perform their expected job duties is not tolerated. Each member of management is responsible for creating an atmosphere free of discrimination and harassment, sexual or otherwise. Further, employees are responsible for respecting the rights of their co-workers.

The following is prohibited:

- Unwelcome sexual advances, requests for sexual favors, and all other verbal or physical conduct of a sexual or otherwise offensive nature
- Behaviors that engender a hostile or offensive work environment will not be tolerated. These behaviors may include, but are not limited to, offensive comments, jokes, innuendos and other sexually oriented or culturally insensitive/inappropriate statements, printed material, material distributed through electronic media or items posted on walls or bulletin boards.

8. FWBMC also has a policy entitled “Complaint Procedures,” which is contained in the employee handbook, as well as on its “HR Answers” online portal and intranet.

9. The “Complaint Procedures” policy states, in part:

If you experience any job-related harassment based on race, national origin, religion, gender, gender identity, color, disability, age or other factor

prohibited by federal, state or local statute, or you believe you have been treated in an unlawful, discriminatory manner, promptly report the incident to your manager or Human Resources, who will investigate the matter and take appropriate action. If you believe it would be inappropriate to discuss the matter with your manager or Human Resources, you may bypass your manager or Human Resources and report it directly for investigation at The Ethics Line at [phone number].

10. Ms. Landress testified that she received a copy of the employee handbook, read the policies contained in it—including the policy concerning “Equal Employment Opportunity/Harassment” and “Complaint Procedures”—and knew of and utilized them.

11. Ms. Sanders testified that if FWBMC, after investigation by its human resources department, substantiates a claim of harassment or discrimination by a physician, it would provide its investigative findings to the medical staff office, who would then refer the physician to a peer review process that could culminate in an appropriate action with respect to that physician’s hospital privileges.

12. The undisputed evidence at the final hearing revealed that Ms. Landress reported to FWBMC’s human resources department that she was subjected to discrimination and harassment in August 2018, and again in March 2019.

Allegations of Harassment and Hostile Work Environment

13. Ms. Landress testified that Dr. Al-Dehneh began sexually harassing her starting in 2013. On August 30, 2018, she met with Ms. Sanders and Ms. Ristom and discussed this allegation.

14. Ms. Sanders testified of the allegations made by Ms. Landress at the August 30, 2018, meeting:

That Dr. Al-Dehneh had asked Rob to find women for him and to get Ms. Landress to sleep with him. She also indicated that Dr. Al-Dehneh was listening

to her conversations via some sort of recording or monitoring device in her computer. She felt that Dr. Al-Dehneh had bugged her home through Siri and had accessed her medical records here at the facility.

She was afraid for her life and had a gun. She also felt that Dr. Al-Dehneh was watching her home and that she told us a story about a lady on a bike who said that she was dead to her. She was afraid to go to the police about Dr. Al-Dehneh because she had been told that he was a mobster. And then she did admit to us at one point that she had started developing feelings for Dr. Al-Dehneh.

15. Ms. Ristom also testified concerning the allegations made by Ms. Landress at the August 30, 2018, meeting:

She said that Dr. Al-Dehneh had said to her to let him know when she was ready to get married. She said that Rob was tasked with getting women and obtaining sex for Dr. Al-Dehneh. And, you know, during that time Jennifer told me that – told Julie Sanders and I that she had started developing feelings for him, for Dr. Al-Dehneh.

And in addition, she felt like her neighbor was watching her and providing information back to Dr. Al-Dehneh about her activities at home. Also, she said that she was afraid to report him because she felt like she – she understood him to be a mobster. She said he was listening to her through a listening device when she was at home through, like, a Siri, a radio kind of device because he would say things that he would only know if he was able to hear her at home.

She told us about a heavysset lady on a bicycle who told her that she was a dead lady, that Jennifer was a dead lady, but that that woman was not going to be the one to kill her because Jennifer had been nice to her. She said that she was afraid to go to the police because she believed Dr. Al-Dehneh to be a mobster and that he owned the police and the hospital as

well. She said that she was defending herself – felt like she needed to defend herself and had been carrying a gun and keeping it on her nightstand as well. She told us that she hadn't slept in months, that she was taking medication to help her but that she was having difficulty concentrating.

