

CAUSE NO. DC-11-13467

CARLOTTA HOWARD

Plaintiff,

v.

STATE OF TEXAS, TEXAS
DEPARTMENT OF FAMILY AND
PROTECTIVE SERVICES

Defendant.

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§

IN THE DISTRICT COURT

160th JUDICIAL DISTRICT

DALLAS COUNTY

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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CARLOTTA HOWARD	§	IN THE DISTRICT COURT
<i>Plaintiff,</i>	§	
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v.	§	160th JUDICIAL DISTRICT
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STATE OF TEXAS, TEXAS	§	
DEPARTMENT OF FAMILY AND	§	
PROTECTIVE SERVICES	§	
<i>Defendant.</i>	§	DALLAS COUNTY, TEXAS

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE DISTRICT JUDGE JIM JORDAN:

Defendant Texas Department of Family and Protective Services (“DFPS”) files this its Motion for Summary Judgment requesting dismissal in its favor as a matter of law. In support, Defendant would show the Court as follows: I.

SUMMARY OF ARGUMENT

Plaintiff sues for disability discrimination under the Texas Labor Code, alleging that she was terminated on account of DFPS’s failure to accommodate an alleged disability. Plaintiff’s disability claim should be dismissed because she has failed to produce facts in discovery to support her disability claim as a matter of law. Specifically, Plaintiff cannot make out a prima facie case for failure to accommodate a disability because she produced no evidence that she requested a “reasonable accommodation” or that she was “disabled” as those terms are defined by law. And, the sole accommodation requested would have placed an undue burden on DFPS.

**II.
SUMMARY JUDGMENT EVIDENCE**

Exhibit A Deposition of Plaintiff Carlotta Howard

Exhibit B Deposition of Monica McFarland

<u>Exhibit C</u>	Deposition of Nicole Ogle
<u>Exhibit D</u>	Memorandum from Nicole Ogle Recommending Termination of Plaintiff
<u>Exhibit E</u>	Emails between Larry Barnes and Nicole Ogle
<u>Exhibit F</u>	Notice and Termination Letters from Lisa Black to Plaintiff
<u>Exhibit G</u>	Deposition of Lisa Black
<u>Exhibit H</u>	Texas Worker's Compensation Status Report, dated October 9, 2009
<u>Exhibit I</u>	Official Charge of Discrimination
<u>Exhibit J</u>	Email from Ami Labercque regarding Plaintiff's election of sick leave and Form
<u>Exhibit K</u>	Exam Notes date June 10, 2009

III. STATEMENT OF FACTS

Plaintiff worked at DFPS as a "Human Services Technician."¹ The position primarily entails transporting people and items for the agency. Ex. A at 49, 68:21-25; Ex. C at 8-9; Ex. G at 76. Generally, an HST will also perform clerical and casework, including typing, faxing, and supervising visits between children and families. Ex. G at 76-77.

On December 16, 2008, a little more than two years into her employ, Plaintiff was involved in a work-related car crash. Plaintiff was taken to a hospital due to the injuries she received in the accident. Ex. A at 42-43. Plaintiff was released six hours later. *Id.*

Plaintiff sought and received worker's compensation benefits due to the car accident.² The first day that Plaintiff was absent from work due to the accident was December 17, 2008.

At the time of the accident, Plaintiff's immediate supervisor was Monica McFarland. Ex. A at 68:11-14. Ms. McFarland testified that in the timeframe of the accident, there was an

¹ The position is also referred to as a "case aide" in some testimony. See, e.g., Ex. B at 10, and Ex. G at 76.

² Plaintiff testified that she received worker's compensation benefits until April 2011. See Ex. A at 148.

agency-wide reorganization, and Plaintiff was reassigned to another Unit and another supervisor, Ms. Nicole Ogle. Ex. B at 13, 17:5-20. The re-organization was completed by January 2009, and Ms. McFarland expressly notified Plaintiff of the transfer. Ex. B at 19:17-20. During this time, Ms. McFarland also told Ms. Ogle about Plaintiff's car wreck and Plaintiff's transfer. Ex. B at 19-20.

Ms. McFarland testified that she visited Plaintiff in the hospital and spoke with her several times by phone after the accident, but that Plaintiff never requested a "reasonable accommodation" from Ms. McFarland. Ms. McFarland played no role in terminating Plaintiff's employ. See Ex. B at 16:25 – 17:2.

Before the time of the accident and until early February 2009, Ms. Ogle was on maternity leave. Ex. C at 20:10, 26. Ms. Ogle testified that Plaintiff was transferred to Ms. Ogle's Unit in mid-December 2008. Ex. C at 10:6-8. When Ms. Ogle returned from maternity leave in February, she was made aware that Plaintiff was still on workmen's compensation leave due to the car accident in December 2008. Ex. C at 20-21; Ex. D at 115.

Learning that Plaintiff had not returned to work by February 2009, Ms. Ogle contacted Plaintiff by phone for an update on her status. Ex. D at 115. Plaintiff told Ms. Ogle that Plaintiff "did not know how long she was expected to be out and that [her] doctor would be making all those decisions." Id.; Ex. A at 82:19-22. After this conversation, Plaintiff provided Ms. Ogle with a status report, noting that Plaintiff's condition would continue until April 2008 [sic]. See Ex. D at 117.

Accordingly, in April 2009, Ms. Ogle contacted Plaintiff again by phone to inquire of her status. Id. at 115. Plaintiff indicated that she would not be able to return work due to pain in her back. Id. Plaintiff further authorized Ms. Ogle to contact her doctor directly, and a fax was sent

to Ms. Ogle the same day, stating that Plaintiff was “unable to return to work until further notice” and that a follow-up appointment had been scheduled for May 2009. See *id.* at 115, 118.

Accordingly, in May 2009, Ms. Ogle again attempted to contact Plaintiff’s doctor for her return-to-work status, but the call was not returned. Ex. D. So, Ms. Ogle contacted Plaintiff by telephone again to determine her return-to-work status, and Plaintiff responded that she now had blurred vision and continued pain in her back. *Id.* at 115.

Ms. Ogle again contacted Plaintiff in July 2009, and Plaintiff became argumentative, stating that “she would not be returning to work at this time and would not be making the decision to do so.” *Id.*; see also, Ex. A at 102 (Plaintiff admitting that she became “testy” with Ms. Ogle); see also, Ex. A at 100-101.

Ms. Ogle wrote in a memo dated September 9, 2009, recommending Plaintiff’s termination, that a letter from DARS had been received in April (dated January 26, 2009) regarding the need for “visual accommodations” for Plaintiff. See Ex. D; Ex. A at 116:18-20. Although Ms. Ogle could not remember seeing the document nearly three years later in her deposition, see ex. D. at 119, Ms. Ogle nevertheless testified that she was contacted by DARS by email in regards to Plaintiff’s “blurry vision.” See Ex. E.

Having heard nothing from Plaintiff since July 2009, Ms. Ogle again attempted to obtain records directly from Plaintiff’s physician in November 2009, but the request was apparently ignored. See Ex. D at 116; Ex. A at 91. Ms. Ogle further noted in her memo that her efforts to obtain documentation and Plaintiff’s status were ongoing. See Ex. D.

Ms. Ogle also stated in her memo that, due to the trifecta of confusion relating to the reorganization, the car accident, and Ms. Ogle’s maternity leave, Plaintiff had not been placed on

FMLA leave until April 20, 2009, which exhausted on July 25, 2009.³ Id; Ex. C at 32:12-15; Ex. E.

Ms. Ogle summarized that she made the recommendation to terminate Plaintiff because of her “inability to provide us with any further information on when she was going to be returning to work and had run out her FMLA.” Ex. D; Ex. C at 54 at 14-17. Also central to Ms. Ogle’s reasons for requesting termination is that Plaintiff never initiated any efforts to inform Ms. Ogle of Plaintiff’s health or her return-to-work status. Ex. D. Ms. Ogle had held the position open for Plaintiff for more than ten months, despite the repeated request for the status of her condition. Ms. Ogle wanted to fill the vacancy in her unit, as it was negatively impacting the workload. Ex. D. Plaintiff confirmed that she told Ms. Ogle to do whatever she had to do. See id.; Ex. A at 88.

Ms. Ogle’s involvement in the termination of Plaintiff’s employ ended with the submission of the memo to her direct supervisors. Ex. D. at 116. Ms. Ogle was not part of the committee who determined whether to terminate Plaintiff’s employment. Ex. E; Ex. C at 29:14-17, 30:8-10, 31-32; Ex. G at 10:17-24. Ms. Ogle testified that Plaintiff never requested a “reasonable accommodation” from Ms. Ogle, either verbally or in writing. See Ex. C at 11:25 – 12:2, 13:1-3, 38:10-21. Plaintiff testified that she verbally requested “light duty” from Ms. Ogle as a reasonable accommodation. See Ex. A at 59-60, 173.

Ms. Ogle’s recommendation to terminate Plaintiff was approved by her direct supervisors,⁴ and then forwarded to Lisa Black, DFPS’s Regional Director, who ultimately had

³ Ms. Ogle learned some time in April 2009, that somehow, Plaintiff was not placed on FMLA leave after the accident. Accordingly, Plaintiff was off work from Dec. 17, 2008, until April when she was placed on FMLA leave. As a result, Plaintiff was actually afforded more than twice the amount of “protected” leave provided under the FMLA. See Ex. C at 20-22; Ex. G at 75-76; see also, Ex. A at 79:16-25.

⁴ The signatures of Ms. Ogle’s supervisors indicate that they were in concurrence with the recommendation to terminate. See Ex. G at 33:5-8.

the power and made the decision to terminate Plaintiff. Ex. E; Ex. G at 5:11-12, 10:17-24.

Ms. Black testified that, pursuant to agency policy, Plaintiff was notified of the intention to terminate her employment, and Plaintiff was given the opportunity to respond in one of three ways. Ex. G at 13:5-9 and Ex. F. Plaintiff chose to meet with Ms. Black in person. The meeting took place on September 28, 2009. See Ex. F. Plaintiff indicated that she would be unable to return to work and that she would provide Ms. Black with a work release from her doctor. *Id.* The document Plaintiff subsequently presented indicated that she could return to work part-time (four hours per day only) on October 12, 2009, but there was no timeframe on the proposed restriction. See Ex. H; Ex. A at 110-111. In the memo terminating Plaintiff, Ms. Black noted that the document from Plaintiff's doctor did not release Plaintiff to work full-time, and that Plaintiff had insufficient accrued leave to compensate for the part-time restriction. See Ex. F.

Ms. Black testified that Plaintiff was terminated because she had not submitted adequate information to her supervisor regarding her return-to-work status, and she had exhausted her FMLA and leave balances. See Ex. G at 42 – 43; Ex. A at 65-66; Ex. J. Ms. Black further testified that Plaintiff never requested a “reasonable accommodation.” Specifically, Ms. Black testified that, when she met with Plaintiff on September 28th, Plaintiff did not request an accommodation; rather, Plaintiff admitted that she was able to work, but that she needed the extra time to wean herself from the medications she had been taking. See Ex. A at 85:21-24, 110-; Ex. G. at 71-72.

Plaintiff testified that she asked Ms. Black “to work with her” and use her accrued annual leave to compensate for the remaining four hours per day that she was not authorized to perform by her doctor. See Ex. A at 56-57. Plaintiff testified that she asked Lisa Black to be accommodated by awarding her with a secretarial job, “until [she] could get it together.” See Ex.

A at 72, 173-175.

Shortly after receiving the termination letter from Ms. Black, Plaintiff filed an official charge of discrimination with the EEOC, alleging that DFPS failed to accommodate an alleged disability relating to the car accident by allowing her to work part-time, and that she was therefore terminated. See Ex. I.

Plaintiff testified the injuries that she suffered in the car accident form the sole basis of her failure-to-accommodate discrimination claim. See Ex. A at 7, 29-32; 39-40. That is, Plaintiff specifically denied that the alleged failure to accommodate a disability was related to a pre-existing medical condition regarding her eye.

IV. ARGUMENT AND AUTHORITY

Plaintiff did not exhaust a disparate treatment claim. See Ex. I. Rather, Plaintiff's charge only exhausts a claim for failure to make an accommodation to work part time. See *id.*

To establish a failure-to-accommodate disability claim under the Texas Labor Code, Plaintiff must make out a prima facie case that: (1) she is an individual who has a disability within the meaning of the TCHRA; (2) DFPS had notice of her disability; (3) with reasonable accommodations she could perform the essential functions of the position; and (4) DFPS refused to make such accommodations. See *Davis v. City of Grapevine*, 188 S.W.3d 748, 758 (Tex. App.—Fort Worth 2006, pet. denied).

To satisfy her requirement that she was disabled within the meaning of the TCHRA, Plaintiff has the burden show that she had a “disability” during the timeframe in question—September/October 2009. *Id.* Failure to establish an actual, perceived, or record of disability is fatal to a plaintiff's case. *Id.*

The TCHRA defines a “disability” as: (1) a mental or physical impairment that substantially limits at least one major life activity of that individual, (2) a record of such impairment, or (3) being regarded as having such an impairment. Tex. Lab. Code § 21.002(6).

Plaintiff has not produced competent summary judgment evidence to make out a prima facie case that she was a qualified individual with a disability. *See Blanks v. Southwestern Bell Communs., Inc.*, 310 F.3d 398, 402 (5th Cir. 2002).

Physical Impairment

Plaintiff testified that her physical impairment is limited to the injuries she received in the December 16, 2008, car accident. However, she offers no evidence to show that she was unable to perform a major life activity that the average person in the general population can perform; or that her condition “significantly restricted as to the condition, manner or duration under which [she could perform] a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population [could] perform that same major life activity.”⁵ Specifically, Plaintiff did not produce facts that in September/October of 2009, she lacked the ability to do her assigned full-time job duties, or to function in her day-to-day life. *See Talk v. Delta Airlines, Inc.*, 165 F.3d 1021, 1025 (5th Cir. 1999) (concluding that allegations that claimant walked with a limp and moved at a slower pace than other individuals, did not rise to the level of “substantial impairment” required by the ADA and TCHRA). Rather, Plaintiff admits that she was significantly better by April 2009, and that she drove herself to classes and doctors’ appointments, rode the bus, and took the train. See Ex. A at 83, 85, 108. In

⁵ *See, e.g.*, 29 C.F.R. § 1630.2(j)(1). In its regulations to enforce the ADA, the Equal Employment Opportunity Commission (EEOC) defines the term “substantially limits” to mean: (i) Unable to perform a major life activity that the average person in the general population can perform; or, (ii) Significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.

fact, her own treating physician indicated that she had full range of motion by June 2009. Ex. A at 128-129; Ex. K (“Range of motion is essentially normal.”). Further, Plaintiff admitted that the only reason she needed a part-time work day was so that she could wean herself from her muscle relaxers. See Ex. A at 111, 189. These facts, and others, contravene a physical impairment as a matter of law. See *Pryor v. Trane Co.*, 138 F.3d 1024, 1026 (5th Cir. 1998) (“Temporary, non-chronic impairments of short duration, with little or no longer term or permanent impact, are usually not disabilities.”); *Dupre v. Charter Behavioral Health Sys. of Lafayette, Inc.*, 242 F.3d 610, 614 (5th Cir. 2001) (not all impairments are serious enough to be considered disabilities).

In sum, Plaintiff offers no summary judgment evidence that her December 2008 injuries constituted a substantial limitation of a major life activity by September/October 2009. See *Little v. Tex. Dep’t of Crim. Justice*, 148 S.W.3d 374, 383 (Tex. 2004).⁶ Nor has she otherwise developed the summary judgment record to show how any of her major life activities were impaired in September/October 2009. *Blanks v. Southwestern Bell Communs., Inc.*, 310 F.3d at 402 (dismissal of disability claim on summary judgment affirmed for failure to produce evidence that HIV status substantially impaired a major life activity). The only evidence offered by Plaintiff to remotely satisfy this burden is her own self-serving testimony stating that her injuries were “permanent.” Ex. A at 78:5; *Taylor v. Principal Fin. Group*, 93 F.3d 155, 164 (5th Cir. 1996). Accordingly, Plaintiff has failed to raise a genuine issue of material fact suggesting that she is qualified as disabled under the TCHRA, and thus, her disability claim must be dismissed. Tex. R. Civ. P. 166a(i).

⁶ Citing to CFR 29 C.F.R. § 1630.2, “Major Life Activities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”

Record of Impairment

Plaintiff's disability claim fails also because she has offered no summary judgment evidence that there is "a record of substantial impairment of a major life activity." To prevail under such a theory, a claimant must show that she has a history of, or has been classified as having, a mental or physical impairment that substantially limits a major life activity. *Kiser v. Original, Inc.*, 32 S.W.3d 449, 453 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The EEOC has described the type of records contemplated under the ADA as being like, but not limited to educational, medical, or employment records. *Morrison v. Pinkerton Inc.*, 7 S.W.3d 851, 857 (Tex. App. —Houston [1st Dist.] 1999, no pet.). Plaintiff offered no such evidence in discovery, or otherwise, she has failed to develop the record to show she had a record of impairment relating to the December 2008 car accident. Tex. R. Civ. P. 166a(i).

Plaintiff produced no evidence in discovery that she could not return full-time and perform the essential functions of her job in September/October 2009. The only information provided to DFPS were doctor's notes stating that Plaintiff could return to work for four hours per day, and there was no indication as to why this unreasonable restriction was necessary or how long it would continue. See Ex. K; Ex. A at 191 (Plaintiff admitting that there is no timeframe on the restriction in her doctor's note, but testifying that he "verbally" told her that she would only need to work part-time for three weeks). Furthermore, none of the documents presented to Ms. Ogle would establish a record of disability. See Ex. D at 118-119. This evidence is insufficient as a matter of law to show that Plaintiff had a history of, or had been classified as having, a mental or physical impairment that substantially limited a major life activity. See *Kiser v. Original, Inc.*, 32 S.W.3d at 453. Plaintiff's disability claim should be dismissed. Tex. R. Civ. P. 166a(c).

Regarded as Having an Impairment

Plaintiff also fails in her burden to produce evidence that DFPS regarded her as impaired. An individual may qualify for protection under the TCHRA if she is “regarded as” disabled by his or her employer. *Blanks*, 310 F.3d at 402. An employee may be “regarded as” disabled if she “has an impairment which is not substantially limiting but which the employer perceives as constituting a substantially limiting impairment.” *Morrison*, 7 S.W.3d at 857. Simple awareness of an impairment is insufficient to prove the employer regarded the employee as disabled. *E.E.O.C. v. Exxon Corp.*, 124 F. Supp. 2d 987, 998 (N.D. Tex. 2000).

Plaintiff failed to produce sufficient evidence to allow a reasonable trier of fact to conclude that she may have been “regarded as” disabled by Ms. Black and Ms. Ogle. *See* Exhibit G at 30-31; Ex. A at 65:24 (“I never even met Nicole.”). Plaintiff’s disability claim fails, therefore, because she has not produced any competent summary judgment evidence to show that DFPS regarded her as having an impairment. *See Bridges v. Bossier*, 92 F.3d at 332-34.

Because Plaintiff has failed to make a threshold showing that she had a disability in September/October 2009, that she had a record of disability, or that she was regarded as disabled, Plaintiff’s disability claim must be dismissed. *Morrison v. Pinkerton Inc.*, 7 S.W.3d at 858 (affirming no-evidence summary judgment for failure to satisfy the elements of a disability claim).

Failure to Accommodate a Disability

In the light most favorable to her, the only accommodations Plaintiff requested were verbally conveyed to Ms. Ogle for “light duty” at an unspecified time, and to Ms. Black to work part-time.

Again, in order to establish a failure-to-accommodate disability claim under the Texas Labor Code, Plaintiff must make out a prima facie case that: (1) she is an individual who has a disability within the meaning of the TCHRA; (2) DFPS had notice of her disability; (3) with reasonable accommodations she could perform the essential functions of the position; and (4) DFPS refused to make such accommodations. *Davis v. City of Grapevine*, 188 S.W.3d at 758.

First, as shown above, Plaintiff can provide no evidence that she is “disabled” as contemplated by the TCHRA. Second, the evidence conclusively shows that none of Plaintiff’s supervisors had information that would put them on notice that she was disabled in September/October 2009. *See Taylor v. Principal Fin. Group*, 93 F.3d at 164 (the evidence does not show that Taylor ever told Matthews that he suffered a limitation as a result of his alleged impairment); see Exs. D & F.

Third, as a matter of law, DFPS had no duty to provide Plaintiff with a part-time job. The HST position is a full-time position, and there is no other unit in the region that operates with a part-time HST. Ex. G at 77:19-25. More importantly, there was no indication when the part-time situation would end, and Plaintiff had already exhausted all of her FMLA and accrued sick-leave balances. (In addition, due to the fact that Plaintiff was not promptly designated as utilizing FMLA leave, she was essentially credited with four extra months of protected leave from the time of the accident until April 2009). And, at the time Plaintiff met with Lisa Black, Plaintiff was still receiving worker’s compensation benefits, so it was not possible to utilize the 72 hours of accrued vacation leave as an “accommodation” in any event. Ex. G at 22:25 – 23:3; Ex. E; Ex. J; see also, Tex. Lab. Code § Sec. 501.044 (Effect of Sick Leave; Annual Leave):

(a) An employee may elect to use accrued sick leave before receiving income benefits. If an employee elects to use sick leave, the employee is not entitled to income benefits under this chapter until the employee has exhausted the employee’s accrued sick leave.

(b) An employee may elect to use all or any number of weeks of accrued annual leave after the employee's accrued sick leave is exhausted. If an employee elects to use annual leave, the employee is not entitled to income benefits under this chapter until the elected number of weeks of leave have been exhausted.

Pursuant to Plaintiff's election under subsection (a), Plaintiff had already received indemnity benefits, which prevented her from changing her election. Therefore, as a matter of law, Ms. Black was not able to allow Plaintiff to use her remaining vacation leave, even if Ms. Black found that Plaintiff could indeed perform the essential functions of her job. *See id.*

With respect to the Third prong, some courts have determined that a plaintiff's burden in a cause of action alleging failure to accommodate, is to show that she is "otherwise qualified" for the position from which she was excluded. She may show this qualification in one of two ways: (a) by proving that she can perform all essential job functions without modifications or accommodations, or (b) that some reasonable accommodation by the employer would enable her to perform the job. *See Austin State Hosp. v. Kitchen*, 903 S.W.2d 83, 91 (Tex. App.—Austin 1995, no writ).

(a) It should be undisputed that Plaintiff could not perform all the essential functions of the HST position with or without modifications or accommodations because she did not provide DFPS supervisors with a work-release allowing her to perform the essential functions of the position, which is full-time, and involves transporting children 75% of the time. Furthermore, after acquired evidence shows that Plaintiff was on a daily regimen of strong muscle relaxers, pain- and anti-anxiety medications, most of which she admitted to using up to and during her deposition in this case (August 1, 2012) (Klonopin & Soma). Ex. A at 6-8. Even Plaintiff readily admits that she could not safely transport children while on the medications. Ex. A at 103. It is only a small step to conclude therefore, that Plaintiff, who claimed in October 2009

that she could taper off her medications in three weeks' time, could not perform the collateral functions of supporting investigators and caseworkers in protecting children from abuse and neglect, even if she had been relieved of the driving duties. *See also* Tex. Lab. Code § 21.105 (excluding discrimination based on a disability of a physical or mental condition that impairs an individual's ability to reasonably perform a job).

(b) There should also be little dispute that an employer would not be required to find or create a position for a person whose job function was to support other workers in a small unit of five to seven workers charged with investigating child abuse and/or neglect. *See* Ex. B at 6-7; Ex. C at 8-9. The evidence in the light most favorable to Plaintiff shows that there was only one other employee, "Stephanie," an investigator, who was allowed to work part-time after she was injured in a car wreck. *See* Ex. B at 36. However, the arrangement did not work out, and "Stephanie" promptly resigned after it became evident that she could not perform the functions on a part-time basis. *See also*, Ex. G at 77-78 (explaining that the way the Legislature allocates positions within DFPS essentially eliminating part-time employment within DFPS); *cf. Jenkins v. Guardian Indus. Corp.*, 16 S.W.3d 431, 440 (Tex. App.—Waco 2000, pet. denied). Child protection and supervision in a small unit is not like working in a large privately-owned global industrial glass factory with hundreds of thousands of local jobs that could be performed part-time. *See id.* Therefore, *Guardian* is distinguishable.

Although Plaintiff did not exhaust a request for "light duty," there is no requirement under the Labor Code or the ADA to *create* a position as an accommodation. *See Davis v. City of Grapevine*, 188 S.W.3d at 758 (concluding that under *Burch v. City of Nacogdoches*, 174 F.3d

615, 621 (5th Cir. 1999) there is no duty on the employer to offer “light duty” as a reasonable accommodation); *see Burch*, 174 F.3d at 621 (the ADA does not require an employer to relieve an employee of any essential functions of his or her job, modify those duties, reassign existing employees to perform those jobs, or hire new employees to do so). Nevertheless, this Court lacks jurisdiction to hear an unexhausted claim against a governmental entity such as DFPS. *See Prairie View A & M Univ. v. Chatha*, No. 10-0353, 2012 Tex. LEXIS 723, 2012 WL 3800321, at *8-10 (Tex. Aug. 31, 2012); Tex. Gov’t Code § 311.034 (“Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity”).

In sum, Plaintiff cannot show, as she is required to do as part of her prima facie case, that an accommodation of her alleged disability exists and that such accommodation is reasonable. *Riel v. Elec. Data Sys. Corp.*, 99 F.3d 678, 683 (5th Cir. 1996). Plaintiff fails in her burdens and her case must be dismissed. *LeBlanc v. Lamar State College*, 232 S.W.3d 294, 301 (Tex. App.—Beaumont 2007, no pet.).

Affirmative Defense of Business Necessity

In the event that this Court concludes that Plaintiff was a qualified individual with a disability, who could perform the essential functions of her job, DFPS has met its summary judgment burden in showing that, regardless of whether Plaintiff was disabled or entitled to a reasonable accommodation of part-time work for an unspecified length of time, the decision to terminate her employment was a business necessity.

Chapter 21 of the Texas Labor Code mandates that it is an unlawful employment practice for an employer to fail to make a reasonable accommodation, unless the employer “demonstrates

that the accommodation would impose an undue hardship on the operation of the business. . . .”
Tex. Lab. Code § 21.128(a).

It should be beyond dispute that DFPS is charged with the enormous and critically important task of protecting children. And, it is common knowledge that the resources to carry out this important mandate are limited. Nevertheless, DFPS held Plaintiff’s job open for her for 10 months, all the while requesting work releases from her physicians. Plaintiff’s ten-month absence placed an undue burden on Ms. Ogle’s small unit of five child abuse investigators and support staff of one. Ex. C at 32:10-18, 27; Ex. G at 31; Ex. D; *Davis v. City of Grapevine*, 188 S.W.3d at 758. DFPS honored all of Plaintiff’s entitlements under the FMLA and Worker’s Compensation statutes. It is plain that DFPS simply could not form a reasonable expectation that Plaintiff would return to work and capably handle her job duties, even if the request for part-time was approved.

**V.
PRAYER**

For the forgoing reasons, Defendant prays that it grant summary judgment and dismiss Plaintiff’s disability claim.

Respectfully Submitted,

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ATTORNEYS FOR DEFENDANT TEXAS DEPARTMENT
OF FAMILY AND PROTECTIVE SERVICES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent *via* certified mail return receipt requested on this the 30th day of November, 2012, to:

Colin Walsh
LAW OFFICE OF ROB WILEY, P.C.
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214-528-6511 (FAX)
phone (915) 541-1000

/s/ Madeleine Connor
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Assistant Attorney General

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

Page 1

1 NO. DC-11-13467
 2 CARLOTTA HOWARD,) IN THE DISTRICT COURT
 3)
 4 Plaintiff,)
 5)
 6 VS.)
 7) DALLAS COUNTY, TEXAS
 8)
 9 STATE OF TEXAS,)
 10 TEXAS DEPARTMENT OF)
 11 FAMILY AND)
 12 PROTECTIVE SERVICES,)
 13)
 14 Defendant.) 160TH JUDICIAL DISTRICT

 ORAL AND VIDEOTAPED DEPOSITION OF
 CARLOTTA HOWARD
 AUGUST 1, 2012

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA
 HOWARD, produced as a witness at the instance of the
 defendants, and duly sworn, was taken in the
 above-styled and numbered cause on AUGUST 1, 2012, from
 9:36 a.m. to 3:42 p.m., before Michelle L. Varner, CSR
 in and for the State of Texas, reported by machine
 shorthand, at the offices of Office of Attorney General,
 Consumer Protection Division, Dallas Regional Office,
 1412 Main Street, Suite 810, in the City of Dallas,
 County of Dallas and State of Texas, pursuant to the
 Texas Rules of Civil Procedure and the provisions stated
 on the record or attached hereto.

Page 2

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20 ALSO PRESENT:
 21 Videographer: Kevin J. Schaefer
 22 Michael Howard
 23
 24
 25

Page 3

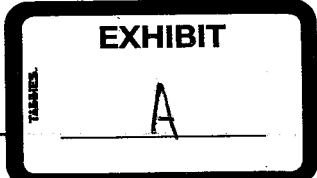
I N D E X

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EXHIBITS		
8	NUMBER	DESCRIPTION
9	1	Letter from Rehab Now dated January 5, 2008
10	2	Charge of Discrimination dated October 20, 2009
11	3	Reasonable Accommodation Request
12	4	E-mail to Melissa Hobbs from Nicole Ogle Dated October 12, 2009
13	5	Employee's Election Regarding Utilization Of Sick and Annual Leave
14	6	Letter to Carlotta Howard dated September 18, 2009 with attached Recommendation for Termination
15	7	Texas workers' Compensation Work Status Report dated 1/13/09
16	8	Return to Work Certificate dated 4/15/2009
17	9	Return to Work Certificate dated March 4, 2009
18	10	Two Letters from Dr. McHenry
19	11	Letter from Lisa Black to Carlotta Howard Dated October 16, 2009
20	12	Return to Work Certificate dated 9/30/2009
21	13	Texas workers' compensation work status Report dated 10/9/09
22	14	Letter from Dr. Zegarelli dated September 23, 2009
23	15	Handwritten Note from Carlotta dated 1/6/09
24	16	Texas workers' compensation work status Report dated 2/4/09
25	17	Fax Cover Page dated 4/16/09
	18	Return to Work Certificate dated 4/15/2009
	19	Medical Record of Dr. Zegarelli dated 6/10/2009

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EXHIBITS (Cont.)		
1	NUMBER	DESCRIPTION
2	20	Letter from Dr. Zegarelli dated November 20, 2009
3	21	Acknowledgment by New Employees dated 7/30/07
4	22	Student Transcript
5	23	Letter to Carlotta Howard re: EEOC
6	24	Complaint dated 10/20/2011
7	25	E-mail Chain Regarding NAGLO Complaint
8	26	Memo Regarding Recommendation for Termination dated September 9, 2009
9		Employee's Claim for Compensation for A Work-Related Injury
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ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

Page 5

1 PROCEEDINGS
 2 THE VIDEOGRAPHER: We're on record at
 3 9:36 a.m., August 1st, 2012, start of DVD number 1.
 4 You may swear in the witness.
 5 THE REPORTER: Are there any agreements
 6 for the record, first?
 7 MS. CONNOR: No. Just by the Rules.
 8 MR. WALSH: Yeah.
 9 CARLOTTA HOWARD,
 10 having been first duly sworn, testified as follows:
 11 EXAMINATION
 12 BY MS. CONNOR:
 13 Q. Hi, Ms. Howard. My name is Madeleine
 14 Connor. I'm the -- an assistant attorney general
 15 representing the Department of Protective and Family
 16 Services where you used to work. And we're here because
 17 of the lawsuit that you filed. Is that correct? Is
 18 that your understanding?
 19 A. Yes.
 20 Q. Okay. Have you ever been deposed before?
 21 Have you ever given your deposition like the sworn
 22 testimony out of court? Have you ever done this before?
 23 A. No, ma'am.
 24 Q. Okay. Have you ever filed any other
 25 lawsuits before?

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1 A. No, ma'am.
 2 Q. Okay. So you understand that this is sworn
 3 testimony and everything that you say today can be used
 4 in the court and presented to the jury?
 5 A. Yes.
 6 Q. Do understand that?
 7 A. Yes.
 8 Q. Okay. When I ask you a question -- you look
 9 like you're doing really well, you're waiting for me to
 10 finish. And before you respond, just let me finish my
 11 question and then that way it's easier for the court
 12 reporter to take everything down.
 13 A. Yes.
 14 Q. Okay. You can take a break if you need to,
 15 just as long as there's not a question pending. Like,
 16 if I ask you a question, you know, go ahead and answer
 17 that question before you can take a break. But we're
 18 not going to chain you to your chair until it's over; if
 19 you need to use the restroom or something, just let us
 20 know.
 21 A. (Witness nods head.)
 22 Q. Okay? Are you on any medication today?
 23 A. Medication. Like regular regimen
 24 medication, pain medication, or just my regular
 25 medication?

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1 Q. Any kind of medication today.
 2 A. I'm on my regular medication.
 3 Q. Okay. What is your regular medication?
 4 MR. WALSH: You can answer.
 5 A. (BY MR. WALSH) Okay. My regular medication
 6 would be Clonazepam, I use as a regimen three times a
 7 day, and Indomethacin twice a day, and I use a Zantac
 8 once a day -- Zantac -- and some other medicine, I don't
 9 know the name of it.
 10 Q. And what are these medications for, the
 11 Clonazepam, is that what you're saying?
 12 A. I have trigeminal nerve that they treat.
 13 Q. And what does that mean?
 14 A. It's a nerve that it is loose in my right
 15 orbital, that they can't correct.
 16 Q. Your right what?
 17 A. Orbital. My right eye, orbital area.
 18 Q. Okay.
 19 A. Yes.
 20 Q. And so is the -- what is the trigeminal
 21 nerve and this Clonazepam -- what is your understanding
 22 that that does for that disorder?
 23 A. It's supposed to help settle the nerve in my
 24 face.
 25 Q. Okay. Endometria (sic)?

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1 A. That's a pain medication.
 2 Q. And that's a pain medication.
 3 A. Uh-huh.
 4 Q. What do you take that for?
 5 A. The same thing.
 6 Q. For your eye --
 7 A. Uh-huh.
 8 Q. -- and face?
 9 A. Uh-huh.
 10 Q. And so you have pain because of that and yo
 11 take that daily?
 12 A. Uh-huh, yes.
 13 Q. And you said -- you didn't give me how many
 14 times a day.
 15 A. The Indomethacin?
 16 Q. Yes.
 17 A. Twice a day.
 18 Q. Do you know the milligram?
 19 A. 735-milligram Indomethacin.
 20 Q. And the Clonazepam, is that like also a pai
 21 med?
 22 A. It can be for nerve and they said it could
 23 help out with the pain. 400 milligrams.
 24 Q. 400 milligrams?
 25 A. Uh-huh.

