

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

CHATORYA WHITEHURST,

Petitioner,

vs.

Case No. 22-0436

MICAH'S PLACE,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was conducted on April 8, 2022, via Zoom, before Garnett W. Chisenhall, a duly designated Administrative Law Judge of the Division of Administrative Hearings (“DOAH”).

APPEARANCES

For Petitioner:           Chatorya Chavon Whitehurst, pro se  
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Fernandina, Florida 32034

For Respondent:       Leonard T. Hackett, Esquire  
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STATEMENT OF THE ISSUE

The issue is whether Micah’s Place committed an unlawful employment practice by discriminating against Chatorya Whitehurst based on her race.

PRELIMINARY STATEMENT

Ms. Whitehurst filed an Employment Complaint of Discrimination with the Florida Commission on Human Relations (“the Commission”) on July 29, 2021, alleging the following:

I am an African American. I was discriminated against because of my race. I began my employment with [Micah's Place] on July 25, 2017. My most recent position title was Shelter Advocate. Throughout my time there I was written up for the smallest things. I was never given a chance to explain my side of the story; it was automatically assumed that I was guilty. During a training session with a coworker and [upon] our return to the office, my coworker was questioned about me and my boyfriend. One question she was asked was did I or my boyfriend see the credit card? My coworker did not tell me about the incident until she was leaving the agency for fear that I would have said something, and she did not want to get involved. I was called a "n[...]" by participants who have stayed in the shelter. The only response I received from the Executive Director was that she had been called worse. There was never any compassion for anything dealing with race. For four years I was made to work every weekend while I saw my white co-workers quit, comeback and still get better schedules. On April 15, 2021, I was terminated from employment. However, I was waiting on exemption papers, and I was not supposed to be at work after April 7, 2021. I was disqualified from work after a background check, and I had to complete the exemption process. Taylor Riffey and Heather Jones told me I could still come to work; I just couldn't be by myself. Three days later, I was fired.

The Commission issued a Notice on January 25, 2022, concluding there was no reasonable cause to conclude that an unlawful employment practice had occurred. Ms. Whitehurst responded by filing a Petition for Relief, and the Commission referred this matter to DOAH on February 10, 2022, for a formal administrative hearing.

The final hearing was convened on April 8, 2022. In addition to her own testimony, Ms. Whitehurst presented testimony from Amanda De La Cruz

and Leslie Dinkins. Petitioner’s Exhibits B, C, D, G, and H were received into evidence. Micah’s Place presented testimony from Taylor Riffey, and Respondent’s Exhibits A and B were accepted into evidence.

The one-volume final hearing Transcript was filed on June 9, 2022. 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. Servs.*, 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. Micah’s Place is certified by the Florida Department of Children and Families (“the Department”) as a provider of services to survivors of domestic violence (“survivors” or “participants”)<sup>1</sup> in Nassau County, Florida. Taylor Riffey, the director of domestic violence services at Micah’s Place at all times relevant to the instant case, describes its work as follows:

We provide safe haven through our emergency shelters to survivors of domestic violence and their children, as well as outreach services to those who maybe don’t need shelter, but do still need our services. We operate a 24-hour hotline, and we provide preventative services as well in schools.

Micah’s Place operates 24 hours a day, 365 days a year.

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<sup>1</sup> Employees of Micah’s Place often refer to domestic violence survivors as “participants.”

2. Ms. Whitehurst is an African American female who began working at Micah's Place in July of 2017 as a shelter advocate.<sup>2</sup> Shelter advocates act as a support system for participants and answer calls to Micah's Place's 24-hour hotline.

3. In order to ensure the safety of the staff and participants, the Department's contract with Micah's Place mandates that two shelter advocates be on site daily between the hours of 8:00 a.m. and 11:00 p.m. Also, Micah's Place requires that every full-time employee work a Saturday or a Sunday each week.

4. When Ms. Whitehurst began her employment at Micah's Place, she was aware of the staffing requirements and that it was not a typical "9 to 5" job.

5. In October of 2017, a participant who had been working with Ms. Whitehurst filed a complaint with Micah's Place alleging that Ms. Whitehurst had been rude to her. Ms. Whitehurst had been counseling this participant about pursuing a GED and allegedly used the word "damn" during the course of the conversation.

6. As a result, Ms. Whitehurst received a "Corrective Action" form on October 26, 2017. While she did not receive any discipline, Mr. Whitehurst's initial 90-day probationary period as an employee of Micah's Place was extended by an additional 90 days.

7. Ms. Whitehurst received a second "Corrective Action" form on September 20, 2018. One of Ms. Whitehurst's co-workers told Ms. Riffey that Ms. Whitehurst was leaving work early. Ms. Riffey viewed video footage and discovered that Ms. Whitehurst had arrived late or left early on August 30th and 31st, and September 1st, 7th, 8th, 13th, 14th, 15th, and 16th. Ms. Riffey determined that Ms. Whitehurst had 11 hours of unauthorized absences on the aforementioned days.