16. The testimony of Ms. Landress more or less confirmed that she made those allegations that Ms. Sanders and Ms. Ristom testified were made at the August 30, 2018, meeting, and that those allegations formed the basis for her Petition for Relief. She added that Dr. Al-Dehneh “constantly” harassed her, that she believed he started a rumor at the hospital that she had herpes, and that he had her “followed” to a local mall. Ms. Landress denied that she had romantic feelings for Dr. Al-Dehneh, but stated that she “had a great working relationship with him for a long time.”

17. Dr. Al-Dehneh testified and denied all of Ms. Landress's allegations, including: asking Ms. Landress to let him know when she was ready to get married; offering to “buy” Ms. Landress from her husband; threatening to have Ms. Landress fired; having Ms. Landress followed; putting a “hit” out on Ms. Landress; making comments about Ms. Landress to other physicians; spreading a rumor that Ms. Landress had herpes; calling Ms. Landress's treating physician, Dr. Chen, for information about her; and accessing Ms. Landress's medical records.

18. According to Ms. Landress, Dr. Sandwith and Ms. Park were witnesses who could corroborate many of her allegations concerning Dr. Al-Dehneh. Both denied each and every allegation.

19. Dr. Sandwith testified that he never saw Ms. Landress and Dr. Al-Dehneh together; denied talking to Dr. Al-Dehneh about Ms. Landress; denied ever seeing or hearing Dr. Al-Dehneh harass or act inappropriately with Ms. Landress or any other hospital staff; and denied hearing rumors concerning Ms. Landress, Dr. Al-Dehneh, their alleged relationship, or that Ms. Landress had herpes.

20. Ms. Park, who worked with Ms. Landress: testified that she never heard any rumors that Dr. Al-Dehneh was having sexual relationships with other women; denied witnessing Dr. Al-Dehneh tell Ms. Landress that he was going to call Ms. Landress's husband and offer \$5,000 for her; denied talking with Ms. Landress about being sexually harassed; denied hearing rumors about Ms. Landress and Dr. Al-Dehneh; denied hearing rumors that Ms. Landress had herpes; and denied telling Ms. Landress to stay away from Dr. Al-Dehneh.

21. According to Ms. Landress, she also discussed her allegations of sexual harassment with her orthopedic physician, Dr. Chen, on numerous occasions. Dr. Chen testified that during one of Ms. Landress's appointments,

I recall you telling me just occurrences at home, of what happened in the workplace between yourself and a certain physician on staff at the – at the Walton Beach Medical Center. Yeah, and there was situations or there were occurrences that were – upsetting to you and they were providing some sorts of distress.

He further testified that Ms. Landress “spoke ... about the herpes.”

22. Dr. Chen testified that he may have heard FWBMC staff discussing the alleged herpes rumor, but could not recall from whom he heard those rumors, and admitted that the rumors could have come from Ms. Landress herself.

23. Dr. Chen testified that he never witnessed Dr. Al-Dehneh acting inappropriately towards Ms. Landress, and that he never heard any other physician at FWBMC discuss any rumors concerning Ms. Landress or Dr. Al-Dehneh.

FWBMC Investigation of Complaint of Harassment and Hostile Work Environment

24. At the conclusion of the August 30, 2018, meeting, Ms. Sanders immediately investigated Ms. Landress's claims by interviewing

Dr. Al-Dehneh that same day, and by interviewing other employees who could potentially substantiate Ms. Landress's claims. However, Ms. Sanders was unable to find any witness who corroborated any of Ms. Landress's allegations.

25. Ms. Sanders testified, as part of her investigation, that she determined that Dr. Al-Dehneh did not have any remote access or log-in capabilities to access Ms. Landress's computer.

26. Ms. Sanders further testified, as part of the investigation, that she confirmed that Dr. Al-Dehneh never had access, nor tried to access, Ms. Landress's medical records.

27. During the investigation, Ms. Ristom testified that she offered to move Ms. Landress's office to distance her from the individuals allegedly involved, including Dr. Al-Dehneh. Ms. Landress declined this offer.

28. Ms. Sanders completed her investigation of Ms. Landress's claims of sexual harassment and hostile work environment on September 18, 2018, and informed Ms. Landress that FWBMC could not substantiate her claims.