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

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1 Q. And Zantac?
 2 A. It's a pill to keep my stomach from being
 3 upset.
 4 Q. Okay. And you take that once a day?
 5 A. Uh-huh.
 6 Q. And does the same doctor prescribe all of
 7 those daily medications for you?
 8 A. Yes, uh-huh.
 9 Q. And which doctor is that?
 10 A. Dr. Herzog.
 11 Q. Okay. Do you know how to spell that?
 12 A. H-e -- H-e-r-z-o-d (sic).
 13 Q. And how long have you been seeing
 14 Dr. Herzog for this?
 15 A. Maybe for about -- I think about -- I
 16 believe it's a little over a year or maybe a year and a
 17 half.
 18 Q. Okay. So you started taking these meds
 19 after you left your job at CPS?
 20 A. The -- it's broken down. That particular --
 21 they didn't all start at the same time. Now, the
 22 Clonazepam, after I left CPS, I was taking that. I
 23 started taking that about a -- maybe -- maybe a year
 24 ago. And the Indomethacin, I took that before I left my
 25 job. I had medication before I left my job, but most of

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1 them -- that and another medication that I'm taking now,
 2 two new medication, the one that I don't know the name
 3 of.
 4 Q. Okay. So you are on two other medications
 5 today that you don't know the name of; is that what
 6 you're saying?
 7 A. Uh-huh, yes.
 8 Q. Okay. And who prescribes those medications
 9 for you?
 10 A. It would be the pain management clinic.
 11 It's for depression.
 12 Q. Pain management and depression?
 13 A. Uh-huh, it's for depression.
 14 Q. And you don't know the name --
 15 A. No.
 16 Q. -- of the --
 17 A. No.
 18 Q. Could you find out today? Do you think your
 19 husband knows the name of the medications?
 20 A. No, he don't.
 21 Q. Okay. Do you have them in your purse?
 22 A. I don't have them in my purse, no.
 23 Q. And it's for pain and depression?
 24 A. Uh-huh.
 25 Q. And which doctors prescribe those for you?

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1 A. My depression is my pain management doctor,
 2 which is Dr. -- Dr. Van Wright.
 3 Q. Can you spell that?
 4 A. It's -- let me look.
 5 (Hands card to Ms. Connor.)
 6 A. They treat me for my depression.
 7 Q. (BY MS. CONNOR) Okay. And how many times
 8 week do you see or a month do you see Dr. Van Wright?
 9 A. I see him -- it's down to every six weeks.
 10 Q. I'm sorry. Can you say that again?
 11 A. It's down to every six weeks now, about onc
 12 a month or six weeks.
 13 Q. Once a month?
 14 A. Uh-huh.
 15 Q. How long have you been seeing Dr. Wright --
 16 Van Wright, sorry.
 17 A. I've been seeing him since 2009 -- 2009.
 18 Q. Do you remember what month?
 19 A. No.
 20 Q. Have you seen any other doctors for
 21 depression or pain?
 22 A. For depression, I've seen about -- what do
 23 you call it? Biofeedback doctor for depression and
 24 pain. I've seen a worker comp psychiatrist, and I've
 25 seen two other psychiatrists; I don't have the

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1 information.
 2 Q. Okay. But for right now, you've only seen
 3 Dr. Van Wright for pain or depression?
 4 A. For depression. I see him for depression.
 5 Texas Neurology for pain. They treat me for my
 6 depression. Texas Neurologists treat me for my pain. I
 7 mean Texas -- yeah, they treat me for my pain,
 8 because -- it's vice versa.
 9 Q. okay. So who do you see at Texas Neurology?
 10 A. Dr. Herzog -- H-e-r-z-o-d (sic).
 11 Q. How long have you being see Dr. Herzog? I
 12 may have already asked you that.
 13 A. Dr. Herzog, I think since 2009.
 14 Q. Do you know what month?
 15 A. No, ma'am.
 16 (Hands card back to witness.)
 17 THE WITNESS: Thank you.
 18 Q. (BY MS. CONNOR) With respect to these
 19 medications, are you claiming in your lawsuit that this
 20 is part of your lawsuit -- this pain and depression, is
 21 this part of your damages?
 22 A. With respect to my eye or with respect to my
 23 depression?
 24 Q. Either/or.
 25 A. The depression is part of my losses because

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

1 ever since they fired me, I went into a great
 2 depression, and I saw a lot of psychiatrists because of
 3 that. And as far as my workers' comp case, I had to see
 4 a psychiatrist. My workers' comp doctor had to send me
 5 to a psychiatry because of my depression, because they
 6 fired me because of my injuries.
 7 Q. Okay. With respect to the depression, just
 8 so we're clear and so that I know everything that you're
 9 claiming in your lawsuit, which doctor did you see for
 10 the depression?
 11 A. Which doctor did I see for the depression?
 12 Q. Relating to your lawsuit.
 13 A. My workers' comp doctor which subscribed
 14 Cymbalta to me, which I'm not on right now. My Cymbalta
 15 increased from 20 milligrams to 60 milligrams because of
 16 my depression. And he subscribed Zoloft, which I'm no
 17 longer taking because of my depression. He prescribed
 18 that; this is my workers' comp doctor at the time.
 19 Q. And his or her name?
 20 A. His name is Dr. Zegarelli.
 21 Q. So Dr. Zegarelli you saw for depression and
 22 pain?
 23 A. Uh-huh.
 24 Q. Relating to your lawsuit?
 25 A. Yes.

1 MR. WALSH: Objection, form.
 2 Q. (BY MS. CONNOR) Did you see any other
 3 doctors for your depression and pain as you allege
 4 arising from your lawsuit?
 5 MR. WALSH: Objection, form.
 6 You can answer.
 7 A. What was the question?
 8 Q. (BY MS. CONNOR) Did you see any other
 9 doctors relating to your depression or your pain as it
 10 relates to your lawsuit?
 11 A. Like as a primary doctor or -- because in
 12 workers' comp -- in the workers' comp network, we see a
 13 lot of doctors. But I had one counselor who treated me
 14 specifically for depression. I don't have her
 15 information, but you can pull the workers' comp file and
 16 it will give you all of the information for my
 17 depression. That is for my -- depression is for my
 18 workers' comp doctor, which was my counselor. And then,
 19 they referred me to -- DARS also referred me to a
 20 psychiatrist.
 21 Q. Do you remember his or her name?
 22 A. Her name Dr. Kight, K-i-t-e (sic),
 23 Dr. Kight, yes.
 24 Q. And how long have you been seeing Dr. Kight?
 25 A. I saw her for about maybe six months or

1 seven months.
 2 Q. From when to when?
 3 A. From -- I think my last visit was in
 4 January, February, March -- I think it was April
 5 of 2012, I'm not for sure. But I think it was or
 6 November 2011. Let me see if I have her information.
 7 THE WITNESS: Can I give them
 8 Dr. Zegarelli? No? Do they need this, my workers' comp
 9 doctor?
 10 A. I don't have that information. But DARS
 11 prescribed psychiatry for my depression.
 12 Q. (BY MS. CONNOR) Do you remember Dr. Kight's
 13 first name?
 14 A. Dr. Kight. No, the only thing I know is
 15 Dr. Kight.
 16 Q. And how many times do you think you saw
 17 Dr. Kight between November 2011 and April 2012?
 18 A. Maybe about eight times. And actually, they
 19 are in the process of trying to give me a voucher to see
 20 her again -- this is through the department of DARS.
 21 Q. And you're seeing Dr. Kight for?
 22 A. Depression.
 23 Q. For depression. As it relates to the
 24 lawsuit?
 25 A. Yes.

1 Q. Anything else?
 2 A. No.
 3 Q. Have you ever been treated for depression
 4 before?
 5 A. No.
 6 Q. Never in your life?
 7 A. No.
 8 Q. Have you ever seen any other psychiatrists?
 9 MR. WALSH: Objection.
 10 A. Yes.
 11 Q. (BY MS. CONNOR) When was that?
 12 MR. WALSH: I'm going to object. This
 13 is privileged under patient-doctor privilege and mental
 14 health privilege.
 15 MS. CONNOR: I'm asking her if she's
 16 seen a psychiatrist and what his name is. Are you gonna
 17 still assert that objection?
 18 MR. WALSH: You can answer, if you
 19 want.
 20 A. Is this in relation to anything as far as my
 21 function?
 22 Q. (BY MS. CONNOR) You -- I've asked you a
 23 question. Have you seen any other psychiatrists, in
 24 addition to Dr. Kight, before or after this lawsuit was
 25 filed?

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

1 A. No, no. After the lawsuit was filed, no.
 2 Q. Or before?
 3 A. Not in -- maybe not in 15 years, no.
 4 Q. Who else have you seen before that?
 5 A. I -- it was military doctors. I don't
 6 remember the name.
 7 Q. Okay. And where was that?
 8 A. Vandenberg Air Force Base.
 9 Q. Do you remember what year?
 10 A. Maybe '86.
 11 Q. And what did you go see this doctor for in
 12 1986?
 13 A. For --
 14 MR. WALSH: Objection, privileged.
 15 MS. CONNOR: I'm asking her just the
 16 topic of what she went to see. We're entitled to know
 17 that.
 18 MR. WALSH: I think that that's
 19 privileged as potential diagnosis.
 20 MS. CONNOR: So you're asking her not
 21 to answer?
 22 MR. WALSH: That's correct.
 23 Q. (BY MS. CONNOR) Well, we may come back to
 24 that, but we will see about what we do about that.
 25 Have you seen any other psychi- --

1 psychologists for depression before or after your
 2 lawsuit has been filed, other than the ones that you've
 3 named, I believe?
 4 A. No. Almost all of them was after my
 5 accident and after the lawsuit was filed, after I got
 6 fired from my job.
 7 Q. So you can't recall any other mental health
 8 professionals that you have gone to be evaluated by
 9 other than this 1986 Vandenberg Air Force Base?
 10 A. That's it.
 11 Q. Okay. Are you sure about that?
 12 MR. WALSH: Objection. This is all
 13 privileged.
 14 Q. (BY MS. CONNOR) what other medications are
 15 you on, besides these three that you've listed and the
 16 two new medications?
 17 THE WITNESS: I need to answer that?
 18 MR. WALSH: You can answer.
 19 A. Okay. I -- my workers' comp doctor, I have
 20 PRN medication for my workers' comp doctor for muscle
 21 spasm.
 22 Q. What is PRN medication?
 23 A. As needed. Medication as needed.
 24 Q. What does that mean? What does PRN
 25 medication mean?

1 A. As needed. It's like if you get a migraine
 2 headache and you take an aspirin or something like that,
 3 so that's as needed. You know, if I get a spasm in my
 4 back, a muscle spasm, I take that medication.
 5 Q. Do you know the name of it?
 6 A. I think it's Storm -- Soma, S-o-m-a. And
 7 then it's a --
 8 (Phone buzzing.)
 9 Q. (BY MS. CONNOR) Go ahead.
 10 A. And then it's a --- it's a -- he just
 11 recently changed my prescription. I don't know the name
 12 of it. I don't have it with me.
 13 Q. So in addition to this one PRN medication
 14 that you take as needed that you think is called soma
 15 for your spasms --
 16 A. Back spasms.
 17 Q. -- is there any other medication that you
 18 take?
 19 A. No, that's it.
 20 Q. But you're not taking that today?
 21 A. No, no. It's as -- if I need it, no.
 22 Q. When was the last time you needed it?
 23 A. Maybe about a month ago, maybe three weeks
 24 ago.
 25 Q. That was the last time you took it?

1 A. Uh-huh. Maybe about a month ago, yes.
 2 Q. And for a spasm -- let's not talk over each
 3 other because she's got to --
 4 A. Oh, I'm sorry.
 5 Q. It's okay.
 6 A. I didn't realize. I'm trying to think as
 7 you ask me the questions.
 8 Q. Yeah.
 9 A. I'm sorry.
 10 Q. That's okay.
 11 A. Maybe about three weeks ago.
 12 Q. Okay. And when you took that three weeks
 13 ago, why did you take that three weeks ago?
 14 A. I was having a muscle spasm in my back.
 15 Q. And what part of your back?
 16 A. My lower back.
 17 Q. And is that the injury that you claim was
 18 during the car accident -- caused by the car accident or
 19 was that something you had before?
 20 A. That was my car accident.
 21 Q. Had you had any muscle spasms before the car
 22 accident?
 23 A. No. I was perfectly healthy.
 24 Q. Did you have any --
 25 A. Never had any back problem, never had any

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

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1 muscle problem. As a matter of fact, I was going to the
 2 gym Monday through Friday; nothing, nothing but my
 3 trigeminal nerve.
 4 Q. So in relation to your eye in your face, you
 5 didn't have any other problems?
 6 A. No, no problems, no.
 7 Q. So is there something that you believe might
 8 have triggered this where you took the medication three
 9 weeks ago?
 10 A. What was the question?
 11 Q. A triggering.
 12 A. What made it trigger my muscle spasm?
 13 Q. Uh-huh.
 14 A. They come unannounced. They just come
 15 unannounced. I mean, they just come unannounced.
 16 Q. And before that, three weeks ago when you
 17 took the Soma, when was the last time you took the
 18 medication?
 19 A. Soma? Three weeks ago.
 20 Q. Right. But before that?
 21 A. Before that? I take it when needed. I
 22 don't remember when I last took it. I don't remember.
 23 I mean, I can tell you three weeks ago when I needed it.
 24 I don't keep a regimen because it's not a regimen
 25 medication.

Page 22

1 Q. Did you ever see somebody at Walter Reed
 2 Hospital?
 3 A. At Walter Reed Hospital, yes, yes.
 4 Q. Okay. What doctor did you see at Walter
 5 Reed Hospital?
 6 A. It was -- I have a primary doctor at Walter
 7 Reed; my eye doctor is at Walter Reed.
 8 Q. Your primary doctor's name is?
 9 A. I have no idea. My primary doctor was -- my
 10 primary doctor was -- my chief primary doctor for my eye
 11 was Dr. Gleason, I believe. I'm not for sure.
 12 Q. And when was this that you saw him or her?
 13 A. I came to Texas in '97, probably '96 --
 14 excuse me -- '96, maybe. Maybe. I'm not for sure. I'm
 15 not for sure.
 16 Q. Does Dr. Gleason prescribe any medication
 17 for you?
 18 THE WITNESS: Do I need to answer that
 19 question?
 20 MR. WALSH: You can answer.
 21 A. Prescribe medication for my eye? Eye drops.
 22 And what else? You know, actually, I don't remember.
 23 Q. (BY MS. CONNOR) Did you ever see a doctor
 24 for bipolar disorder?
 25 MR. WALSH: Objection, privileged.

Page 23

1 MS. CONNOR: She's filed a lawsuit
 2 claiming mental damages. This is definitely
 3 discoverable.
 4 MR. WALSH: This is all privileged
 5 information.
 6 MS. CONNOR: Okay. Well, we will just
 7 call the court in a little bit, but we will just keep
 8 going for now.
 9 Q. (BY MS. CONNOR) Did you ever see any other
 10 doctors for any other mental health issues?
 11 MR. WALSH: Objection, privileged.
 12 MS. CONNOR: Are you telling her not to
 13 answer?
 14 MR. WALSH: I'm going to instruct her
 15 not to answer.
 16 (Phone ringing.)
 17 Q. (BY MS. CONNOR) Are you claiming mental
 18 anguish damages in your lawsuit?
 19 A. From the time I have got fired, I had to see
 20 double psychiatrists -- I had to see --
 21 THE VIDEOGRAPHER: Let's wait a second.
 22 It's destroying the record.
 23 Okay.
 24 THE WITNESS: Is that my phone?
 25 MR. WALSH: I think it was your phone.

Page 24

1 THE WITNESS: I thought I turned it
 2 off. I'm so sorry. Can I turn it off real quick?
 3 THE VIDEOGRAPHER: Sure. Thank you.
 4 A. Okay. From the time I have -- from the time
 5 October 2009 I was not under no psychiatrist. I was not
 6 seeing nobody for mental health. I was functioning at a
 7 hundred percent. All of my mental health started when I
 8 got fired and had my wreck, since December the 8th,
 9 2008. I have been on the sofa and had pain and
 10 suffering. I have been on the sofa, sitting on the sofa
 11 and seen a lot of psychiatry because of my pain that
 12 also contributes also to my face pain which caused me to
 13 see a lot of doctors because of depression and agony. I
 14 have not seen anybody since 2008; everything started
 15 then after I had my accident.
 16 Q. Okay. So you're saying that you haven't
 17 seen any --
 18 A. I have not seen nobody.
 19 Q. Let me finish my question. Let me finish my
 20 question.
 21 So you're saying -- your testimony
 22 today is you haven't seen anybody for any other mental
 23 health disorder before the accident occurred?
 24 MR. WALSH: Objection, this is
 25 privileged.

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1 I'm going to instruct you not to
 2 answer.
 3 MS. CONNOR: Let's go off the record.
 4 THE VIDEOGRAPHER: Off the record at
 5 10:04.
 6 (Break taken 10:04 a.m. to 10:20 a.m.)
 7 THE VIDEOGRAPHER: We are back on
 8 record at 10:20.
 9 Q. (BY MS. CONNOR) Ms. Howard?
 10 A. Yes.
 11 Q. I'm going to ask you the question again and
 12 if your attorney objects or asserts a privilege, then
 13 we're just getting this on the record and then we're
 14 going to move on. Have you ever been treated for
 15 bipolar disorder?
 16 MR. WALSH: Objection, that's
 17 privileged.
 18 And I'm going to instruct you not to
 19 answer.
 20 MS. CONNOR: What is the specific
 21 privilege that you're asserting?
 22 MR. WALSH: Physician-patient privilege
 23 and mental health privilege.
 24 MS. CONNOR: And so you're instructing
 25 her not answer based on a privilege of what? I'm sorry.

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1 MR. WALSH: Mental health information
 2 privilege and physician-patient privilege.
 3 Q. (BY MS. CONNOR) So your attorney has
 4 instructed you not to answer. So I'm just going to move
 5 on to the next question. I believe that there was also
 6 the same assertion of a privilege. Have you ever been
 7 treated for any other mental health issue prior to being
 8 terminated?
 9 MR. WALSH: Objection, privileged.
 10 And I'm instructing you not to answer.
 11 MS. CONNOR: What is your specific
 12 privilege that you're asserting?
 13 MR. WALSH: The same privilege as I
 14 just asserted, physician-patient and mental health.
 15 MS. CONNOR: Do you have a rule number?
 16 MR. WALSH: Texas Rule of Evidence 509
 17 and 510.
 18 MS. CONNOR: And that's for the other
 19 objection as well about the bipolar disorder?
 20 MR. WALSH: Yes.
 21 Q. (BY MS. CONNOR) Are there any other mental
 22 health issues from before that you've been treated for
 23 before you became came to work at DFPS?
 24 MR. WALSH: objection. That is also
 25 privileged.

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1 I'm instructing you not to answer.
 2 MS. CONNOR: Same assertion?
 3 MR. WALSH: Yes.
 4 MS. CONNOR: Okay. Those rules that
 5 you just cited?
 6 MR. WALSH: Yes.
 7 Q. (BY MS. CONNOR) Are you claiming mental
 8 health damages, emotional distress damages in your
 9 lawsuit?
 10 A. Yes.
 11 Q. Other than the doctors that we've already
 12 discussed that you've talked about, Dr. Herzog,
 13 Dr. --
 14 A. Zegarelli.
 15 Q. -- Zegarelli, are there any other primary
 16 physicians that you're currently seeing?
 17 A. Did you put Dr. Aaron -- you got Aaron Van
 18 wright -- Dr. A-a-r-o-n Van Wright? You got him? Okay.
 19 Q. And?
 20 A. And you have Dr. Kight.
 21 Q. Doctor? I'm sorry.
 22 A. Kight. Dr. Kight, K-a-t-e.
 23 Q. Right. Is there anybody else that you're
 24 currently seeing right now for any kind of mental health
 25 or physical issues?

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1 A. Physical issues. I'm still see my workers'
 2 comp doctor on maybe three -- once out of 90 days.
 3 Q. Anybody that you see for your eye?
 4 A. Yes.
 5 Q. And have you -- is that one of these
 6 doctors?
 7 A. No.
 8 Q. Okay. who are you seeing for your eye?
 9 A. Dr. McHenry.
 10 Q. Okay. And you still see Dr. McHenry?
 11 A. Yes.
 12 Q. When was the last time you saw Dr. McHenry?
 13 A. I believe it was April.
 14 Q. April 2012?
 15 A. Uh-huh, yes.
 16 Q. How long have you been seeing Dr. McHenry?
 17 A. About four years.
 18 Q. When did you start having trouble with your
 19 eye?
 20 A. Like pertaining to? I don't understand the
 21 question.
 22 Q. When did you start -- you've asserted in
 23 your lawsuit or today in this deposition that you have
 24 problems with your eye. what specifically are they an
 25 when did they begin?

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1 A. My eye is -- I have a disability, it is my
 2 eye. It's always been there, but my increased pain
 3 began after I had my accident.
 4 Q. In your eye? The pain in your eye?
 5 A. It's always -- it's -- it's there, but it
 6 agitates when I have pain anywhere else, it triggers my
 7 pain more.
 8 Q. Okay. And so who have you seen for that
 9 pain, what doctor?
 10 A. Dr. Herzog.
 11 Q. Can you spell that again? I'm sorry.
 12 A. H-e-r-a-g-r-z-o-d (sic).
 13 Q. So you see Dr. McHenry and Dr. Herzog for
 14 pain in your eye?
 15 A. Uh-huh. Dr. McHenry is the optometry. He's
 16 the eye doctor and Dr. Herzog is a pain doctor.
 17 Q. Are there any other issues that -- unrelated
 18 to the accident that you --
 19 A. Unrelated to the accident?
 20 Q. Yeah. You said you had your eye -- you've
 21 always had this eye problem.
 22 A. That's it. That's it. Before -- I'm not
 23 understanding the question.
 24 Q. Do you have any other medical issues, other
 25 than this eye issue that you've described today?

1 A. Oh, no. No, ma'am.
 2 Q. What about the nerve issue, is that related
 3 to the eye?
 4 A. That's all related to the eye, yes.
 5 Q. Okay. And what is that condition called?
 6 A. Trigeminal nerve.
 7 Q. Can you spell that?
 8 A. Oh, no, I can't spell it. I can't spell.
 9 T-r-i -- I have no idea.
 10 Q. And how long have you been treated for that?
 11 A. For maybe four years, since I've been seeing
 12 Dr. McHenry.
 13 Q. But you said that you've had it all of your
 14 life?
 15 A. No. It's not all of my life.
 16 Q. Why don't you explain to the jury when it
 17 started and what the condition is.
 18 MR. WALSH: Objection, form.
 19 MS. CONNOR: Do you want to tell her
 20 she can answer?
 21 MR. WALSH: You can go ahead and
 22 answer.
 23 I'm sorry.
 24 A. Oh, okay.
 25 It's my eye -- what's happening is the

1 right side of my face is a prosthesis and it's nerve
 2 damage on the right side of my face. And it causes
 3 pain.
 4 Q. Okay. And when did that start?
 5 A. It started about maybe four years ago 2007,
 6 '08, '09, '10, '11 -- four years ago.
 7 Q. Was it due to any event or is it something
 8 that just started happening?
 9 A. It just started happening.
 10 Q. So it's not something that you've had since
 11 birth or --
 12 A. Oh, no, no, no.
 13 Q. And the eye issue, how long has that being
 14 been going on?
 15 A. Since '86, I believe. I believe. I'm not
 16 for sure. That's just a round about.
 17 Q. So that's not -- the nerve issue is
 18 unrelated to this eye issue that started in 1986?
 19 A. No. It's all together. It's all together.
 20 Q. So that started in 1986?
 21 A. Not the -- the anything -- any pain over in
 22 this side of any face is related to my orbital -- my
 23 orbital implant because of the nerves around there. So
 24 everything on this side is related. It's the trigeminal
 25 nerves are loose. So everything is related to the pain

1 over in this eye.
 2 Q. And when did that begin?
 3 A. Maybe about four years ago.
 4 Q. What is the prosthesis?
 5 A. The prosthesis? It's an artificial eye.
 6 Q. And so how long have you had the prosthesis?
 7 A. Since 19 -- I believe, 1983 maybe or 1986
 8 maybe, something like that.
 9 Q. And what was the reason that you ended up
 10 getting an artificial eye?
 11 A. I had to have the eye removed, it was
 12 getting discoloration and the retina detaching from the
 13 eye. So I -- there was no sight and it was painful, so
 14 they had to remove it.
 15 Q. So you only have sight out of one eye then?
 16 A. Yes.
 17 Q. And is that the eye that gives you pain
 18 also?
 19 A. Just the right eye.
 20 Q. The other eye is --
 21 A. It's okay, yes. It has low vision, but it's
 22 okay.
 23 Q. And so what doctor did you see in 1986 or
 24 1983 when this determination to --
 25 A. It was at Shepard Eye Clinic in California.

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1 I was stationed at Vandenberg Air Force Base.
 2 Q. Do you remember the doctor that you saw?
 3 A. No. Because they were all military doctors.
 4 The only thing I can tell you is I had the procedure at
 5 Shepherd Eye Clinic.
 6 Q. Do you remember what city?
 7 A. It's called Vandenberg Air Force Base.
 8 That's the name of the city. Oh, the city is -- would
 9 be Santa Maria, California.
 10 Q. Okay. Did you do ever --- were you ever
 11 treated for a tumor?
 12 A. A tumor?
 13 MR. WALSH: Objection, privileged.
 14 I'm going to instruct you not to
 15 answer.
 16 MS. CONNOR: Okay. What is the
 17 specific privileged you're asserting?
 18 MR. WALSH: The specific privilege
 19 would be physician-patient (inaudible).
 20 MS. CONNOR: I'm sorry?
 21 MR. WALSH: The physician-patient.
 22 MS. CONNOR: Okay. And that's your
 23 privilege?
 24 Q. (BY MS. CONNOR) what -- what sort of
 25 education do you have? What is your educational

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1 background?
 2 A. I have a bachelor's in science. I have a
 3 associate in science, which is human services and human
 4 services management leadership. So I have a bachelor
 5 and an associate and I have a mediation license. And
 6 then, I just recently finished -- I did it because I
 7 liked doing it -- a CNA program, a nursing program.
 8 Q. Did you say you have a bachelor's of
 9 science?
 10 A. A bachelor of science, yes.
 11 Q. From what university?
 12 A. University of North Texas State.
 13 Q. When did you receive that degree?
 14 A. May the 16th, 2011.
 15 Q. And you said -- do you have any other?
 16 A. I have an associate in human services. I
 17 received that in 19 -- 19 -- I'm getting the years mixed
 18 up. It had to be -- '90-something. I don't remember.
 19 Q. And what is the name of your degree that you
 20 were awarded in May of 2011?
 21 A. It's management leadership -- human services
 22 in management leadership.
 23 Q. And this mediation license, where did you
 24 get that?
 25 A. University of North Texas State.

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1 Q. When did you receive that license?
 2 A. Last year in December.
 3 Q. December 2011?
 4 A. 2011, yes.
 5 Q. And your associate in human services is thi
 6 one that you received in May 2011 at North Texas, or i
 7 that something different?
 8 A. That's something different, associate.
 9 Q. Okay. What is that?
 10 A. That's in human services, which is at Santa
 11 Maria -- Santa Maria College.
 12 Q. Is that a bachelor's degree?
 13 A. Associate.
 14 Q. That's in California?
 15 A. Yes.
 16 Q. What year?
 17 A. I don't quite remember the year. Maybe
 18 '90-something, '96, I'm not for sure of the year.
 19 Q. And what is the CNA program?
 20 A. Certified Nurses Assistant.
 21 Q. Okay. Have you completed that?
 22 A. Yes. And I just took my test July the -- I
 23 think it was the 29th and passed.
 24 Q. With what organization?
 25 A. Arlington Career Institute.

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1 Q. What is it?
 2 A. Arlington Career Institute.
 3 Q. Arlington --
 4 A. Career Institute, yes.
 5 Q. Any other degrees or education?
 6 A. No.
 7 Q. And you went to high school -- where did you
 8 go to high school?
 9 A. Terrell High School. Terrell High School.
 10 Q. Terrell High School?
 11 A. Uh-huh.
 12 Q. Is that here?
 13 A. Terrell, Texas.
 14 Q. Terrell, Texas?
 15 A. Uh-huh.
 16 Q. I'm going to ask you now about some of the
 17 jobs that you've tried to get since being terminated at
 18 DFPS. What kind of jobs have you looked for?
 19 A. Case management.
 20 Q. What does that mean?
 21 A. That means assist a client doing their
 22 profile, making IEP plans. I have tried to get resident
 23 assistant jobs, just simple office work job with -- with
 24 the state.
 25 Q. Do you remember any of the agencies that you

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1 applied with?
 2 A. I applied with DARS. I have applied with
 3 CPS. I had applied with -- I think the Four-Step
 4 Agency. I had applied several -- I can't remember all
 5 of them, but I have applied.
 6 Q. Did you retain any copies of your --
 7 A. Yes.
 8 Q. Let me finish.
 9 Did you retain any copies of your
 10 applications?
 11 A. I got the confirmation where they gave me
 12 confirmation where they received my application, yes.
 13 Q. Have you given those to your lawyer?
 14 A. Yes.
 15 Q. So other than DARS and CPS, can you recall
 16 any other employers that you've apply with?
 17 A. I have had some interviews.
 18 Q. Okay. Where?
 19 A. Metro -- Metrocare interview, the Phoenix
 20 House interview. I have had a phone interview, a church
 21 interview -- phone interview for a teacher's assistant.
 22 Q. Where was the teacher's assistant?
 23 A. That was at Fellowship Christian School, Oak
 24 Cliff Bible School.
 25 Q. Do you have copies of these applications?

1 A. I have them all.
 2 Q. Did you provide them to your lawyer?
 3 A. Yes.
 4 Q. Any other jobs that you've applied for?
 5 A. I have applied for US Today jobs,
 6 caseworker, nursing assistant, US -- USA -- USA -- I'm
 7 trying to -- I think it's U.S.A. on the web. I have
 8 been in the OPM site applying for some jobs there.
 9 Q. What's the OPM site?
 10 A. Office of Personnel Management.
 11 Q. Is that a state agency?
 12 A. Uh-huh, yes. Washington, D.C.
 13 Q. So it's a federal agency?
 14 A. Yes.
 15 Q. So what other federal jobs have you applied
 16 for?
 17 A. I can't recall all of them, case management,
 18 assistant, clerks.
 19 Q. Do you have any of the copies of the job
 20 descriptions for any of these jobs?
 21 A. Yes, I do.
 22 Q. Did you give them to your lawyer?
 23 A. I don't -- he may have some of the job
 24 descriptions, but not all of them. But I could produce
 25 them.

1 Q. Is there anything else that you can remember
 2 to --
 3 A. I had applied for the -- the forest -- park
 4 for U.S.A. because they have social service assistant
 5 job. Oh, social services assistant job for...
 6 Q. Anything else?
 7 A. There's more, but I can't recall them all.
 8 I have applied for a lot of jobs, I just can't call them
 9 off.
 10 Q. Okay. But if you had time and you had to
 11 sit down and think about --
 12 A. My counselor also gave me jobs, I looked at.
 13 I can write them down. I can give you a list. It would
 14 take me awhile, but I can give you a list.
 15 Q. Okay.
 16 A. And they -- they did a program -- OPM
 17 recently did a program for people with disabilities and
 18 I applied for certain jobs so...
 19 Q. So what disabilities do you think you have?
 20 A. What disabilities?
 21 MR. WALSH: Objection, form.
 22 THE WITNESS: Huh?
 23 MR. WALSH: Objection to form.
 24 You can answer.
 25 A. As far as my eye, since my -- my injury to

1 my back, my shoulder, my cervical and my back.
 2 Q. So you believe you have a disability related
 3 to your eye issue; is that correct?
 4 A. No.
 5 MR. WALSH: Objection, form.
 6 Q. (BY MS. CONNOR) Okay. Can you explain?
 7 A. I had an accident December the 8th, which
 8 left me with injuries to my lower back, my shoulder and
 9 my -- my shoulder and my neck, which caused my vision to
 10 become an impairment because I don't have range of
 11 motion on that side. And when I function, I need
 12 complete range of motion more than everybody do.
 13 MS. CONNOR: Objection, nonresponsive.
 14 Go ahead.
 15 A. Okay. I need total range of motion. I have
 16 lost that range of motion since I had my accident
 17 December the 8th -- December 16th in 2008, because of my
 18 limited vision. I no longer have all of the range of
 19 motion to turn -- turn my neck. I have to turn my whole
 20 body to drive.
 21 Q. (BY MS. CONNOR) So -- but the question was
 22 about your eye. Do you believe that you are disabled
 23 based on the issues that you have with your eye?
 24 MR. WALSH: Objection, form.
 25 A. No, no.

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1 Q. (BY MS. CONNOR) Okay. Have you ever
 2 considered yourself disabled for that?
 3 A. No.
 4 Q. So as it pertains to this lawsuit, you
 5 believe that you have a disability based on a car
 6 accident that occurred on December 16th, 2008?
 7 MR. WALSH: Objection.
 8 Q. (BY MS. CONNOR) Is that correct, is that
 9 fair?
 10 MR. WALSH: Objection, form.
 11 A. Yes.
 12 Q. (BY MS. CONNOR) why don't you describe the
 13 injuries that you sustained in that accident in
 14 December 2008.
 15 A. You want me to describe the accident or the
 16 injuries?
 17 Q. The injuries?
 18 A. The injury. I had contusions, bruises on my
 19 lower 5 and 6 vertebrae, and my back is extended or --
 20 extended. I don't know the medical term. But my
 21 shoulder was sprung and my neck was spring to my neck
 22 and my shoulder.
 23 Q. Okay. And you went to the hospital that
 24 day?
 25 A. Yes.

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1 Q. Okay. which hospital?
 2 A. Methodist Medical Center. It was on -- I
 3 have got to give you -- it's two hospitals. It's the
 4 one on wheatland -- wheatland, because there's two of
 5 them.
 6 Q. That's here in Dallas?
 7 A. Uh-huh, yes.
 8 Q. And you were in Dallas at the time?
 9 A. Yes.
 10 Q. And so how long -- had you ever had any
 11 other issues with your shoulder or your back --
 12 A. No.
 13 Q. -- before that?
 14 A. No.
 15 Q. Do you still suffer -- do you feel -- do you
 16 still have pain today because of this shoulder, back
 17 pain?
 18 A. It's stable. Yes, I do.
 19 Q. And you said you're seeing Dr. --
 20 A. Zegarelli.
 21 Q. -- Zegarelli -- I can never say that -- for
 22 this to this day?
 23 A. Yes.
 24 Q. So after you had the accident, how long were
 25 you in the hospital?

