STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF BLADEN	14 OSP 07967

HOPE FREEMAN, Petitioner,	)	
V.	)	**FINAL DECISION**
NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Respondent.	)	

This contested case was heard by Administrative Law Judge Phil Berger, Jr. on March 16, 2015, March 17, 2015, May 26, 2015 and May 27, 2015 at the Office of Administrative Hearings in Raleigh, North Carolina.

APPEARANCES

For Petitioner:
Richard D. Allen
Attorney at Law
205 Lloyd Street, Suite 209
Carrboro, North Carolina 27510

For Respondent:
Vanessa N. Totten
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629
Raleigh, North Carolina 27602

PRELIMINARY MATTERS

Motion to Dismiss

On March 3, 2015, Respondent filed a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to N.C.G.S. §§1A-1, 12(b) (1), 12(b) (2) and 12(b) (6). Petitioner filed an Amended Prehearing Statement on March 11, 2015. Petitioner filed a response on March 12, 2015. The matter was heard before the Undersigned on March 16, 2015. Upon careful consideration of Respondent's motion and Petitioner's response, the motion was granted in part and denied in part.

The Undersigned dismissed all claims with prejudice except for Petitioner's claims for sexual discrimination and retaliation. Petitioner presented evidence throughout the course of the hearing on whether she was unlawfully discriminated against based upon sex and entitled to relief for retaliation including relief pursuant to N.C.G.S. § 126-84, *et. seq.*, Whistleblower Act. At the close of Petitioner's case, Respondent moved for a directed verdict under N.C.G.S. § 1A-1, Rule 50 or in the alternative involuntary dismissal under N.C.G.S. § 1A-1, Rule 41. For purposes of this hearing, Respondent's motion is treated as a motion for involuntary dismissal under N.C.G.S. § 1A-1, Rule 41.

Respondent's motion is allowed.

Extraordinary Cause

The Petition in this matter was filed October 16, 2014. This matter was extended beyond the mandated 180 days due to extraordinary cause.

Hearing of the contested case began March 16, 2015, within the 180 day mandated time frame. The hearing did not conclude on March 16, 2015, and was scheduled to resume March 17, 2015. Petitioner was involved in an automobile accident on the morning of March 17, 2015, prior to resumption of the hearing. Additional evidence was presented by Petitioner's attorney that morning, but the Petitioner did not appear as she was being treated in a local emergency room. Petitioner and her passenger were scheduled to be witnesses on the morning of the accident.

The contested case hearing was continued until April 16, 2015. The matter was again continued due to Petitioner's health and effects related to the automobile accident. Hearing in the matter concluded on May 27, 2015.

Extraordinary cause did in fact exist which necessitated additional time for hearing of this matter.

WITNESSES

Called by Petitioner:

Petitioner
Loretta Bell (aka Loretta Hooks)
Anjanette Kinston-Ingram
Gearonie Locklear
Deb Long

Called by Respondent:

None

EXHIBITS

The following were exhibits admitted on behalf of Petitioner except as otherwise indicated

("P. Ex."): A, D, E, F, H, I (redacted), J,K,L,M,P,Q,R and S.

The following were exhibits admitted on behalf of Respondent except as otherwise indicated ("R. Ex."): 2,5,6,12,14,15,16,19 and 20.

Upon careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding as appropriate for consideration, the undersigned makes the following findings of fact. In making the findings of fact, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

Based upon the evidence presented and the arguments of counsel, the undersigned makes the following findings of fact by a preponderance or greater weight of the evidence:

1. The parties are properly before the Office of Administrative Hearings on a Petition for Contested Case pursuant to Chapters 126 and 150B of the North Carolina General Statutes, and the Office of Administrative Hearings has jurisdiction over both parties and subject matter as such. To the extent that Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings are Fact, they should be so considered without regard to the given labels.

2. Petitioner Hope Freeman ("Petitioner") was a female who formerly was employed by the North Carolina Department of Public Safety ("NCDPS" or "Respondent") formerly Department of Correction.

3. Petitioner alleged that she was discriminated against on the basis of her sex and retaliated against by Respondent.

4. Petitioner began work for Respondent on May 17, 2010 as a Probation/Parole Officer in the Division of Community Corrections ("DCC") in Cumberland County.