Subsequent Events

29. On September 20, 2018, Ms. Landress suffered an anxiety attack and went home from work early. When Ms. Sanders and Ms. Ristom learned of the anxiety attack, they attempted to speak with Ms. Landress in her office and told her to take the weekend off to deal with her anxiety. Both Ms. Sanders and Ms. Ristom testified that Landress did not attribute her anxiety attack to the alleged past sexual harassment incidents with Dr. Al-Dehneh, nor any new incidents of harassment.

30. Ms. Landress's testimony concerning the anxiety attack and subsequent leave was as follows:

Predominately because I really wanted to come home and take medication because I couldn't stand – I – I just couldn't get past people in the hospital constantly talking about me having herpes. I mean, it's kind of like if you were walking in the

building and that's all you heard, you want to get out of there.

31. As previously noted, the FWBMC investigation did not substantiate Ms. Landress's allegation concerning hospital rumors that she had herpes. Further, there was no testimony or evidence presented at the final hearing, outside of Ms. Landress's testimony, that confirmed this allegation.

32. Ms. Landress soon returned to work and did not report another incident of harassment until March 2019.

33. On March 1, 2019, Ms. Landress reported that a nurse practitioner, who she claimed worked for Dr. Al-Dehneh, took a photo of Ms. Landress on her cellphone when she walked by Ms. Landress's office. Ms. Landress testified that she "assumed" the nurse practitioner took the photo for Dr. Al-Dehneh. Ms. Landress further testified that she never saw the photo.

34. Ms. Ristom and Ms. Sanders met with Ms. Landress concerning this allegation, and Ms. Sanders investigated it. Ultimately, FWBMC was unable to substantiate this claim or that she was being harassed by Dr. Al-Dehneh or his nurse practitioner.

35. Ms. Landress did not report any other incidents of harassment after March 1, 2019.

Leave(s) of Absence

36. FWBMC approved Ms. Landress for a paid leave of absence from June 10, 2019, until she resigned on October 4, 2019.

37. FWBMC granted this leave for two separate reasons: for an orthopedic condition, and for a mental health condition. Initially, Ms. Landress was placed on leave for her claims of stress, anxiety, and post traumatic stress disorder related to the alleged harassment. Then, on September 9, 2019, Ms. Landress submitted a separate claim because of pain in her right elbow.

38. Dr. Chen, Ms. Landress's treating orthopedic physician, informed FWBMC that her anticipated return work date was October 7, 2019, with

restrictions, such as “no repetitive use of right arm to include typing, mouse use, [and] writing.”

39. After Dr. Chen cleared Ms. Landress to return to work, with restrictions, Ms. Sanders reminded Ms. Landress that she could not return until her mental health counselor also cleared her.

40. Ms. Landress’s mental health counselor never cleared her to return to work.

41. In July 2019—during her leave of absence for a mental health condition—Ms. Landress requested, to Ms. Ristom, the opportunity to work from home.

42. FWBMC denied Ms. Landress’s accommodation request; Ms. Sanders testified:

At that time we weren’t able to accommodate the work from home request. There was concerns around protecting patient medical records and her ability to work with the staff and the physicians when she needed to ask questions.

43. On September 20, 2019, while Ms. Landress remained on leave, Ms. Ristom received an email from Q-Centrix, a third-party data management provider that collaborates with healthcare providers, such as FWBMC. The September 30, 2019, email requested that FWBMC terminate Ms. Landress as an employee so that Q-Centrix could employ Ms. Landress in a full-time position.

44. Ms. Ristom forwarded this email to Ms. Sanders to investigate and did not reply to the September 20, 2019, email from Q-Centrix until FWBMC could confirm from Ms. Landress that it was her intention to resign her position with FWBMC.

45. On September 27, 2019, Q-Centrix emailed another request to FWBMC to terminate Ms. Landress. Ms. Sanders testified that she spoke with Ms. Landress about this request.

46. On October 4, 2019, Ms. Landress—who still had not received clearance to return to work at FWBMC from her mental health counselor—submitted a letter of resignation to Ms. Sanders. Her letter of resignation stated that she and her mental health counselor agreed that her “PTSD is too great to return.” Her letter further stated that because FWBMC denied her request to work from home, she had accepted a position with “another company.”