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1 A. Only, I believe it was, about six hours from
 2 12 to about 7:00 o'clock.
 3 Q. So you were released after six hours?
 4 A. Yes, yes.
 5 Q. Okay. Released to go home?
 6 A. Uh-huh, yes.
 7 Q. How did you get home?
 8 A. My husband took me home.
 9 Q. Okay. And after that did you go back to
 10 work?
 11 A. No.
 12 Q. What did you do next in -- in -- with
 13 respect to this injury to your -- that you've testified
 14 to your 4 and 5 vertebrae, your shoulder, what --
 15 A. I -- the doctor -- the emergency room doctor
 16 sent me home with medication. He told me to follow up
 17 with a doctor who was on the back of the form, which I
 18 followed him for three times. The third time he told me
 19 that he could not see me because it's a workers' comp
 20 case.
 21 Q. And do you remember who that was?
 22 A. Doctor -- I think the name is V-a-g-a -- I
 23 can't remember his name. I think it's in the report. I
 24 can't remember his name.
 25 Q. And this was the doctor that said he can't

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1 see you because it's a workers' comp case?
 2 A. Yes, uh-huh.
 3 Q. And he told you this the day of the
 4 accident?
 5 A. No. I saw him the first time and second
 6 time, which he gave me my first excuse. And I brought
 7 some papers in to him for -- I think it was -- I don't
 8 remember. I think it was from the agent that he needs
 9 to sign the papers for workers' comp. And he said he
 10 couldn't sign papers because he's a worker -- he's not
 11 an authorized workers' comp doctor.
 12 Q. Do you have some kind of paperwork that
 13 would show his name?
 14 A. I don't have it with me.
 15 Q. But you have it at home?
 16 A. Yes.
 17 Q. And you can give it to your lawyer?
 18 A. Yes.
 19 Q. So after you saw this doctor that you're
 20 going let us know -- let your lawyer know his name,
 21 after you saw him, who else did you see?
 22 A. I went to a rehab doctor. It was Rehab Now
 23 and...
 24 Q. Do you remember his or her name?
 25 A. No, I don't.

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1 Q. Do you remember when that was?
 2 A. It was from January the -- it was from
 3 January the 5th to January the 19th -- or either January
 4 the 18th, I believe.
 5 Q. January 18th?
 6 A. I'm not for sure of the dates. I'm not
 7 quite for sure of the date, but it was in January. They
 8 found out -- they told me they were workers' comp, but
 9 they don't deal with workers' comp. So finally, I found
 10 the Rehab Now -- I found the -- that's the -- I found a
 11 doctor that do workers' comp.
 12 Q. And what did Rehab Now, this doctor, do for
 13 you?
 14 A. He gave me therapy on my back and neck.
 15 Q. And what did that entail?
 16 A. Therapy on my back and neck? Therapy on
 17 my -- therapy.
 18 Q. What does that mean?
 19 A. They have a rotating bed they put you on,
 20 they have a machine that put you on, they do your
 21 muscles. That's about it.
 22 MS. CONNOR: Mark this one.
 23 (Exhibit 1 marked)
 24 Q. (BY MS. CONNOR) I'm showing you what's been
 25 marked as Exhibit 1. Do you recognize that?

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1 A. Uh-huh, yes.
 2 Q. Is that a letter that this doctor gave you?
 3 A. Yes.
 4 Q. Do you remember that -- do you recognize the
 5 name? Can you read it off down at the bottom there in
 6 that letter?
 7 A. Terence Floyd -- Floyd.
 8 Q. Does that refresh your memory about who you
 9 saw there?
 10 A. That was who I saw.
 11 Q. What was who you saw?
 12 A. Uh-huh.
 13 Q. Okay. And is he a doctor or --
 14 A. He's a physician. The only thing I know,
 15 he's a physician. He prescribed a treatment for me.
 16 Q. And what treatment did he prescribe?
 17 A. For physical therapy.
 18 Q. Okay. And what did that entail?
 19 A. Machines, you -- the back. It's a
 20 machine -- a table you get on and it do your backbones,
 21 your bones in your back, and then it do -- they did
 22 massages and...
 23 Q. And how many times did you see Terence
 24 Floyd?
 25 A. I -- I seen him once. He prescribed the

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1 treatment, and I didn't stay long enough to see him
 2 again because they say they couldn't do workers' comp
 3 cases. So the State did not find me a workers' comp
 4 doctor.
 5 Q. What do you mean by that, "the State didn't
 6 find me a workers' comp doctor"?
 7 A. They did not --
 8 Q. Hold on. Let me finish my question.
 9 A. I'm sorry.
 10 Q. That's okay. It's just hard for her to
 11 write down.
 12 A. Okay. I'm sorry.
 13 Q. Let me finish and then you can talk.
 14 So what did you mean by that, the State
 15 couldn't -- wouldn't find you a workers' comp doctor?
 16 A. It's not wouldn't. It's just the transition
 17 between holidays and something fell -- I don't know what
 18 happened. I -- nobody referred me to a workers' comp
 19 doctor. My adjuster, once I find out, nobody referred
 20 me to a workers' comp doctor.
 21 Q. What do you mean by that. Who did you ask?
 22 A. I would think that the adjuster would tell
 23 me what doctor I need to go to.
 24 Q. What adjuster were you talking to?
 25 A. Matthew -- Matthew Jones. I guess during

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1 the holiday, everybody was like...
 2 Q. Did Mr. Jones ultimately refer you to a
 3 doctor?
 4 A. No.
 5 Q. Okay. How did you find your workers' comp
 6 doctor then?
 7 A. Talking to friend and family knowing my
 8 situation and my friend and family referred me to a
 9 doctor.
 10 Q. And so who -- who specifically referred you
 11 to Dr. Zegarelli? Is it Zegarelli?
 12 A. Dr. Zegarelli, yes. They called him "Dr. Z"
 13 for short.
 14 My sister referred me to Dr. Zegarelli.
 15 Q. And so he just became your doctor for
 16 purposes of the --
 17 A. workers' comp.
 18 Q. And when was the first time you saw him?
 19 A. It was the latter part of January, I
 20 believe. It had to be the latter part of January, I'm
 21 thinking, because all of my doctors excuses falled in
 22 line. So it had -- I don't remember the date, I saw
 23 him, maybe it was January the 15th or even -- I can even
 24 say February. I'm not for sure whether it was the first
 25 visit.

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1 MS. CONNOR: Can I replace this one for
 2 that one, because that has a marking on it. I think I
 3 did that marking. It's the same letter.
 4 (Exhibit 1 exchanged for clean copy)
 5 Q. (BY MS. CONNOR) When did you begin working
 6 at DFPS?
 7 A. July the 31st, 2007.
 8 Q. And what were your duties there?
 9 A. Varieties of duties.
 10 Q. Okay. Explain to the jury what you did for
 11 DFPS.
 12 MR. WALSH: Objection, form.
 13 A. I supervised client visit. I supervised
 14 children visit. I run errands. I go to the courthouse,
 15 pick up disposition. I sat with the children. I go to
 16 doctor's appointments. About -- that's basically all
 17 and some of it. I do paperwork, write reports.
 18 Q. And you were there --
 19 A. Not limited -- not limited to them duties,
 20 though.
 21 Q. I'm sorry?
 22 A. It's not limited to them duties. I do a lot
 23 other.
 24 Q. How long did you work there before the car
 25 accident?

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1 A. A year and five or four months.
 2 Q. Did you ever have any other issues before
 3 the car accident that might relate to your lawsuit?
 4 A. No, ma'am.
 5 Q. So why don't you describe what happened
 6 after the lawsuit after you started seeing
 7 Dr. Zegarelli, what did you do to get yourself well
 8 enough to go back to work?
 9 MR. WALSH: Objection, form.
 10 You can answer.
 11 A. He provided me physical therapy, he provided
 12 medication treatment, he provided counseling, the
 13 physical therapy department, I went through for two
 14 programs consecutively for two weeks, which add up to a
 15 month. He provided medication and counseling.
 16 Q. (BY MS. CONNOR) And what kind of counseling
 17 did he provide you with?
 18 A. I don't understand the question, Counselor.
 19 Q. You said that Dr. Zegarelli provided you
 20 with counseling; what did you mean by that?
 21 A. To talk to someone.
 22 Q. who did you talk to?
 23 A. I don't know the lady name. I don't know
 24 her name. I don't remember her name.
 25 Q. would it have been Dr. Wright?

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1 A. Dr. Wright?
 2 Q. Dr. Mary Wright. Could it have been
 3 Dr. Mary Wright?
 4 A. Is that a lady, Mary Wright? I'm not for
 5 sure.
 6 Q. Anything else that you did to get yourself
 7 healthy to get back to work?
 8 A. He send me out -- he send me out to other
 9 doctors to evaluate me as far as my back, neck and my
 10 sprain to see what target I was on and how I was doing
 11 yes.
 12 Q. And sent you out where?
 13 A. To, I think it's called, Orthopedic, the
 14 other doctor for back injury and injury to your bones,
 15 and other doctors.
 16 Q. Do you remember any of those names?
 17 A. Dr. Honduras, H-u-y-d-a. I don't remember
 18 the name. I am trying to think. I don't remember the
 19 name.
 20 Q. And when was the last time you saw
 21 Dr. Honduras?
 22 A. It's been over a year.
 23 Q. And what kind of treatment did he give you?
 24 A. No, he just evaluated. He evaluated and
 25 tell the doctor what I need.

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1 Q. Okay. what kind of evaluation did he do?
 2 Do you recall?
 3 A. I think he -- requested that I get three
 4 epidural shots in my back.
 5 Q. So he administered epidural shots; is that
 6 what you're saying?
 7 A. He requested it for me to have epidural
 8 shots.
 9 Q. what is that?
 10 A. I believe it's pain medication for your
 11 back. It's some type of pain medication to help your
 12 back from excruciating pain.
 13 Q. Did you have excruciating pain? Did you
 14 have excruciating pain?
 15 A. Yes.
 16 Q. And you went in to see this Dr. Honduras fo
 17 the excruciating pain?
 18 A. I went in to see him for evaluation, and he
 19 gave the treatment to Dr. Zegarelli. He offices in
 20 Richardson. He is -- actually, State recommended it -
 21 Storm.
 22 Q. Recommended who?
 23 A. For me to go there.
 24 Q. To go where?
 25 A. To see the doctor.

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1 Q. Which one?

2 A. Dr. Honduras, H-y-u-something.

3 Q. Is this Matthew Jones; is that you said?

4 A. Uh-huh, yes, yes.

5 Q. He recommended?

6 A. Uh-huh.

7 Q. Okay. Any other doctors?

8 A. He had a physical therapy doctor. I don't

9 know their names.

10 Q. Do you remember the name of the business or

11 where it was?

12 A. No, ma'am. Oh, one physical therapy doctor

13 would be with Dr. Zegarelli. He have his own therapy in

14 his apartment.

15 Q. So is he associated with Dr. Zegarelli?

16 A. Yes.

17 Q. Do you remember his name?

18 A. No.

19 Q. Do you remember how many times you saw this

20 physical therapist associated with Dr. Zegarelli?

21 A. He was there throughout the -- you have a

22 session and you come in your session and he was there

23 throughout the session. So, if I went five times a

24 week, he was there.

25 (Exhibit 2 marked)

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1 MS. CONNOR: I don't have a copy of

2 that affidavit, but y'all produced it.

3 Q. (BY MS. CONNOR) I'm showing you Exhibit 2.

4 Do you recognize that document?

5 A. Yes.

6 Q. Okay. Is this your charge of

7 discrimination?

8 A. Yes.

9 Q. Okay. Now, if you look down where it

10 says -- like the middle of the page over to the right,

11 it says, your discrimination took place October 9th

12 through October 12, 2009. Do you see that?

13 A. Uh-huh, yes.

14 Q. What did you mean by that?

15 A. This statement here, respondent reason for

16 adverse reaction. This is not my response. What is

17 this? Could you read it? "In a letter dated October

18 16, 2009 from Lisa Black, regional director, states that

19 I was not yet able to return to work full time and I had

20 not -- I had not leave balances to accommodate these

21 restrictions. Therefore decision to terminate my

22 employment was based on the following work rules and

23 policies and violation. Be familiar with HHS policies

24 and procedures related to job performance and work,

25 perform job duty, meet HHS standard for job performance

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1 and follow job-related instruction. The letter also

2 stated that it is the policy of the Department of Family

3 and Protective Services that if a DFPS employee exhausts

4 all leave in entitled and does not return to work, she

5 may be dismissed.

6 So in a letter stating I'm not able to

7 return to work full time I had to leave -- that's not me

8 because I have leave available. So I don't know what

9 this is. I don't understand it. Is this Lisa Black's

10 statement?

11 Q. Okay. You said -- well, you just testified

12 that you recognized the document.

13 A. Uh-huh.

14 Q. So are you saying now you don't recognize

15 the document?

16 A. No. I recognize this document. I recognize

17 this. I don't know what's on here. I was not

18 reasonable accommodation. I had in a letter dated

19 October 16, 2009, from Lisa Black, regional director

20 stated -- she stated that I was not yet able to return

21 to work full-time and I have not leave -- I had no

22 leave. That's her saying that. Because I only had 72

23 hours. So that's not me, that's Lisa Black.

24 MS. CONNOR: Objection, nonresponsive.

25 Q. (BY MS. CONNOR) When you -- when you look

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1 at this document, is this something you filed with the

2 EEOC or the Texas Work Force Commission?

3 THE WITNESS: Mr. Colin, I don't

4 understand this. I don't understand what this is

5 saying.

6 MR. WALSH: Can we take a break?

7 MS. CONNOR: Sure.

8 THE VIDEOGRAPHER: Off the record at

9 11:04.

10 (Break taken 11:04 a.m. to 11:12 a.m.)

11 THE VIDEOGRAPHER: We are back on

12 record at 11:12, with the start of DVD number 2.

13 MS. CONNOR: will you read back the

14 next -- the last question?

15 (Requested portion read.)

16 A. Yes.

17 Q. (BY MS. CONNOR) And before that, I asked

18 you, looking at Exhibit 2, what that meant that your

19 alleged discrimination took place between October 9th

20 and October 12th, 2009, and what you meant by that.

21 A. This was the time I met with Lisa Black and

22 was pleading for accommodation to accommodate me.

23 Q. Okay. Well, when was that? When was it

24 that you met with Lisa Black?

25 A. September 29th. I believe it was on

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1 September 29th.

2 Q. Okay. When you said you pleaded with her,

3 what did you ask her?

4 A. She was insisting that we need somebody on

5 the unit. We need somebody on the unit. You haven't

6 been at work. I said, well, I am doing the best I can

7 do, please work with me. You don't have any time

8 available. I said, I have 72 hours.

9 Q. Okay. And what did you -- and what did

10 you -- you said you pleaded with her. What did you

11 specifically ask her?

12 A. I said, please, work with me, please work

13 with me. I have been in a real bad accident, it was

14 job-related and it has taken more time for me to heal.

15 So I don't remember all of the detail, but I pleaded

16 with her and I said I had 72 hours. And she totally

17 didn't hear that. I said, I have 72 hours. But she

18 said, you have exhausted all of your -- your leave.

19 Q. So are you testifying then to the jury that

20 you asked her for an accommodation?

21 A. I asked her for accommodation for 70 -- let

22 me use my 72 hours.

23 Q. And that was what you specifically asked

24 her. Did you ask any other thing of her?

25 A. I told her I was going to go get a doctor's

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1 excuse and a doctor --

2 MS. CONNOR: Nonresponsive, objection.

3 A. And I went to the doctor. I went on Friday,

4 got a doctor excuse and I brought it back and it was for

5 part-time -- to accommodate me for part-time because

6 they had already said they don't have light-duty or

7 alternate duty or whatever. And I brought the excuse

8 back, left it with the receptionist. And they called

9 me, I think it was Melissa Hobbs called me saying I have

10 a full-time position, there's no such thing as part-time

11 position. I said, well, I have 72 hours. And they

12 didn't hear anything I said.

13 Q. Okay. In addition to asking to use the 72

14 hours of leave that you said you had, was there anything

15 else that you specifically asked Ms. Black as a

16 reasonable accommodation for your alleged disability?

17 A. I have -- DARS had April Gonzales, DARS --

18 MS. CONNOR: Objection, nonresponsive.

19 A. -- had asked for accommodation for me and

20 Ms. -- Ms. Oglebee would not communicate with DARS as a

21 state agency that was helping me to maintain my job.

22 And she would not communicate with them or I don't know

23 what happened for accommodation.

24 Q. In your September 9th -- September 29th,

25 2009 meeting with Lisa Black, did you specifically ask

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1 for any other sort of accommodation other than to use 72

2 hours of annual leave as you have now testified to the

3 jury?

4 A. I -- the only thing, I also just told her I

5 will go see the doctor. I don't know what the doctor is

6 going to tell me.

7 MS. CONNOR: Objection, nonresponsive.

8 A. I will go see the doctor. I asked her -- I

9 don't understand the question.

10 MS. CONNOR: Can you read it back to

11 her?

12 (Requested portion was read.)

13 A. It was the 72 hours, I believe. It

14 wasn't -- after she said my time is exhausted, I told

15 her I have 72 hours, could I work with that.

16 Q. (BY MS. CONNOR) Okay. There was no other

17 request though for any other kind of accommodation?

18 A. I asked Ms. Nicole Oglebee, she was

19 harassing me, kept calling me and asking me did she --

20 MS. CONNOR: Objection, nonresponsive.

21 A. I asked Nicole Oglebee, I said, please,

22 could I do light duty. And she said she would check

23 with her supervisor. She called me back, there is no

24 such thing as light duty, you either be here or not. I

25 said, what are you telling me? Well, I have never been

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1 on that unit. Never made it to that unit.

2 (Exhibit 3 marked)

3 A. When I had my accident I was on Unit 88.

4 MS. CONNOR: Same objection,

5 nonresponsive.

6 Q. (BY MS. CONNOR) Ms. Howard, I'm showing you

7 what's been marked as Exhibit 3. Do you recognize that

8 document?

9 A. No. No, I don't.

10 Q. Have you ever seen anything like that?

11 A. No. No, ma'am.

12 Q. Okay. Do you want to look over the second

13 page, as well?

14 A. No.

15 Q. Okay. So other than the 72 hours of leave

16 that you requested from Lisa Black on September 29th and

17 the light duty that you requested from Ms. Ogle, I

18 believe?

19 A. Uh-huh, Oglebee, Ms. Oglebee.

20 Q. I think it's Ogle.

21 A. Okay. Ogle, uh-huh.

22 Q. For light duty, is there any other person or

23 accommodation that you've requested?

24 A. I requested for assistance through DARS and

25 DARS, April Gonzales, tried to talk to Ms. Oglebee --

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1 Ogle.
 2 MS. CONNOR: Objection.
 3 Q. (BY MS. CONNOR) Ms. Gonzales -- you talked
 4 to Ms. Gonzales and what did you ask Ms. Gonzales?
 5 A. They was supposed to talk to Ms. Nicole --
 6 MS. CONNOR: Objection, nonresponsive.
 7 A. -- for to help me to take and maintain my
 8 job and to keep my job. And Ms. Nicole refused to talk
 9 to them or something. It wasn't a good conversation she
 10 said.
 11 Q. (BY MS. CONNOR) Okay. So did you ask
 12 Ms. Gonzales to convey to the department --
 13 A. Yes.
 14 Q. What did you ask Ms. Gonzales to convey to
 15 the department?
 16 A. I asked her to talk to Ms. Nicole and to
 17 explain my situation and what had happened to me
 18 since -- because she don't know. I mean, she's totally
 19 not my supervisor at the time.
 20 Q. Okay. Why didn't you call her and explain
 21 your situation to her?
 22 A. She already know my situation.
 23 MR. WALSH: Objection, form.
 24 Q. (BY MS. CONNOR) How would she know that?
 25 A. She already -- what do you mean?

1 MR. WALSH: Objection, form.
 2 Q. (BY MS. CONNOR) Why did you call Ms.
 3 Gonzales?
 4 A. Because Ms. Nicole wasn't listening to me.
 5 Q. Okay. When did you talk to Ms. Nicole?
 6 A. I talked to her on several occasions. And
 7 everything she asked me I was rushed to fax to make sure
 8 she had it once I found out she was my supervisor. I
 9 talked to her on several occasions.
 10 Q. When did you find out she was your
 11 supervisor?
 12 A. Actually, maybe it was February or something
 13 like that, January, February, a little later on.
 14 Q. That's when you found out you had --
 15 A. I'm not for sure. I'm not for sure, because
 16 nobody never told me the transition. Because I was
 17 still on Unit 88 when I had my accident, I was under
 18 Monica McFarland and Monica McFarland, who came to the
 19 hospital, who was supposed to do my incident report and
 20 I was looking at my incident report and it was Nicole
 21 Ogle is on there, and I haven't even went to that unit.
 22 I never went to Unit 77. I never was on Unit 77. I
 23 have never seen Nicole up 'til this day.
 24 Q. So you don't remember -- your testimony is
 25 you don't remember when you found out you had a new

1 supervisor?
 2 A. Nobody never told me, because I never went
 3 to the unit.
 4 MS. CONNOR: Objection, nonresponsive
 5 A. No. I really don't remember when I found
 6 out. I don't even know how I found out. I don't know
 7 if she called me or either I called her. I think I
 8 probably may be called her because they was -- I just
 9 thought about something.
 10 Q. (BY MS. CONNOR) Oh, I thought you said you
 11 thought about something. Do you remember something
 12 about when --
 13 A. I was looking -- what happened was
 14 Ms. Nicole entered my pay. She -- I guess, when she
 15 came off maternity leave, she entered my pay, not once
 16 but twice, and so that means we get paid once a month.
 17 So I had to call her because I looked some -- I think
 18 one of my friends had told me, you have a new
 19 supervisor. I don't know how I found out, I don't know
 20 if it was on paper or what.
 21 MS. CONNOR: Objection, nonresponsive
 22 A. But she -- and I had to call her up about m
 23 pay. I don't know if she called me first or I called
 24 her. I really don't know.
 25 (Exhibit 4 marked)

1 Q. (BY MS. CONNOR) I'm showing you what's been
 2 marked as Exhibit 4. Have you seen this e-mail before?
 3 A. Uh-huh, yes.
 4 Q. And who was it from?
 5 A. It says Nicole Ogle. It says Nicole Ogle,
 6 but it really was from -- this was from -- it says from
 7 Nicole Ogle.
 8 Q. Do you remember receiving this e-mail? You
 9 said you recognized it. Do you remember seeing it?
 10 A. I recognize it. But if you think about it,
 11 she was on maternity leave during that time.
 12 Q. Okay. Who was on maternity leave at that
 13 time?
 14 A. I believe Ms. Nicole Ogle was on.
 15 Q. How did you know she was on maternity leave
 16 at that time?
 17 A. That's what she told me when I talked to
 18 her. This is what -- what date is this? It's just like
 19 if you look at the incident report, her name is on the
 20 incident report. Guess what? I was on Unit 88. So
 21 tell me that. The incident report said Nicole Ogle and
 22 she wouldn't even -- I wasn't even on her unit.
 23 MS. CONNOR: Objection, nonresponsive.
 24 A. I was on Unit 88, so something is not right.
 25 Q. (BY MS. CONNOR) Will you read that second

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1 sentence of that e-mail?
 2 A. This says, a worker compensation claim has
 3 been filed for employee Carlotta Howard. Ms. Howard has
 4 chosen to use only her available sick time to cover time
 5 lost from work at -- at the time -- at the time of
 6 injury. Ms. Howard had 123 sick leaves available.
 7 Estimated amount of leave has run out the first, 13th.
 8 Please adjust time accordingly. Ms. Howard states
 9 change (inaudible).
 10 Q. You say you remember getting that e-mail?
 11 A. Uh-huh.
 12 Q. And that second sentence that you read that
 13 you only -- you have chosen to use only your available
 14 sick leave.
 15 A. Right, which is 123 hours.
 16 Q. Okay. And so you received that on or around
 17 the first part of January 2009?
 18 A. This is from Amy. I think -- maybe, I don't
 19 know.
 20 MS. CONNOR: Objection, nonresponsive.
 21 A. But Nicole entered my time because she
 22 didn't know. I never made it to the unit, so I mean --
 23 I don't know what's your point, but I never made it to
 24 the unit. I never met Nicole. When I got hurt December
 25 the 16th, I was on Unit 88. I was doing case work for

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1 Unit 88, and Monica McFarland came to the hospital.
 2 Monica McFarland sent me a basket and picked up the rest
 3 of the toys for the kids that was in the accident with
 4 me, that was December -- before Christmas. I think it
 5 was December the 23rd.
 6 Q. So do you recall in the first part of
 7 January talking to somebody about this second sentence
 8 here where you just read from that e-mail on -- it's
 9 Exhibit 4, Ms. Howard has chosen to use only her
 10 available sick leave?
 11 A. Amy and Matthew Jones, that's who did my
 12 sick leave, Amy and Matthew Jones. And like I said --
 13 Q. Is it the same person listed in this e-mail
 14 here?
 15 A. Uh-huh.
 16 Q. That's the person who you talked to?
 17 A. Yep. These were the people who were doing
 18 my time sheet, yep. They selected and they say you have
 19 got 72 hours you have got 123 hours. So once you
 20 selected to do that, you know, you can't go back and
 21 change it. So I selected to use my sick time versus
 22 using my annual time. And that's what I talked to
 23 Matthew Jones and -- the Amy lady. Amy -- right here
 24 (indicating.)
 25 Q. So Amy and Matthew Jones?

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1 A. Uh-huh, yeah, they did that for me.
 2 (Exhibit 5 marked)
 3 MS. CONNOR: I think that has a Bates
 4 number 796. Did that one have a Bates number?
 5 MR. WALSH: Huh-uh.
 6 MS. CONNOR: Okay. It's 796. That's
 7 just a clean copy.
 8 Q. (BY MS. CONNOR) I'm showing you what's been
 9 marked as Exhibit 5. Do you recognize that?
 10 A. I have a question. Why does it say none of
 11 my accrued annual leave? Okay, that's what is says.
 12 MS. CONNOR: Objection.
 13 Can you tell her?
 14 A. My 123 hours sick -- why do --
 15 MS. CONNOR: Just, objection,
 16 nonresponsive.
 17 Q. (BY MS. CONNOR) All I asked you is if you
 18 recognized that?
 19 A. Oh, yes, I recognize it. No, I don't
 20 recognize it, because this is supposed to be 72 hours
 21 down there. So something is missing. If it's not 72
 22 hours, it's not a complete form.
 23 Q. Okay. Do you remember talking to --
 24 A. Matthew Jones and Amy -- I can't pronounce
 25 her last name.

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1 Q. Regarding?
 2 A. They talked to me over the phone.
 3 Q. Right. Okay.
 4 MR. WALSH: Can we take a quick break
 5 MS. CONNOR: We just had a break.
 6 MR. WALSH: Okay.
 7 MS. CONNOR: I'm going to move on.
 8 Because, I mean, unless you can give me some other --
 9 except to tell her what to say kind of break.
 10 MR. WALSH: Okay.
 11 Q. (BY MS. CONNOR) Okay. So you said that you
 12 had -- when you first started at the agency Monica
 13 McFarland was your supervisor?
 14 A. Yes.
 15 Q. Did she hire you?
 16 A. The hiring manager, it was Ms. --
 17 Q. Was Ms. McFarland in your interview?
 18 A. No. They have a hiring manager for CPS.
 19 They don't do the hiring. They do the hiring at the
 20 corporate office.
 21 Q. You said you did some -- the duties you did
 22 there included driving?
 23 A. Uh-huh.
 24 Q. About how much of your work was driving?
 25 A. Like 75 percent.

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1 Q. And so, can you drive today?
 2 A. Yes.
 3 Q. And you could drive fine then?
 4 A. Yes.
 5 Q. And your sight and vision problems that
 6 you've described to the jury do not interfere with your
 7 driving abilities?
 8 A. This interferes with my driving ability.
 9 The limited to move my shoulders, to move my neck, this
 10 is what interferes with my driving ability. I drove for
 11 DC for six years with the same situation.
 12 MS. CONNOR: Objection, nonresponsive.
 13 Q. (BY MS. CONNOR) So you're pointing to your
 14 shoulder.
 15 A. My shoulder and my neck. Instead of me
 16 turning my body the way y'all turn your neck to look, I
 17 have to turn my whole body to look versus you just turn
 18 your neck.
 19 Q. And that's to this day?
 20 A. Yes.
 21 Q. To this day you still have difficulty
 22 driving?
 23 A. But it's better, I can drive.
 24 Q. But you can drive?
 25 A. Yes, yes, I can drive.

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1 Q. Do you have any restrictions on your
 2 driver's license?
 3 A. I always have restriction on my driver's
 4 license.
 5 Q. Okay. What are those?
 6 A. Restriction A.
 7 Q. What does that mean?
 8 A. Drive -- don't drive without glasses.
 9 Q. Any other restrictions on your driver's
 10 license?
 11 A. Not that I know of.
 12 Q. But you're able to drive?
 13 A. Yes.
 14 Q. Okay. And so -- but you're explaining that
 15 you're having difficulty. Does it impair your vision,
 16 this physical pain that you're alleging or your
 17 inability to turn?
 18 A. What do you mean? What pain are you talking
 19 about, my back pain or my eye pain?
 20 Q. You were pointing to your shoulder and you
 21 were motioning that you had difficulty turning?
 22 A. Yes, it's stiff. Yes, I have difficulties
 23 turning, yes.
 24 Q. But that's not interfering with your
 25 driving; is that what you're telling the jury today?

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1 A. It slows me down. It's making me slower.
 2 Q. How so?
 3 A. It's like versus you turning a corner and
 4 looking back, you just do a quick look back. And my
 5 angle is really slower. It's just slower. I mean, some
 6 people drive fast, some people drive slow and I'm going
 7 to be a slower driver.
 8 Q. Did you ask for a reasonable accommodation
 9 for slow driving? You just testified that --
 10 A. I just asked for accommodation. I asked for
 11 accommodation. Give me an opportunity to come back to
 12 work. Give me an opportunity to come back to work. I
 13 have 72 hours. Whatever that accommodation may be, I
 14 will go with it. They didn't accommodate me. They said
 15 flat out, flat pancake, no.
 16 MS. CONNOR: Objection, nonresponsive.
 17 A. I don't know what kind of accommodation they
 18 had, because some people go to different jobs, work
 19 different; like some people go to the food stamp place
 20 and work, some people go to -- you know, the agency was
 21 in a reorganization, so other peoples was working not
 22 even driving. Some people just do -- my friend, she
 23 have accommodation. She do secretary work, sit at the
 24 desk. My accommodation, I didn't get any accommodation.
 25 whatever that would have been to help me, there was no

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1 accommodation made for me. Flat out no. There was no
 2 accommodation. I asked, the State asked, I asked
 3 Nicole, I asked Ms. Lisa, it was just flat out no.
 4 Melissa Hobbs said, we can't help you, no. So that's
 5 what she told me.
 6 Q. Okay.
 7 A. So, they didn't help.
 8 Q. So in addition to the 72 hours that you
 9 asked to use your leave or your request to Ms. Ogle fo
 10 light duty, is there any other request that you
 11 accommodate -- for accommodation that you're alleging?
 12 A. I asked her can I do just office work for
 13 now until I can get it together.
 14 Q. Who did you ask?
 15 A. I asked Ms. Ogle can I just sit at the
 16 office and do stuff and do the visits. I can do
 17 children visit, you know, that takes up all of their
 18 time.
 19 Q. Are there visits on-site where you were?
 20 A. Yes. Visit on-site, yes.
 21 Q. What are the duties of somebody whose, as
 22 you testified, doing visits?
 23 A. Going and watching the interaction between
 24 the children and the parents.
 25 Q. Do you take notes?

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1 A. I take notes, yes.

2 Q. Was that something you had done in the past?

3 A. Uh-huh, yes, I have done that in the past.

4 I just monitor kids while they're in the meeting with

5 the workers. And I have the -- you know, paperwork. I

6 had sat in courts, listen. I could have did anything.

7 Q. So -- so I just want to make sure because

8 you've filed a civil rights lawsuit against the agency,

9 so we're going to make sure that today you tell me every

10 part of your claim. So we have that you asked for 72

11 hours to be able to use your annual leave?

12 A. Uh-huh.

13 Q. You asked for light duty, which might have

14 encompassed paperwork, office, watching the visits with

15 the children, food stamps, these kind of things?

16 A. Uh-huh.

17 Q. And who did you ask to do that?

18 MR. WALSH: Objection, form,

19 mischaracterization.

20 Q. (BY MS. CONNOR) Okay. Well, then, why

21 don't you characterize what exactly it is that you're

22 claiming in this lawsuit?

23 A. Discrimination.

24 Q. I'm talking about the accommodations you

25 requested.

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1 A. I requested accommodation, whatever

2 accommodation they can provide for me.

3 Q. Is that what you said?

4 A. No. I asked -- I asked Ms. Oglebee, she

5 said she would check with a supervisor for light duty.

6 of course another terminology would be alternate duty.

7 She come back and said, there's no such thing as light

8 duty. Then I asked -- I asked, well, I can just, you

9 know, right now, I can, you know, stay at the office and

10 do paperwork, do visits and do this.

11 Q. Did you ask?

12 A. Yes. I asked Ms. Oglebee I can do -- you

13 know, light duty include anything. I said I can do the

14 visit. I can...

15 Q. Okay. And when was that?

16 A. When I was talking to her one day on the

17 phone. We talked several times. I can't identify all

18 of the dates.

19 Q. Okay. Can you give me ballpark what dates

20 you talked to Ms. Ogle on the phone?

21 A. Maybe it was June or July.

22 Q. So just one conversation with her?

23 A. No. We had many conversations.

24 Q. Okay. What did y'all talk about?

25 A. Well, I can tell you the first

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1 conversation -- well, no, I can't tell you the first.

2 We talked about mostly she wanted to know when I'm

3 coming back to work and then she asked, you know, how

4 I'm doing, when can you get back to work or I need

5 doctor excuses. So I will give her a doctor excuse or I

6 need this. I said, well, my former supervisor had all

7 of my doctor excuses. So I said I can produce the

8 doctor excuses for you. So I got all of my doctor's

9 excuses that I had and gave them to her. And then she

10 called, well, I need something from the doctor; I

11 demanded something from the doctor. I said, well,

12 workers' comp you only can go to the doctor every three

13 weeks, you can't just pop up and go. It's not like

14 that, but I do my -- I'll do the best I can do. And I

15 even a had a coworker put stuff in her seat for her.

16 Q. Okay. When was that and who was that?

17 A. That was probably about -- Ms. Peggy --

18 Ms. Peggy might have gave -- gave her a doctor excuse to

19 put in her seat. It was probably during July.

20 Q. Who -- who did you ask to put something in a

21 seat?

22 A. Peggy Mata, she gave it to another coworker

23 and put it in her seat because she wasn't, you know,

24 there or something. I said, put it on her door or put

25 in her seat so she can get it.

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1 Q. Put what?

2 A. A doctor excuse, once I had it.

3 Q. Okay. Can you just be more detailed about

4 when that started, what you asked to put -- who you

5 asked and what you asked to be put in whose seat?

6 A. I had an excuse that I needed to give to

7 Ms. Nicole and I -- I needed to get it to her, and I

8 asked one of the coworkers to pick it up. They came and

9 picked it up and they took it to Stemmons office, and

10 they gave it to another coworker to put in her seat for

11 me.

12 Q. Okay. And do you remember what the note

13 was -- who the note was from?

14 A. It was Dr. Zegarelli. It was a note from

15 Dr. Zegarelli. Which one, I don't know.

16 (Exhibit 6 marked)

17 Q. (BY MS. CONNOR) Was that Exhibit 6? I'm

18 showing you Exhibit 6. Do you recognize that?