5. Sharon Phillips ("Phillips") was a female. At all relevant times, she was employed as the Judicial District 12 Manager for the Cumberland County Office.

6. Phillips' supervisory chain of command included Petitioner, Deb Young ("Young"), Gearonie Locklear ("Locklear") and Anjanette Kinston-Ingram ("Kinston-Ingram").

7. Petitioner's immediate supervisor in the Cumberland County Office was Kathy Blackmon ("Blackmon"), Chief Probation/Parole Officer.

8. Petitioner alleged that Phillips had made comments about Petitioner's appearance on an unspecified date. She further stated that she was sent home by Phillips from a training

based on her appearance and clothing on an unspecified date. (T p 380)

9. Young was a female who formerly was employed by the NCDPS as a Probation/Parole Officer in the Cumberland County Office. Young resigned from NCDPS.

10. The credible evidence showed that Young disagreed with the NCDPS professional dress code for officers. However, Young denied that Phillips discriminated against employees on the basis of sex. Phillips was gender neutral. (T pp 139-140, 165, 176, 184)

11. Gearonie Locklear ("Locklear") was a male who retired from NCDPS as a Chief Probation/Parole Officer. The credible evidence showed that Locklear and Phillips disagreed about management styles. Locklear denied that Phillips discriminated against employees on the basis of sex. (T p 239)

12. Anjanette Kinston-Ingram ("Kinston-Ingram") was a female employed with NCDPS as a Probation/Parole Officer in the Cumberland County Office. The credible evidence showed that Kinston-Ingram denied that Phillips or Blackmon discriminated against employees on the basis of sex. (T p 261)

13. Loretta Bell ("Bell") was a female employed with NCDPS as a Probation/Parole Officer in the Bladen County Office. She was dismissed from NCDPS.

14. The credible evidence showed that Bell had a pending lawsuit against NCDPS based on her employment in the Bladen County office. (T p 349)

15. Petitioner contradicted Bell's testimony concerning the Bladen County Office. Petitioner testified that she enjoyed working in that office. (T pp 619-621)

16. Bell made no references to any sexual allegations in her testimony. (T pp 347-348)

17. Bell had no personal knowledge concerning Petitioner's allegations or grievances. (T pp 347-348)

18. The testimonial evidence showed that Phillips and Blackmon treated all NCDPS staff the same. (T p 261)

19. The Undersigned finds that the substantial evidence shows that Phillips and Blackmon did not discriminate against the employees in their supervisory chain of command on the basis of their sex.

20. The totality of evidence in the record shows that Petitioner has failed to show that she was unlawfully discriminated against by Respondent because of her sex.

21. Petitioner alleged that she was subjected to internal investigations, written warnings and a reassignment in retaliation for her engaging in protected activity by filing grievances.

22. The credible evidence in the record showed that Petitioner filed one grievance on June 15, 2011 alleging violence in the workplace. An internal investigation revealed that the allegations were unsubstantiated.

23. Petitioner was issued three written warnings based on unacceptable personal conduct for violating Departmental policies and procedures.

24. NCDPS Personnel Policy, Section 6, Failure to Cooperate During or Hindering an Internal Investigation, states in part, "discussing any aspect of the investigation with anyone other than the investigative personnel also constitutes unacceptable personal conduct and is representative of those causes considered for disciplinary action up to and including dismissal." (R. Ex. 14;T pp 598)

25. On December 6, 2010, Petitioner was issued a written warning for failure to follow the NCDPS Personnel Policy, Section 6, Failure to Cooperate During or Hindering an Internal Investigation, by discussing an internal investigation. The credible evidence showed that Petitioner did violate the policy by discussing an internal investigation with other staff. (R. Exs. 14-15, T pp 598-601)

26. Following the December 6, 2010 written warning, Petitioner was placed on Employee Action Plan to ensure that she followed Departmental policies and procedures. (R. Ex. 16)

27. The Division of Community Corrections ("DCC") Policy and Procedure Manual, Chapter B, Section .0401 states that State-owned vehicles will be used for official state business only. (R. Ex. 19)

