STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ANGELA D. JONES,

Petitioner,

vs. Case No. 21-1786

GRAND BOULEVARD HEALTH AND REHAB,
D/B/A FL HUD DESTIN, LLC,

Respondent.
_____/

RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on August 2, 2021, via Zoom, before Garnett W. Chisenhall, a duly designated Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Angela D. Jones, pro se
115 Christie Lane
Panama City, Florida 32404

For Respondent: David Sydney Harvey, Esquire
Lewis Brisbois Bisgaard and Smith
401 East Jackson Street, Suite 3400
Tampa, Florida 33602

STATEMENT OF THE ISSUE

The issue is whether Grand Boulevard Health and Rehabilitation, d/b/a FL HUD Destin, LLC ("Grand Boulevard"), committed an unlawful employment practice by discriminating against Angela D. Jones based on her race.

PRELIMINARY STATEMENT

Ms. Jones filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations ("the Commission") on November 14, 2019, alleging the following:

> I am an African American female over the age of 40. I was discriminated against for these reasons. I began working for [Grand Boulevard] on May 15, 2019 as a Certified Nursing Assistant. On June 16, 2019, I was suspended for an incident that occurred in regard to a resident. From that point forward, [Grand Boulevard] lodged an attack against me by attacking my character. I was accused of being a criminal, not having proper licens[ure] and stating that I deliberately did not check a box on the application. I was accused of having been arrested in a town where I have not been arrested. I was treated with great hostility by management. There was and still [are] other employees who are white who had similar incidents and were not treated the way I was treated. I was terminated on July 12, 2019.

The Commission issued a Notice on April 28, 2021, concluding there was no reasonable cause to conclude that an unlawful employment practice occurred. Ms. Jones responded by filing a Petition for Relief,[1] and the Commission referred this matter to DOAH on June 4, 2021, for a formal administrative hearing.

The final hearing was convened on August 2, 2021. Ms. Jones testified on her own behalf but did not attempt to move any exhibits into evidence. Grand

[1] Ms. Jones alleged the following in her Petition for Relief: "I, Ms. Angela D. Jones, an African American female, was treated differently than Caucasian co-workers during employment. Specifically, Heather treats Caucasian employees with respect and dignity versus African American employees. The most recent incident is that Heather terminated me, Ms. Angela D. Jones an African American, from working at Grand Boulevard Health and Rehabilitation Center based on the word of a Caucasian male law enforcement [officer] over my word. I, Angela D. Jones, a CNA, advised Heather several times that I didn't get arrested in the last 5 years [ ]. Heather didn't believe me and I was truthful on my application."

Boulevard presented testimony from Shakara Mayberry, Connie Zuraff, and Heather Hanna. Respondent's Exhibits 2, 5, 6, 8, and 10 were accepted into evidence. In addition, the portion of Respondent's Exhibit 1 containing an affidavit from Phynerrian Manning was also accepted into evidence.[2]

The one-volume final hearing Transcript was filed on August 18, 2021. Both parties filed timely proposed recommended orders that were considered in the preparation of this Recommended Order.

Unless stated otherwise, all statutory references shall be to the 2018 version of the Florida Statutes. *See McClosky v. Dep't of Fin. Serv.*, 115 So. 3d 441 (Fla. 5th DCA 2013)(stating that a proceeding is governed by the law in effect at the time of the commission of the acts alleged to constitute a violation of law).

FINDINGS OF FACT

Based on the oral and documentary evidence adduced at the final hearing, the entire record of this proceeding, and matters subject to official recognition, the following Findings of Fact are made:

1. Ms. Jones is a 49-year-old African American female. She has a high school degree and earned certifications or licenses enabling her to work as a certified nursing assistant ("CNA"), a home-health aide, a cosmetologist, and a security guard. However, healthcare has been her primary field of work.