47. The October 4, 2019, letter of resignation attached four additional pages of what Ms. Landress contends were the events that led her to resign. The first page listed the allegations of sexual harassment by Dr. Al-Dehneh that Ms. Landress discussed with Ms. Sanders and Ms. Ristom during the August 30, 2018, meeting. The remaining three pages listed various allegations that Ms. Landress did not report to FWBMC and did not include in her charge of discrimination with FCHR.

Findings of Ultimate Fact

48. Ms. Landress presented no persuasive evidence that FWBMC’s decisions concerning, or actions affecting, her, directly or indirectly, were motivated in any way by sex-based or disability-based discriminatory animus. There is no competent, persuasive evidence in the record, direct or circumstantial, upon which the undersigned could make a finding of unlawful sex-based or disability-based discrimination.

49. Ms. Landress presented no persuasive evidence that FWBMC’s actions subjected her to harassment based on sex. There is no competent, persuasive evidence in the record, direct or circumstantial, upon which the undersigned could make a finding of unlawful sexual harassment.

50. Ms. Landress presented no persuasive evidence that FWBMC discriminated against her because she opposed an unlawful employment practice, or because she made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under the FCRA. There is no competent, persuasive evidence in the record, direct or

circumstantial, upon which the undersigned could make a finding of unlawful retaliation.

51. Ms. Landress presented no persuasive evidence that FWBMC's actions were sufficiently severe or pervasive to alter the terms and conditions of her employment to create a hostile work environment. There is no competent, persuasive evidence in the record, direct or circumstantial, upon which the undersigned could make a finding of hostile work environment.

52. Finally, Ms. Landress presented no persuasive evidence that her working conditions at FWBMC were so intolerable that a reasonable person in her condition would have been compelled to resign. There is no competent, persuasive evidence in the record, direct or circumstantial, upon which the undersigned could make a finding of constructive discharge.

CONCLUSIONS OF LAW

53. The Division has jurisdiction over the subject matter and the parties to this proceeding in accordance with sections 120.569, 120.57(1), and 760.11(7), Florida Statutes. *See also* Fla. Admin. Code R. 60Y-4.016 (providing upon a petition for relief from an unlawful employment practice, a hearing shall be conducted by an administrative law judge).

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

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

(a) To discharge or 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.

* * *

(7) 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.

55. Because the FCRA is patterned after federal anti-discrimination laws, such as Title VII of the Civil Rights Act of 1964 (Title VII), courts rely on federal Title VII cases when analyzing discrimination and retaliation claims brought pursuant to the FCRA. *See Ponce v. City of Naples*, 2017 WL 4574649, at *4 (M.D. Fla. Oct. 13, 2017); *Harper v. Blockbuster Ent. Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998) (finding that complaint fails for the same reasons under Title VII and the FCRA); *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 21 (Fla. 3d DCA 2009).

56. The burden of proof in an administrative proceeding is on Ms. Landress as the complainant. *See Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 935 (Fla. 1996) (“The general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue.”). To show a violation of the FCRA, Ms. Landress must establish, by a preponderance of the evidence, a prima facie case of discrimination, retaliation, or hostile work environment. *See St. Louis v. Fla. Int'l. Univ.*, 60 So. 3d 455, 458-59 (Fla. 3d DCA 2011) (reversing jury verdict awarding damages on FCRA racial discrimination and retaliation claims where employee failed to show similarly situated employees outside his protected class were treated more favorably). A “prima

facie” case means it is legally sufficient to establish a fact or that a violation happened unless disproved.

57. The “preponderance of the evidence” standard is the “greater weight” of the evidence, or evidence that “more likely than not” tends to prove the fact at issue. This means that if the undersigned found the parties presented equally competent substantial evidence, Ms. Landress would not have proved her claims by the “greater weight” of the evidence, and would not prevail in this proceeding. *See Gross v. Lyons*, 763 So. 2d 276, 289 n.1 (Fla. 2000).

Discrimination / Failure to Accommodate

58. The Americans with Disabilities Act (ADA) prohibits employers from discriminating against a “qualified individual” on the basis of the individual’s disability. *Earl v. Mervyns*, 207 F.3d 1361, 1365 (11th Cir. 2000). Disability discrimination claims under the FCRA are analyzed using the same framework as ADA claims. *See Holly v. Clairson Indus., LLC*, 492 F.3d 1247, 1255 (11th Cir. 2007).