28. The Division of Community Corrections ("DCC") Policy and Procedure Manual, Chapter B, Section .0403 provides that:

> (a) Off Duty Travel
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> With the exception of employees whose home is designated as the official workstation or employees authorized to commute, no state-owned vehicle will be driven to an employee's home or used during non-working hours except with the permission of the employee's supervisor when one or both of the following conditions exist:
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> (1) State business requires an authorized trip by vehicle the following workday; the employee's residence is closer to the destination than the official workstation; and the employee does not have to return to the work station prior to beginning the trip; and/or
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> (2) The employee needs the use of the vehicle after completion of the regular workday to conduct state business on the same day or before usual working hours on the next work day.

(R. Ex. 19, T pp 608-609)

29. On May 31, 2011, Petitioner was issued a written warning for failure to follow DCC Policy and Procedure, Chapter B, Sections .0401 and .0403 by using her state assigned vehicle for personal use. The credible evidence showed that Petitioner did violate the policies by driving her state vehicle, without permission from her supervisor, to another county. (R. Ex. 19, T p 607)

30. NCDPS Personnel Manual, Section 6, page 38, Appendix C states in part:

> A. POLICY:
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> All employees of the Department of Correction shall maintain personal conduct of an acceptable standard as an employee and member of the community. Violations of this policy may result in disciplinary action including dismissal without prior warning.
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> B. EXAMPLES:
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> 9. Refusal to accept a reasonable and proper assignment from an authorized supervisor. Insubordination: Refusal to follow the orders of a superior or supervisor, or refusal to follow established policy or practice.

31. On September 14, 2011, Petitioner was issued a written warning for insubordination after she accompanied another officer on a parole pick up when she had not been approved by her supervisor Chief Probation/Parole Officer, Kathy Blackmon. (T pp 615-616, 618)

32. On September 14, 2011, Petitioner was administratively reassigned to Division 1, Judicial District 4. (P.Ex. L)

33. Petitioner's title, pay grade and salary were not affected by the reassignment and/or written warnings. (T pp 611, 617-619)

34. The Undersigned finds that on December 21, 2011 Petitioner was placed on Family Medical Leave ("FML") Status. Her FML exhausted on January 12, 2012. She was then placed on leave without pay until September 20, 2012 when she was separated for unavailability. Petitioner did not appeal her separation from NCDPS.

35. The credible evidence showed that Petitioner failed to prove that she engaged in a protected activity while employed with Respondent that led to an adverse employment action.

36. Petitioner presented insufficient evidence to support that her complaints related to her employment caused or led to NCDPS internal investigations, issuance of the written warnings, and/or reassignment.

Based upon the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings for consideration pursuant to Chapters 126 and 150 B of the North Carolina General Statutes.

2. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel*, 110 N.C. App. 438, 440, 429 S.E.2d 611,612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

3. Petitioner has the burden of proving that Respondent unlawfully discriminated against her because of her sex and/or retaliated against her.

4. Because Petitioner presented no direct evidence of sex discrimination, her discrimination claim is subject to the burden-shifting scheme of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973), and its progeny. See also *North Carolina Dep't of Corr. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).

5. Under the *McDonnell Douglas* burden-shifting scheme, a Petitioner must first establish a prima facie case of discrimination. If a Petitioner establishes her prima facie case, the burden then shifts to the Respondent to articulate a legitimate, non-discriminatory reason for its decision. If the Respondent articulates a legitimate, non-discriminatory reason for the decision, then the burden shifts back to the Petitioner to prove that the reason given by the Respondent was a pretext for discrimination. *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 337 (4th Cir. 2011); *North Carolina Dep't of Crime Control & Pub. Safety v. Greene*, 172 N.C. App. 530, 537-38, 616 S.E.2d 594, 600 (2005).

6. The "ultimate burden" of proving that the employer intentionally discriminated against the employee remains with the employee at all times. *Gibson*, 308 N.C. at 138, 301 S.E.2d at 83.

7. Petitioner did not meet her burden of proof that Respondent's reasons were a pretext for discrimination. In particular, she presented no evidence of a discriminatory animus on the part of the decision makers involved.