---

[2] Ms. Jones stated during the final hearing that she had transmitted to DOAH an audio recording made by Mr. Manning and that she had intended to move that audio recording into evidence. The audio recording was not received by DOAH. Nonetheless, the undersigned has determined that no prejudice resulted to Ms. Jones because there was no dispute regarding the event described by Mr. Manning's affidavit.

2. In May of 2019, Ms. Jones was working in a nursing home and heard from a coworker about the substantial benefits and signing bonus that Grand Boulevard was offering new hires.

3. Grand Boulevard's employment application contained a question asking each applicant to respond "yes" or "no" as to whether he or she had "ever pled guilty, pled no contest, had adjudication withheld, or been placed in a pre-trial intervention program as a result of being charged with a crime." Ms. Jones left that portion of her application blank.[3]

4. Ms. Jones responded "no" in response to a question asking if she had "ever been convicted of any criminal violation of law, or [if she was] now under pending investigation or charges of violation of criminal law."[4]

5. The employment application contained a provision requiring Ms. Jones to certify that:

> the information provided in this employment application (and accompanying resume, if any) is true and complete. I understand that any false, incomplete, or misleading information given by me on this form, regardless of when it is discovered, may disqualify me from further consideration for employment, and may be justification for my

[3] Ms. Jones testified that she told Shakara Mayberry, Grand Boulevard's Director of Staff Development at the time, that she had a criminal background and that she left that portion of the application blank because she could not remember specific details about the charges. Ms. Jones also testified that she offered to supplement her application with precise information after she had an opportunity to consult documentation in her possession. According to Ms. Jones, Ms. Mayberry accepted her application and told her to not worry about disclosing her criminal background. Ms. Mayberry also testified during the final hearing and denied telling Ms. Jones that she could leave that portion of her application blank. During the final hearing, Grand Boulevard provided no satisfactory explanation as to why Ms. Jones was hired without completing that portion of her application.

[4] Respondent's Exhibit 3 was Ms. Jones's responses to interrogatories from Grand Boulevard. Via her responses, Ms. Jones provided documentation regarding her criminal history. However, Grand Boulevard did not request that Respondent's Exhibit 3 be accepted into evidence. When being questioned about Respondent's Exhibit 3, Ms. Jones acknowledged that she has: (1) pled no contest to a battery charge; (2) been charged or arrested for resisting an officer; (3) been arrested for criminal mischief; and (4) entered a plea on a different criminal mischief charge.

> dismissal from employment, if discovered at a later date.

6. After conducting a background check through the Agency for Health Care Administration ("AHCA") indicating Ms. Jones had no disqualifying offenses, Grand Boulevard hired Ms. Jones.[5]

7. Ms. Jones began working for Grand Boulevard on May 15, 2019, as a CNA helping nursing home residents with activities of daily living such as dental hygiene, grooming, and eating.

8. On June 16, 2019, a resident in Ms. Jones's care suffered injuries after he rolled out of his bed while Ms. Jones was cleaning him. Pursuant to its policy, Grand Boulevard suspended Ms. Jones while the Walton County Police Department investigated the incident. Ms. Jones returned to work at Grand Boulevard three days later but was suspended again on June 20, 2019, because she had allowed her CNA certificate to expire. Ms. Jones paid her delinquency fee, and her certificate was reinstated.

9. During the course of the investigation of the June 16, 2019, incident, an investigator from the Walton County Sheriff's Office asked Heather Hanna, Grand Boulevard's Director of Nursing at the time, why Grand Boulevard would hire someone such as Ms. Jones with a criminal history. Ms. Hanna then had Ms. Jones's application pulled and noticed that Ms. Jones did not