8. As for discipline, the "Corrective Action" form notes Ms. Whitehurst was required to review Micah's Place's policies on excessive tardiness and

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<sup>2</sup> Ms. Whitehurst worked as a shelter advocate at Micah's Place for nearly four years.

working hours. Ms. Whitehurst was also required to surrender 11 hours of her paid time off. The “Corrective Action” form notes Ms. Whitehurst would be subject to termination if this conduct continued.

9. Ms. Whitehurst felt that her coworkers who were not African American received preferential treatment:

Q: And with regard to this incident, why do you feel like this amounts to discrimination?

A: Up until – from 2017, from that first write-up, up until that write-up, Your Honor, I was basically just witnessing, during that time, my co-workers who were not of color, just basically do -- come -- come late, leave early, basically break confidentiality, do all kinds of sorts of things, not getting written up for. And during this time I was simply trying to spend time with my son on the weekends for football. And I had expressed this to Taylor and Heather [Jones]<sup>3</sup> so many times, to have a weekend off with my son, to go to a football game, to support my son, before he went to college. He’s in high school and he played football. We had this conversation several times. And prior to then, no one was helping me, but I see all my other co-workers not of color getting help, getting assistance from Taylor. But with me, it was – that was never done for me, so, I did take it upon myself to leave early those days to go to my son’s practices at football. And, also, when I did go – when I did go to my son’s activities, I had to use my [paid time off]. And when my grandfather passed away, I didn’t have any [paid time off] to go to his funeral, because I’m from Virginia, so all my [paid time off] was going towards just supporting my son. I tried to express this to Taylor and –

\* \* \*

Q: And why was all that paid time off exhausted?

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<sup>3</sup> Ms. Jones was the Executive Director of Micah’s Place at all times relevant to the instant case.

A: Due to me just having to leave work to go to my son's football games, practices, or just simply wanting to spend time with my son. While all my other co-workers were able to spend time with their children, families, attend football games, cheerleader practices.

10. Ms. Whitehurst's issues with Micah's Place's scheduling continued past her second "Corrective Action" plan, and she continued to leave early without permission:

A: And in 20 – in 2020 of September, I was there for three years and still not able to attend my son's football practices or games without using PTO. Three years later, I'm still having the same issues as I'm having in 2017, even explaining to Taylor and Heather how much my – supporting my son means to me because we are from Virginia and not from Florida, and so it's just me and I don't have any family.

So, as you can see, from those conversations from 2017, from 2020, nothing never changed. I still had the same schedule. I was still having to leave work, sneaking out the back door to go support my son because they never worked with me. They never ever considered my child. They considered Amber Dickerson's child. They considered Robyn Lewis's child. They considered Tonya Vandaveer's grandkids. Because she – they were all off every Saturday to go to cheerleading, band practices, and I still had to work and not go to none of my son's football games unless I PTO'd.

Q: And I appreciate that, Ms. Whitehurst. Let me just ask you, I believe you mentioned that your schedule stayed the same throughout your employment with Micah's Place; did I hear that correctly?

A: Oh, well, I'll rephrase. When I first got there, I was Thursday, Friday, Saturday and Sunday, 12:00 to 10:00. And then, you know, of me saying, hey, I really want to support my son, I'm getting off late, I

don't have no time to spend with him, he's going to college soon, yeah, then they say, hey, well, we can work with you, and then they gave me a – what was my schedule? Well, basically, I was off by 5:30. Still working on Saturdays, but they did give me Sunday off, but still they did not help me because the football games are Friday, and I'm still trying to express to them that I – that the schedule still didn't – I appreciated having a weekend day off finally, but it still wasn't helpful, like I see them help other -- my other co-workers.

11. Ms. Whitehurst received a third “Corrective Action” form on December 14, 2018, due to an interaction with a participant while Ms. Whitehurst was fielding calls to Micah’s Place’s hotline. A participant had reported to two other shelter advocates that Ms. Whitehurst had been rude to her during a call made to the hotline on December 12, 2018.

12. Ms. Whitehurst denied being rude to that participant, but Micah’s Place required her to complete additional training pertaining to the hotline and ethical communications. Ms. Whitehurst was warned that continued behavior of that nature could lead to termination.

13. Two subsequent incidents led to Micah’s Place issuing a last chance agreement to Ms. Whitehurst on November 19, 2020. Micah’s Place sets its holiday schedule in October every year so that its employees can request time off and manage their paid time off as necessary. Ms. Whitehurst’s request for leave on Christmas Eve and Christmas was granted. However, Ms. Whitehurst later asked to have leave on New Year’s Eve and New Year’s Day as well. After that request for additional leave was denied, Ms. Whitehurst sent an e-mail to Ms. Riffey unilaterally declaring that she would be working over Christmas, but not New Year’s. After being told that was not an option, Ms. Whitehurst continued asking for leave for New Year’s and complained about her schedule. Micah’s Place considered Ms. Whitehurst’s conduct to be insubordinate.