19 A. Uh-huh.

20 Q. It's actually -- Exhibit 6 is two documents.

21 Do you recognize that one on the second page?

22 A. Uh-huh, yes.

23 Q. Do you remember receiving this letter on

24 September 8th -- well, the letter is dated

25 September 18th from Lisa Black?

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1 A. Yes, uh-huh.
 2 Q. Okay. Did you write a response?
 3 A. Yes.
 4 Q. Okay. And you gave it --
 5 A. No. I believe I called. I called and set
 6 up a meeting but she was out of -- she was out of the
 7 office. So we couldn't have our meeting until September
 8 the 29th, I believe.
 9 Q. And you've testified a little bit already;
 10 is that correct?
 11 A. Uh-huh, yes.
 12 Q. Okay. Is there anything you want to add to
 13 that about what y'all discussed?
 14 A. Well, I discussed with her -- I was telling
 15 her -- I told her, I said, you know, Ms. Black, I don't
 16 understand. I nearly lost my life working for CPS
 17 trying to get gifts to children, and they had to
 18 literally pull me out of the car. My car was totaled
 19 and this is how I get treated. I mean, I just don't
 20 injure -- I have a back injury. I have a shoulder. I
 21 mean, my whole life is turned upside down. I said, and
 22 this is what they make me go through? I'm -- I don't
 23 understand. I am doing a good job and I'm a good
 24 worker. And that's what I told her.
 25 Q. And so to this day, you're still having

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1 those injuries that you complained of, the accident that
 2 you just described was December?
 3 A. 16, '08.
 4 Q. '08.
 5 A. They are a permanent injury.
 6 Q. And then this is the --
 7 MS. CONNOR: Objection, nonresponsive.
 8 Q. (BY MS. CONNOR) And this is a meeting in
 9 September the next year, almost a year later, that
 10 you're having?
 11 A. Have you ever had a back injury?
 12 MS. CONNOR: Objection.
 13 Q. (BY MS. CONNOR) You can't ask me a
 14 question, sorry. This is your lawsuit. You filed a
 15 lawsuit. We get to ask you questions.
 16 A. Okay. I -- I have permanent injuries.
 17 MS. CONNOR: Objection, nonresponsive.
 18 Q. (BY MS. CONNOR) I asked you, this was
 19 almost a year later; is that correct? And you were
 20 saying -- and you were --
 21 A. October, November, uh-huh.
 22 Q. So it's almost a year later?
 23 A. Uh-huh.
 24 Q. And so you've seen several doctors --
 25 A. Uh-huh.

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1 Q. -- by that time?
 2 A. Uh-huh.
 3 Q. At the time, did you -- were you able to
 4 drive yourself to this meeting with Ms. Black?
 5 A. My sister drove me.
 6 Q. Okay. Were you in excruciating pain at the
 7 time of the meeting?
 8 A. No.
 9 Q. Were you in excruciating pain at the time
 10 that you talked to Ms. Ogle in late -- in late July?
 11 A. I don't remember. I probably was having a
 12 pain episode. Or maybe I was just depressed because she
 13 had sent out this letter.
 14 Q. Are you claiming in your lawsuit any
 15 discrimination based on your FMLA status?
 16 A. I never knew about my FMLA status. Nobody
 17 ever told me.
 18 MS. CONNOR: Objection, nonresponsive.
 19 A. I don't even know when I went on FMA (sic).
 20 Nobody never even told me I went on FMA. They just -- I
 21 never signed any paperwork. It's just the same as Lisa
 22 putting my time in twice. So she didn't know where it
 23 was going in neither, Ms. Ogle. I had to pay money back
 24 because she put in my time. That's how much she knew.
 25 She didn't know. I never was on the unit.

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1 Q. (BY MS. CONNOR) If you'll flip to that
 2 third page of Exhibit 6.
 3 A. Exhibit 6.
 4 Q. It's the second full paragraph, it starts
 5 with, "in February 2009."
 6 A. Uh-huh. Do you want me to read it?
 7 Q. No. I'm just going to ask you a question.
 8 Do you recall -- this is a narrative by Ms. Ogle
 9 relating to your incident and your lawsuit. She said
 10 she contacted you in February 2009 and inquired about
 11 your status.
 12 A. Uh-huh.
 13 Q. Is that correct?
 14 A. I believe it is, maybe. I'm not for sure of
 15 the date because everything was happening. I just don't
 16 know. It could be right, it could not be right, I don't
 17 know.
 18 Q. Do you remember talking to her somewhere
 19 around February of 2009?
 20 A. Maybe at the latter part. I just don't know
 21 when.
 22 Q. Do you remember her asking you why you
 23 hadn't tried to contact her?
 24 A. If she called my -- if she called me, that
 25 means that I didn't really know -- I didn't know of her,

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1 if she called me first. So, you know, that's the fuzzy
 2 part. I can't remember that part, who called who first.
 3 The only way I found out -- I found out through the
 4 grapevine she was my supervisor. Because, like I said,
 5 Monica McFarland, I was up under her care.
 6 MS. CONNOR: Objection, nonresponsive.
 7 A. I don't know. I just honestly don't know.
 8 Q. (BY MS. CONNOR) Do you remember her calling
 9 you in February 2009?
 10 A. I think she maybe called me in February.
 11 January, February, March -- everybody was calling me.
 12 Q. When you say everybody was calling you, what
 13 do you mean by that?
 14 A. My lawyer was calling me, the doctor was
 15 calling me, my bill collector was calling me, my car was
 16 calling me because I hasn't paid the remaining balance
 17 of the car being totaled out. So I just don't know, and
 18 then, if you think about this, I had just been injured
 19 during that time. I was just injured. I was injured
 20 December 16th and I'm on my medication. So everything
 21 is fuzzy by then. That's early February and I had just
 22 had my injury. So you can't expect me to remember too
 23 much. And I was going through it. And then she's
 24 calling me, so I don't know.
 25 MS. CONNOR: Can you mark that?

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1 Thanks.
 2 (Exhibit 7 marked)
 3 Q. (BY MS. CONNOR) I'm showing you what's been
 4 marked as Exhibit 7. Do you recognize that?
 5 A. Uh-huh, yes.
 6 Q. Okay. Is that the page that you faxed over
 7 to her as she stated in Exhibit 6?
 8 A. That may be one of the pages I faxed to her.
 9 Q. Okay. Are you saying you faxed more than
 10 one page to her?
 11 A. Yes.
 12 Q. That day?
 13 A. I don't know what day. I don't know, what
 14 day is that? Has it got a fax number on it?
 15 Q. I don't know.
 16 A. It could be because I faxed --
 17 Q. But that is something you did fax to her?
 18 A. Uh-huh, yes.
 19 Q. Did you tell her at that time how long you
 20 expected to be out?
 21 A. No, I didn't, because that's for the doctor
 22 to determine.
 23 Q. Is that what you told her?
 24 A. I told her I don't know, I would go see the
 25 doctor and see what he said. But I can't see the doctor

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1 but every three weeks because workers' comp doesn't
 2 allow you to see the doctor but every three weeks. And
 3 I think that's what I told her, I don't know.
 4 Q. At that time in February were you unable to
 5 drive?
 6 A. You know, I honestly think at that time
 7 maybe, I'm not for sure. I probably -- since I had just
 8 started my treatments, I -- in February probably was the
 9 hard month, January, February, March was really a
 10 complicated month. So it could well be true. I'm not
 11 for sure.
 12 Q. You don't remember whether in February 2009
 13 you drove a car?
 14 A. I'm sure I drove maybe to the store or
 15 something.
 16 Q. Did you drive to your classes?
 17 A. My husband mostly take me to my classes
 18 because it's at night.
 19 Q. Did you ever drive yourself to class?
 20 A. Every now and then, yes.
 21 Q. So you were driving in February 2009?
 22 A. Maybe 40 percent out of 100.
 23 Q. Okay. So you drove yourself to the store as
 24 you testified to the jury?
 25 A. Uh-huh.

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1 Q. And you drove yourself to class?
 2 A. Uh-huh.
 3 Q. Okay. Did you do any other driving in
 4 February 2009?
 5 A. Every now and then I -- the doctors that ar
 6 in the neighborhood, I drive to the neighborhood.
 7 Q. Okay. Where?
 8 A. It's -- Doctor is on wheatland, it's about
 9 ten minutes away.
 10 Q. Okay. And you testified to the jury about
 11 75 percent of your job was driving?
 12 A. Uh-huh, yes.
 13 Q. And the rest of it was visiting -- observin
 14 visits?
 15 A. Uh-huh.
 16 Q. Light clerical work?
 17 A. Yes.
 18 Q. Working in food stamps?
 19 A. Not food stamps. That would be an alternat
 20 duty that they could put me on.
 21 Q. Oh, okay.
 22 A. Yeah.
 23 Q. But 75 percent of your job was driving?
 24 A. Yes.
 25 Q. And you just testified to the jury that

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1 basically your eye issues were not impairing your
 2 driving abilities, other than wearing corrective lenses;
 3 is that correct?
 4 A. No, that's not correct.
 5 Q. Okay.
 6 A. That's not correct. Because you have a
 7 time. You have, my accident was December the 8th.
 8 MS. CONNOR: Objection, nonresponsive.
 9 A. You have January, you have February, you
 10 have March and you have April. My accident, I told them
 11 in November -- I just started healing at the beginning
 12 of October and November, September, I just started
 13 healing. This is the beginning of the month. This is
 14 where I just started my treatments. So the dates -- you
 15 have to consider the dates. Like January, I had my
 16 accident December 16, '08. So you have January, you
 17 have February, I'm in pain. You have January, February,
 18 March. April, I started beginning to feel better.
 19 March. So all of those dates, you have to consider my
 20 accident and my recuperation period there. Not October,
 21 November, December. October, November, December, I'm
 22 ready to go to work.
 23 Q. So back to Exhibit 6 in that second full
 24 paragraph.
 25 A. Exhibit 6.

1 Q. Do you see that second full paragraph where
 2 she states that you told her you didn't know when you
 3 would be back, that the doctor would make those
 4 decisions?
 5 A. Uh-huh.
 6 Q. And like you stand by that today, that's
 7 what you said to her?
 8 A. Yes. The doctor have to make them
 9 decisions. He made a decision for me to go back to work
 10 part-time.
 11 Q. Okay.
 12 A. I'm not the doctor. I can't make a
 13 decision. I can't make a decision. I mean, I can't
 14 release myself to work.
 15 Q. But you were driving at the time?
 16 A. I can drive.
 17 Q. Yes.
 18 A. He didn't say I couldn't drive. I have a
 19 license.
 20 Q. All right. So if you'll go down to the next
 21 paragraph, April 15th, 2009. It's the third full
 22 paragraph on the page of Exhibit 6.
 23 A. Which? The third page?
 24 Q. It's the paragraph right under the one we
 25 were just looking at in the narrative from Nicole Ogle

1 on Exhibit 6 --
 2 A. Uh-huh.
 3 Q. -- that you're looking at. It starts with,
 4 "On April 15th I contacted Ms. Howard to inquire about
 5 her return to work status. She stated that she was not
 6 physically able to return to work because she was still
 7 suffering from pain in her back."
 8 A. Uh-huh.
 9 Q. Okay. Do you remember her calling you that
 10 day?
 11 A. I don't know what day it was. But she -- I
 12 did talk to her probably.
 13 Q. Do you remember talking to her?
 14 A. I don't remember what day it was, but I
 15 remember talking to her.
 16 Q. And do you remember any part of the
 17 conversation that y'all had?
 18 A. She -- let me see what -- she had told me
 19 that -- she had told me that she needs to get somebody
 20 for the unit. And I respond, how are you going to just
 21 throw me out and get somebody? I mean, I had an
 22 accident. I am working. I had a work-related accident
 23 and I'm healing. Why are you -- why are you harassing
 24 me? Why are you telling me these things to upset me?
 25 You know, that's upsetting. She's telling me that she's

1 going to have to get somebody else in my place and I got
 2 upset and that was it.
 3 Q. And you got upset and what did you say to
 4 her?
 5 A. I just say, you do what you need to do. I
 6 said, you need -- you know, I can't control you, you do
 7 what you need to do.
 8 Q. And what did you mean by that?
 9 A. whatever she needs to do -- whatever you
 10 need to do, do it.
 11 (Exhibit 8 marked)
 12 Q. (BY MS. CONNOR) I'm showing you what's been
 13 marked as Exhibit 8. Do you recognize that?
 14 A. Uh-huh, yes.
 15 Q. So that's something that you faxed to
 16 Ms. Ogle on April 15th?
 17 A. Uh-huh.
 18 Q. Did you drive yourself to that appointment?
 19 A. No. My sister drove me.
 20 Q. Are you sure?
 21 A. Yes, yes.
 22 Q. Okay. Did you do any other driving in the
 23 month of April? Was there any driving in the month of
 24 April?
 25 A. No.

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1 Q. You didn't drive yourself anywhere in the
2 month of April?
3 A. I drove maybe to the store, maybe down --
4 not just hop in the car to the store and get out. My
5 husband drive me everywhere.
6 Q. But you did drive in April?
7 A. Yes.
8 (Exhibit 9 marked)
9 Q. (BY MS. CONNOR) I'm showing you what's been
10 marked as Exhibit 9. Do you recognize that document?
11 A. Yes.
12 Q. Okay. Did you give that to Ms. Ogle in
13 March?
14 A. Do she have it? I mean, if she faxed it.
15 She should have all of the doctors excuses. I don't
16 know when she got it --
17 MS. CONNOR: Objection, nonresponsive.
18 A. -- or how. She got it. I don't know how
19 she got it, but she do have it.
20 Q. (BY MS. CONNOR) Did you give it to her in
21 March?
22 A. I don't know which one of my friends gave it
23 to her. I honestly don't know which one of my friends.
24 I didn't hand her anything, no. Physically give to her
25 is that what you mean?

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1 Q. Or fax it to her, or fax it to the
2 department.
3 A. I probably -- somebody -- is it a fax?
4 Because I sent some forms.
5 MS. CONNOR: Objection, nonresponsive.
6 A. Maybe Ms. ...
7 Q. (BY MS. CONNOR) Do you remember that
8 document?
9 A. Uh-huh, yes, yes, yes.
10 Q. Okay. And it's dated March 4th, 2009?
11 A. Uh-huh.
12 Q. Okay. And it's from your doctor?
13 A. Uh-huh.
14 Q. Concerning your injury?
15 A. Uh-huh.
16 Q. Okay. Do you think -- but you can't
17 remember whether you faxed this to somebody at the
18 department or gave it to somebody at the department; is
19 that correct?
20 A. Most of them have a fax page on them though,
21 if they was faxed.
22 MS. CONNOR: Objection, nonresponsive.
23 A. I don't remember.
24 Q. (BY MS. CONNOR) I'm asking you if you
25 remember.

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1 A. No. I don't remember. I don't know how she
2 got it.
3 Q. Okay. If you'd go back to Exhibit 6,
4 please.
5 A. Uh-huh.
6 Q. In that -- did you -- that third full
7 paragraph Ms. Ogle states that you asked her to contact
8 the doctor's office regarding your status. Do you
9 remember doing that?
10 A. Uh-huh, yes.
11 She said she needed permission. I gave
12 her permission and she said she would check with her
13 supervisor.
14 Q. About what?
15 A. If she can do that.
16 Q. Do what?
17 A. Contact my doctor.
18 Q. Okay. It says that you told her that you
19 were not physically able to return to work because you
20 were still suffering from pain in your back?
21 A. Uh-huh.
22 Q. Is that correct?
23 A. Yes.
24 Q. Okay. Do you remember telling her that?
25 A. Yes.

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1 Q. Okay. Now the next paragraph says she
2 contacted you again in May; do you recall that?
3 A. Uh-huh, yes.
4 Q. Okay. Did she ask you if you were ready to
5 come back to work?
6 A. No.
7 Q. Okay. What was the point, if you recall, of
8 that conversation or the reason she picked up the phone
9 and called you, if you recall?
10 A. She was getting to where I guess she was
11 trying to see where I'm at in my -- my healing process.
12 Maybe I shouldn't have said no. Maybe I don't remember.
13 But she was getting to the point to see where I was at
14 in my healing process.
15 Q. And what did you tell her?
16 A. I tell her I'm suffering from vision
17 problems due to my Cymbalta. I was taking 60 milligrams
18 of Cymbalta.
19 Q. Cymbalta?
20 A. Uh-huh. I was taking 60 milligrams of
21 cymbalta.
22 Q. And what is Cymbalta?
23 A. It's a drug for depression, that causes
24 blurred vision.
25 Q. Are you still taking that?

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1 A. No.

2 Q. How long did you take that?

3 A. The 60 milligrams of Cymbalta, I took it

4 from -- he started me out in, I think it was February

5 until maybe May, I can't just remember, or July.

6 Q. And you said, "he started me out," which

7 doctor was that?

8 A. Dr. Zegarelli.

9 Q. And you believe the blurred vision was

10 attributed from the Cymbalta?

11 A. Yes.

12 Q. It said you continued to have spasms in your

13 back?

14 A. Yes.

15 Q. Did you continue -- did you tell Nicole Ogle

16 that you were having spasms in your back?

17 A. I didn't understand the question.

18 Q. Okay. Does -- she has stated in this letter

19 that as part of Exhibit 6 that she talked to you in May

20 and that you told her you were having spasms in your

21 back.

22 A. Yes.

23 Q. Do you remember telling her that?

24 A. Uh-huh.

25 Q. Okay. Can you tell the jury what you meant

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1 by having spasms in your back?

2 A. Uncontrollable muscles. When I sat, it's

3 like uncontrollable muscle. They just come out of

4 nowhere. And it's like they're painful and it's even

5 hard for me to pick up a purse or pick up something.

6 Q. So was that interfering with your ability to

7 drive?

8 A. when I have them, yes.

9 Q. Okay. And so when you have them, have you

10 ever had them when you were driving to the store or to a

11 class that you just testified to the jury that you did

12 back in April?

13 A. I had to pull over a couple of times. I did

14 have them while driving, and I had to pull over a couple

15 of times. I couldn't take any medication because I was

16 going to class, yeah.

17 Q. Okay. what medication did you stop taking

18 because of class?

19 A. I didn't stop taking them, I couldn't take

20 them when I was going to class.

21 Q. Okay. what medications?

22 A. Soma, Soma. S-o-r-s -- it's for muscle

23 spasm and there's another one, I can't think of the name

24 of it.

25 Q. But that was another muscle relaxer?

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1 A. Yes, yes, yes.

2 Q. So you're saying it was probably a muscle

3 relaxer?

4 A. Uh-huh.

5 Q. Okay. And you were taking two different

6 kinds of muscle relaxers?

7 A. Yes.

8 Q. One you can't remember the name and one is

9 something like Soma?

10 A. Uh-huh.

11 Q. Isn't that what you testified?

12 A. Yes.

13 Q. So back in May of 2009 you had an

14 appointment with Dr. Zegarelli; is that correct?

15 A. Back in May 2009 I had an appointment --

16 back in May 2009 had appointment with Dr. Zegarelli.

17 May. Yes, I had an appointment. I don't remember wha

18 date.

19 Q. Did you drive yourself to that appointment?

20 A. My husband did. My husband or either my

21 sister drove me.

22 Q. Do you remember which?

23 A. No, I don't.

24 Q. Did you tell Dr. Zegarelli that you were

25 having spasms in your back?

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1 A. Uh-huh, yes.

2 Q. Still?

3 A. Uh-huh.

4 Q. What other types of things did the spasms in

5 your back prevent you from doing?

6 A. It -- it just immobilized me. I have to lay

7 down so -- it just, when I got spasms, if I'm home I can

8 take medication. These was when they was

9 uncontrollable. It wouldn't allow me -- I couldn't lift

10 up any weight, like carry my purse. It was very

11 painful. When you sit down to use the bathroom, it

12 feels like everything is going to drop out. It just

13 very painful and uncomfortable, and it just feel like

14 you have no control of your body.

15 Q. And how many times a day did this happen?

16 A. This was in May? This was in May. It

17 probably -- during May, it probably like maybe once a

18 day or maybe three times a week or maybe four times a

19 week. I'm not for sure, because I'm getting stable

20 during that time as time goes by.

21 Q. Because you just testified to the jury that

22 in April you felt better?

23 A. Yeah, I did. As time goes by, I started

24 feeling better.

25 Q. okay.

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1 A. As time goes by I started feeling better.
 2 Q. Since April 2009 you testified that you
 3 started feeling better?
 4 A. Uh-huh, yes, yes.
 5 Q. Okay. So by May 2009 are you feeling better
 6 than you did in April 2009?
 7 A. Yes. Every month I felt a little better and
 8 then --
 9 Q. And did you have fewer of these spasms that
 10 you've described to the jury?
 11 A. After I got my epidural shot, it was great.
 12 Q. And when did you go get the epidural shot,
 13 again?
 14 A. It wasn't until 2010.
 15 Q. I'm sorry?
 16 A. 2010.
 17 Q. 2010. Okay. Did you -- did Dr. Zegarelli
 18 in 2008 or 2009 give you an epidural shot?
 19 A. The State wouldn't allow him to.
 20 MS. CONNOR: Objection, nonresponsive.
 21 A. No, no.
 22 Q. (BY MS. CONNOR) Okay.
 23 A. It wasn't Dr. Zegarelli to give the shot.
 24 Q. So who gave you the epidural shot?
 25 A. Dr. Daley.

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1 Q. Dr. Daley?
 2 A. Uh-huh.
 3 Q. Okay. This is a new one. I've never heard
 4 today --
 5 A. Epidural. You didn't talk about epidural
 6 shots. You got --
 7 Q. Ms. Howard, two hours ago I asked you if
 8 there were any other doctors.
 9 A. Maybe I just should have said, I'm not for
 10 sure. Because there's so many doctors in the network.
 11 I mean, I don't think about them until I hit on that
 12 point.
 13 Q. Okay.
 14 A. Like the epidural, I didn't think about the
 15 epidural until you hit on that point. So, I'm sorry.
 16 Q. Okay. I'm not griping at you. I just want
 17 to get home sometime today.
 18 A. I'm sorry. You know --
 19 Q. That's okay.
 20 A. Okay. I have a network of doctors and I
 21 just can't keep up with them. And when I get to that
 22 point, like the epidural, that's totally different.
 23 Q. Okay. Dr. Daley, is that just a regular
 24 spelling, D-a-i-l-y?
 25 A. D-a-l-e-y. You're right, you're right, yes.

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1 Q. Okay. When did you see Dr. Daley?
 2 A. 2010.
 3 Q. And he gave you or she?
 4 A. Three epidural.
 5 Q. And what's his or her first name; or do you
 6 remember?
 7 A. No. It seems like I want to say Benjamin.
 8 I don't have the information with me.
 9 Q. Okay. Is that somebody that Dr. Zegarelli
 10 referred you to or works with him, or is he just another
 11 provider on the list?
 12 A. He -- let me see how this work. Workers'
 13 comp -- let me see, workers' comp -- did workers' comp
 14 refer? Dr. Zegarelli referred me to Dr. Daley. Once
 15 the State approved the injection, Dr. Daley have to be
 16 on workers' comp network. That's how that works. I'm
 17 sorry.
 18 Q. That's okay.
 19 A. I'm so sorry.
 20 Q. That's all right. I understand.
 21 And so once he gave you the shot, did
 22 it -- for lack of a better word -- cure you?
 23 A. It didn't cure me. I'll never be cured. It
 24 helped me.
 25 Q. Okay. How do you know you'll never be

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1 cured? How do you know that?
 2 A. You can't cure the vertebrae, unless I have
 3 surgery. The surgeon told me unless I have surgery, I
 4 would be cured, but I am able to function.
 5 Q. Okay. So we'll get back to the surgery
 6 issue. But we might as well just get back to Exhibit 6.
 7 If you'll go back to Exhibit 6 and we're at the end of
 8 May. When you talked to Nicole Ogle -- when you told
 9 her, you testified that you told her you had blurred
 10 vision from the Cymbalta and spasms in your back.
 11 A. Uh-huh.
 12 Q. And you recall that conversation with her;
 13 is that correct?
 14 A. Uh-huh, yes.
 15 Q. So let's skip down to the next paragraph.
 16 Ms. Ogle said that she tried to contact you or that she
 17 contacted you in the month of July. She said that you
 18 got upset with her, that you were being harassed; is
 19 that correct?
 20 A. Yes.
 21 Q. I mean, is -- do you recall it getting more
 22 heated, the conversation with her?
 23 A. Yes.
 24 Q. Okay.
 25 A. She threatened me.

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1 Q. Okay. How did she threaten you?
 2 A. I'm going to have to put somebody else in
 3 your position. See, this is her side. It's not mine.
 4 Q. Okay. But that's -- I'm just asking you
 5 what she told you.
 6 A. Yes, yes. She said, I am going to have to
 7 put somebody else in your position. I said, how are you
 8 going to do that? I'm injured. I nearly lost my life
 9 for CPS and y'all throw me away like a rag doll. I done
 10 lost my car, a bill collector, my whole life is upside
 11 down and this is what you tell me?
 12 Q. Is that -- is that what you told her --
 13 A. I don't know what I told her that day.
 14 Q. -- in July?
 15 A. I was upset with her because she threatened
 16 me. I just have to get somebody else. I'm like...
 17 Q. So is that a fair characterization then that
 18 she makes that you became verbally aggressive on the
 19 phone?
 20 A. I didn't become verbally aggressive. I was
 21 just stating facts. When she told me this, I was stern.
 22 I said, this is how you treat me? You don't even know
 23 me. I haven't even worked for you. I haven't even been
 24 in your unit. I'm a good worker. I had an accident
 25 delivering gifts to kids making sure children get their

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1 gifts. And you're just going to throw me away because
 2 you need somebody on your unit?
 3 Q. Okay. And so in July after you have this
 4 conversation with -- you have this conversation with her
 5 in July over the phone and you told her that you would
 6 not be making the decision to go back to work. Do you
 7 remember telling her that?
 8 A. Yes, yes, yes.
 9 Q. Okay.
 10 A. I will not be --
 11 Q. And is that the time that -- did you fax her
 12 something or did you ask -- is that when you asked April
 13 Gonzales to get involved?
 14 A. That may have been the time. I'm not for
 15 sure when my counsel got involved. But that could have
 16 very well been the time, because I tried to call
 17 Ms. Oglebee like three times. She wouldn't pick the
 18 phone up. But we did, at the end of our conversation,
 19 apologize. And I said, you know, I apologize and she
 20 apologized, too, for being a little testy. But -- and I
 21 tried to call her three times, she didn't even pick the
 22 phone up. So I did get another note at that time --
 23 maybe that's when that note came -- and I had somebody
 24 to take it over. I just don't remember.
 25 Q. Did you leave a voice message of these three

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1 times that you called?
 2 A. I left one voice message. The other times,
 3 I didn't.
 4 Q. Do you remember on or about when that was
 5 that you left the one voice message?
 6 A. It had to be in -- sometime in July or
 7 August. I'm not for sure.
 8 Q. Okay. So when you talked to Ms. Ogle in
 9 July, and as you just testified, it got a little testy,
 10 at that point was your back also increasingly better, as
 11 you just testified?
 12 A. It was -- it was better. It was getting
 13 better every day. But it wasn't to the point to where I
 14 can go back to work and function. I can't have kids --
 15 Q. Why not?
 16 A. I can't have kids in the car and I have to
 17 pull over and we on a schedule. I can't have kids and I
 18 have to stop and take some -- or either get back or
 19 either go home or whatever the reason may be. That
 20 would be a liability. That would be totally a -- that
 21 would be unfair to the agency and that would have been
 22 unfair to me to do something like that. That would be
 23 not safe at all.
 24 Q. So --
 25 A. But this was the last time I talked to her

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1 though.
 2 Q. So July in 2009 you were still experiencing
 3 these spasms --
 4 A. Uh-huh.
 5 Q. -- that you've described to the jury?
 6 A. Yes.
 7 Q. And you don't believe it would be safe to
 8 drive?
 9 A. Not at that time.
 10 Q. Okay.
 11 A. That's why I asked her for light duty.
 12 Q. But you had been driving at this point?
 13 A. Yeah, at my own risk, my own self, yes.
 14 Q. Okay.
 15 A. Not that much.
 16 Q. There's other people on the road though,
 17 right, when you're driving?
 18 A. Yes, it is.
 19 Q. And was this -- you had testified already
 20 once that you told her that the agency could do whatever
 21 they needed to do?
 22 A. I didn't say that. I told her she could do
 23 whatever she needs to do, because she was the one
 24 badgering me. It wasn't the agency.
 25 Q. Okay. What do you mean she was badgering

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1 you?

2 A. Kept calling me or ask me -- demanding me to

3 get a doctor excuse. I'm not the doctor, when can you

4 come back to work. I can't determine that. That was

5 her. I can't determine -- I can't -- hey, Doctor, I

6 need to go back to work. I can't do that. That's not

7 my place. I'm not a doctor. Oh, you need to go get a

8 doctor's excuse. And I tell her it's every three weeks,

9 that workers' comp only allow you to see the doctor --

10 in my case it was like every three weeks. I would go in

11 every three weeks at that time. And I was getting

12 better, but she was like, you need to get an excuse, you

13 need to get this. I said, I do the best I can. And I

14 gave her stuff and the stuff I gave to Monica, I got --

15 I made copies of the stuff that I gave to my supervisor

16 and gave to her because she never was my supervisor. I

17 may have transferred over, I don't even know when. I

18 don't even know when this took place, family medical

19 leave.

20 (Exhibit 10 marked)

21 Q. (BY MS. CONNOR) I'm showing you what's been

22 marked as Exhibit 10. Do you recognize that?

23 A. Yes.

24 Q. Is that something that you faxed to Nicole

25 ogle in July of 2009?

1 A. I believe -- maybe April Gonzales faxed this

2 or did I fax it? Because I don't know. Because I gave

3 April something from Dr. McHenry. So I don't know who

4 did it. If I did it -- is there a fax thing on here?

5 No, I think April Gonzales because she scratched out

6 some stuff. This is April Gonzales' notes. So I think

7 April Gonzales did this, faxed that over.

8 Q. Okay.

9 A. To help me to keep my job. I believe she

10 was talking to Nicole.

11 Q. Did you contact Ms. Gonzales in July of 2009

12 and ask her to fax that for you?

13 A. She was working with me on my case.

14 MS. CONNOR: Objection, nonresponsive.

15 A. I don't know the date, but I did talk to her

16 in July.

17 Q. (BY MS. CONNOR) Okay. what did y'all talk

18 about?

19 A. we talked about my job, my situation and my

20 supervisor. And I was asking her, my new supervisor --

21 she was asking me what supervisor, I says, they done

22 transferred me to another unit. I have no idea, you

23 know, who is this person? I've never been over there,

24 but she don't, you know, quite understand. Well, could

25 you help me, because that was it. I don't know what

1 else went on.

2 Q. Okay. When you talked to April Gonzales in

3 July of 2009, did you pick up the phone and call her?

4 A. Call who?

5 Q. April Gonzales. Or did you go to her

6 office?

7 A. I think I was there, maybe. I've been in

8 her office. I don't know was this phone -- I think --

9 I'm pretty sure this was at her office.

10 Q. So was it before or after you talked to

11 Nicole Ogle in July --

12 A. That was after I talked to Ms. Nicole.

13 Q. Let me finish my questions, but go ahead.

14 A. It was after I talked to Nicole.

15 Q. So after you talked to Nicole in July

16 of 2009, you went to Ms. Gonzales' office. Is that what

17 your testimony is?

18 A. This could be anywhere in between or after.

19 I don't know was it before I was having problems with

20 Nicole or either after I was having problems with

21 Nicole. So I don't know whether it was between or

22 after. Because I was having problems with her. I don't

23 know if it probably had been before or maybe after, I'm

24 not for sure.

25 Q. You don't remember?

1 A. I don't remember, because I've been -- saw

2 April several times. She's my counselor. We discusse

3 about me trying to keep my job. That's what DARS do,

4 they try to keep you or maintain your job, you know.

5 And right now, if I had my regular supervisor, I don't

6 think I never -- this would never happen because she

7 understand my work.

8 MS. CONNOR: Objection, nonresponsive

9 Q. (BY MS. CONNOR) So your testimony is you

10 don't remember but that you did go to the office to se

11 April?

12 A. I saw her several times.

13 Q. Okay. How did you get to her office?

14 A. My husband usually takes me.

15 Q. Do you remember --

16 A. Or either I ride the bus or either the

17 train.

18 Q. So you're also riding a bus?

19 A. Or train.

20 Q. And train.

21 This letter is dated 2000- --

22 January 26, 2009.

23 A. Uh-huh.

24 Q. And if you'll read this. Just read this

25 sentence right here that I'm pointing to (indicating).