[5] Section 400.9065, Florida Statutes, mandates that AHCA "shall require level 2 background screening for personnel as required in s. 408.809(1)(e) pursuant to chapter 435 and s. 408.809." Section 408.809(1)(e), Florida Statutes, requires level 2 background screening of any person who is expected to provide personal care services directly to nursing home residents. Section 435.04(2), Florida Statutes, lists many specific offenses that disqualify someone from working in a nursing home. Accordingly, the background screening conducted through AHCA is narrower in scope than Grand Boulevard's employment application, which asks applicants if they have "ever pled guilty, pled no contest, had adjudication withheld, or been placed in a pre-trial intervention program as a result of being charged with a crime." For example, while Ms. Jones acknowledged that she has pled no contest to a battery charge, that charge would not necessarily have been a disqualifying offense because section 435.04(2) only encompasses felony battery, battery on a minor, sexual battery, and battery on a vulnerable adult. Likewise, resisting an officer and criminal mischief are not disqualifying offenses.

respond to the question asking if she had ever been charged with a crime. Ms. Hanna sent the following report to Connie Zuraff on June 28, 2019:

> I received a visit from Investigator Donna Armstrong with Walton County PD and Julianne Dalton APS investigator. The investigator questioned why we would have an employee who had a recent arrest record, she stated that she knew Angela Jones from the community and that she was concerned that she was employed here. We reviewed her application and found that she had not checked the boxes related to history of arrests.[6] I called Ms. Jones with Tuwanna RN Risk Manager and [Shakara] Mayberry LPN SDC present in the room. I placed Ms. Jones on speaker phone and asked if she had been arrested for any recent criminal activity and she confirmed that she was arrested for battery, petty theft and fighting. I notified the employee that failure to disclose this information could lead to termination and suspended her at that time.
>
> The DCS did pull her background through the AHCA clearing house and we confirmed that she still showed eligible for employment.

10. Grand Boulevard then suspended Ms. Jones and ultimately terminated her on June 27, 2019, on the basis that she "knowingly falsified [her] employment application."

11. There was no persuasive evidence of Grand Boulevard giving more favorable treatment to nonminority employees who neglected to fully disclose whether they had "ever pled guilty, pled no contest, had adjudication withheld, or been placed in a pre-trial intervention program as a result of being charged with a crime." Any testimony from Ms. Jones on that point was

[6] The pertinent question on the application does not require applicants to disclose arrests. The question asks applicants if they have "ever pled guilty, pled no contest, had adjudication withheld, or been placed in a pre-trial intervention program as a result of being charged with a crime."

either unpersuasive, unsubstantiated, or insufficiently specific. Accordingly, the greater weight of the evidence does not demonstrate that Grand Boulevard committed an unlawful employment practice.

CONCLUSIONS OF LAW

12. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 120.569 and 120.57, Florida Statutes, and Florida Administrative Code Rule 60Y-4.016(1).

13. The State of Florida, under the legislative scheme contained in sections 760.01 through 760.11 and 509.092, Florida Statutes, known as the Florida Civil Rights Act of 1992, incorporates and adopts the legal principles and precedents established in the federal anti-discrimination laws specifically set forth under Title VII of the Civil Rights Act of 1964, as amended. 42 U.S.C. § 2000e, *et seq*.

14. Section 760.10 prohibits discrimination "against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, handicap, or marital status." § 760.10(1)(a), Fla. Stat.

15. Ms. Jones alleges that she was the victim of disparate treatment. *See Reeves v. C.H. Robinson Worldwide, Inc.*, 594 F.3d 798, 808 n.2 (11th Cir. 2010)(en banc)("We reiterate that disparate treatment under 42 U.S.C. § 2000e-2(a)(1) is the proper framework under which to evaluate hostile work environment claims."). The United States Supreme Court has noted that "[d]isparate treatment . . . is the most easily understood type of discrimination. The employer simply treats some people less favorably than others because of their race, color, religion, sex, or [other protected characteristic]." *Teamsters v. U.S.*, 431 U.S. 324, 335 n.15 (1977). Liability in a disparate treatment case "depends on whether the protected trait . . . actually motivated the employer's decision." *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993). "The ultimate question in every employment

discrimination case involving a claim of disparate treatment is whether the plaintiff was the victim of intentional discrimination." *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 153 (2000).