8. As to Petitioner's claim for retaliation/Whistleblower claim for her engaging in protected activity, "[t]o establish a prima facie case of retaliation, it must be shown that (1) the plaintiff engaged in a protected activity, (2) the employer took adverse action, and (3) there existed a causal connection between the protected activity and the adverse action." *Salter v. E & J Healthcare Inc*., 155 N.C. App. 685, 693, 575 S.E.2d 46, 51 (2003) (*quoting Brewer v. Cabarrus Plastics, Inc*., 130 N.C. App. 681, 690, 504 S.E.2d 580, 586 (1998), *disc. rev. denied*, 350 N.C. 91, 527 S.E.2d 662 (1999)); *Newberne v. Dep't of Crime Control & Pub. Safety*, 359 N.C. 782, 788, 618 S.E.2d 201, 206 (2005);*Demurry v. N.C. Dept. Of Corrections (sic)*, 195 N.C. App. 485, 297, 673 S.E.2d 374, 383 (2009).

9. Federal courts use the same burden-shifting schemes for retaliation claims. *See, e.g., Hoyle*, 650 F.3d at 337.

10. Petitioner failed to establish a prima facie case of retaliation, because she failed to establish that she engaged in any protected activity. Even if she had demonstrated she engaged in any protected activity, she failed to establish a causal connection between the protected activity and the adverse action.

11. The preponderance of evidence showed that Petitioner failed to present evidence to support that her complaints were causally related to the internal investigations, written warnings and reassignment.

12. Petitioner failed to present any evidence that Respondent's legitimate non-retaliatory reason for its employment actions were pretextual, or that retaliation was the real reason for the action.

13. In accord with *Painter v. Wake County Bd. Of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will always be presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption." *See also Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619 (1961).

14. In cases without a jury, after the party with the burden of proof has completed the presentation of its evidence, the responding party may move for dismissal on the grounds that on the facts and the law there has been no showing of a right to relief. N.C.G.S. § 1A-1, Rule 41.

15. Based upon the facts and law in this case, the Petitioner has shown no right to relief.

16. In weighing all of the competent evidence, the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn therefrom, the Respondent is entitled to judgment on the merits.

17. Petitioner's case is based solely upon speculation and innuendo; there is no evidence that the Petitioner was the victim of sexual discrimination or discrimination based on sex.

18. There is no evidence that any adverse employment action took place against this Petitioner.

19. Even if a written warning, reprimand, or transfer under the circumstances and evidence presented could be considered an adverse employment action, such action was not taken in retaliation to any reporting activity undertaken by Petitioner.

20. The Undersigned concludes that Petitioner has failed to meet her burden in her contested case and her claims should be dismissed.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law the Petitioner's claims are dismissed with prejudice.

NOTICE AND ORDER

This is a final decision issued under the authority of N.C.G.S. § 150B-34. Under the provisions of N.C.G.S. § 126-34.02(a): "An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing."

In conformity with the Office of Administrative Hearings' Rules, and the Rules of Civil Procedure, N.C.G.S. § 1A-1, Article 2, this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.

Under N.C.G.S. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of the Court of Appeals within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 23rd day of July, 2015.

_____

Philip E. Berger, Jr.
Administrative Law Judge

STATE OF NORTH CAROLINA	IN THE OFFICE OF ADMINISTRATIVE HEARINGS
COUNTY OF BLADEN	14 OSP 07967

HOPE FREEMAN, Petitioner,	)	
	)	**AMENDED**
V.	)	**FINAL DECISION**
NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY, Respondent.	)	

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For Respondent:
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PRELIMINARY MATTERS

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Respondent's motion is allowed.

Extraordinary Cause

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Called by Petitioner:

Petitioner
Loretta Bell (aka Loretta Hooks)
Anjanette Kinston-Ingram
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Deb Long

Called by Respondent:

None

EXHIBITS

The following were exhibits admitted on behalf of Petitioner except as otherwise indicated

("P. Ex."): A, D, E, F, H, I (redacted), J,K,L,M,P,Q,R and S.

The following were exhibits admitted on behalf of Respondent except as otherwise indicated ("R. Ex."): 2,5,6,12,14,15,16,19 and 20.