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1 A. Requesting accommodation.
 2 Q. Yes. Go ahead and read that.
 3 A. She required visual accommodation.
 4 Q. Okay.
 5 A. Uh-huh.
 6 Q. So the DARS was dealing with your issues
 7 with your eye; is that correct?
 8 A. Uh-huh, yes.
 9 Q. Is that a fair characterization?
 10 A. Uh-huh, yes.
 11 Q. Okay.
 12 (Exhibit 11 marked)
 13 Q. (BY MS. CONNOR) I'm showing you what's been
 14 marked as Exhibit 11. Do you recognize that?
 15 A. Yes.
 16 Q. Do you remember receiving that?
 17 A. Certified, yes.
 18 Q. Okay.
 19 (Exhibit 12 marked)
 20 Q. (BY MS. CONNOR) I'm showing you what's been
 21 marked as Exhibit 12.
 22 A. Yes.
 23 Q. Do you recognize that?
 24 A. Yes.
 25 Q. Okay. Is that the letter that you provided

1 to Lisa Black after your conversation with her in
 2 September of 2009?
 3 A. I don't remember that letter providing for
 4 Lisa Black 2009.
 5 Q. Okay.
 6 A. I remember the four hours.
 7 (Exhibit 13 marked)
 8 Q. (BY MS. CONNOR) I'm showing you what's been
 9 marked as Exhibit 13. Do you recognize that?
 10 A. Yes, yes.
 11 Q. Okay. Do you -- is this something that you
 12 provided to the department?
 13 A. Oh, are you asking me did I provide this? I
 14 provided it to Ms. Lisa Black, yes.
 15 Q. Okay. Was that before or after your meeting
 16 with her?
 17 A. It had to be -- there's another form that
 18 goes with this. This was after the meeting though. I
 19 provided four hours a day because I went there.
 20 Q. But you recognize this?
 21 A. Yes, yes, yes.
 22 Q. It was something that you gave to Lisa
 23 Black?
 24 A. Uh-huh.
 25 Q. And this indication down here in this box is

1 number 16 sedentary level four hours a day, was that
 2 your understanding of what that meant?
 3 A. Uh-huh, yes.
 4 Q. Is that what your doctor basically told you,
 5 that he was allowing you to go back to work for four
 6 hours a day?
 7 A. You want to know what he said to me?
 8 Q. Sure.
 9 A. He wanted to try me for four hours and wean
 10 me off of the rest of the medication, which I was
 11 already coming off of, that's what he said.
 12 Q. What medication were you being weaned off
 13 of?
 14 A. I have no idea. I don't remember all of the
 15 medication. There was medication -- maybe -- maybe it
 16 was the Soma -- S-o-r-e-m and maybe it's the Flexeril, I
 17 don't know.
 18 Q. Did you say Soma?
 19 A. Soma. I can't remember all of it.
 20 Q. Did you say Flexeril?
 21 A. It's not Flexeril, it's called something
 22 else.
 23 Q. Well you just started to say it, that's
 24 why --
 25 A. I know. But I don't remember. I don't

1 remember what it is.
 2 MS. CONNOR: Objection.
 3 Q. (BY MS. CONNOR) Let me finish my question.
 4 She can't write both of us at the same time.
 5 A. I'm sorry.
 6 Q. Did you say Flexeril?
 7 A. No.
 8 Q. Okay. I heard you say Flexeril.
 9 A. I said Flex-rel. It's not Flexeril, it's
 10 something else.
 11 Q. So are you taking --
 12 A. I don't know, no.
 13 Q. Hold on. Let me finish my question.
 14 Have you ever taken Flexeril?
 15 A. Yes, yes.
 16 Q. Okay. When was the last time you took
 17 Flexeril?
 18 A. Maybe two years ago.
 19 MS. CONNOR: Let's go off the record.
 20 THE VIDEOGRAPHER: Off record at 12:30.
 21 (Break taken 12:30 p.m. to 1:11 p.m.)
 22 THE VIDEOGRAPHER: We are on record at
 23 1:11 at the start of DVD number 3.
 24 Q. (BY MS. CONNOR) Just to be clear, I think I
 25 went back and checked out some of the stuff that I

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1 needed to make sure that I got on the record and I had
 2 forgotten to ask -- re-ask a question to you that I'm --
 3 that your lawyer is going to ask you not to answer, I
 4 anticipate. But I am going to go ahead and ask it again
 5 so that we have a clear record.
 6 Did you have a tumor at some point or a
 7 complaint of a tumor at some point?
 8 MR. WALSH: Objection, privileged.
 9 I'm going to instruct you not to
 10 answer.
 11 MS. CONNOR: Okay. And can you
 12 specifically state your objection or your privilege?
 13 MR. WALSH: Physician-patient
 14 privilege.
 15 MS. CONNOR: Okay.
 16 Q. (BY MS. CONNOR) I think I might have asked
 17 you this before, but when did you realize that you had a
 18 new supervisor? Do you recall?
 19 A. No, no, ma'am. No, I don't.
 20 Q. And was there a reorganization?
 21 A. It wasn't a reorganization. It was going to
 22 be a reorganization and nobody -- I -- I had my accident
 23 in December the 8th, so I wasn't informed of that. And
 24 when I had my accident, I was giving all of my medical
 25 excuses to Monica McFarland, and I didn't know any --

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1 when I went to Stemmons, because I never did go
 2 Stemmons.
 3 Q. So you gave medical excuses to --
 4 A. Monica McFarland.
 5 Q. Related to your injury or before?
 6 A. I gave her -- she was -- I gave her, Monica
 7 McFarland, my supervisor, that I was up under at the
 8 time, I gave her my -- my excuses, my medical excuses.
 9 Q. Do you remember which medical excuses gave
 10 to Monica --
 11 A. I gave her the first.
 12 Q. Let me finish my questions, please.
 13 Do you remember the medical excuses
 14 that you gave to Monica McFarland?
 15 A. Yes.
 16 Q. Which ones were those?
 17 A. I gave her the one with Dr. Don, the first
 18 one. I gave her the one, Rehab Now, and I gave her
 19 Dr. Zegarelli; them are my first for the medical
 20 excuses.
 21 Q. Do you remember into what month that was?
 22 A. Probably up until February -- January, maybe
 23 up until January. I believe maybe up until January,
 24 maybe.
 25 Q. So you gave this one, which is Exhibit 1 --

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1 A. Uh-huh, yes.
 2 Q. Perhaps this one, Exhibit 9, or no? Because
 3 I think you were saying earlier that you couldn't
 4 remember who you gave this one to.
 5 A. It's not that one. It can't be. It had a
 6 date on it. It has got Dr. Bauhn is the man I saw after
 7 the accident. Dr. Bauhn, B-a-u-h-n. You may not even
 8 have that.
 9 Q. Doctor -- I'm sorry. Could you spell that
 10 again?
 11 A. B-a- -- B-a-u-n -- Dr. Bauhn. He was the
 12 doctor that I saw that gave me my first excuse.
 13 Q. Dr. Vaughn, V-a-u-g-h-n?
 14 A. I think it's V-a-u-g-h-n, yes.
 15 Q. And when did you see Dr. Vaughn?
 16 A. Two days after my accident.
 17 Q. Did you do just remember this just now?
 18 A. We talking about it earlier.
 19 Q. Okay.
 20 A. We talked about Vaughn. We were trying to
 21 spell Bon, B-o-n, or something. Some doctor I seen
 22 after the doctor -- after the emergency room. I went to
 23 see him Medical Methodist -- part of the Medical
 24 Methodist network, and he said he wasn't a -- oh, he
 25 said he wasn't a workers' compensation doctor, that's

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1 that doctor we talked about, Dr. Vaughn.
 2 Q. So that was the other one in addition to th
 3 first --
 4 A. Uh-huh, that was the first one.
 5 Q. Hold on. Hold on. We want to make a clear
 6 record, okay?
 7 So when you testified earlier that
 8 there were a couple of people that you saw not, you
 9 know, related to workers' comp, and that was the Rehab
 10 Now reflected in Exhibit 1 and this Dr. Vaughn?
 11 A. Uh-huh, yes.
 12 Q. Okay. If you'll look at what you've alread
 13 seen as Exhibit 10, these are two letters or notes fro
 14 Dr. McHenry.
 15 A. Uh-huh.
 16 Q. Did you give these to Monica McFarland?
 17 A. No.
 18 Q. These are just the ones that April Gonzales
 19 sent to Nicole Ogle; is that correct?
 20 A. Yes.
 21 Q. And he treated you for your eye; is that
 22 correct?
 23 A. Yes.
 24 Q. Did he treat you for anything else?
 25 A. No. My eye, I need to tell you that my eye

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1 consists of my trigeminal nerve though. When I said
 2 "eye," that's the trigeminal nerve. That's what he
 3 treats me. So when I say "eye," it's the trigeminal
 4 nerve.
 5 Q. So, yes. And it's reflected in Exhibit 10
 6 those notes from Dr. McHenry. But he only treated you
 7 for trigeminal nerve and your eye issues?
 8 A. Yes, uh-huh.
 9 Q. Not your back?
 10 A. No.
 11 Q. Not anything related to the accident?
 12 A. No, ma'am.
 13 Q. Did you get any accommodations from your
 14 school related to your eye?
 15 A. Yes.
 16 Q. What accommodation did they provide for you?
 17 A. They provided for me to have test time --
 18 extended time to take my test and larger print.
 19 Q. Okay. And so -- and that -- you followed --
 20 they followed through with that?
 21 A. Yes.
 22 Q. Did you ask for anything like that from the
 23 department? Larger print or longer periods of time to
 24 complete tasks?
 25 A. What do you mean "the department" or what?

1 Q. Where you worked at CPS.
 2 A. No.
 3 Q. Okay.
 4 A. That was concerning my eye. I don't need
 5 accommodation, it's just for my studies.
 6 (Exhibit 14 marked)
 7 Q. (BY MS. CONNOR) okay. I'm showing you
 8 what's been marked as Exhibit 14. Do you recognize
 9 this?
 10 A. Yes.
 11 Q. Do you remember who you gave this document
 12 to, if anybody, at CPS?
 13 A. Nicole Oglebee.
 14 Q. Okay. Do you remember if you faxed it or if
 15 it's one of the documents you placed in her seat or had
 16 somebody place in her seat?
 17 A. Most of her documents were faxed and I don't
 18 know which one was faxed. I faxed a lot of stuff to
 19 her.
 20 (Exhibit 15 marked)
 21 Q. (BY MS. CONNOR) Do you remember this
 22 document, which I'm showing you as Exhibit 15, for the
 23 record?
 24 A. Uh-huh, yes.
 25 Q. Okay. And you gave this to Monica or did

1 you fax it? How did you give it to her?
 2 A. I probably slipped that up under her door,
 3 along with a doctor excuse for the 19th, which go with
 4 the Rehab Now, I believe. That's when I am thinking
 5 she's my supervisor, yes.
 6 Q. You think you gave her that with Exhibit 17
 7 A. Uh-huh.
 8 Q. 15 and 1 were given her together?
 9 A. Uh-huh.
 10 Q. So when you wrote this letter to Monica
 11 McFarland saying that you could come back to work
 12 probably January -- does that say January?
 13 A. Yeah, January '09, uh-huh.
 14 Q. Okay.
 15 A. Uh-huh, yes.
 16 Q. Okay. Why did you say that you could come
 17 back to work January '09?
 18 A. I was hoping so bad to come back to work.
 19 I didn't know how serious my injury was. I was hoping I
 20 can come back to work. That's -- I had no idea. I wa
 21 just in hope that I could come back to work.
 22 Q. So you went up to the office and dropped
 23 that under her door on January 6th, '09?
 24 A. I believe my husband drove me up there and
 25 put it up under the desk -- up under the door. Or --

1 yeah, I didn't hand that to Ms. Peggy. I think somebody
 2 drove me up there and I could put it up under her
 3 desk -- up under her door.
 4 (Exhibit 16 marked)
 5 Q. (BY MS. CONNOR) I'm showing you what's been
 6 marked as Exhibit 16. Do you recognize that?
 7 A. Yes, yes.
 8 Q. Do you remember giving this to Monica
 9 McFarland or to Nicole Ogle?
 10 A. This would be 2nd/04/09. This should be --
 11 this should be -- I'm not for sure. But this should be
 12 considered a fax with other papers because I faxed to
 13 Ms. Oglebee some forms together, some paper -- excuses,
 14 because she was out of the loop. So I faxed her some
 15 information once I found out she was my supervisor.
 16 (Exhibit 17 marked)
 17 Q. (BY MS. CONNOR) I'm showing you what's been
 18 marked as Exhibit 17. Was this the fax cover that you
 19 just testified you faxed Monica McFarland -- I mean,
 20 Nicole Ogle some -- some documents? Was this, you
 21 believe, with that?
 22 A. This is my fax. I mean, this is mine, yes.
 23 Q. You're pointing at Exhibit 17?
 24 A. Uh-huh. This is mine, yes.
 25 Q. Okay. Do you believe that you accompanied

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1 that fax, Exhibit 16, with that?
 2 A. I don't know. I don't know though. I don't
 3 know what -- I have all of this at home. But I don't
 4 know what goes with the fax. I just know I faxed forms
 5 to her. Like I said, anything possible she needed, I
 6 faxed it to her. So I don't know what goes with the
 7 fax.
 8 Q. Okay. Now, you said you had the originals
 9 at home?
 10 A. Uh-huh.
 11 Q. Is that correct? Do you believe that you
 12 still have them bound together so we could figure what
 13 went what -- with what to whom and at what time?
 14 A. I don't think they are bound together
 15 because I have been through that box so many times.
 16 They all scattered right now. They all scattered. I
 17 have been through that box. I have got a big box and
 18 it's just scattered. I got everything, but they are
 19 just loosely...
 20 Q. Okay. Will you look back to 16, then,
 21 please.
 22 A. (Witness complies.)
 23 Q. And that was a note from your doctor on the
 24 Texas Workers' Compensation form, work status report
 25 from Dr. Zegarelli; is that correct?

1 A. Yes.
 2 Q. Okay. And that was dated February 4th, '09,
 3 right? I'll help you here (indicating). There's a date
 4 here by his signature, it says the date of the visit and
 5 then here it says when you came in.
 6 A. Uh-huh, that's what it says.
 7 Q. And so in February '09, you testified you
 8 don't remember if you gave this to anybody. Is that
 9 your writing up at the top on Exhibit 16,
 10 "February 2009," is that your writing?
 11 A. That's my writing, yes.
 12 Q. Okay. So perhaps it is -- well, we'll just
 13 have to try to figure it out. Do you remember if you
 14 gave it to somebody at CPS?
 15 A. Dr. Zegarelli, he usually don't do these
 16 because State have all of the information if you access
 17 the file.
 18 MS. CONNOR: Objection, nonresponsive.
 19 A. But I'm giving -- but if I request this to
 20 give these -- so they had to go to Nicole Ogle because
 21 we don't get these. So all of these documentation went
 22 to Nicole Ogle because I had to personally request this
 23 because he said you'll have to do it because the State
 24 have all of the records, they can call up Storm.
 25 Q. (BY MS. CONNOR) Okay. So you believe then,

1 I guess, from what you just testified, that you did give
 2 this to Nicole Ogle at some point?
 3 A. She got every one of them, the back ones,
 4 even when before -- she got the first one, all of the
 5 way up to the last one until further notice.
 6 Q. Now, in the middle box, part two it says,
 7 pain, inflammation and drug side effects. Do you know
 8 what he meant by that?
 9 A. I had side effects to the drugs.
 10 Q. Like what kind of side effects?
 11 A. A rash reaction, maybe -- I think more a
 12 rash reaction. I think it was a rash reaction. I'm not
 13 recalling. It was a rash reaction. It was a -- mostly,
 14 I remember was a rash reaction.
 15 Q. Okay. Were they starting to -- was -- were
 16 they starting to wean you off the drugs at this point,
 17 or were they just discontinued, one of the drugs for the
 18 rash reaction?
 19 A. If this is the 2nd or 4th of February, they
 20 was trying new drugs. January, February, March I was in
 21 trying new drug period.
 22 Q. What kind of drugs?
 23 A. They were just trying -- you know, a drug
 24 that would work for me. They were trying to find a drug
 25 that would work for me.

1 Q. work for what?
 2 A. My pain, my spasm, what can I tolerate, the
 3 doses.
 4 (Exhibit 18 marked)
 5 Q. (BY MS. CONNOR) Okay. I'm showing you
 6 what's been marked as Exhibit 18. And I believe that'
 7 the same document that's Exhibit 8, but there's some
 8 writing at the top. It says for Nicole Ogle. Is that
 9 your writing?
 10 A. Uh-huh, yes.
 11 Q. Do you believe that that was faxed with thi
 12 cover letter of the 7 -- Exhibit 17?
 13 A. I know it was faxed, but I don't know was i
 14 faxed with that, because I've got three or four cover
 15 letters. I just don't know, I'm sorry. I faxed them.
 16 Q. Because I think you produced one cover
 17 letter for us. And, I mean, I could be mistaken, but
 18 thought I only saw one cover letter. Would Exhibit
 19 17 -- one cover letter dated 4/16/09 to Nicole Ogle, d
 20 you believe that there's others?
 21 A. Yes.
 22 Q. Okay.
 23 (Exhibit 19 marked)
 24 Q. (BY MS. CONNOR) Okay. I'm showing you
 25 what's been marked as Exhibit 19. Do you recognize

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1 that?

2 A. Yes.

3 Q. Okay. Is this one of the documents that you

4 provided to Nicole Ogle on the fax cover of this Exhibit

5 17, April 16th, '09?

6 A. I'm not for sure of this particular

7 document. I'm not for sure. I don't even know if I

8 provided this to her, but -- I don't know. I don't know

9 because I don't think -- if I did, that was the only

10 one.

11 Q. Do you remember how you got a copy of it?

12 A. It would be in my records.

13 Q. Oh, wait, the exam was June 10th, 2009. So

14 it could not have been faxed over there on April. So

15 never mind that.

16 But so here is -- but you remember

17 seeing this at some point, you've testified, right?

18 A. Uh-huh, that's my records, uh-huh.

19 Q. So there's something here that's from your

20 doctor and the date of exam was June 10th, 2009. Do you

21 see that up at the corner -- top right-hand corner?

22 A. Uh-huh, yes.

23 Q. Says your pain was 5 to 7 on a 0-to-10

24 scale; is that correct?

25 A. Yes.

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1 Q. It says your increased activity caused

2 increased discomfort. What is some of the things that

3 your activity -- describe some of the activities that --

4 that you had increased at that point in June '09.

5 A. When I was doing physical therapy, they were

6 trying to get me to carry weights and they was

7 stretching me, and I was carrying weights in physical

8 therapy, doing physical therapy, which increased the

9 pain and they was trying to get me to a level of

10 carrying five pounds, I believe.

11 Q. So the physical therapy was increasing your

12 pain?

13 A. And carrying the weights.

14 Q. Okay. And again, who did you do physical

15 therapy with?

16 A. Dr. Zegarelli's office. He have a physical

17 therapy department.

18 Q. And so you worked with them and that was

19 increasing your pain?

20 A. The weights was. Weights. When I carried

21 the weights some activities -- exercise I can tolerate

22 and some exercises I couldn't tolerate. So the weights

23 was the ones that I couldn't tolerate.

24 Q. So you just testified that in April of '09

25 you were feeling a lot better?

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1 A. I'm still feeling a lot better, yes.

2 Q. But then, you're saying just now that in

3 June 2009 that the physical therapy at Dr. Zegarelli's

4 office was causing you to have pain?

5 A. Didn't I say certain activity?

6 MS. CONNOR: Objection, nonresponsive.

7 A. I have specified certain -- I have specified

8 certain activity. I said weights. When I carry the

9 weights.

10 Q. (BY MS. CONNOR) At the doctor's office?

11 A. I have activity.

12 MS. CONNOR: Objection, nonresponsive.

13 Q. (BY MS. CONNOR) I'm just trying to be clear

14 here, Ms. Howard. I just want to make sure that we have

15 a good clean record.

16 A. okay. When I do my physical therapy and

17 certain physical -- certain stuff I have to do, like, I

18 can ride the bicycle fine, but when I have to carry

19 weights from one end to the other end, that caused me to

20 have pain. And that's what I was saying. So my

21 physical -- everything is better. But when I have to

22 carry weights during that time, that caused me to

23 aggravate my back. That's what I am telling you.

24 Q. So what did they have -- describe the

25 situation where they had you, as you testified, carry

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1 weights.

2 A. You pick up -- you lift this box. It's lik

3 in a box like this, in a shelf like that (indicating)

4 and you pick up the box and you carry it away from you

5 and it have like -- I had two 10-pound weights. I was

6 supposed to be up to 20, but I only managed to do

7 15 pounds. So I had to carry the weights. But it

8 aggravates my back and I couldn't get up to 20 pounds.

9 Q. Did you tell them that that physical therap

10 was aggravating your injury?

11 A. Just the weight. They gave me five pounds,

12 they decreased it to five pounds.

13 Q. So you let them know that it was hurting

14 your back?

15 A. Yes, uh-huh.

16 Q. At the physical therapy appointment?

17 A. Uh-huh, yes. That's what it's all about,

18 seeing where I'm at.

19 Q. If you'll look again at Exhibit 19 in the

20 middle of the page it says range of motion is

21 essentially normal.

22 A. Uh-huh.

23 Q. That's in June of '09. Is that what you

24 recall?

25 A. What would you consider range of motion?

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1 what you consider range of motion? I don't understand.
 2 what is range of motion?
 3 Q. Well, earlier you were testifying when you
 4 turn in the car you can't do it to this day because your
 5 range of motion is limited from your injury on the
 6 accident in December of '08.
 7 A. Oh the range of motion on my neck, uh-huh.
 8 Q. And here in June 2009, he's saying, your
 9 doctor -- your own doctor, is saying your range of
 10 motion is essentially normal.
 11 A. Where is you looking at that at?
 12 Q. Middle of the page, "range of motion
 13 essentially normal."
 14 A. Is he considering my whole body range of
 15 motion when he's saying range of motion essentially
 16 normal. My range of motion as far as my leg and my arm,
 17 but it's not my range of motion. He doesn't specify
 18 involving neck and upper back region. He said complaint
 19 of stiffness continue involving neck and upper back and
 20 range of motion essentially normal.
 21 (Exhibit 20 marked)
 22 Q. (BY MS. CONNOR) I'm showing you what's been
 23 marked as Exhibit 20. Do you recognize that document?
 24 Ms. Howard, the question was, do you
 25 recognize it?

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1 A. I have to read it to recognize it, right?
 2 Uh-huh, yes.
 3 Q. Okay. You recognize it and it was given to
 4 us by you, at least after the litigation, because
 5 there's a little number down at the bottom that has your
 6 name. That's not a question.
 7 Anyway, so do you remember if you gave
 8 this to anybody at the department? Now, I will note
 9 that it's dated November 20th, 2009, so that's after
 10 your termination. Did you give this to anybody at the
 11 department?
 12 A. No.
 13 Q. It does discuss though and we were going to
 14 get back to this, so I might as well right now bring
 15 this up. There was some -- you had testified that you
 16 wanted to -- that you might be a surgery candidate. Do
 17 you recall testifying to that?
 18 A. That's what my doctor said.
 19 Q. Okay. Which doctor?
 20 A. Dr. Zegarelli.
 21 Q. Okay.
 22 A. Surgery intervention. At this time the
 23 patient considers surgery intervention and will be seen
 24 by Dr. Honduras in follow-up.
 25 Q. Did you ultimately have surgery on your

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1 back?
 2 A. They -- no. They did epidural.
 3 Q. So just the pain injections?
 4 A. Uh-huh, yes.
 5 (Exhibit 21 marked)
 6 Q. (BY MS. CONNOR) Ms. Howard, I'm showing you
 7 Exhibit 21. You may not remember that because I think
 8 it was signed by you when you first started at the
 9 agency. But I just wanted to ask you if you remembered
 10 signing that or reading that when you first started at
 11 the agency?
 12 A. I remember reading it and going over it in
 13 class.
 14 Q. I'm sorry. I didn't bring a copy of that.
 15 I can't even read the Bates stamp on it. Oh, it's got
 16 to be an early one because it came from a personnel
 17 file. So I think it's D 12.
 18 (Exhibit 22 marked)
 19 Q. (BY MS. CONNOR) I'm showing you what's been
 20 marked Exhibit 22. You may not recognize that. I think
 21 it's a screen shot. But does it look familiar to you at
 22 all?
 23 A. I have never seen this transcript.
 24 Q. I think it --
 25 A. I have never seen that.

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1 Q. If I will -- if I may, it's a list of the
 2 trainings you took when you worked at the department.
 3 MS. CONNOR: I'm going to say I have
 4 made a copy of that for you and I forgot to give it to
 5 you.
 6 Q. (BY MS. CONNOR) Does it look like the
 7 trainings that you took when you were at the department?
 8 A. I did the new employee orientation. I never
 9 did finish -- I never did even start my module because
 10 they had you pull them off of the Internet or something,
 11 and I never had time to do the module.
 12 Q. Do you remember taking civil rights
 13 training?
 14 A. I'm not for sure, but I can tell you I did
 15 the employee -- the new employment orientation and even
 16 the passport don't look familiar. I know I didn't do
 17 the module because they never got the module papers
 18 together, because you have to pull them off the
 19 computer.
 20 MS. CONNOR: Objection, nonresponsive.
 21 Q. (BY MS. CONNOR) Do you remember doing the
 22 civil rights training?
 23 A. No.
 24 Q. Civil rights training, it says here, you
 25 took March 25th, 2008. And that's just -- it's

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1 reflected in Exhibit 22. Do you remember them providing
 2 you any training on how to do a reasonable
 3 accommodation -- to request a reasonable accommodation
 4 from your employer?
 5 A. I don't remember it.
 6 Q. Okay.
 7 A. I don't remember it.
 8 (Exhibit 23 marked)
 9 Q. (BY MS. CONNOR) That's two pieces. I'm
 10 showing you what's been marked as Exhibit 23. Do you --
 11 it's actually two letters. If you'll look at both and
 12 tell me whether you recognize them or remember them?
 13 A. Yes.
 14 Q. Do you remember the incident where -- that
 15 you had some aggression toward your husband for some
 16 uniform he was wearing?
 17 MR. WALSH: Objection, form.
 18 Q. (BY MS. CONNOR) Do you remember -- do you
 19 have any recollection of having a problem or an
 20 aggression towards your husband for wearing a uniform?
 21 A. I can answer that?
 22 MR. WALSH: You can answer.
 23 A. Aggression, would you repeat question?
 24 Q. (BY MS. CONNOR) I've asked it twice the
 25 same way. Do you have any recollection of having a

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1 problem or an aggression towards your husband for
 2 wearing a uniform?
 3 A. No.
 4 Q. Anything like that?
 5 A. No.
 6 Q. Do you remember when you worked under Monica
 7 McFarland you having any problems with teamwork?
 8 A. No.
 9 Q. Her addressing any problems with you about
 10 your ability to work as a team?
 11 A. No.
 12 Q. Okay. Do you ever have any problem -- any
 13 recollection of her addressing with you your inability
 14 to do clerical work?
 15 A. No.
 16 Q. Was there ever an incident where she
 17 addressed to you that you had difficulty with just doing
 18 basic spell check?
 19 A. No.
 20 Q. Was there ever a situation where you did
 21 some clerical work, maybe doing some narratives, to be
 22 entered in the computer?
 23 A. She was showing me how to do narratives to
 24 enter into the computer. I had just started. She was
 25 showing me how to do the narratives.

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1 Q. Okay. Do you remember that incident then?
 2 A. There wasn't an incident. It was just
 3 training.
 4 Q. Okay. What happened?
 5 A. Nothing happened. It was just training.
 6 Unless they are just making up stuff. I haven't --
 7 there is nothing on paper saying that --
 8 MS. CONNOR: Objection, nonresponsive.
 9 A. There is nothing on paper saying I was
 10 inadequate in my job. Anything, I went beyond and above
 11 my job. If there was anything listed, they didn't tell
 12 me and it's not written. So, no.
 13 Q. (BY MS. CONNOR) So you don't remember ever
 14 having any discussion with Monica McFarland related to
 15 your performance in doing clerical work?
 16 A. Do you have any documentation of that?
 17 Q. You can't ask me questions, Ms. Howard. I'm
 18 not filing a lawsuit, you are. So I get to ask you the
 19 questions.
 20 So do you recall, again, the question
 21 was, whether Monica McFarland discussed with you any
 22 performance issues relating to clerical work?
 23 A. No, ma'am.
 24 Q. Did you contact Monica after the car
 25 accident?

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1 A. In what way?
 2 Q. Did you contact her by phone?
 3 A. I let her know how I was doing.
 4 Q. When you were in the hospital or after?
 5 A. She came to the hospital.
 6 Q. She came to the hospital the day of the
 7 accident?
 8 A. Yes, she did.
 9 Q. And you were there about six hours?
 10 A. Uh-huh. She came about 4:30, left about
 11 5:30.
 12 Q. And she brought you stuff?
 13 A. The unit gave me a basket after I went home
 14 Q. And she brought that to you?
 15 A. One of her workers, Patrick.
 16 Q. Do you remember --
 17 A. Patrick, because he had to pick up the
 18 gifts. Patrick Ozee brought the gift basket for me and
 19 a get well card.
 20 Q. Do you still have the card?
 21 A. Probably do.
 22 Q. And so January -- you testified earlier, I'
 23 just trying to make a clear record, that you filed a
 24 workers' compensation claim around the first part of
 25 January '09, or was it before?

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1 A. I believe the adjuster called me before. I
 2 don't know how it got filed, but I think it was after
 3 the Christmas. I'm not for sure because...
 4 Q. And when you say "adjuster," do you mean --
 5 A. Matthew Jones and Amy -- and Amy from HR
 6 office.
 7 Q. So Matthew Jones with -- not with the
 8 department. Was he with --
 9 A. He was with Storm Insurance -- workers' comp
 10 insurance, yes.
 11 Q. And Amy was with CPS?
 12 A. She -- she's -- I guess she's with CPS. I
 13 guess that's her -- she's out of Austin.
 14 Q. Do you remember -- other than the time that
 15 Monica -- you testified Monica came to the hospital, did
 16 Monica ever contact you?
 17 A. She called me at home to see how I was
 18 doing.
 19 Q. Did you remember when that was?
 20 A. No.
 21 Q. Do you remember what y'all talked about?
 22 A. She just asked to see how I was coming along
 23 and see how my health was doing.
 24 Q. Do you remember what you told her?
 25 A. I told her I was doing okay. I just hurt.

1 Q. So other than the accommodation that you
 2 testify you requested from Nicole Ogle and Linda Black,
 3 did you ever request any other accommodation from
 4 anybody for any disability or condition?
 5 A. No, ma'am.
 6 Q. Okay. Did you ever file an internal
 7 grievance?
 8 A. No.
 9 Q. The time you had the meeting with Lisa Black
 10 in September 2009 and you said you could return to work
 11 on October 12th, 2009?
 12 A. I believe that's right.
 13 Q. Okay. Part-time four hours a day?
 14 A. Yes.
 15 Q. Is that what you told her?
 16 A. Yes.
 17 Q. Okay. And at the time you understood that
 18 you had 72 hours of annual leave?
 19 A. Yes.
 20 Q. Okay. Did you tell Lisa Black that?
 21 A. Yes.
 22 Q. Okay. Did you tell her or did you write it
 23 down?
 24 A. I told her. I had informed her, I said, I
 25 have -- I still have 72 hours remaining. Because she

1 was saying that I was all out of time and I said, I
 2 didn't use my annual time, I still have 72 hours annua
 3 time. And it was as if she didn't even hear me.
 4 Q. And so that was September 28th?
 5 A. 29th.
 6 Q. Yeah. More or less right, '09?
 7 A. Yes.
 8 Q. And you had 72 hours and you said you could
 9 return on October 12th, '09; is that correct?
 10 A. Uh-huh, yes.
 11 Q. Are you on SSI or SSDI right now?
 12 A. SSDI.
 13 Q. Okay. What is that?
 14 A. Social Security Disability Income.
 15 Q. And how much do you receive of that a month
 16 A. It would be \$1,300.
 17 Q. You receive a check for \$1,300 a month for
 18 SSDI?
 19 A. Yes.
 20 Q. Okay. When did you start receiving that?
 21 A. May of 2010.
 22 Q. Did you ever get denied for SSI or SSDI?
 23 A. No.
 24 Q. When did you apply for it?
 25 A. I suppose in 2010 or 2009.

1 Q. Do you remember what month?
 2 A. No. You know, I really don't remember what
 3 month or even what year. Because 2010, because it was a
 4 year -- because DARS...
 5 Q. Did you ever have -- did you have an injury
 6 in 2006 to your neck and shoulders?
 7 A. No.
 8 Q. Did you ever have a -- were you ever
 9 hospitalized at Walter Reed for a bipolar episode?
 10 MR. WALSH: Objection, privileged.
 11 I'm going to instruct you not to
 12 answer.
 13 Q. (BY MS. CONNOR) Okay. You're saying you've
 14 never had an injury to your neck and shoulder prior to
 15 the accident in 2000 -- December 2008?
 16 A. Not that I can recollect. I can't recollect
 17 anything at this time.
 18 Q. Have you ever had any other surgeries -- I
 19 mean, have you ever had any surgeries? Have you ever
 20 had any surgeries?
 21 THE WITNESS: Mr. Colin, I really don't
 22 want to answer it because I don't think it's their
 23 business about my surgery. What's --
 24 MR. WALSH: Well, I am going to object
 25 to privilege and instruct you not to answer. That's

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1 physician-patient privilege.
 2 Q. (BY MS. CONNOR) Okay. Did you ever get a
 3 letter from the Social Security Administration saying
 4 you owed them money?
 5 A. Yes.
 6 Q. Okay. What was that about?
 7 THE WITNESS: I don't think I have to
 8 tell her my Social Security -- my -- my status. That
 9 don't have nothing to do with this.
 10 MR. WALSH: You can answer.
 11 THE WITNESS: I don't want to answer
 12 it. Unless they're going to help me pay something. I
 13 don't want to answer that. What's the point? What's
 14 significant of that? I'm not answering it.
 15 MR. WALSH: Can we go off the record
 16 for a minute?
 17 MS. CONNOR: Sure.
 18 THE VIDEOGRAPHER: Off the record at
 19 2:04.
 20 (Break taken 2:04 p.m. to 2:11 p.m.)
 21 THE VIDEOGRAPHER: Back on record at
 22 2:11.
 23 Q. (BY MS. CONNOR) So that last question, I
 24 believe, was about the -- any -- I asked you if you had
 25 to repay the Social Security Administration money?

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1 A. No.
 2 Q. Did you ever have to pay them money back?
 3 A. No.
 4 Q. Did you ever pay any money back?
 5 A. No.
 6 Q. Did they ever request you to pay any money
 7 back?
 8 A. Yes.
 9 Q. Okay. So what -- what is the issue there?
 10 A. They made a mistake on my -- it's still up
 11 in the air. They made a mistake on my workers' comp
 12 earning and my Social Security compilation, so the --
 13 it's still pending.
 14 Q. Do you have -- did you receive a letter from
 15 them?
 16 A. Yes.
 17 Q. Okay. Do you have a copy of it?
 18 A. Yes.
 19 Q. Did you receive more than one letter from
 20 them?
 21 A. Yes.
 22 Q. Okay. Can you provide those to your lawyer,
 23 please?
 24 A. Yes.
 25 Q. Okay. Did you write them any letters back?

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1 A. Uh-huh, yes.
 2 Q. Can you provide those to your lawyer,
 3 please?
 4 A. Answer that question again. I'm sorry.
 5 Q. You said that you wrote some letters in
 6 response to the letters that they wrote you?
 7 A. I did a profile.
 8 Q. Can we get a copy of that? Do you have a
 9 copy of that, I guess is a better question?
 10 A. Yes.
 11 Q. Okay. Do you recall Dr. Mary Kight -- oh,
 12 that's the Mary Kight. That's what -- I thought it said
 13 Kight.
 14 A. I called her Knight, I'm sorry, Kight.
 15 Q. It's Dr. Mary Kight.
 16 A. Uh-huh, K-i-t-e.
 17 Q. It's K-i-g-h-t.
 18 A. Oh, I'm sorry.
 19 Q. She's a Ph.D.
 20 Do you remember being hospitalized at
 21 Walter Reed Medical Center in 2009 for bipolar disorder?
 22 MR. WALSH: Objection, that's
 23 privileged and I'm going to instruct you not to answer.
 24 MS. CONNOR: Will you state the
 25 specific privilege that you're asserting?

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1 MR. WALSH: Mental health and
 2 patient-doctor privilege.
 3 Q. (BY MS. CONNOR) In 2006 did you sustain an
 4 injury to your neck and shoulder?
 5 A. No, not that I know of. I can't remember
 6 any injury.
 7 Q. You took biofeedback as part of a pain
 8 management program; is that correct?
 9 A. Yes.
 10 Q. Okay. Who did you do that with?
 11 A. Southwestern Medical Center, Pain Management
 12 Clinic, McDermott.
 13 Q. McDermott?
 14 A. Uh-huh, McDermott Pain Management Clinic.
 15 Q. Do you know who you saw there?
 16 A. Judy -- Judy Mac -- I think it's McMillan.
 17 Q. What kind of services did they provide to
 18 you? I mean, this biofeedback and the pain management
 19 program.
 20 A. It's the same network. They -- they had a
 21 program, you go through physical therapy, there's
 22 several different entities to that program. I can't
 23 name them all. The one of mine was physical therapy,
 24 medication and pain -- biofeedback.
 25 Q. What is biofeedback?