59. To establish a prima facie case of disability discrimination, Ms. Landress must show: (a) she is disabled; (b) she is a qualified individual; and (c) she was subjected to unlawful discrimination because of her disability. *Garrison v. City of Tallahassee*, 664 Fed. Appx. 823, 825-26 (N.D. Fla. Nov. 9, 2016). Failure to reasonably accommodate a disability may constitute unlawful discrimination. *Id.*

60. A qualified individual is someone who can perform the essential functions of her job, with or without reasonable accommodation. *Id.* at 826. The essential functions of a position “are the fundamental job duties of a position that an individual with a disability is actually required to perform.” *Holly*, 492 F.3d at 1257. Whether a function is “essential” is determined on a case-by-case basis. *Id.*

61. Ms. Landress “must show that either [s]he can perform the essential functions of [her] job without accommodation, or, failing that, show that [s]he can perform the essential functions of [her] job with a reasonable

accommodation.” *Bagwell v. Morgan Cnty. Comm’n*, 676 Fed. Appx. 863, 865 (11th Cir. 2017). If Ms. Landress is “unable to perform an essential function of [her] ... job, even with an accommodation, [s]he is, by definition, not a qualified individual and, therefore, not covered” under the ADA or the FCRA. *Id.*

62. Ms. Landress “bears the burden of identifying an accommodation, and of demonstrating that the accommodation allows [her] to perform the job’s essential functions.” *Id.* A “substantial weight [is given] to an employer’s judgment as to which functions are essential.” *Id.*

63. Ms. Landress’s preferred accommodation was to work from home. However, the requested accommodation would eliminate essential functions of her job because FWBMC was not able to adequately protect the patient medical records that Ms. Landress would need to access in her position, and because FWBMC was concerned with her ability to work with staff and physicians remotely.

64. Additionally, Ms. Landress presented no evidence that her mental health counselor would have released her back to work if FWBMC allowed her to work from home. Ms. Landress could not perform the essential functions of her job if she was not released back to work.

65. The undersigned notes that FWBMC placed Ms. Landress on paid leave for her physical and mental health conditions.

66. The undersigned concludes that Ms. Landress failed to demonstrate that her requested accommodation would allow her to perform her job’s essential functions, and, thus, her claim for disability discrimination and failure to accommodate must fail.

Hostile Work Environment

67. To establish a prima facie case of hostile work environment, Ms. Landress must show that: (a) she is a member of a protected class; (b) she was “subjected to unwelcome harassment”; (c) the harassment was based upon a protected trait; (d) the harassment was “severe or pervasive enough to

alter the terms and conditions of employment and create a hostile or abusive working environment”; and (e) the employer is liable for the hostile work environment through either vicarious or direct liability. *Jones v. UPS Ground Freight*, 683 F.3d 1283, 1292 (11th Cir. 2012). To be clear, “[i]t is a bedrock principle that not all objectionable conduct or language amounts to discrimination under Title VII.” *Id.* at 1297 (internal quotations omitted). Rather, “only conduct that is ‘based on’ a protected category, such as race, may be considered in a hostile work environment analysis.” *Id.* Accordingly, “[i]nnocuous statements or conduct, or boorish ones that do not relate to the [protected trait] of the actor or of the offended party (the plaintiff), are not counted.” *Id.*

68. Ms. Landress failed to establish that any actions and conduct she experienced at FWBMC were based on her protected status, *i.e.*, sex.

69. Ms. Landress’s testimony failed to establish that “the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter conditions of the victim’s employment and create an abusive working environment.” *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (internal quotations and citations omitted).

70. The undersigned notes that no witness confirmed or corroborated Ms. Landress’s allegations. The undersigned further notes that Ms. Landress introduced no evidence to establish a hostile work environment. The undersigned evaluated her testimony as well, and finds that it was neither persuasive nor plausible.

71. Ms. Landress’s failure to establish that the alleged hostile work environment was based on her sex, and that the alleged harassment was sufficiently severe or pervasive to alter the terms of her employment, creating a hostile work environment, ends the undersigned’s analysis of her hostile work environment claim. The undersigned concludes that Ms. Landress has failed to establish a *prima facie* case of hostile work environment.