Upon careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding as appropriate for consideration, the undersigned makes the following findings of fact. In making the findings of fact, the undersigned has weighed all the evidence and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

Based upon the evidence presented and the arguments of counsel, the undersigned makes the following findings of fact by a preponderance or greater weight of the evidence:

1. The parties are properly before the Office of Administrative Hearings on a Petition for Contested Case pursuant to Chapters 126 and 150B of the North Carolina General Statutes, and the Office of Administrative Hearings has jurisdiction over both parties and subject matter as such. To the extent that Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings are Fact, they should be so considered without regard to the given labels.

2. Petitioner Hope Freeman ("Petitioner") was a female who formerly was employed by the North Carolina Department of Public Safety ("NCDPS" or "Respondent") formerly Department of Correction.

3. Petitioner alleged that she was discriminated against on the basis of her sex and retaliated against by Respondent.

4. Petitioner began work for Respondent on May 17, 2010 as a Probation/Parole Officer in the Division of Community Corrections ("DCC") in Cumberland County.

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6. Phillips' supervisory chain of command included Petitioner, Deb Young ("Young"), Gearonie Locklear ("Locklear") and Anjanette Kinston-Ingram ("Kinston-Ingram").

7. Petitioner's immediate supervisor in the Cumberland County Office was Kathy Blackmon ("Blackmon"), Chief Probation/Parole Officer.

8. Petitioner alleged that Phillips had made comments about Petitioner's appearance on an unspecified date. She further stated that she was sent home by Phillips from a training

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12. Anjanette Kinston-Ingram ("Kinston-Ingram") was a female employed with NCDPS as a Probation/Parole Officer in the Cumberland County Office. The credible evidence showed that Kinston-Ingram denied that Phillips or Blackmon discriminated against employees on the basis of sex. (T p 261)

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19. The Undersigned finds that the substantial evidence shows that Phillips and Blackmon did not discriminate against the employees in their supervisory chain of command on the basis of their sex.

20. The totality of evidence in the record shows that Petitioner has failed to show that she was unlawfully discriminated against by Respondent because of her sex.

21. Petitioner alleged that she was subjected to internal investigations, written warnings and a reassignment in retaliation for her engaging in protected activity by filing grievances.

22. The credible evidence in the record showed that Petitioner filed one grievance on June 15, 2011 alleging violence in the workplace. An internal investigation revealed that the allegations were unsubstantiated.

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32. On September 14, 2011, Petitioner was administratively reassigned to Division 1, Judicial District 4. (P.Ex. L)

33. Petitioner's title, pay grade and salary were not affected by the reassignment and/or written warnings. (T pp 611, 617-619)

34. The Undersigned finds that on December 21, 2011 Petitioner was placed on Family Medical Leave ("FML") Status. Her FML exhausted on January 12, 2012. She was then placed on leave without pay until September 20, 2012 when she was separated for unavailability. Petitioner did not appeal her separation from NCDPS.

35. The credible evidence showed that Petitioner failed to prove that she engaged in a protected activity while employed with Respondent that led to an adverse employment action.

36. Petitioner presented insufficient evidence to support that her complaints related to her employment caused or led to NCDPS internal investigations, issuance of the written warnings, and/or reassignment.

Based upon the foregoing findings of fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Office of Administrative Hearings for consideration pursuant to Chapters 126 and 150 B of the North Carolina General Statutes.

2. A court need not make findings as to every fact that arises from the evidence and need only find those facts which are material to the settlement of the dispute. *Flanders v. Gabriel,* 110 N.C. App. 438, 440, 429 S.E.2d 611,612, *aff'd*, 335 N.C. 234, 436 S.E.2d 588 (1993).

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4. Because Petitioner presented no direct evidence of sex discrimination, her discrimination claim is subject to the burden-shifting scheme of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973), and its progeny. See also *North Carolina Dep't of Corr. v. Gibson*, 308 N.C. 131, 301 S.E.2d 78 (1983).