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1 A. It teach you how to deal with pain. It
 2 teach you how to deal with your pain.
 3 Q. And how?
 4 A. How do they do it?
 5 Q. Uh-huh.
 6 A. They counsel you and then they hook you up
 7 to electrodes and they tell you what your pain level is
 8 at and how to -- it's kind of like, what you call a
 9 calming mechanism is how they do it. It's -- I can't
 10 think of the word for it. They teach you how to deal
 11 with your pain.
 12 Q. Do you feel like it's been successful
 13 treatment for you?
 14 A. Yes.
 15 Q. How many times have you gone for
 16 biofeedback?
 17 A. I went about maybe about six times, about
 18 six -- about six.
 19 Q. Do you remember -- was it all together, all
 20 included the -- all of the physical therapy, the
 21 biofeedback, was it the same?
 22 A. Uh-huh, yes.
 23 Q. And all done at the same time like with the
 24 weights and stuff?
 25 A. Excuse me.

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1 You have a workers' comp is the weight
 2 and physical therapy. And you have my vision, my pain,
 3 my trigeminal nerve, that's for my trigeminal nerve.
 4 That is not for my -- so it's two entities you're mixing
 5 up.
 6 Q. Okay. Well why don't you separate them out
 7 for us.
 8 A. Okay. Dr. Zegarelli is workers' comp. That
 9 means my back, neck and shoulder. There's physical
 10 therapy that deals with my injury -- my work-related
 11 injury which is my lower back, my shoulder and my neck.
 12 That is called work-hardening program, preparing me to
 13 go to work. I did it twice. It lasts for two weeks, 40
 14 hours a week. And that program prepared me to go to
 15 work. And this is the program I had to learn how to
 16 carry weights and do other things.
 17 Q. The work what program?
 18 A. Work-hardening program. They call it
 19 work-hardening because they are getting me ready to go
 20 back to work.
 21 Q. Work hardening?
 22 A. Uh-huh.
 23 Q. How many times did you do that program?
 24 A. I did it twice.
 25 Q. Okay. And that was through Dr. Zegarelli?

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1 A. Uh-huh, yes, yes.
 2 Q. Who paid for that?
 3 A. Workers' compensation.
 4 Q. Okay. How much out-of-pocket money have you
 5 had to pay for your work-related injuries?
 6 A. I don't have a -- I don't have a -- I don't
 7 know how much I had to pay. I don't have an idea how
 8 much that is.
 9 Q. Did you ever tell Dr. Kight that -- that the
 10 system is attacking you?
 11 A. Yes.
 12 Q. Okay. What did you mean by that?
 13 A. First, the system is attacking me. I -- I
 14 had lost my job and then Social Security said I owe them
 15 money and then workers' compensation is trying to --
 16 workers' compensation called me wanting to know have I
 17 got a large amount of money. I didn't get a large
 18 amount of money. So between workers' comp -- workers'
 19 compensation and Social Security, they done cooped up I
 20 owed them a large amount of money.
 21 And then you have at the other end, I
 22 cannot find a job with my degree because I have been
 23 dismissed from the Texas Department of Family and
 24 Protective Services and that causing me a lot of stress.
 25 So I feel like with all of that said, the system is

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1 attacking me. Texas Department of Health and Human
 2 Services -- Child Protective Services has dismissed me.
 3 I can't find a job every time -- in my area of
 4 specialty, associate services, I can't get a job or even
 5 a caseworker job right now. And then, Social Security
 6 is saying I owe them money and then workers' comp goes
 7 along with Social Security. So the system is attacking
 8 me.
 9 Q. So has your workers' comp benefits run
 10 out --
 11 A. Yes.
 12 Q. -- presently?
 13 A. Yes.
 14 Q. Okay. When did they end?
 15 A. April -- April of 2011.
 16 Q. So have you seen any doctors related to your
 17 pain from the accident after April 2011?
 18 A. Yes.
 19 Q. Okay.
 20 A. Dr. Zegarelli.
 21 Q. How many times have you seen him after
 22 April 2011?
 23 A. I have no idea. I see him every three
 24 months, as needed.
 25 Q. So your pain -- I mean, your depression and

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1 anxiety you just testified is attributed to the dispute
 2 you're having with Social Security Administration, the
 3 fact that you got fired from DFPS, the workers' comp
 4 administration ending your payments in April 2011. Is
 5 there anything else?
 6 A. Reiterate. It's all about the last word is
 7 I'm losing my job. Losing my job is the problem. I
 8 wasn't able to go back to my job after being injured on
 9 my job. That's -- that's the problem.
 10 Q. Okay. So you're not relating your anxiety
 11 as stemming from this dispute with Social Security?
 12 A. No. That's contributing to it.
 13 Q. So it's --
 14 A. It's contributing to it.
 15 Q. Okay. What's the difference?
 16 A. It's just contributing. It agitated. It's
 17 already there because the Texas department have
 18 dismissed me and I was planning on go back to work. My
 19 whole life has been upside down since I have been out of
 20 work.
 21 Q. What kind of -- are you taking medication
 22 for depression?
 23 A. I already told you. I don't even remember
 24 the name of it. My workers' --
 25 Q. So you --

1 A. -- my Dr. K was one of the -- Dr. Kight, I
 2 call Dr. K, is one of the persons, she's from DARS.
 3 She's helping me deal with losing my job and my
 4 depression, which goes around. And -- I lost my train
 5 of thought.
 6 The medication I take is from pain
 7 management. They deal with my depression.
 8 MS. CONNOR: Can you go back a little
 9 bit? My last question, now I've forgot it, too.
 10 Okay, yes.
 11 Q. (BY MS. CONNOR) So what kind of medication
 12 are you taking for depression?
 13 A. I don't remember the name of it.
 14 Q. Are you currently taking --
 15 A. Uh-huh, they just changed it.
 16 Q. Whose "they"?
 17 A. My doctor, Dr. Van Wright at Southwestern
 18 Medical Center, Pain McDermott Clinic.
 19 Q. And they're treating you for depression
 20 related to losing your job?
 21 A. Since Texas Neurology was treating me for
 22 pain -- so they was treating me -- Pain McDermott was
 23 treating me for my face, but now they have to treat me
 24 for my depression. My pain is stable. But they're
 25 treating me for my depression. So Dr. Herzog, which is

1 Texas Neurology, they're treating me for my pain. Texas
 2 neurology is treating me for my pain. The Pain
 3 Management Center, McDermott Center, Dr. Van Wright is
 4 treating me for my depression. It's all backwards, but
 5 that's it.
 6 Because while they were treating me for
 7 my face, it's stable -- my face is stable, so this is
 8 how it works. It's confusing.
 9 Q. So are you on antidepressant medication?
 10 A. I'm on depression medication.
 11 Q. Okay. And so when did you start taking
 12 that?
 13 A. Probably in -- it was probably in 2000- --
 14 it was at the beginning of 2010, I think. 2010. It was
 15 right before -- after I got fired and I was -- had a
 16 setback because of that.
 17 Q. Okay. When you say you "had a setback,"
 18 what do you mean?
 19 A. When they fired me and I had a setback,
 20 because I knew I was getting anxious to go back to work,
 21 and then they just let me go. And I had an accident.
 22 How can people let you go when you had an accident
 23 trying to do your job and they just fired me?
 24 MS. CONNOR: Objection, nonresponsive.
 25 A. You asked a question.

1 Q. (BY MS. CONNOR) No. I asked you about your
 2 medication for depression. I asked you when you started
 3 taking it.
 4 A. I answered it. I said 2010 right before.
 5 Q. Uh-huh. And then after that answer I
 6 objected to nonresponsive because that answered the
 7 question.
 8 A. Oh, okay.
 9 Q. When you testified you were anxious to go
 10 back to work, what did you mean by that?
 11 A. I wanted to go back to work. I wanted --
 12 when that doctor gave me that doctor excuse, I was
 13 hoping that they would let me go back to work. I said,
 14 I was hoping they would let me go back to work because
 15 that's my livelihood is my work. My life is my work.
 16 And I couldn't understand how you just -- a new
 17 supervisor --
 18 MS. CONNOR: Objection, nonresponsive.
 19 A. I was just wanting to go back to work.
 20 Q. (BY MS. CONNOR) what did you mean by -- how
 21 did that manifest itself, you were anxious to go back to
 22 work? What does that mean?
 23 A. I was ready to go back to work. The doctor
 24 gave me an excuse, so I could go back to work and they
 25 wouldn't even work with me. And then it manifest, I had

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1 an accident doing my job.
 2 MS. CONNOR: Objection, nonresponsive.
 3 Q. (BY MS. CONNOR) I still would like to know
 4 what you meant by, "I was anxious to go back to work."
 5 A. I was wanting to go back to work.
 6 Q. Did you tell anybody at the department that
 7 you wanted to come back to work?
 8 A. I told them to call. I wanted to come back
 9 to work. I wanted my job.
 10 Q. And when did you tell Nicole you wanted to
 11 come back to work?
 12 A. When I asked for light-duty I said, can I
 13 come back to work on light-duty, and she said she would
 14 check with her supervisor. And then she called me the
 15 next day and --
 16 MS. CONNOR: Objection, nonresponsive.
 17 A. -- said there's no such thing as. I asked
 18 Ms. Nicole Oglebee could I come back to work.
 19 Q. (BY MS. CONNOR) The question was, did you
 20 tell her you wanted to come back to work?
 21 A. Yes.
 22 MR. WALSH: Objection, form.
 23 Q. (BY MS. CONNOR) And when was that?
 24 A. Whenever I talked to her on the phone,
 25 whatever day it was.

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1 Q. Do you remember what day?
 2 A. No, ma'am.
 3 Q. Are you taking pain medication right now?
 4 Are you on pain medication right now?
 5 A. Am I on pain medication right now? I am on
 6 a regular regimen of pain medication.
 7 MS. CONNOR: Objection, nonresponsive.
 8 A. Yes.
 9 Q. (BY MS. CONNOR) Are you on pain medication?
 10 A. Uh-huh, yes.
 11 Q. What pain medication are you taking right
 12 now?
 13 A. Indomethacin.
 14 Q. Okay. Anything else?
 15 A. Clonazepam.
 16 Q. Clonazepam?
 17 A. That's what I gave you earlier.
 18 Q. Yeah. And you took that this morning?
 19 A. Uh-huh, yes, yes.
 20 Q. And what is that pain for?
 21 A. What is that pain for?
 22 Q. I mean, what is that medication -- what pain
 23 are you trying to treat with that medication?
 24 A. Oh, it's for my face. My back medication is
 25 PRN, as needed.

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1 Q. Is that the name of the drug, PRN?
 2 A. As -- no, as needed. You call as needed, i
 3 medical term. As needed, you take it.
 4 Q. Right. But I'm asking the name of the drug
 5 that you take as needed.
 6 A. As needed, Soma as needed, S-o-r-n, Soma.
 7 Q. Any other -- are you on any kind of muscle
 8 relaxers today?
 9 A. No. I have muscle relaxers, but I don't
 10 know the name.
 11 Q. Are you on any kind of antidepressant today
 12 A. Yes, yes.
 13 Q. Okay. Which one?
 14 A. I don't know the name of it.
 15 Q. Okay. How long have you been taking that?
 16 A. I've been taking it for about -- they chang
 17 up. Let's see. Different antidepressants. I've been
 18 taking this one for about three weeks.
 19 Q. So you just started taking it three weeks
 20 ago?
 21 A. This particular one.
 22 Q. Okay. What did you take before?
 23 A. I took wellbutrin.
 24 Q. Wellbutrin?
 25 A. Uh-huh, yes.

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1 Q. Okay. How long were you on wellbutrin?
 2 A. I have no idea.
 3 Q. Was it a year?
 4 A. I have no idea.
 5 Q. Two years?
 6 A. I have no idea.
 7 Q. Three years?
 8 A. All after 2009. I don't know, because they
 9 change it up, it quit working.
 10 Q. Did you ever take a -- did you ever take an
 11 antidepressant before the accident?
 12 A. No.
 13 Q. In your life, you never took an
 14 antidepressant before the accident in your entire life?
 15 MR. WALSH: Objection, this is
 16 privileged.
 17 MS. CONNOR: You've got to be kidding.
 18 MR. WALSH: Doctor-patient privileged.
 19 THE WITNESS: Why is she digging?
 20 Q. (BY MS. CONNOR) Okay. So did you or did
 21 you not take antidepressant medication before the
 22 accident in December 2008?
 23 MR. WALSH: Objection, this is
 24 doctor-patient privileged, diagnoses and things like
 25 that are going to be privileged under the doctor-patient

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1 privilege.
 2 MS. CONNOR: Okay. And we will fight
 3 about that later.
 4 Q. (BY MS. CONNOR) But you're -- did you ever
 5 take any muscle relaxers before December 2008?
 6 A. No.
 7 Q. Did you ever take any other kind of pain
 8 medication before December 2008?
 9 A. Yes.
 10 Q. What kinds?
 11 A. I don't know the name of them.
 12 Q. Okay. Did you ever take any -- well, who
 13 prescribed them for you?
 14 A. Dr. McHenry.
 15 Q. Okay. So it was related to your eye?
 16 A. Yes, yes.
 17 Q. Okay. Any other doctors prescribe pain
 18 medication for you before the accident?
 19 A. Before the accident?
 20 Q. Uh-huh.
 21 MR. WALSH: Objection, privileged. I'm
 22 sorry, patient-doctor privilege.
 23 I'm going to instruct you not to answer
 24 that.
 25 A. Can we just move on? Stop wasting time.

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1 Q. (BY MS. CONNOR) It's your lawsuit,
 2 Ms. Howard. We're all here for you and you're going to
 3 complain about the time?
 4 A. I mean, you keep digging for something
 5 you're not going to get.
 6 Q. No, I'm making a clear record. I'm not
 7 digging. I'm not trying to get it from you.
 8 A. That doesn't have anything to do with it.
 9 Q. I'm not going to argue with you.
 10 A. I'm not arguing. I am just saying it has
 11 nothing to do with this case.
 12 Q. You have no idea what you're talking about.
 13 A. 2008 is what you should be concerned with,
 14 from on up.
 15 Q. Oh, Ms. Howard, you need to listen to your
 16 lawyer.
 17 Did you ever tell Dr. Kight that you
 18 take less pain medication than has been prescribed by
 19 your neurologist?
 20 A. I don't remember.
 21 Q. Do you need time to think about it?
 22 A. I don't remember.
 23 Q. Okay. Have you ever been evaluated for
 24 telescopic lenses for driving?
 25 A. Have I ever been evaluated?

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1 MR. WALSH: You can answer.
 2 A. Uh-huh, yes.
 3 Q. (BY MS. CONNOR) Okay. When was that?
 4 A. I don't remember.
 5 Q. And who was the doctor?
 6 A. Dr. -- I have to get his name. I don't
 7 remember his name.
 8 Q. Okay. Did you have an appointment?
 9 A. What do you mean, "have an appointment"?
 10 Q. To be evaluated for telescopic lenses.
 11 A. I don't have an appointment now.
 12 Q. Did you go to one?
 13 A. Yes.
 14 Q. Being cute and evasive is not really going
 15 to help your case.
 16 A. I am answering your questions the best I
 17 can.
 18 Q. Okay. I'm asking you, did you have an
 19 appointment for telescopic lenses?
 20 A. And I said yes.
 21 Q. Okay. Did you -- do you have telescopic
 22 lenses?
 23 A. What are the telescopic lenses? How do the
 24 look? what are they?
 25 Q. You just testified that you had --

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1 A. I have been evaluated, but I don't know
 2 which ones you are talking about. It's many of them.
 3 So how do they look?
 4 Q. So the doctor whose name you can't remember
 5 where you went and talked to them, you had an
 6 appointment in February of this year?
 7 A. Uh-huh.
 8 Q. Okay.
 9 A. Was it this year?
 10 Q. That's what it says in the documents that
 11 you provided to us.
 12 A. Dr. Daley?
 13 Q. I have no idea. It doesn't say here.
 14 That's why we're here.
 15 A. Dr. Franklin? I am trying to see.
 16 Q. Dr. Franklin?
 17 A. What doctor?
 18 Q. What does Dr. Franklin do?
 19 A. I am calling names. I am trying to remember
 20 the man name. I don't even remember. I am trying to
 21 get to his name. I can't remember his name. I don't --
 22 I can't remember his name. I can get it later and give
 23 it to my attorney.
 24 Q. Did -- what does Dr. Daley do?
 25 A. Dr. Daley, he's my -- one of my workers'

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1 comp doctors that give the epidural injection.
 2 Q. Okay. I thought that was Dr. Haley.
 3 A. Dr. Haley is the evaluation doctor for the
 4 vertebrae.
 5 Q. There have been so many doctors, I'm getting
 6 confused.
 7 So did you receive a prescription for
 8 telescopic lenses for driving recently?
 9 A. A prescription, yes.
 10 Q. Did you fill that prescription for
 11 telescopic lenses that you received recently?
 12 A. Yes.
 13 Q. Okay. Do you have those glasses?
 14 A. Yes.
 15 Q. Okay. Do you wear them?
 16 A. Sometimes.
 17 Q. Okay. When do you wear them?
 18 A. When I'm looking at TV or I want to see
 19 something far away.
 20 Q. Okay. Do you use them when you drive?
 21 A. No.
 22 Q. Why not?
 23 A. They black out the peripheral vision.
 24 Q. Did you ever tell Dr. Kight that you could
 25 work eight hours a day if you had flexible hours?

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1 A. Yes.
 2 Q. What did you mean by that?
 3 A. Work maybe three days and then work another
 4 three days, just flexible hours. Flex -- they have a
 5 program called flex, and you work eight hours and be off
 6 eight, maybe work 16 hours and be off, yes.
 7 Q. Why would you need flexible hours?
 8 A. Just to get me started in a program.
 9 Q. What do you mean by that?
 10 A. Just to see how -- test me out to see how I
 11 would do. That's what I thought.
 12 Q. Is that what you told these people that you
 13 applied for these jobs that you testified about, that
 14 you would need flexible hours?
 15 A. No.
 16 Q. Did you ever mention to any of your
 17 prospective employers that you wanted flexible hours?
 18 A. No.
 19 Q. Did you ever complain to Dr. Kight that
 20 you're having anger related to adjustment to disability
 21 issues?
 22 A. Yes.
 23 Q. What did you mean by that?
 24 A. I was frustrated. Just frustrated, that's
 25 all.

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1 Q. Well, what did you tell her?
 2 A. That's why I am seeing a counselor. I am
 3 frustrated with the State. They fired me. That's what
 4 I told her. I don't know what I told her that day.
 5 What did that paper say?
 6 Q. What about your disability issues?
 7 A. What about them?
 8 Q. What did you tell her about your disability
 9 issues?
 10 A. I don't remember.
 11 Q. Do you see yourself as having disability
 12 issues now?
 13 A. I believe so.
 14 Q. What are they, in your mind?
 15 A. In my mind?
 16 Q. Yeah. What is your belief about whether you
 17 have a disability issue and what are they? Please
 18 describe them.
 19 A. I'm legally blind in my right eye. I have
 20 floaters in my left eye and I have back issues, neck
 21 issues, shoulder issues and -- and would depression be
 22 an issue? Depression and anxiety.
 23 Q. How does it -- the depression and anxiety
 24 manifest themselves in your life?
 25 A. When I think of -- when I think about how

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1 people do you so wrong when something happens. When I
 2 think about the State firing me after having the
 3 accident and they literally fired me and I literally
 4 lost my life, so that's how it manifests.
 5 MS. CONNOR: No, that's -- objection,
 6 nonresponsive.
 7 Q. (BY MS. CONNOR) What I am asking is how
 8 does it affect your life?
 9 A. How does it affect my life? I don't want to
 10 go nowhere. I don't want to see nobody. I don't want
 11 to have friends. I do not want to function because job
 12 is my main security. Job, I need to work. And by not
 13 having a job and if I can't get a job, I can't do my --
 14 I have two degrees in human services now and I can't go
 15 to my career field, I am working some other career
 16 field, so...
 17 Q. Okay. What are you claiming -- you said you
 18 don't want to go nowhere, you don't want to see nobody
 19 what -- can you explain to the jury which of these kinds
 20 of opportunities you've passed -- hold on, let me
 21 finish -- that you have passed upon in the past, that
 22 you've decided not to engage in because of your
 23 depression and anxiety?
 24 A. My family function. It's just -- my family
 25 function, we have functions, get together on Sunday.

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1 have no desire to socialize. I just want to -- there's
 2 just nothing there. I cries all of the time. You never
 3 see me cry. I cries all of the time. I feel sad for
 4 myself. It's just... And I have worked all of my life.
 5 And here now -- and why am I even here? I had the
 6 accident, but this is how I be treated.
 7 MS. CONNOR: Objection, nonresponsive.
 8 Q. (BY MS. CONNOR) And your anxiety, how does
 9 that manifest itself in your life? what are your
 10 symptoms?
 11 A. My symptoms, I fear peoples. I fear what
 12 people are thinking. I have a great fear of peoples. I
 13 have -- I have fear how people do you wrong, so it's
 14 like a withdrawal symptom. I have fear of the state
 15 right now why they are...
 16 Q. So what -- and this fear of people, fear of
 17 people doing you wrong, fear of -- what is that? How
 18 does that impact your life? what has that prevented you
 19 from doing?
 20 A. I slept on the sofa for two years.
 21 Q. Why was that?
 22 A. Because of pain and going -- after my
 23 accident in December 2008, I went to therapy and I slept
 24 on the sofa.
 25 Q. I think we were specifically -- I was asking

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1 you about anxiety, not pain.
 2 A. Just being withdrawn from everybody. It's
 3 just a great fear. I mean, it's a painful -- fear of
 4 people hurting you.
 5 Q. Okay. And so what -- can you recall
 6 anything specific about your fears or fears of people
 7 hating you as it relates to this anxiety that you're
 8 alleging?
 9 A. Not fear of people hating me. Is that what
 10 you said?
 11 Q. I thought that's what you said.
 12 A. No. Fear of people hurting me.
 13 Q. Hurting you, okay. So how does that relate
 14 to the anxiety that you're alleging?
 15 A. Because it's -- it's just, the fear, it has
 16 done caused me to have this fear. I have a fear of not
 17 meeting -- I have a fear of not working. when you don't
 18 work and you've worked all of your life and you sitting
 19 at home and you do what? It's a great fear of being
 20 sabotaged. I have a fear of peoples. Is that what you
 21 wanted?
 22 Q. I wanted specific examples. If you could
 23 tell the jury your specific examples of your anxiety and
 24 how that manifests itself in your life.
 25 MR. WALSH: objection, form.

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1 Q. (BY MS. CONNOR) Can you do that?
 2 A. How it manifests in my life? How did it
 3 manifest in my life and what happened?
 4 Q. Yes, specific examples, yes.
 5 A. Sitting on the sofa, not going anywhere, not
 6 able to go anywhere.
 7 Q. What months were you not able to go
 8 anywhere?
 9 A. From December 16th, 2008 until about --
 10 besides going to the doctor and going to the doctor's
 11 appointment to maybe about April of 2009, I went to the
 12 doctor and that's all I did. Doctor and slept, doctors
 13 and slept, pain medicine.
 14 Q. The question was related to your anxiety.
 15 A. Uh-huh.
 16 Q. What -- what months were you unable to go
 17 any place or do anything, as you testified, due to your
 18 anxiety?
 19 A. From December 16, '08 -- you mean going
 20 socially and do stuff or just going out period? I'm not
 21 understanding the question.
 22 Q. Well, that's -- that's it. We don't
 23 understand, either. We need to know what you're
 24 claiming in your lawsuit. You have claimed that you
 25 have depression and anxiety from being terminated from

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1 CPS.
 2 A. Uh-huh.
 3 Q. Can you please give some specific examples
 4 and tell the jury the time period that you suffered
 5 anxiety so bad that you couldn't go anywhere or do
 6 anything? When was that?
 7 A. That was October -- whenever I got fired,
 8 that's when I started having stomach pain, throwing up,
 9 that -- that's after I had got fired. I was telling you
 10 before after I had the accident. That was the accident.
 11 But once I got fired, I got sick. I
 12 started throwing up. I start imagining that everybody
 13 is after me. I don't want to live. I done committed a
 14 crime because I had an accident.
 15 Q. Okay. You said that you have stomach pain.
 16 Did you see a doctor for stomach pain?
 17 A. My doctor -- my workers' comp took care of
 18 that and gave me Zantac, Zantac 150.
 19 Q. And you said that you --
 20 A. I started having more headaches.
 21 Q. You were throwing up?
 22 A. I was throwing up.
 23 Q. When were you throwing up?
 24 A. I can't recall the days. Whenever I get my
 25 anxiety attack, that's when it happens. I cries. I

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1 cried and I cried.
 2 Q. When did you cry?
 3 A. I don't know. Many days, I cried many days.
 4 That's why I ended up talking to Dr. Kight.
 5 Q. Okay. So you said that you didn't want to
 6 live?
 7 A. Uh-huh.
 8 Q. When did you feel like you didn't want to
 9 live anymore?
 10 A. After I got fired from my job and it was
 11 real. I was fired. After I got fired from my job, it
 12 was reality set in, and they send me my paperwork. They
 13 actually dismissed me from my position only because I
 14 had a wreck. The problem was that I had a wreck doing
 15 my job and they couldn't have work with me, so I got
 16 really sick. And I talked to my counselor at DARS and
 17 she refer me to Dr. Kight.
 18 MS. CONNOR: Objection, nonresponsive.
 19 Q. (BY MS. CONNOR) When was it that you
 20 decided you didn't want to live anymore?
 21 A. Many times, on many occasions.
 22 Q. When was that?
 23 A. That was after I got fired.
 24 Q. To this day?
 25 A. No, not to this day.

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1 Q. Have you felt suicidal?
 2 A. No.
 3 Q. Have you ever had a plan to commit suicide
 4 because you got fired from CPS?
 5 THE WITNESS: I have to answer that?
 6 MR. WALSH: You can answer.
 7 THE WITNESS: okay.
 8 A. No, I was just real sad.
 9 Q. (BY MS. CONNOR) okay. You said you got
 10 headaches?
 11 A. I got migraines, yes.
 12 Q. Okay. Have you ever had migraines before
 13 you got fired from CPS?
 14 A. No, no.
 15 Q. Never in your whole life?
 16 A. Huh-uh.
 17 Q. who diagnosed you with migraines?
 18 A. No one diagnosed me with migraines.
 19 Q. Okay. You diagnosed yourself?
 20 A. A headache, I had headaches.
 21 Q. Did you ever tell Dr. Kight that you had at
 22 least 21 good days of less pain or no pain each month?
 23 A. when I was getting better, yes.
 24 Q. Okay. Do you remember when that was?
 25 A. No, I don't.

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1 Q. Who is Peggy Mata?
 2 A. My coworker.
 3 Q. Okay. And she worked with you where?
 4 A. At CPS at westmoreland office.
 5 Q. Okay. What kind of work did she do?
 6 A. The same as I.
 7 Q. So she was an HST also?
 8 A. Uh-huh, yes.
 9 Q. Okay. So she drove people -- kids around
 10 and --
 11 A. Uh-huh.
 12 Q. And observed visitations?
 13 A. Yes.
 14 Q. Did clerical?
 15 A. Uh-huh.
 16 Q. Okay. Who would she know about your
 17 lawsuit?
 18 A. As far as my lawsuit, I would think that sh
 19 would know little or nothing. Not that I know of. Sh
 20 just knows that I am out on workers' comp.
 21 Q. Okay. Yolanda Brooker, what would she know
 22 about your lawsuit?
 23 A. She would know that I'm out on workers'
 24 comp, and they don't know where I'm at in my situation
 25 Q. Why did you list her as somebody with

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1 knowledge about your lawsuit?
 2 A. Ms. Peggy Mata?
 3 Q. Either one of them.
 4 A. I'm not -- because I didn't really
 5 understand the question, because I know they know that I
 6 was out on workers' comp, and then I went to EEOC and
 7 that's all they would know. So that's all I would
 8 assume they would know. So I don't know what else they
 9 know, because I haven't told them anything else.
 10 Q. Okay. So Peggy Mata you're saying wouldn't
 11 know anything about anything in your lawsuit?
 12 A. She -- the only thing she would know is my
 13 workers' comp.
 14 MR. WALSH: Objection, form.
 15 Q. (BY MS. CONNOR) What do you mean by that?
 16 A. Mean by what?
 17 Q. All she would know about is your workers'
 18 comp?
 19 A. That I was out on workers' comp, I had an
 20 accident and I filed an EEOC case. And that was -- I
 21 think that's all she would -- I think that's all she
 22 would know. I'm not for sure.
 23 Q. Would she know anything about you requesting
 24 an accommodation for disability?
 25 A. She will. She will know that much.

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1 Q. Was she there when you said you verbally
2 requested an accommodation for disability?
3 A. No, no.
4 Q. Okay. Was she -- did you ever -- are you
5 claiming that you ever wrote a written request for
6 disability to anybody at the department?
7 A. I'm not claiming that because I didn't have
8 that kind of opportunity to do that.
9 Q. Okay.
10 A. I wasn't at work.
11 MS. CONNOR: Objection, nonresponsive.
12 Q. (BY MS. CONNOR) So you never filed a
13 written request for an accommodation for injuries that
14 you've sustained that you believe has disabled you?
15 MR. WALSH: Objection, form.
16 Q. (BY MS. CONNOR) Is that correct?
17 A. I wouldn't say it like that. I told Lisa
18 Black.
19 Q. Okay.
20 A. I told Lisa Black.
21 Q. I'm asking if you --
22 A. A written form?
23 Q. A written, yes. Written anything?
24 A. No. It was verbal. It was verbal. I
25 wasn't at work.

1 Q. Okay.
2 A. No, no.
3 Q. I'm just trying to make it clear.
4 A. No, no, I did not. I was not at work.
5 Q. Okay. The question is, did you ever get out
6 a piece of paper and write on the piece of paper that
7 you believe you have a disability that you would like
8 them to accommodate at any time to anyone ever?
9 A. Disability, as far as my injury?
10 Q. Yes.
11 A. To my back and neck and shoulders, my
12 accident? No, no.
13 Q. Do you know that you could have done that?
14 A. With that time -- a lot of that time --
15 MS. CONNOR: Objection, nonresponsive.
16 Q. (BY MS. CONNOR) Do you know that you could
17 have written something to somebody, anyone at the
18 department, and handed them a letter on a blank piece of
19 paper saying you wanted an accommodation --
20 A. I don't know I was going get fired.
21 Q. Hold on, hold on, let me finish.
22 Did you know that you could do that?
23 A. No.
24 Q. You didn't know?
25 A. No, I didn't, because I didn't know I was

1 going to get fired. I did not know because I was
2 talking to --
3 MS. CONNOR: Objection, nonresponsive
4 A. -- I was talking to Ms. Black.
5 MS. CONNOR: Objection, nonresponsive
6 Q. (BY MS. CONNOR) I'm just asking if you knew
7 that you could put in a written request to the
8 department requesting an accommodation? Did you know
9 that?
10 A. No. I didn't know how you even -- I
11 don't --
12 MS. CONNOR: Objection, nonresponsive
13 A. -- the protocol for -- I don't know the
14 protocol for writing accommodation after I had spoke to
15 peoples about it.
16 Q. (BY MS. CONNOR) Did you know that you could
17 have contacted somebody other than Lisa Black or Nicol
18 Ogle and asked for an accommodation?
19 A. No.
20 Q. Who's Willness Thomas?
21 A. Willnessia Thomas, she's a caseworker.
22 Q. Okay. What does she know about your
23 lawsuit?
24 A. She knows that I went out on workers' comp.
25 Q. What does that mean?

1 A. She knows that I got injured and I went out
2 on workers' comp.
3 Q. Does she have any other specific knowledge
4 about your condition?
5 A. No.
6 Q. Other than you were just gone from your job?
7 A. No. She knows I was gone from my job and I
8 was fired.
9 Q. Okay. I'm showing you Exhibit 15. Do you
10 see how you got a piece of paper and you wrote something
11 on it and you stuck it under Monica's door, like you
12 just testified to?
13 MR. WALSH: Objection, form.
14 A. I was, I guess, following protocol.
15 Q. (BY MS. CONNOR) I am asking you whether you
16 knew you could just get out a piece or paper and stick
17 it under somebody's door or put it in their chair or
18 anything you if wanted an accommodation for your
19 injuries that you claim have disabled you?
20 A. If I am dealing with the regional manager,
21 it seemed like she should really have helped me out when
22 I asked her.
23 MS. CONNOR: Objection, nonresponsive.
24 Q. (BY MS. CONNOR) I asked you if you knew you
25 could do that? That's a simple question.

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1 A. No, I didn't, no, no.
 2 Q. Thank you. That's all I wanted to know.
 3 Okay.
 4 Willness Thomas, your testimony is that
 5 she doesn't know anything other than the fact that you
 6 want on workman's compensation?
 7 A. She knows I was injured, out on workers'
 8 compensation and they fired me from any job after I had
 9 an accident on my job.
 10 Q. Okay. So she has the basic knowledge. She
 11 doesn't have any inside information about your
 12 disability or what you did during, before or after the
 13 accident?
 14 A. No.
 15 MR. WALSH: Objection, form.
 16 Q. (BY MS. CONNOR) She is just a coworker?
 17 A. (Witness nods head.)
 18 Q. She didn't have any other kind of knowledge?
 19 A. She -- yes. She have knowledge that when I
 20 had the accident I was delivering gifts to her clients
 21 when I had the accident. That's -- that's the knowledge
 22 she have because that was the person I was working with
 23 when I had my accident, Unit 88.
 24 Q. Okay. Does she have any knowledge about
 25 anything that's in dispute? I mean, we're not disputing

1 that you a had an accident while you were delivering
 2 gifts for the children who are -- you know, what's the
 3 word I'm looking for -- under the agency's care. We're
 4 not disputing that.
 5 Does willness Thomas have any other
 6 knowledge other than some issue that's not disputed?
 7 A. No, ma'am.
 8 MR. WALSH: Objection, form.
 9 Q. (BY MS. CONNOR) Fakesha Thomas. Okay.
 10 Willness Thomas, is she an employee of the department?
 11 A. She was. She's with Foster -- she with
 12 adoption now. She with another agency.
 13 Q. Do you know which agency?
 14 A. I think it's have to do with collecting
 15 child support.
 16 Q. Okay. Fakesha Thomas?
 17 A. She's with another agency. I don't know
 18 what agency she with.
 19 Q. What does she know about your lawsuit that's
 20 not contested?
 21 MR. WALSH: Objection, form.
 22 A. She --
 23 THE WITNESS: I can answer that?
 24 MR. WALSH: Yeah, you can answer that.
 25 THE WITNESS: okay.