16. Discriminatory intent can be established through direct or circumstantial evidence. *Schoenfeld v. Babbitt*, 168 F.3d 1257, 1266 (11th Cir. 1999). Direct evidence of discrimination is evidence that, if believed, establishes the existence of discriminatory intent behind an employment decision without inference or presumption. *Maynard v. Bd. of Regents*, 342 F.3d 1281, 1289 (11th Cir. 2003).

17. "[D]irect evidence is composed of only the most blatant remarks, whose intent could be nothing other than to discriminate on the basis of some impermissible factor." *Schoenfeld*, 168 F.3d at 1266.

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

19. Those seeking to prove discriminatory intent via circumstantial evidence use the shifting burden of proof pattern established in *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (1973). *See Holifield v. Reno*, 115 F.3d 1555, 1562 (11th Cir. 1997).

20. Under the shifting burden pattern developed in *McDonnell Douglas*:

> First, [Petitioner] has the burden of proving a prima facie case of discrimination by a preponderance of the evidence. Second, if [Petitioner] sufficiently establishes a prima facie case, the burden shifts to [Respondent] to "articulate some legitimate, nondiscriminatory reason" for its action. Third, if [Respondent] satisfies this burden, [Petitioner] has the opportunity to prove by a preponderance that the

> legitimate reasons asserted by [Respondent] are in fact mere pretext.

U.S. Dep't of Hous. and Urban Dev. v. Blackwell, 908 F.2d 864, 870 (11th Cir. 1990)(housing discrimination claim); *accord*, *Valenzuela v. GlobeGround N. Am., LLC*, 18 So. 3d 17, 22 (Fla. 3d DCA 2009)(gender discrimination claim)("Under the McDonnell Douglas framework, a plaintiff must first establish, by a preponderance of the evidence, a prima facie case of discrimination.").

21. Ms. Jones did not present statistical or direct evidence of discrimination. Therefore, in order to prevail in her claim against Grand Boulevard, Ms. Jones must first establish a prima facie case by a preponderance of the evidence. *Id.*; § 120.57(1)(j), Fla. Stat. ("Findings of fact shall be based upon a preponderance of the evidence, except in penal or licensure proceedings or except as otherwise provided by statute and shall be based exclusively on the evidence of record and on matters officially recognized.").

22. "Demonstrating a prima facie case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination." *Holifield*, 115 F.3d at 1562; *cf. Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)("A preponderance of the evidence is 'the greater weight of the evidence,' or evidence that 'more likely than not' tends to prove a certain proposition.")(citation omitted).

23. Ms. Jones's discrimination claims are based on alleged, disparate treatment. In order to establish a prima facie case for discrimination based on disparate treatment, Ms. Jones must show that: (a) she belongs to a protected class; (b) she was subject to an adverse employment action; (c) her employer treated similarly-situated employees outside her protected class more favorably; and (d) she was qualified to do the job. *Holifield*, 115 F.3d at 1562.

24. The first, second, and fourth elements of a prima facie case are not at issue in the instant case. As for the third element, Ms. Jones failed to present any specific, persuasive evidence that similarly-situated employees outside her protected class were treated more favorably. As a result, Ms. Jones failed to carry her burden of proof.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Commission on Human Relations enter a final order dismissing Ms. Jones's Petition for Relief.

DONE AND ENTERED this 26th day of August, 2021, in Tallahassee, Leon County, Florida.

Garnett Chisenhall

G. W. CHISENHALL
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of August, 2021.

COPIES FURNISHED:

Tammy S. Barton, Agency Clerk
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-7020

Angela D. Jones
115 Christie Lane
Panama City, Florida 32404

David Sydney Harvey, Esquire
Lewis Brisbois Bisgaard and Smith
401 East Jackson Street, Suite 3400
Tampa, Florida 33602

Stanley Gorsica, General Counsel
Florida Commission on Human Relations
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399-7020

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.