5. Under the *McDonnell Douglas* burden-shifting scheme, a Petitioner must first establish a prima facie case of discrimination. If a Petitioner establishes her prima facie case, the burden then shifts to the Respondent to articulate a legitimate, non-discriminatory reason for its decision. If the Respondent articulates a legitimate, non-discriminatory reason for the decision, then the burden shifts back to the Petitioner to prove that the reason given by the Respondent was a pretext for discrimination. *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 337 (4th Cir. 2011); *North Carolina Dep't of Crime Control & Pub. Safety v. Greene*, 172 N.C. App. 530, 537-38, 616 S.E.2d 594, 600 (2005).

6. The "ultimate burden" of proving that the employer intentionally discriminated against the employee remains with the employee at all times. *Gibson*, 308 N.C. at 138, 301 S.E.2d at 83.

7. Petitioner did not meet her burden of proof that Respondent's reasons were a pretext for discrimination. In particular, she presented no evidence of a discriminatory animus on the part of the decision makers involved.

8. As to Petitioner's claim for retaliation/Whistleblower claim for her engaging in protected activity, "[t]o establish a prima facie case of retaliation, it must be shown that (1) the plaintiff engaged in a protected activity, (2) the employer took adverse action, and (3) there existed a causal connection between the protected activity and the adverse action." *Salter v. E & J Healthcare Inc*., 155 N.C. App. 685, 693, 575 S.E.2d 46, 51 (2003) (*quoting Brewer v. Cabarrus Plastics, Inc*., 130 N.C. App. 681, 690, 504 S.E.2d 580, 586 (1998), *disc. rev. denied*, 350 N.C. 91, 527 S.E.2d 662 (1999)); *Newberne v. Dep't of Crime*

Control & Pub. Safety, 359 N.C. 782, 788, 618 S.E.2d 201, 206 (2005);*Demurry v. N.C. Dept. Of Corrections (sic)*, 195 N.C. App. 485, 297, 673 S.E.2d 374, 383 (2009).

9. Federal courts use the same burden-shifting schemes for retaliation claims. *See, e.g.*, *Hoyle*, 650 F.3d at 337.

10. Petitioner failed to establish a prima facie case of retaliation, because she failed to establish that she engaged in any protected activity. Even if she had demonstrated she engaged in any protected activity, she failed to establish a causal connection between the protected activity and the adverse action.

11. The preponderance of evidence showed that Petitioner failed to present evidence to support that her complaints were causally related to the internal investigations, written warnings and reassignment.

12. Petitioner failed to present any evidence that Respondent's legitimate non-retaliatory reason for its employment actions were pretextual, or that retaliation was the real reason for the action.

13. In accord with *Painter v. Wake County Bd. Of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will always be presumed that "public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption." *See also Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619 (1961).

14. In cases without a jury, after the party with the burden of proof has completed the presentation of its evidence, the responding party may move for dismissal on the grounds that on the facts and the law there has been no showing of a right to relief. N.C.G.S. § 1A-1, Rule 41.

15. Based upon the facts and law in this case, the Petitioner has shown no right to relief.

16. In weighing all of the competent evidence, the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn therefrom, the Respondent is entitled to judgment on the merits.

17. Petitioner's case is based solely upon speculation and innuendo; there is no evidence that the Petitioner was the victim of sexual discrimination or discrimination based on sex.

18. There is no evidence that any adverse employment action took place against this Petitioner.

19. Even if a written warning, reprimand, or transfer under the circumstances and evidence presented could be considered an adverse employment action, such action was not taken in retaliation to any reporting activity undertaken by Petitioner.

20. The Undersigned concludes that Petitioner has failed to meet her burden in her contested case and her claims should be dismissed.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law the Petitioner's claims are dismissed with prejudice.

NOTICE AND ORDER

This is a final decision issued under the authority of N.C.G.S. § 150B-34. Under the provisions of N.C.G.S. § 126-34.02(a): "An aggrieved party in a contested case under this section shall be entitled to judicial review of a final decision by appeal to the Court of Appeals as provided in G.S. 7A-29(a). The procedure for the appeal shall be as provided by the rules of appellate procedure. The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice of appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing."

This the 29th day of July, 2015.

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Philip E. Berger, Jr.
Administrative Law Judge