1 A. She don't know, she just know I had an
 2 accident and I went out on workers' comp.
 3 Q. (BY MS. CONNOR) Sarah Epps, what does she
 4 know about your lawsuit that's not contested?
 5 MR. WALSH: Objection, form.
 6 A. She -- I went out on workers' comp and I ha
 7 an accident.
 8 Q. (BY MS. CONNOR) Ruth Omorowa?
 9 A. I had an accident, went out on workers'
 10 comp, that's what she knows.
 11 Q. Are these coworkers of yourself?
 12 A. Yes. They are coworkers.
 13 Q. They were coworkers?
 14 A. Uh-huh.
 15 Q. Nickelle Dangerfield?
 16 A. Just the same, same.
 17 Q. Gordon Baxter?
 18 A. He was my coworker. He knows I had an
 19 accident and went out on workers' comp. I never saw
 20 them no more.
 21 Q. Maria Castillo?
 22 A. Went out on workers' comp.
 23 Q. Patricia Ouiroz?
 24 A. They know that I had an accident and went
 25 out on workers' comp.

1 Q. Fakesha Knight. Is that the same person as
 2 Fakesha Thomas?
 3 A. It may be. It may be, I don't know. It
 4 could be I got mixed up, I guess.
 5 Q. Maria Rayas?
 6 A. The same thing.
 7 Q. Is she a coworker?
 8 A. Uh-huh.
 9 Q. Maria Briseno?
 10 A. Same thing.
 11 Q. It's a coworker?
 12 A. Uh-huh.
 13 Q. Latoya Duffie.
 14 A. She would have been accommodated for the
 15 same thing, knowing I had an accident and went out on
 16 workers' comp.
 17 Q. Okay. Lisa Cardenas?
 18 A. That's the director. She knows I had filed
 19 workers' comp and I had an accident.
 20 Q. Lane'll Ledbetter Meek?
 21 A. She knew I had accident and went out on
 22 workers' comp and got fired.
 23 Q. Did you ever write an e-mail to the Nationa
 24 Association of Government Labor Officials?
 25 A. Yes.

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1 Q. Okay. What was the point of that?

2 A. Can you read it or show it to me?

3 Q. Sure.

4 MS. CONNOR: Hold on, let her mark it.

5 (Exhibit 24 marked)

6 MR. WALSH: Can we get these stapled

7 together?

8 A. I -- I was -- I'm assuming I was looking for

9 information, who could help me, since she said I

10 couldn't return back to work.

11 Q. (BY MS. CONNOR) Okay. Why would you

12 contact them, specifically?

13 A. That just part of your list. I contacted a

14 lot of people all of the way to D.C., you just don't

15 have the information. So I was contacting, I don't

16 know, politics. So whoever my attorney said write to, I

17 wrote to.

18 Q. Do you remember which attorney told you to

19 write to the --

20 A. My workers' comp attorney.

21 Q. Okay. And who was that?

22 A. The name was -- oh my goodness, his name was

23 Good -- Mr. Goodclick, his assistant -- I think it was

24 Goodclick or something. I forgot his name. So wherever

25 they told me to wrote to, that's where I written to.

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1 Q. Did you have any other attorneys represent

2 you, other than Mr. Walsh and his firm and this workers'

3 compensation attorney that you now can't remember his

4 name? Did you ever have any other attorney represent

5 you?

6 A. No, ma'am.

7 Q. Those are the only two?

8 A. I had one other, but when I -- for my

9 workers' comp, I had another man, but it was with Rehab

10 Now, and he only did it while I was at Rehab. I told

11 him I am transferring over the Dr. Zegarelli and that

12 was the only one. I don't have his name.

13 Q. When did you see him?

14 A. I never saw this attorney, it was through

15 Rehab Now. I can't remember the firm.

16 Q. So that would be three attorneys, right?

17 A. For workers' comp?

18 Q. For this lawsuit.

19 A. Name them off, two, three. I don't know

20 their names.

21 Q. Well, you have Mr. Walsh's firm, that's one?

22 A. Uh-huh.

23 Q. And then say -- you now testified to a

24 workers' comp attorney that you're going to try to find

25 out the answer to that, because we're going to want to

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1 know that. And now, there's a third one? I'm not

2 trying to...

3 A. Oh, okay. He was just there for a week. I

4 didn't even see him, I didn't even talk to him. I don't

5 know.

6 Where you go to Rehab Now, they have

7 attorneys and -- but they don't deal with the workers'

8 comp or something, so that was just only for, like,

9 what, two weeks? And so that was that. It was really

10 the whole time one attorney for my workers' comp,

11 besides them first two weeks, when I was trying to find

12 a workers' comp doctor. I don't know their name.

13 (Exhibit 25 marked)

14 Q. (BY MS. CONNOR) Are there any other

15 attorneys?

16 Oh, sorry. Hold on.

17 A. No, not that I know of.

18 Q. Hold on, hold on. She can't write and...

19 Okay. Now you can answer. Are there

20 any other attorneys?

21 Okay. I'm showing you what's been

22 marked as Exhibit 25. The only thing I really need to

23 ask you about that, because it's something you gave us.

24 So, but I just wanted to make sure that I got on the

25 record that that is your writing?

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1 A. Uh-huh, yes.

2 Q. Did you do the highlighting and the

3 underlining also?

4 A. Uh-huh, yes.

5 Q. Okay. Do you have a copy that -- that's

6 easier to read, like do you still have the original?

7 A. Uh-huh, yes, ma'am.

8 Q. Okay.

9 (Exhibit 26 marked)

10 Q. (BY MS. CONNOR) I'm showing you what's been

11 marked as Exhibit 26. And that's a document that you

12 gave us. The only question I have -- I can't read this.

13 what does that say there? (Indicating) She's reading

14 from the middle section.

15 A. That says hips, arms, left shoulder, neck --

16 hips. That's a hip. I just couldn't read it. Hip.

17 MS. CONNOR: Why don't we go off the

18 record real quick and I'll just make sure I don't have

19 anything else. If y'all want to take a five-minute

20 break.

21 THE VIDEOGRAPHER: Off the record at

22 3:12.

23 (Break taken 3:12 p.m. to 3:18 p.m.)

24 THE VIDEOGRAPHER: Back on record at

25 3:18.

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1 Q. (BY MS. CONNOR) You testified earlier that
 2 you ride a bus and/or a train?
 3 A. Uh-huh.
 4 Q. Are those two different things?
 5 A. Yes, yes.
 6 Q. Okay. And the bus is here in Dallas?
 7 A. Yes.
 8 Q. Where do you go when you ride the bus?
 9 A. I catch it at any -- any station close by,
 10 it can be the Hampton Station, it can be the
 11 westmoreland station. And I get on the train and I
 12 probably go down to the DARS or Greenville Avenue or
 13 somewhere.
 14 Q. How often do you ride the bus?
 15 A. I don't ride the bus, I ride the train and I
 16 ride the bus to the destination I need to go.
 17 Q. Okay. How often do you use public
 18 transportation?
 19 A. Maybe about -- maybe about once a week or
 20 something like that. It varies. Some weeks, none at
 21 all.
 22 Q. When did you start riding the bus and the
 23 train?
 24 A. I'm from D.C., I always ride the bus and
 25 train.

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1 Q. And so after your accident, how soon was it
 2 that you started riding the bus and the train?
 3 A. I just started last year riding the train
 4 and bus in Texas.
 5 Q. So --
 6 A. I just started that last year.
 7 Q. -- 2011 is when you started using public
 8 transportation?
 9 A. I use it all the time. I use it
 10 periodically. It's not no certain time. I just use it
 11 if it's available.
 12 Q. Ms. Howard, you're claiming in your lawsuit
 13 that you were injured by a car accident while you were
 14 working for my client?
 15 A. Yes, yes.
 16 Q. When after the December 16th, 2008 accident
 17 did you start using the bus and the train?
 18 A. Oh, after the accident? I started probably
 19 about maybe in November or something like that. I don't
 20 remember. I don't write down when I get on the train or
 21 when I get on the bus. If somebody take me to the
 22 station, if I have an appointment at Greenville Avenue,
 23 if my husband is not available, I can get somebody to
 24 take me to the station, I hop on the bus and train. I
 25 hop on the train and then catch the bus to where I am

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1 going. So, I mean, I don't write the dates down so I
 2 can't pinpoint me on a date. I use it.
 3 Q. Did you start using the bus or the train in
 4 December 2008?
 5 A. No.
 6 Q. Did you use it in January 2009?
 7 A. No.
 8 Q. Did you use it in February 2009?
 9 A. No.
 10 Q. Did you use it in March 2009?
 11 A. No.
 12 Q. April 2009, did you use the bus or the
 13 train --
 14 A. Possibly, maybe.
 15 Q. -- for the first time since your accident?
 16 A. Maybe a possibility, I could have used it
 17 during that time. I don't know.
 18 Q. March?
 19 A. That could be a possibility. I could have
 20 used it during that time. I just don't, you know, write
 21 the date down when I use the train. But I could have
 22 used it, I don't know. I just don't know.
 23 Q. Okay.
 24 A. Because I can't drive long -- you know,
 25 long, long distance so...

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1 Q. May 2009 --
 2 A. May 2009.
 3 Q. -- did you use the bus or the train?
 4 A. No. I don't think so. I don't know. I
 5 don't know if I used it then.
 6 Q. June 2009, did you use the bus or the train?
 7 A. No, no, no.
 8 Q. July 2009, did you use the bus or the train?
 9 A. Possibility, I don't know.
 10 Q. Did you use the bus or the train in
 11 August 2009?
 12 A. Possibility, I could have used it.
 13 Q. Did you use the bus or the train in
 14 September of 2009?
 15 A. September 2009, I probably did.
 16 Q. When you -- you testified that you called
 17 Melissa Hobbs; is that correct?
 18 A. What date is that?
 19 Q. After your meeting with Lisa Black. At some
 20 point within the following couple of days after your
 21 meeting with Lisa Black you just testified that you
 22 called Melissa Hobbs or you talked to her on the phone
 23 A. I talked to Melissa Hobbs. I turned my
 24 notice in on, I believe it was --
 25 MS. CONNOR: Objection, nonresponsive

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1 A. I talked to Melissa Hobbs. Did I call her?
 2 Q. (BY MS. CONNOR) That's the question.
 3 A. I made -- I made a phone call. It wasn't
 4 particularly to Melissa Hobbs. I made a phone call to
 5 Ms. Black.
 6 Q. Did you tell Melissa Hobbs that you were
 7 going to -- requesting to return to work for four hours
 8 a day for two or three days a week to transition off of
 9 your medication?
 10 A. -- I left a note on Friday.
 11 MS. CONNOR: Objection, nonresponsive.
 12 THE WITNESS: Mr. Colin, I don't know
 13 how to answer it, because I left a note for Friday and I
 14 guess Ms. Black was too busy to answer the note and
 15 Melissa Hobbs -- I called, so Ms. Black told Melissa
 16 Hobbs to inform me that my job is full-time, not
 17 part-time. So I don't know how to answer that the way
 18 she asked me that question.
 19 MS. CONNOR: Objection.
 20 Q. (BY MS. CONNOR) Well, then I can re-ask the
 21 question.
 22 Did you have a conversation with
 23 Ms. Hobbs sometime after your meeting with Ms. Black?
 24 A. Yes.
 25 Q. Okay. Did you tell Melissa Hobbs that you

1 wanted an accommodation to be able to work four hours a
 2 day for several weeks so that you could taper off of
 3 your medication?
 4 A. For a couple of weeks, yes.
 5 Q. Okay. What medication?
 6 A. It was the Soma, I think, because I believe
 7 the Cymbalta was already gone. It was two medication.
 8 I know one of them was Soma and it probably was the
 9 muscle relaxer. And I think -- I'm not for sure what
 10 medication, but they were the ones that I needed to
 11 taper off of.
 12 Q. Why did you feel like you needed to taper
 13 off a medication?
 14 A. Because it causes you to be dizzy.
 15 Q. Did it cause you to be dizzy?
 16 A. Uh-huh, yes.
 17 Q. Had you already started tapering off at the
 18 point that you talked to Melissa Hobbs?
 19 A. Yes, yes, yes. It was already in process,
 20 yes.
 21 Q. Okay. And what was the symptoms you were
 22 having from tapering off of the medication that you
 23 described? What were the symptoms?
 24 A. What was the symptoms tapering off the
 25 medication?

1 Q. Yes.
 2 A. From going down -- decreasing my dose of
 3 medication, what was the symptoms?
 4 Q. That's the question.
 5 A. I don't think there was any symptoms when I
 6 was tapering off of my medication.
 7 Q. Then why did you need two more weeks?
 8 A. That's what the doctor recommended.
 9 Q. Okay. Can you show me in here where he
 10 recommended that you take time off -- additional time
 11 off from your job so that you can --
 12 A. Uh-huh.
 13 Q. Hold on. Can you find it in here, can you
 14 show me where your doctor suggested that you take an
 15 additional two weeks off to taper off of medication?
 16 A. He said verbally.
 17 MR. WALSH: Objection, form.
 18 MS. CONNOR: Objection, nonresponsive
 19 A. Okay. Well, he said verbally by the time
 20 you get back, which will be three weeks, you should be
 21 tapered off of your medication and be, you know, ready
 22 to go. He said verbally because I don't see him but
 23 every three weeks because of workers' comp. So he's
 24 assuming wherein that three weeks period I should be
 25 fine.

1 Q. And when was this conversation?
 2 A. It was my last conversation that I had him
 3 to go get that part-time excuse.
 4 Q. To get the part-time excuse that --
 5 A. The four hours. The four hours. So I had
 6 already seen him, and I can't see him for another three
 7 weeks.
 8 Q. Did you ask him whether you could work
 9 full-time?
 10 A. He wanted me to start at part-time.
 11 Q. Did he say why?
 12 A. Because of my condition, I suppose. I
 13 suppose.
 14 Q. What was your condition at the time?
 15 A. Same as it always had been.
 16 Q. Same as it is today?
 17 A. No, not quite.
 18 Q. Did you ever tell Melissa -- was it Melissa
 19 Hobbs? Yeah, Melissa Hobbs -- that you would get
 20 another release from your doctor that was more specific?
 21 A. You know, I honestly can't remember that.
 22 But seemed like I did. And then by that time she went
 23 to talk to Lisa Black and said no. I said, okay, send
 24 me my resignation then.
 25 Q. Okay.

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1 A. I think I did tell her that, but she went to
 2 talk to Lisa Black and Lisa Black said no and that was
 3 it.
 4 Q. So when Melissa Hobbs called you on October
 5 12th to tell you -- what did she tell you on
 6 October 12th when she called you?
 7 A. Ms. Black is in a meeting or busy but she
 8 said you have a full-time position, not a part-time
 9 position; at this time, we're going to have to terminate
 10 you. And I said, terminate me? So that's what she told
 11 me.
 12 Q. Now, as it relates to your accident, you've
 13 testified in some of your written discovery that you had
 14 a bruised collarbone; is that correct?
 15 A. If that's what the paper said, the
 16 documentation.
 17 Q. Well, I am asking you.
 18 A. I can't see a bruised collarbone. My
 19 doctor, if he documented that, that's what was on there.
 20 Q. Do you know where a collarbone is on your
 21 body?
 22 A. Up here.
 23 Q. Was it bruised after the accident?
 24 A. It was bruised.
 25 Q. Did it hurt?

1 A. It was excruciating.
 2 Q. Okay. Does it hurt today?
 3 A. No. It's just really stiff.
 4 Q. Okay. It's stiff?
 5 A. Uh-huh.
 6 Q. What about the time frame of August 2009?
 7 A. August 2009, it was better. It was better.
 8 Q. Was it still bruised?
 9 A. It wasn't bruised. It was just really,
 10 really tender. It wasn't bruised, it was just tender
 11 and sore.
 12 Q. Okay. What about contusions, did you still
 13 have contusions --
 14 A. No.
 15 Q. -- in August 2009?
 16 A. No.
 17 Q. Do you know what a cervical or radiculitis
 18 is?
 19 A. I have no idea.
 20 Q. Lumbar radiculitis -- radiculitis lumbar, do
 21 you know what that is?
 22 A. A swelling inflammation in your spine.
 23 Q. Okay. Is it still bothering you today?
 24 A. It bothers me, but it's not as bad as --
 25 it's tolerant, it's under control, it's stable.

1 Q. What about April 2009 when you just
 2 testified you were feeling much better?
 3 A. It was better, every month it gets better.
 4 I mean, the first few months was horrible, but it's
 5 getting better every month.
 6 Q. Would it prevent you from driving?
 7 A. If I don't take my medication possibility,
 8 maybe, yes. Could be a possibility there if I don't
 9 take my medication.
 10 Q. Do you know what Pail Syndrome is?
 11 A. No.
 12 Q. Have you ever been told you have Pail
 13 Syndrome?
 14 A. I can't remember it. Was that during the
 15 first -- when they first -- what month, what year?
 16 Q. I don't know.
 17 How long do you think you would have
 18 needed to wind down from your meds?
 19 A. It -- I -- I would think it would have been
 20 just the -- just the -- maybe -- not -- it depends.
 21 Like, my Cymbalta, I could immediately stop, lower dose.
 22 My Soma, it can go PRN. It wouldn't have even took me
 23 long at all. It's just a matter of going back to the
 24 doctor and him doing, you know, his tests and whatever
 25 and giving me the permission to go back. I don't

1 think -- it even wouldn't have took me that long because
 2 we was in the process.
 3 Q. Now the pain medication or the medication
 4 that you're on today, does it -- do you think that it
 5 impairs your --
 6 MR. WALSH: Objection, form.
 7 A. I've been on that for six years. I've been
 8 on that for six years.
 9 Q. (BY MS. CONNOR) I wasn't allowed to finish
 10 the question.
 11 A. Go ahead. Do you want me to answer? I've
 12 been on the medicine I'm on for over six or seven years
 13 and I have functioned. You know, you have stable people
 14 that function. I have been able to function. So it
 15 doesn't impair me. It keeps me stable. When people
 16 have critical or chronical (sic) condition, medications
 17 keeps them stable. So, no, it doesn't impair me.
 18 But the other medication, the one that
 19 I needed to wind down on, like the Soma and muscle
 20 relaxant, that would impair me. But not the medication
 21 that I take on a regular basis, no.
 22 Q. So the six or seven years that you've been
 23 on this other medication, which is that?
 24 A. It's just a medication that keeps me
 25 balanced for my muscles in my face. It's different

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1 medication.

2 Q. Are they narcotics, the ones you've been on

3 for six or seven years?

4 A. They are -- no, they're like -- like my

5 Indomethacin that started -- I don't know when that

6 started, but I've been on that Indomethacin even before

7 I had a car accident. I was on another form of

8 medication like Lyrica, that's some kind of -- Lyrica is

9 some kind of pain medication, which I don't take.

10 Q. Did you ever take Lyrica?

11 A. I tried it.

12 Q. When was that?

13 A. It was like -- it was before the accident.

14 But it is just to keep me balanced.

15 Q. Who gave -- who prescribed you Lyrica?

16 A. Dr. McHenry for my trigeminal nerve.

17 Q. When you say to keep you balanced, what does

18 that mean?

19 A. Stable.

20 Q. Stable, like physically stable or mentally

21 stable?

22 A. Physically.

23 Q. Okay. What does that mean?

24 A. Stop trigeminal nerve from acting up.

25 Q. Okay. You said in your responses to the

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1 interrogatories that we sent your lawyer that you

2 applied for unemployment insurance.

3 A. Uh-huh.

4 Q. Okay. When was that?

5 A. I got dismissed in -- let me figure out. I

6 got dismissed in 20 -- October 2009. So I -- I applied

7 for unemployment in October 2009 or either it was

8 November 2010. I am thinking I applied for unemployment

9 since I got fired. I don't know. I think, I'm not for

10 sure.

11 Q. Do you know which -- did you apply online or

12 did you go into one of the Texas Workforce Commission

13 sites?

14 A. I went to one of the sites.

15 Q. Do you still have that paperwork?

16 A. Uh-huh. That's the Texas workforce

17 paperwork. November -- that was November 2009.

18 Q. Have you ever been fired from any jobs?

19 A. CPS.

20 Q. Other than that?

21 A. No, ma'am.

22 Q. Where did you work before you were working

23 at CPS?

24 A. I worked from 2001 to 2006 D.C. Government

25 Child and Family Services. I worked with Kennedy

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1 Institute for three years. I worked with Devereux for

2 four years and I had --

3 THE REPORTER: Can you say that again?

4 A. Devereux. Devereux in California. Devereux

5 in Washington, D.C. I transferred from California to

6 D.C. I worked with them for about four years. I worked

7 Kennedy Institute for about two years. And I worked

8 with D.C. Government, which is Child and Family Services

9 from 2000 -- June of 2001 to June of 2006.

10 Q. (BY MS. CONNOR) And that was all Child

11 Protective Services-type agencies?

12 A. Yes.

13 Q. Federal government, you said?

14 A. D.C. government.

15 Q. So --

16 A. D.C. government.

17 Q. State government, basically?

18 A. Uh-huh, yes, yes.

19 Q. Do you drink alcohol?

20 A. No, ma'am.

21 Q. Have you ever drunk alcohol?

22 A. What do you consider alcohol? Wine?

23 Alcohol? What is alcohol?

24 Q. Well, generally --

25 A. A drink?

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1 Q. Generally it's understood as beer, wine or

2 liquor. Do you ever drink beer, wine or liquor?

3 A. Wine.

4 Q. Okay. When do you drink wine?

5 A. I haven't had none in six months. Every now

6 and then I have a little scoop of wine.

7 Q. Okay. How often?

8 A. Not often. I haven't had wine in maybe two

9 years.

10 Q. Okay. What do you mean by "a little scoop

11 of wine"?

12 A. Just a little bitty glass of wine.

13 Q. Just one?

14 A. Yeah, just one.

15 Q. Have you ever got an DWI?

16 A. No, ma'am.

17 Q. Have you ever been arrested?

18 A. No, ma'am.

19 Q. Have you ever done any drugs that weren't

20 prescribed by a doctor?

21 A. No, ma'am.

22 Q. Have you ever abused any drugs that were --

23 A. No, ma'am.

24 Q. -- that were prescribed by a doctor?

25 A. No, ma'am.

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

Page 201

1 Q. Have you ever taken a medication for longer
 2 than it was prescribed?
 3 A. No, ma'am.
 4 Q. Have you ever been arrested?
 5 A. No, ma'am.
 6 Q. Is this your only marriage?
 7 A. No, ma'am.
 8 Q. Okay. You've been married before?
 9 A. Uh-huh, yes.
 10 Q. And obviously divorced?
 11 A. Uh-huh.
 12 Q. Where was that?
 13 A. In Texas.
 14 Q. What -- what city or county?
 15 A. Dallas, Texas.
 16 Q. So Dallas County?
 17 A. Uh-huh, Dallas County, uh-huh.
 18 Q. What year?
 19 THE WITNESS: Mr. Walsh, do I have to
 20 answer my personal business questions?
 21 MR. WALSH: You can answer.
 22 THE WITNESS: I can answer.
 23 A. I don't remember the year. I have no idea
 24 the year. It's in the back of my mind. I can't pull it
 25 out. I don't remember.

Page 203

1 for trial.
 2 THE VIDEOGRAPHER: Off record at 3:42
 3 (Off the record at 3:42 p.m.)
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Page 202

1 Q. (BY MS. CONNOR) Was it ten years ago?
 2 A. I've been married 19, so it's got to be 20
 3 years ago, 30 years ago maybe, maybe 25 years ago.
 4 Q. You just have the one child?
 5 A. Yes.
 6 Q. He Lives in Las Vegas?
 7 A. Uh-huh.
 8 Q. Okay. What does he do for a living?
 9 A. He's a computer scientist. He's a computer
 10 technician.
 11 Q. Do you have any grandchildren?
 12 A. Yes, one.
 13 Q. Boy or girl?
 14 A. Boy.
 15 Q. How old is he?
 16 A. He's four.
 17 Q. Have you been involved in any other
 18 lawsuits?
 19 A. No, ma'am.
 20 Q. As a plaintiff, as a witness?
 21 A. No.
 22 Q. Have you ever been sued?
 23 A. No, no.
 24 MS. CONNOR: I pass the witness.
 25 MR. WALSH: We reserve our questions

Page 204

1 CHANGES AND SIGNATURE
 2 WITNESS: Carlotta Howard DATE OF DEPOSITION: 8/1/12
 3 PAGE/LINE CHANGE REASON
 4 _____
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ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

1 I, _____, have read the
2 foregoing deposition and hereby affix my signature that
3 same is true and correct, except as noted herein.

5 CARLOTTA HOWARD
Job Number: 101820

7 STATE OF _____)
8 COUNTY OF _____)

10 BEFORE ME, _____, on this
day personally appeared CARLOTTA HOWARD, known to me to
11 be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that they executed the
12 same for the purposes and consideration therein
expressed.

14 Given under my hand and seal of office this
day of _____,

17 NOTARY PUBLIC IN AND FOR
18 THE STATE OF _____

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1 Colin Walsh, Attorney for Plaintiff
(Fax: (214) 528-6511)
2 Madeleine Connor, Attorney for Defendant
(Fax: (512) 320-0667)

3 I further certify that I am neither counsel
4 for, related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
5 taken, and further that I am not financially or
otherwise interested in the outcome of the action.

6 Further certification requirements pursuant to
7 Rule 203 of TRCP will be certified to after they have
occurred.

8 Certified to by me this 15th of August, 2012.

9 Michelle Varner

11 Michelle L. Varner, Texas CSR 8123
12 Expiration Date: 12/31/12
Firm Registration No. 301
Sunbelt Reporting & Litigation
13 Services
15150 Preston Road, Suite 300
14 Dallas, Texas 75248
(214) 747-0763
(972) 401-9733 (fax)

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Job No. 101820

1 NO. DC-11-13467
2 CARLOTTA HOWARD,) IN THE DISTRICT COURT
3 Plaintiff,)
4 VS.)
5 STATE OF TEXAS, TEXAS) DALLAS COUNTY, TEXAS
6 DEPARTMENT OF FAMILY AND)
PROTECTIVE SERVICES,)
7 Defendant.) 160TH JUDICIAL DISTRICT

8 REPORTER'S CERTIFICATION
9 DEPOSITION OF CARLOTTA HOWARD
10 AUGUST 1, 2012

11 I, Michelle L. Varner, Certified Shorthand
12 Reporter in and for the State of Texas, hereby certify
to the following:

13 That the witness, CARLOTTA HOWARD, was duly
14 sworn by the officer and that the transcript of the oral
15 deposition is a true record of the testimony given by
the witness;

16 That the deposition transcript was submitted on
17 August 16th, 2012 to the witness or to the attorney
18 for the witness for examination, signature and return to
me by September 5th, 2012;

19 That the amount of time used by each party at
20 the deposition is as follows:

21 Colin Walsh - 00 HOURS:00 MINUTE(S)

22 Madeleine Connor - 04 HOURS:47 MINUTE(S)

23 That pursuant to information given to the
24 Deposition officer at the time said testimony was taken,
the following includes counsel for all parties of
25 record:

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1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition/errata sheet was/was
3 not returned to the deposition officer on
4 _____, 2012;

5 If returned, the attached Changes and Signature
page contains any changes and the reasons therefor;

6 If returned, the original deposition was
7 delivered to Madeleine Connor, Custodial Attorney;

8 That \$_____ is the deposition officer's
charges to the Defendant for preparing the original
9 deposition transcript and any copies of exhibits;

10 That the deposition was delivered in accordance
with rule 203.3, and that a copy of this certificate was
11 served on all parties shown herein on
_____, 2012 and filed with the Clerk.

12 Certified to by me this _____, 2012.

13 Michelle Varner

14 Michelle L. Varner, Texas CSR 8123
15 Expiration Date: 12/31/12
Firm Registration No. 301
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15150 Preston Road, Suite 300
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ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition/errata sheet was/was not returned to the deposition officer on August 29, 2012;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

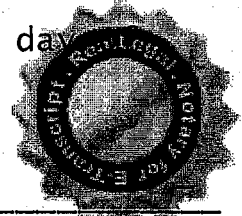
If returned, the original deposition was delivered to Madeleine Connor, Custodial Attorney;

That \$ 941.85 is the deposition officer's charges to the Defendant for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on September 14, 2012 and filed with the Clerk.

Certified to by me this 14th day September, 2012.

Michelle Varner



Michelle L. Varner, Texas CSR 8123
Expiration Date: 12/31/12
Firm Registration No. 301
Sunbelt Reporting & Litigation Services
15150 Preston Road, Suite 300
Dallas, Texas 75248
(214) 747-0763
(972) 401-9733 (fax)

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

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CHANGES AND SIGNATURE

WITNESS: Carlotta Howard DATE OF DEPOSITION: 8/1/12

PAGE/LINE	CHANGE	REASON
7 5	Remove "By Mr. Walsh"	Misheard.
7 6	Clonazepam to Carbamazepine	Misspoke
7 21	same	spelling
7 25	change Endometria to Indomethacin	spelling
8 19	change 735 to 75	misspoke
8 20	change clonazepam to Carbamazepine	spelling
14 19	we did not refer me to DARS	clarification
17 10	change 86 to 96	misspoke
18 9	same	
19 6	change Soma to Form	Misspoke
22 13	change 96 to 2006	misspoke
29 8	change "8th" to "16th"	misspoke
31 15	change 86 to 96	
32 7	change 83 to 93, 86 to 96	
32 23-24	same	
40 7	change 8 to 16	misspoke
53 19	change Apartment to Office	
85 7	change 8 to 16	
112 18	within last 6 months	Misspoke
113 23	change 8 to 16	
114 17	change Don to Bryant	
128 11	change five to twenty	
159 15	change to Carbamazepine	

SUNBELT REPORTING & LITIGATION SERVICES

Houston Austin Corpus Christi Dallas/Ft. Worth East Texas San Antonio Bryan College Station

RECEIVED AUG 29 2012

ORAL AND VIDEOTAPED DEPOSITION OF CARLOTTA HOWARD

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I, Carlotta A. Howard, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

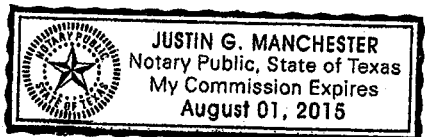
Carlotta A. Howard
CARLOTTA HOWARD
Job Number: 101820

STATE OF Texas)
COUNTY OF Dallas)

BEFORE ME, Justin G. Manchester, on this day personally appeared CARLOTTA HOWARD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 27th day of August, 2012.

Justin G. Manchester
NOTARY PUBLIC IN AND FOR
THE STATE OF Texas



RECEIVED AUG 29 2012

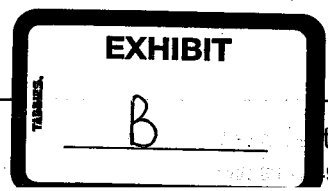
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NO. 11-13467

CARLOTTA HOWARD,	§ IN THE DISTRICT COURT
	§
Plaintiff,	§
	§
VS.	§ 160TH JUDICIAL DISTRICT
	§
STATE OF TEXAS, TEXAS	§
DEPARTMENT OF FAMILY AND	§
PROTECTIVE SERVICES,	§
	§
Defendant.	§ DALLAS COUNTY, TEXAS

ORAL DEPOSITION OF
MONICA MCFARLAND
MAY 31, 2012
VOLUME 1

ORAL DEPOSITION OF MONICA MCFARLAND,
produced as a witness at the instance of the PLAINTIFF,
and duly sworn, was taken in the above-styled and
-numbered cause on May 31, 2012, from 1:08 p.m. to
1:51 p.m., before Natasha Benchimol, CSR in and for the
State of Texas, reported by machine shorthand, at 1200
East Copeland, Suite 400, Arlington, Texas 76011,
pursuant to the Texas Rules of Civil Procedure and the
provisions stated on the record or attached hereto.



2

A P P E A R A N C E S

1
2
3 FOR THE PLAINTIFF:
4 MR. COLIN WALSH
LAW OFFICE OF ROB WILEY, P.C.
5 1825 MARKET CENTER BOULEVARD
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6 DALLAS, TEXAS 75207
PHONE: (214) 528-6500
7 FAX: (214) 528-6511
E-MAIL: Cwalsh@robwiley.com
8
9 FOR THE DEFENDANT:
10 MS. MADELEINE CONNOR
ATTORNEY GENERAL OF TEXAS
GENERAL LITIGATION DIVISION
11 PO BOX 12548
AUSTIN, TEXAS 78711
12 PHONE: (512) 463-2120
FAX: (512) 320-0667
13 E-MAIL: Madeleine.connor@oag.state.tx.us
14 MS. ROSA L. ROHR
TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
15 DEPARTMENT MAIL CODE E-611
PO BOX 149030
16 AUSTIN, TEXAS 78714
PHONE: (512) 438-3074
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E-MAIL: Rosa.rohr@dfps.state.tx.us
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I N D E X

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P R O C E E D I N G S

1
2 THE REPORTER: Read and sign 20 days to
3 you, Ms. Connor, and objections according to the Rules?
4 MS. CONNOR: Yes.
5 MONICA MCFARLAND,
6 having been first duly sworn, testified as follows:
7 EXAMINATION
8 BY MR. WALSH:
9 Q. Okay. Can you please state and spell your name
10 for the record.
11 A. Monica Leigh Walters, W-A-L-T-E-R-S.
12 Q. Okay. And have you gone by any other names?
13 A. Yes. Monica Leigh McFarland,
14 M-C-F-A-R-L-A-N-D, and Monica Leigh Parnell,
15 P-A-R-N-E-L-L.
16 Q. Okay. And in 2008, what was your name?
17 A. Monica Leigh McFarland.
18 Q. Have you ever had your deposition taken before?
19 A. In college, yes.
20 Q. Okay. What were the circumstances of that
21 deposition?
22 A. I was in a car accident with someone else and
23 had to talk to his attorneys.
24 Q. Oh, okay. So you were the plaintiff?
25 A. No. I was the -- I guess the witness that was

5

1 in the car.
2 Q. Okay. Are you currently taking any medications
3 or on anything that will prevent you from answering my
4 questions fully or anything like that?
5 A. No.
6 Q. If you don't understand a question, just let me
7 know and I'll rephrase it and then ask it 15 more times
8 as well. If you need a break, please feel free to ask;
9 however, if I've asked you a question, I do ask that you
10 answer the question and then we can go ahead and take
11 that break. Also, I would appreciate it if you would
12 wait until I finish my question before you answer just
13 so that we're not talking all at once. If your attorney
14 objects to any questions, unless she instructions you
15 not to answer, you can go ahead and answer that right
16 after the objection. If you need me to repeat it, go
17 ahead and ask.
18 Did you meet anyone to prepare for the
19 deposition today?
20 A. No.
21 Q. Did you review any documents for this
22 deposition?
23 A. No.
24 Q. Okay. Did you discuss this deposition with
25 anyone?

6

1 A. Yes.

2 Q. Who was that?

3 A. Well, just the fact that I was going to the

4 deposition with the attorneys and then my supervisor.

5 Q. And who is your supervisor?

6 A. Stephanie Lopez.

7 Q. Okay. What is your current position?

8 A. I'm an investigator for Child Protective

9 Services.

10 Q. Okay. What does that entail?

11 A. We're a part of Family Protective Services in

12 Denton County, Texas. And what I do is when an intake

13 report is made about children or a family, I go out and

14 I speak to -- interview the children and then I

15 interview the family. I disposition cases. And I

16 try -- if the children and family need help, we set up

17 services for the family. And if there is -- if the

18 court needs to be involved to make sure the children are

19 protected, I'm the one who writes up affidavits and

20 files those.