14. The second incident leading to the Last Chance Agreement involved an e-mail Ms. Whitehurst sent on November 5, 2020, stating that she could not come to work because her son's high school football team had been quarantined due to COVID, and anyone who had come into contact with team members had been asked to quarantine. Ms. Riffey learned later that day that the football team had not been quarantined and deducted the time Ms. Whitehurst did not work on November 5, 2020, from her paid time off balance.

15. At some point in 2020, the Department took over operation of Micah's Place. Ms. Whitehurst had to undergo a background check, and the Department discovered that she had a disqualifying offense.<sup>4</sup> As a result, she had to apply for and receive an exemption from disqualification from the Department so that she could continue to work with Micah's Place's participants. *See* § 435.07, Fla. Stat. On April 15, 2021, Ms. Whitehurst e-mailed Ms. Riffey at 10:55 a.m. asking if she could leave work at 2:00 p.m. that day in order to mail the application paperwork to the Department.<sup>5</sup> Ms. Riffey was attending a training session off-site and responded with an e-mail at 12:20 p.m. asking if Ms. Whitehurst planned on returning to work after she mailed the documents. Ms. Whitehurst did not respond. At 2:00 p.m. that day, Ms. Riffey read an e-mail that Ms. Whitehurst sent at 1:20 p.m. asking for leave from 2 p.m. to 7 p.m. that day. After Ms. Riffey returned to Micah's Place around 2:10 p.m. that day, she learned that Ms. Whitehurst

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<sup>4</sup> Section 110.1127(3)(a), Florida Statutes, provides that "[a]ll positions in programs providing care to children, the developmentally disabled, or vulnerable adults for 15 hours or more per week ... are deemed to be persons and positions of special trust or responsibility, and require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter."

<sup>5</sup> Ms. Riffey testified that it was her understanding that Ms. Whitehurst could continue to work at Micah's Place during the exemption process so long as she did not have direct contact with participants.



had left the facility without approval.<sup>6</sup> That led to Micah's Place firing Ms. Whitehurst on April 15, 2021.

16. With regard to whether Micah's Place treated similarly-situated employees outside Ms. Whitehurst's protected class more favorably, Ms. Whitehurst's evidence of disparate treatment was limited to assertions that particular people she identified were treated differently, especially with regard to scheduling. However, Ms. Whitehurst's assertions were lacking in detail, were not substantiated by any evidence of record, and were not corroborated by testimony from other witnesses.<sup>7</sup>

17. Upon considering the evidence and testimony presented by both parties, the undersigned finds that Ms. Whitehurst failed to prove by a preponderance of the evidence that Micah's Place treated similarly-situated employees outside Ms. Whitehurst's protected class more favorably.

#### CONCLUSIONS OF LAW

18. 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).

19. 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.*

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<sup>6</sup> Micah's Place has a handbook policy prohibiting employees from leaving work early without permission.

<sup>7</sup> Ms. Whitehurst questioned Ms. Riffey about an incident in which Micah's Place did not discontinue services to a survivor who called Ms. Whitehurst the n-word and acted in a threatening way toward her. However, Ms. Riffey had no recollection of that incident. Also, Ms. Whitehurst did not offer any testimony or evidence of situations in which similar conduct by participants toward other employees outside her protected class resulted in a different response from Micah's Place.

20. 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.

21. Ms. Whitehurst 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).

22. 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).

23. “[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.

24. “[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).

25. 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).

26. 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.”).

27. Ms. Whitehurst did not present statistical or direct evidence of discrimination. Therefore, in order to prevail in her claim against Micah’s Place, Ms. Whitehurst 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.”).

28. Demonstrating a prima facie case is not onerous; it requires only that the plaintiff establish facts adequate to permit an inference of discrimination. *See Gross v. Lyons*, 763 So. 2d 276, 280 n.1 (Fla. 2000)(describing a preponderance of the evidence as the greater weight of the evidence or evidence that more likely than not tends to prove a certain proposition).

29. Ms. Whitehurst's discrimination claims are based on alleged, disparate treatment. In order to establish a prima facie case for discrimination based on disparate treatment, Ms. Whitehurst 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 that protected class more favorably; and (d) she was qualified to do the job. *Lewis v. City of Georgia*, 918 F.3d 1213, 1221-22 (11th Cir. 2019).

30. 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. Whitehurst's evidence was limited to assertions that particular employees were treated more favorably. However, her testimony was not corroborated by any persuasive evidence or by any persuasive testimony from other witnesses. As a result, Ms. Whitehurst 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. Whitehurst's Petition for Relief.

DONE AND ENTERED this 6th day of July, 2022, in Tallahassee, Leon County, Florida.

*Garnett Chisenhall*

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G. W. CHISENHALL  
Administrative Law Judge  
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Filed with the Clerk of the  
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this 6th day of July, 2022.

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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.