Constructive Discharge

72. Ms. Landress may bring a claim for constructive discharge when her working conditions are “so intolerable that a reasonable person in [her position] would have been compelled to resign.” *Stancombe v. New Process Steel LP*, 652 Fed. Appx. 729, 737 (11th Cir. 2016). Proving constructive discharge “is a more onerous task than establishing a hostile work environment claim.” *Id.*

73. Other courts have held that an employee’s decision to wait to resign until after she has found another job weighs against a finding of constructive discharge. *See, e.g., Giakoumakis v. Maronda Homes, Inc.*, 2010 WL 11507432, at *7 (M.D. Fla. Mar. 26, 2010) (holding “the facts surrounding [employee’s] resignation weigh against a constructive discharge ... she did not resign until she found another job”); *Gonima v. Manatee Cnty. Sch. Bd.*, 2007 WL 1222577 (M.D. Fla. Apr. 24, 2007) (holding that employee failed to prove constructive discharge because he “remained at his job ... long after he contemplated finding another employment.”).

74. Additionally, the Eleventh Circuit has held that an employee’s decision to resign, rather than face an unpleasant alternative, is voluntary, and not constructive discharge. *Conney-Manning v. Thomas Cnty. Bd. of Comm’rs*, 730 Fed. Appx. 883 (11th Cir. 2018).

75. Ms. Landress failed to present evidence to establish a constructive discharge claim. By the time she submitted her letter of resignation on October 4, 2019, she had already accepted a full-time work-from-home position with Q-Centrix. Additionally, she presented no credible, persuasive evidence that she was subjected to harassment that would have risen to the level of intolerableness that would have compelled her to resign. The undersigned concludes that Ms. Landress has failed to establish a constructive discharge claim.

Retaliation

76. To establish a prima facie case of retaliation, Ms. Landress must show that: (a) she was engaged in statutorily protected expression or conduct; (b) she suffered an adverse employment action; and (c) there is a causal relationship between the two events. *Williams v. Motorola, Inc.*, 303 F.3d 1284, 1291 (11th Cir. 2002).

77. In order to satisfy the “statutorily protected expression or conduct” requirement, Ms. Landress must establish that her opposition to unlawful employment practices was sufficient to communicate to FWBMC that she believed that FWBMC was engaged in unlawful discriminatory conduct. *See Murphy v. City of Aventura*, 616 F. Supp. 2d 1267, 1279 (S.D. Fla. 2009); *Webb v. R&B Holding Co., Inc.*, 992 F. Supp. 1382, 1389 (S.D. Fla. 1998).

78. If Ms. Landress establishes a prima facie case of retaliation, the burden then shifts to FWBMC to articulate a legitimate, non-discriminatory reason for its action. *See Addison v. Fla. Dep’t of Corr.*, 683 Fed. Appx. 770, 774 (11th Cir. 2017); *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 950 (11th Cir. 2000).

79. If FWBMC meets this burden, the burden then shifts back to Ms. Landress, to show that FWBMC’s proffered reason is mere pretext. *See James v. Total Sols., Inc.*, 691 Fed. Appx. 572, 574 (11th Cir. 2017); *Quigg v. Thomas Cnty. Sch. Dist.*, 814 F.3d 1227, 1237 (11th Cir. 2016).

80. Ms. Landress’s interactions with Ms. Sanders and Ms. Ristom do not amount to protected activity under either the participation clause or the opposition clause of the FCRA. The participation clause only “protects proceedings and activities which occur in conjunction with or after the filing of a formal charge with the EEOC; it does not include participating in an employer’s internal, in-house investigation, conducted apart from a formal charge with the EEOC.” *EEOC v. Total Sys. Servs., Inc.*, 221 F.3d 1171, 1174 (11th Cir. 2000). Ms. Landress did not file her FCHR charge until

after her interactions with Ms. Sanders and Ms. Ristom, and thus, her interactions are not protected activity under the participation clause.

81. None of the terms or conditions of Ms. Landress's employment changed following the August 30, 2018, meeting, where she reported allegations of sexual harassment to Ms. Sanders and Ms. Ristom. Her employment with FWBMC continued, with the same conditions, terms, privileges, and responsibilities, until she resigned on October 4, 2019.

82. The undersigned concludes that Ms. Landress failed to establish a prima facie case of retaliation.

RECOMMENDATION

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

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



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Filed with the Clerk of the
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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.