21 Q. Okay. Do you supervise anybody?

22 A. Not at this time, no.

23 Q. Okay. Did you supervise anybody in 2008/2009?

24 A. Yes.

25 Q. Okay. What position did you hold in 2008/2009?

8

1 Q. What does that -- what is that job?

2 A. After an investigator investigates the case,

3 then the -- if we go to court and decide that there

4 needs to be a removal, then a legal worker takes over

5 the case and continues to work with the family and

6 children while the State maintains some kind of --

7 usually it's temporary managing conservatorship.

8 Q. Okay. And why did you leave that position?

9 A. I just wanted to try something different.

10 Q. And from that you went to supervisor

11 investigator?

12 A. Yes.

13 Q. Okay. Let's see. I want to talk about your

14 education background. Where did you go to high school?

15 A. High school? Wichita Heights in Wichita,

16 Kansas.

17 Q. Okay. Did you -- where did you go to college?

18 A. Oklahoma Christian University in Edmond,

19 Oklahoma.

20 Q. Did you get any master's degrees or post

21 graduate degrees?

22 A. No.

23 Q. Okay. And why did you move down to Dallas?

24 A. My husband had -- my ex-husband had a job here.

25 Q. So right now -- okay. Let's go back to

7

1 A. I was an investigative supervisor.

2 Q. Okay. And what are the duties for that

3 position?

4 A. To supervise, I think, it was five

5 investigators at that time, a case aide, an

6 administrative assistant, and basically doing the role

7 that I do now. And that was in Dallas County.

8 Q. Okay. And where do you work now?

9 A. Denton County.

10 Q. And why did you move?

11 A. I got married.

12 Q. Okay. Is that why you -- why did you change

13 your position from investigative supervisor?

14 A. Kind of a string of reasons. I don't want to

15 be a supervisor. I don't -- I feel like I can work with

16 the family and children better as an investigator. You

17 know, more hands on.

18 Q. Okay. Have you -- how long have you worked for

19 Child Protective Services?

20 A. Over ten years.

21 Q. Okay. Have you held any other positions

22 besides investigator and investigator supervisor?

23 A. Yes. I was an ongoing legal -- I'm sorry -- an

24 ongoing legal worker in the city of Dallas when I began.

25 A conservatorship worker.

9

1 2008/2009 when you were an investigative supervisor.

2 Did you have an employee who worked for you named

3 Carlotta Howard?

4 A. Yes.

5 Q. Do you remember Carlotta?

6 A. Yes.

7 Q. Okay. What do you remember?

8 A. She was always a very happy person. Just easy

9 to talk to when she came to work.

10 Q. Did you hire her?

11 A. No.

12 Q. Do you know who did?

13 A. No. I assume the same people who hired me,

14 like, the State Office.

15 Q. Okay. Do you have the power to hire people?

16 A. No.

17 Q. Did you have the power to terminate people?

18 A. Not now. I suppose I -- no. I don't think I

19 did, no. Never, no.

20 Q. Did you -- did you ever recommend anyone for

21 termination?

22 A. No, not that I can remember.

23 Q. Do you remember the process by which you would

24 do that?

25 A. I would have to be walked through it. Not very

1 well, no.

2 Q. Okay. Do you -- so what did -- what was

3 Ms. Howard's job when she worked for you?

4 A. She was a case aide. She transported children.

5 Q. Okay. And what other duties were involved,

6 transporting children and?

7 A. She also would help when we had visits. When

8 children are removed, we will have visits with them and

9 their families at the offices. And so she would help do

10 that as well, and she could just -- she delivered

11 Christmas toys, you know, also did some administrative

12 assistant work.

13 Q. Administrative assistant work.

14 Well, like what?

15 A. Answering phone calls. She didn't do a lot of

16 it. Most of her job was in the car. It was mostly

17 travel.

18 Q. Did you ever have any performance issues?

19 A. No.

20 Q. Did you ever discipline her for her

21 performance?

22 A. No.

23 Q. Did you ever write her up for performance?

24 A. No.

25 Q. Okay. When she -- did you know -- were you

1 reason they wouldn't let her go to the bathroom. And

2 that she was just sore, you know, legs and arms and

3 everything.

4 Q. What happens when somebody gets in a

5 work-related car wreck?

6 A. That's the only time I've ever --

7 MS. CONNOR: Objection. Form.

8 Sorry. You can answer.

9 A. That's the only time I've known anybody in a

10 work-related car accident. I don't know.

11 Q. (BY MR. WALSH) Was there any process followed

12 afterwards?

13 MS. CONNOR: Objection. Form.

14 You can answer.

15 THE WITNESS: I can answer?

16 MS. CONNOR: Yeah, you can.

17 A. I don't remember. I don't.

18 Q. (BY MR. WALSH) Do you remember if you filled

19 out any forms?

20 A. I don't, no. It was -- no.

21 Q. Do you remember if you told anybody about the

22 car wreck?

23 A. Yes. I told my program director about it.

24 Q. And who was the program director?

25 A. Lisa Cardenas.

1 aware of the fact that she got in a car accident in

2 2008?

3 A. Yes.

4 Q. Okay. Can you tell me what you know about

5 that?

6 A. Well, I know -- I can't remember who called me.

7 But the day she got in the car accident, she was taking

8 toys. And I remember it was an icy day. And then she

9 was at the hospital, and I went to see her in the

10 hospital. And I waited with her until her husband got

11 there, and it was right after the car accident. And

12 what she had told me is she got hit in an intersection,

13 but I never saw it. You know, the actual car, I don't

14 think I ever saw the actual car.

15 I just saw her after the accident, and she

16 was in a lot of pain. And she couldn't go to the

17 bathroom. I mean I remember she wanted to go to the

18 bathroom, and they wouldn't let her go to the bathroom.

19 They said that she could use a pan, and she didn't want

20 to use the pan. And so they were trying to tilt her

21 bed, and she didn't want them tilting her bed.

22 Q. Do you know what kind of injuries she

23 sustained?

24 A. I don't know. I know that at the time when I

25 was there, they didn't want to move her. That's the

1 Q. And why did you tell her?

2 A. To let her know what happened to Carlotta.

3 Q. Okay. Do you know what accessHR is?

4 A. Yes.

5 Q. What is that?

6 A. That's where we go and put our time and leave

7 and where we request days off. We can also look at our

8 pay and everything else.

9 Q. Do you know who Ami Labrecque is?

10 A. No, I don't think I do. I don't remember.

11 Q. If -- so you have a -- after the car wreck,

12 were you ever contacted by accessHR?

13 A. I don't remember being contacted by them.

14 Q. Were you ever contacted by the workers'

15 compensation?

16 A. I don't think so, no. It -- it was kind of

17 weird. At that time, she was being transferred to

18 Nicole Ogle's unit. And I think Nicole Ogle was

19 supposed to be taking over as supervisor during that

20 time. That's the reason I don't think I did that.

21 Q. Okay. Can you -- let's talk about the

22 transfer. How did that come about?

23 A. Every -- it was kind of -- all case aides --

24 actually, it was case aides and supervisors. For some

25 reason, they had -- positions had to be cut. And in

1 order for it to be fair, people had to, like, be moved.
 2 And so there was, like, some kind of lottery where you
 3 could say where -- the three places -- the top three
 4 places you wanted to go stay -- you know, where you
 5 wanted to work. And so they would try to meet that.
 6 You know, so if you wanted to go -- say I wanted to go
 7 to Fort Worth, they would move me to Fort Worth.
 8 But -- and the same thing with case aides.
 9 And so that's how she got transferred is that -- during
 10 that time. It wasn't -- everybody -- all the case aides
 11 were getting transferred, and it was based upon
 12 seniority. So she did not get to -- she didn't have a
 13 lot of seniority. So pretty much she was going to get
 14 bumped if somebody else asked to come work at
 15 Westmoreland where I worked.
 16 Q. Okay. So you said you supervised -- I think
 17 you said about five investigators; does that sound
 18 right?
 19 A. Yeah. I think it was just -- I think they made
 20 it, like, a five person unit, but I think that I only
 21 supervised, like, four at a time.
 22 Q. Okay. And the people you supervised, they all
 23 had the same -- they all had case aides like Carlotta
 24 Howard?
 25 A. No. I mean there was -- what it was is there

1 was four investigators -- it was a supervisor, four
 2 investigators, administrative assistant, and a case
 3 aide.
 4 Q. Okay.
 5 A. So the case aide was for our unit.
 6 Q. Okay. Do you have a case aide now at your
 7 current position?
 8 A. I think we do, yes. They did some shifting
 9 there, too. I'm not sure if the case aide -- I'm not
 10 sure if the case aide that we have is for our unit or
 11 for a unit shared, because it used to be we got a case
 12 aide per unit.
 13 Q. Okay. Do -- so I guess you don't use your case
 14 aide a whole lot?
 15 A. Investigators really don't use them as much
 16 just because we don't do -- we usually don't do visits
 17 for the families.
 18 Q. Well, then who mainly uses a case aide?
 19 A. Like a CPS ongoing legal workers do. We can
 20 still utilize them.
 21 But, like, you're asking if I use them now?
 22 I don't. You know, I have. But like I said, I'm not
 23 sure if she's just ours or if she -- we share her.
 24 Q. So can I -- would a case aide be able to
 25 perform his or her job part-time?

1 MS. CONNOR: Objection. Form.
 2 A. I don't know. I mean I'm really not sure.
 3 Q. (BY MR. WALSH) Well, would a case aide be able
 4 to work less than eight hours a day?
 5 MS. CONNOR: Objection. Form.
 6 A. I would think so, yes.
 7 Q. (BY MR. WALSH) So a case aide could perform
 8 her job duties -- his or her job duties part-time?
 9 MS. CONNOR: Objection. Form.
 10 A. The thing about CPS is that it's not like you
 11 work 8 to 12 and then, you know, that's it. It's --
 12 there's stuff always going on. You know, I might have
 13 to work until 5:30 tonight because I need to go see a
 14 kid. So it's hard to say, yes, you can only work these
 15 four hours, you know, when you work CPS.
 16 Q. (BY MR. WALSH) Would that be true of case
 17 aides as well?
 18 A. Yeah. Pretty much anyone who works for CPS,
 19 that's what I've seen.
 20 Q. Were any of the people you supervised disabled?
 21 A. No.
 22 Q. Did any of them require accommodations?
 23 A. No.
 24 MS. CONNOR: Objection. Form.
 25 Q. (BY MR. WALSH) Has anyone ever requested an

1 accommodation from you?
 2 A. No.
 3 Q. Is there a process for requesting an
 4 accommodation?
 5 A. I don't know.
 6 Q. What would you do if somebody asked for
 7 accommodation?
 8 A. When I was supervisor?
 9 Q. Uh-huh.
 10 A. I would probably try to do it.
 11 Q. Well, could you expand on that a little bit?
 12 What do you mean you would try to do it?
 13 A. I would talk to my program director and see
 14 what we could do, see how we could accommodate.
 15 Q. And what kind of accommodations would you do?
 16 A. I guess it depends on what they needed. I
 17 guess I feel like I would do that with anyone who was
 18 going through a situation.
 19 Q. What kind of situation?
 20 MS. CONNOR: Objection. Form.
 21 A. I did have an investigator who was pregnant,
 22 and she -- her mother had cancer. And so she was
 23 dealing with that and being pregnant. So she went to
 24 counseling, and she had doctors appointments. So that
 25 was accommodated, I guess.

18

1 Q. (BY MR. WALSH) Okay. Did you ever fill out
2 any forms?
3 A. No. I mean I think I did the FMLA when she
4 went on maternity leave, but that was it.
5 Q. Are you aware of any forms for accommodations?
6 A. No. I mean I'm sure there are, but I'm not
7 aware of them.
8 MR. WALSH: I'm going to enter Exhibit
9 Number 1.
10 (Exhibit Number 1 marked.)
11 Q. (BY MR. WALSH) Have you ever seen that form
12 before?
13 A. If I have, I don't remember.
14 Q. So nobody's ever turned that form in to you?
15 A. I don't remember anybody turning this form in
16 to me, no.
17 Q. Can you tell me what that form says?
18 A. "Reasonable Accommodation Request."
19 Q. Okay. If somebody asked you for reasonable
20 accommodation, would you refer them to policy?
21 MS. CONNOR: Objection. Form.
22 A. Honestly, I don't know the policy on it. What
23 I would probably do is ask my superior.
24 Q. (BY MR. WALSH) Okay. What would you say to
25 the employee that asked you?

20

1 questions, and that's all I remember.
2 Q. Can you remember when that was?
3 A. It would have been 20 -- early 2010, I think.
4 Q. Can you remember a month or a week or anything?
5 A. No. No, I can't. And I looked for them, but I
6 didn't have them.
7 Q. Was it -- do you think it was in January of
8 20 -- oh, I'm sorry. You said 2010?
9 A. Well, the accident happened in 2009. I don't
10 remember. That's what I was thinking is it would have
11 happened -- like if the accident happened in December
12 of 2009, then it would have been, like, January of 2010.
13 Q. The accident that I know about happened in
14 2008.
15 A. Okay. I'm sorry. Then I meant January
16 of 2009. I'm sorry.
17 Q. Okay.
18 A. I just got my years confused.
19 Q. Did you tell Ms. Ogle that Ms. Howard had been
20 in a car wreck?
21 A. Yes.
22 Q. Do you remember the specifics of what you told
23 her?
24 A. No, I don't. I just know that I would have
25 told her.

19

1 A. What I told you --
2 MS. CONNOR: Objection. Form.
3 A. That I don't know the policy, and I would ask
4 my program director and try to figure it out.
5 Q. (BY MR. WALSH) About -- going back to the
6 accident, about how long after the accident did the
7 reorganization take place?
8 A. I want to say it was right there at the same
9 time because it was like -- that was Christmas, and then
10 we had Christmas break. And then I think it was just
11 like that short amount of time in January. They were
12 supposed to all be reorganized.
13 Q. And did you know that Ms. Howard had been
14 transferred?
15 A. Yes. She -- she knew it, too, yes. We talked
16 about it.
17 Q. Did you know where she had been transferred to?
18 A. Yes.
19 Q. Did you contact the new unit?
20 A. I spoke to Nicole Ogle, yes.
21 Q. And what did you tell Nicole Ogle?
22 A. I can't remember precisely. I know that we --
23 and I looked for them, but I could not find them. And,
24 of course, that was a long time ago. I remember us
25 sending some e-mails back and forth where she had some

21

1 Q. And do you remember what Ms. Ogle's response
2 was?
3 A. The only reason I remember anything about the
4 e-mails is that something she said would have come
5 across -- I became defensive about it, and I don't even
6 remember what was said. But she responded back with an
7 e-mail that was like, Hey, I didn't mean it that way or
8 something.
9 Q. Uh-huh.
10 A. So that's the only reason I remember the
11 e-mails.
12 Q. Did you know Nicole Ogle before?
13 A. Yes.
14 Q. Did you have an opinion of Nicole Ogle?
15 A. Yes.
16 MS. CONNOR: Objection. Form.
17 A. Yes.
18 Q. (BY MR. WALSH) And what was your opinion?
19 A. I'm not a huge Nicole Ogle fan. She and I are
20 very different people.
21 Q. Why are you not a huge fan?
22 A. I don't think she's very personable. There's
23 been staffing where we've disagreed with each other.
24 There's been times where she took action that I felt was
25 not in a family's best interest. I'm not saying it was

22

1 the wrong thing to do, it's just what I felt. And I
 2 feel she comes across very assertive. Very -- not
 3 friendly. I mean she can come across a bit
 4 intimidating.

5 Q. What -- what sorts of actions did you disagree
 6 with?

7 A. Well, there's just -- we've had staffing before
 8 where I felt like she decided that a child should be in
 9 this relative placement, and I disagreed and felt like
 10 the child should be in a different relative placement.
 11 And, you know, just -- just stuff like that that happens
 12 during CPS.

13 Q. Did you ever disagree with her about any sort
 14 of personnel decisions?

15 A. I'm not really sure what happened when Nicole
 16 became Carlotta's supervisor, but I know that the
 17 difference between our personalities is just huge. I
 18 feel like if somebody was accustomed to working for me
 19 and, you know, felt comfortable working for me, they
 20 would have a hard time working for Nicole.

21 Q. Did you continue to keep in touch with
 22 Ms. Howard?

23 A. I tried to. We kind of lost touch, though.

24 Q. When was the last time you spoke with
 25 Ms. Howard?

24

1 you see where I'm talking about?

2 A. Uh-huh.

3 Q. Was Carlotta Howard still working for you on
 4 that -- at that time?

5 A. Yes.

6 Q. Okay. Had -- did you know she was being
 7 transferred at that time?

8 A. Yes.

9 Q. And you knew she was being transferred to
 10 Nicole Ogle?

11 A. Yes.

12 Q. Do you know why it -- on Number 28, it says
 13 that her supervisor at that time was Nicole Ogle?

14 A. The only thing I can think of is, like, maybe
 15 there was some flexibility. Like she could stay, you
 16 know, for a little bit longer and then move. I don't
 17 know. So maybe on paper she was supposed -- Nicole was
 18 supposed to be her supervisor.

19 Q. Okay. So you were never provided with a copy
 20 of this report?

21 MS. CONNOR: Objection. Form.

22 A. Not that I remember, no.

23 Q. (BY MR. WALSH) Can you tell me a little bit
 24 about the leave policies?

25 MS. CONNOR: Objection. Form.

23

1 A. It was probably 2009. It was a long time ago.

2 Q. Do you remember what you talked about?

3 A. I think I just checked on her to see how she
 4 was doing.

5 Q. Do you know when she was terminated?

6 A. No. I wasn't really sure that's what had
 7 happened.

8 Q. Were you -- did -- give me a second.
 9 Did a doctor ever contact you while she
 10 was -- after the car wreck?

11 A. I don't think so, no.

12 Q. Did you ever receive reports from workers'
 13 compensation?

14 A. No.

15 Q. Did you ever receive reports from accessHR?

16 A. Not that I can recall, no.

17 MR. WALSH: I want to enter Exhibit
 18 Number 2.
 19 (Exhibit Number 2 marked.)

20 Q. (BY MR. WALSH) Have you ever seen that
 21 document before?

22 A. I don't remember if I did. I really just don't
 23 remember.

24 Q. If you look up at Number 17 in the first row,
 25 it says the date, and that says December 17th, 2008. Do

25

1 A. From what I understand is that FMLA, the most
 2 you can take in a year is 12 weeks.

3 Q. (BY MR. WALSH) Do you have annual leave?

4 MS. CONNOR: Objection. Form.

5 A. Like do I have leave?

6 Q. (BY MR. WALSH) Yeah, do you personally?

7 A. Yes, yes.

8 Q. Okay. How do you use annual leave?

9 MS. CONNOR: Objection. Form.

10 A. I request to -- ask my program director if I
 11 can -- or not program director. Sorry. Ask my
 12 supervisor if I can have such and such off and use it
 13 that way.

14 Q. (BY MR. WALSH) Do you have to ask?

15 A. If I want to take off in advance, I do, yes.
 16 If it's sick leave, then I still have to let her know
 17 I'm not coming in. Call in.

18 Q. If you -- can annual leave ever be charged
 19 against you without you requesting it in advance?

20 MS. CONNOR: Objection. Form.

21 A. I have so much leave, I don't even know. Yeah,
 22 I don't know. I have a lot of leave.

23 Q. (BY MR. WALSH) If you didn't show up tomorrow,
 24 what would happen?

25 MS. CONNOR: Objection. Form.

1 A. My supervisor would probably call and ask.
 2 Q. (BY MR. WALSH) Well, then -- I guess then what
 3 would happen?
 4 MS. CONNOR: Objection. Form.
 5 A. Probably send somebody to my house to make sure
 6 I was okay. It just -- it just wouldn't happen.
 7 Like what if I, for a week, didn't show up?
 8 Q. (BY MR. WALSH) Yeah.
 9 A. I guess action would be taken.
 10 Q. Would leave have been used for that week that
 11 you didn't show up?
 12 A. Uh-huh, yes.
 13 MS. CONNOR: Objection. Form.
 14 Q. (BY MR. WALSH) Even though you hadn't asked
 15 for it?
 16 A. Well, my supervisor would go in to put in my
 17 leave, you know, like if I'm not there.
 18 Q. Okay. Would that have been true for a case
 19 aide?
 20 A. Yes.
 21 Q. So if Carlotta Howard had not showed up for a
 22 day, you would have put in leave -- you would have taken
 23 leave out of her --
 24 MS. CONNOR: Objection. Form.
 25 A. I probably wouldn't have, but I could have. I

1 for being out of leave?
 2 A. No.
 3 Q. What happened -- what would you have done if
 4 you discovered one of your employees didn't have any
 5 leave left?
 6 MS. CONNOR: Objection. Form.
 7 A. I probably would have requested leave for them.
 8 There's emergency leave.
 9 Q. (BY MR. WALSH) What is emergency leave?
 10 A. Emergency leave is like -- I know of two times
 11 that it was taken. One was when a girl first started --
 12 well, I'm not sure about that.
 13 I'll say for myself, when I first started
 14 working at CPS, I was pregnant and I didn't have enough
 15 leave. And so what they talked about was if I couldn't
 16 accumulate -- you know, they got it worked out. But if
 17 I couldn't have, there's an emergency pool that you can
 18 pull from. And there's, like, a process that you have
 19 to go through to get that.
 20 Q. Can you describe what that process was?
 21 A. I don't know what the process was because I've
 22 never had to do it, but I know there is a way to do
 23 that. You can get, like, emergency pool.
 24 Q. Do you know who would tell you when you're
 25 eligible for emergency pool leave?

1 could have as a supervisor. But I could -- I probably
 2 would not have because I usually let people do their own
 3 leave. Like I would have let her -- me personally, I
 4 would have let her put in her leave when she got back.
 5 I do know that I took off three months, and my program
 6 director went in there and put in my leave each time.
 7 Q. (BY MR. WALSH) Do you have access to your --
 8 when you were supervisor, did you have access to the
 9 amount of leave that your employees had available?
 10 A. Yes.
 11 Q. So you could monitor what -- how much leave
 12 they had available?
 13 A. Yes.
 14 Q. Could you -- and then -- do you remember what
 15 Carlotta Howard's salary was?
 16 A. No. I saw it right here but...
 17 Q. Do you remember what kind of benefits she got?
 18 A. I thought pretty much across the board that we
 19 get health insurance, and they put away for our
 20 retirement.
 21 Q. Did you ever forward any doctor's notes to
 22 Nicole?
 23 A. If I received any, I would have forwarded them.
 24 I don't remember.
 25 Q. Let's see. Have you ever terminated somebody

1 A. Probably my supervisor or program director. I
 2 mean I know it's quite a process to try to get it.
 3 Q. Would it be initiated by the employee seeking
 4 that leave?
 5 A. When I've heard about it being -- I mean guess
 6 it's kind of initiated, but it's more initiated by the
 7 supervisor. The supervisor is the one who has to do it.
 8 Q. And what would the supervisor do?
 9 MS. CONNOR: Objection. Form.
 10 A. I just think there's people she has to call and
 11 go through the program director.
 12 Q. (BY MR. WALSH) And the supervisor would inform
 13 the employee?
 14 MS. CONNOR: Objection. Form.
 15 A. Yes.
 16 Q. (BY MR. WALSH) Let's see. Is there a policy
 17 manual that you refer to?
 18 A. There's policy on, like, the -- our intranet on
 19 our computer.
 20 Q. Uh-huh.
 21 Do you know about an HHS or Human -- Health
 22 and Human Services policy manual?
 23 A. I'm sure it's on the intranet.
 24 Q. Okay. Do you know about the -- do you know
 25 what the personnel committee is?

1 A. No. I mean I know there's probably one, but I
 2 don't know what it is.
 3 Q. If you were to recommend somebody for
 4 termination, who would you go to?
 5 A. When I was a supervisor, I would have gone
 6 through my program director.
 7 Q. And what would you have done?
 8 A. What I would have told her is that this is the
 9 reason I think this person needs to be terminated. I
 10 would also have had to put together some kind of
 11 write-up and that goes to the program -- oh, yeah, I
 12 know what you're talking about. The personnel
 13 committee. Okay.
 14 So it goes through the write-up -- it goes
 15 to the program director, and then it goes through this
 16 personnel committee, which Lisa Black is over.
 17 Q. And do you know what happens at the personnel
 18 committee?
 19 A. They decide if that person is going to be
 20 terminated or not or what's going to happen or what kind
 21 of actions. It's not just for termination. It's also
 22 for, like, levels. Level 1, Level 2, and Level 3. I
 23 did have to do, like, a Level 1 and 3, I think.
 24 Q. What is a Level 1?
 25 A. Maybe it wasn't Level 1. It's just like --

1 she said -- I told her I was coming back in eight weeks,
 2 and she said, No, you're coming back in 12, because she
 3 had figured out how I could -- like I had the time
 4 because I put in some overtime, too.
 5 Q. If a -- I'm sorry to jump around like this.
 6 If a case aide for one of -- for your unit
 7 wasn't there, what would happen?
 8 MS. CONNOR: Objection. Form.
 9 A. I would try to figure out where she was.
 10 Q. (BY MR. WALSH) Well, I mean how would the unit
 11 operate?
 12 A. We would just have to find another case aide to
 13 help out.
 14 Could it operate? Yes. There's several
 15 units that don't have case aides.
 16 Q. What do they do?
 17 A. Have to use other case aides or have to do the
 18 business by themselves.
 19 Q. Why don't they have a case aide?
 20 A. Money. Don't have the money to pay for them to
 21 keep them. Those are going to be the first positions
 22 cut, the administrative assistants and case aides.
 23 Q. And Carlotta Howard was transferred as a case
 24 aide to another unit as a case aide?
 25 A. Yes. I believe so, yes. I don't think she --

1 basically, I don't think you have to do it for a
 2 Level 1, but a Level 3 is pretty serious. So if it's a
 3 Level 3, then it's like, Hey, you're that close to being
 4 out.
 5 And then, you know, you also have to do it
 6 for termination, because that's the reason I say I don't
 7 have the power to terminate anybody. I would have to
 8 get permission from the personnel committee. It would
 9 have to be approved from the higher-ups.
 10 Q. You said you went out on FMLA leave when you
 11 were pregnant?
 12 A. Yes, yes.
 13 Q. Were you told how many weeks of FMLA leave you
 14 had?
 15 A. I knew I could take up to 12 weeks, but it was
 16 how much time I had. And I don't think I -- I think I
 17 did end up having 12 weeks, but it was kind of sketchy
 18 there.
 19 Q. Did they -- did anybody from -- did anybody
 20 from CPS contact you while you were out on leave?
 21 A. Just to see how the baby was.
 22 Q. Did -- they didn't talk to you about the -- how
 23 many weeks you had?
 24 A. No, I think we just -- no. Because I think I
 25 kind of knew. Well, I did talk to my supervisor, and

1 sometimes they transfer them as case aides to
 2 administrative assistants, but I'm pretty sure she was
 3 case aide to case aide.
 4 Q. Okay. Were you aware of Carlotta Howard having
 5 any disabilities?
 6 MS. CONNOR: Objection. Form.
 7 A. Before?
 8 Q. (BY MR. WALSH) Before.
 9 MS. CONNOR: Objection. Form.
 10 A. I think she told me she had problems with her
 11 eye.
 12 THE WITNESS: Am I supposed to tell?
 13 MS. CONNOR: Yes, he's just jumping around.
 14 THE WITNESS: I get so confused with the
 15 objections. Okay.
 16 Q. (BY MR. WALSH) Did it affect her ability to
 17 perform her job?
 18 A. Not to my knowledge, no.
 19 Q. And when you say something with her eye, do you
 20 remember more specifically what that was?
 21 A. I can -- I can see it, but I don't really know
 22 the whole complications. I just know she had a weaker
 23 eye.
 24 Q. Would -- based on your knowledge of what a case
 25 aide does and their duties, would a case aide be able to

1 perform his or her job with back spasms?
 2 MS. CONNOR: Objection. Form.
 3 A. She couldn't be able to lift kids to get out of
 4 the car. That's what we do a lot is we have to lift the
 5 babies and put them in the car.
 6 Q. (BY MR. WALSH) And you would say back spasms
 7 would prevent that?
 8 MS. CONNOR: Objection. Form.
 9 A. I'm considering back spasms -- just a pain in
 10 the back?
 11 I'm not sure. I can see where it would
 12 kind of hinder.
 13 Q. (BY MR. WALSH) If a case aide had limited
 14 range of motion in terms of being able to turn, would
 15 that limit their ability to do their job?
 16 MS. CONNOR: Objection. Form.
 17 A. If it limited their ability to drive it would.
 18 Q. (BY MR. WALSH) Do you know of any case aides
 19 that work part-time?
 20 A. No.
 21 Q. Do you know of any people at CPS that work
 22 part-time?
 23 A. No.
 24 Q. Is there such a thing as light duty?
 25 A. Not that I know of, no.

1 day?
 2 A. I'm not sure. She was an investigator. It
 3 didn't work very long -- I mean it didn't work very well
 4 because she still had her cases to cover. And I think
 5 she was taken off rotation as well.
 6 Q. Well, did it last two weeks?
 7 A. I would say at least two weeks, yes.
 8 Q. Three weeks?
 9 A. I would say -- I would say probably at least a
 10 month.
 11 Q. And what was this investigator's name?
 12 A. Stephanie -- I don't know her -- I can't
 13 remember her last name. She's no longer with the
 14 agency. She just left.
 15 Q. Have you known anybody else who has been given
 16 light duty?
 17 A. I don't think so.
 18 Q. Have you heard of anybody else who has had a
 19 reduction in their duties or hours?
 20 A. No, none that I can think of.
 21 Q. If you were going to ask for a reduction -- for
 22 light duty, who would you go to?
 23 MS. CONNOR: Objection. Form.
 24 A. My supervisor.
 25 Q. (BY MR. WALSH) And would you fill out any

1 Q. Is there an ability to allow somebody to work
 2 light duty?
 3 MS. CONNOR: Objection. Form.
 4 A. I've seen it done before.
 5 Q. (BY MR. WALSH) For who?
 6 A. An investigator in my unit in Dallas.
 7 Q. And why was it done?
 8 A. She had -- was in a car accident, and she could
 9 only work four hours a day.
 10 Q. When was this?
 11 A. Just last year.
 12 Q. And this was in your unit?
 13 A. Uh-huh.
 14 Q. That you currently work in?
 15 A. No, my old unit.
 16 Q. The one which Carlotta Howard worked for?
 17 A. No.
 18 Q. Oh, I'm sorry.
 19 A. It's okay. I skipped.
 20 Q. Were you a supervisor at that unit?
 21 A. No.
 22 Q. Do you know the process that that person went
 23 through to get four hours a day?
 24 A. I know she sent -- had a doctor's note sent.
 25 Q. How long did the person only work four hours a

1 form?
 2 MS. CONNOR: Objection. Form.
 3 A. She might have me do so.
 4 Q. (BY MR. WALSH) But you sitting here are not
 5 aware of any form?
 6 A. I have a good relation with my supervisor. I
 7 think if she felt like I needed to do something like
 8 that, she would make arrangements, you know. But I
 9 don't know.
 10 Q. What is the Office of Civil Rights?
 11 A. Oh, wow. I'm not sure.
 12 Q. Do you know who Matt --
 13 MS. CONNOR: Guedea.
 14 Q. (BY MR. WALSH) -- Guedea is?
 15 A. I don't think so, no.
 16 Q. Do you -- does your supervisor report to Lisa
 17 Black currently?
 18 A. She reports to Claudia Grose, and then Claudia
 19 reports to Lisa.
 20 Q. Okay. And when you were an investigative
 21 supervisor, you reported to a program director?
 22 A. Lisa Cardenas.
 23 Q. Okay. And then that person reported to Lisa
 24 Black?
 25 A. To Annie Flores -- I'm sorry. I think I

1 skipped a person. It's actually I reported to Lisa
 2 Cardenas, my program director. She reported to the
 3 program administrator, I believe Annie Flores. And then
 4 Annie reported to Lisa. So there's somebody between
 5 Claudia and Lisa, and I'm not really familiar with
 6 Denton so I don't really know who that person is. I
 7 know what she looks like, but I forgot her name. So
 8 there's, like, two people in between my supervisor and
 9 Lisa.

10 Q. Okay. Well, I am just about done. I did want
 11 to ask you if -- since we've covered a lot of topics, if
 12 you had thought of anything you wanted to add to any of
 13 the questions that I asked you or any of the answers
 14 you've given that you thought of later?

15 A. I don't think so, no.

16 Q. Did you -- when did you find out that Carlotta
 17 Howard was terminated?

18 A. You know, I think -- I don't know if I ever
 19 found out she was terminated or knew it for a fact until
 20 I was called to do this deposition. You know, when I
 21 started being contacted, and then I kind of figured it
 22 out.

23 Q. What did you think had happened to Carlotta
 24 Howard before you were called for this deposition?

25 MS. CONNOR: Objection. Form.

1 A. I wasn't sure.

2 Q. (BY MR. WALSH) You were unaware of any
 3 problems that she was going through?

4 A. I knew she had some health problems, but I
 5 didn't know that -- I didn't know if it was she had been
 6 terminated or if there had been a personality difference
 7 and she decided to leave.

8 Q. Okay. Have you ever -- has anybody in your
 9 unit been terminated for exhaustion of leave?

10 A. No. -- Not that I can think of, no.

11 Q. How about the unit before this current one?

12 A. No.

13 Q. Or the unit where you were a supervisor?

14 A. No.

15 Q. Or before that?

16 A. I can't remember.

17 Q. Have you heard of people being terminated for
 18 exhaustion of leave?

19 A. No.

20 MR. WALSH: Well, I have no further
 21 questions at this time. So I pass the witness.

22 MS. CONNOR: We reserve our questions until
 23 time of trial.

24 (Proceedings concluded at 1:51 p.m.)
 25 (End of proceedings.)

1 CHANGES AND SIGNATURE

2 WITNESS NAME: MONICA MCFARLAND DATE: MAY 31, 2012.

3 PAGE LINE	CHANGE	REASON
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1 I, MONICA MCFARLAND, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.

4 _____
 5 MONICA MCFARLAND

6

7 THE STATE OF _____)
 8 COUNTY OF _____)

9

10 Before me, _____, on this day
 11 personally appeared MONICA MCFARLAND, known to me (or
 12 proved to me under oath or through
 13 _____) (description of identity
 14 card or other document) to be the person whose name is
 15 subscribed to the foregoing instrument and acknowledged
 16 to me that they executed the same for the purposes and
 17 consideration therein expressed.

18 Given under my hand and seal of office this
 19 _____ day of _____,
 20 _____

21
 22
 23 NOTARY PUBLIC IN AND FOR
 24 THE STATE OF _____
 25 COMMISSION EXPIRES: _____

CHANGES AND SIGNATURE

WITNESS NAME: MONICA MCFARLAND DATE: MAY 31, 2012

PAGE LINE CHANGE REASON

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SOLE ADVISE BY NOTAR

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I, MONICA MCFARLAND, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

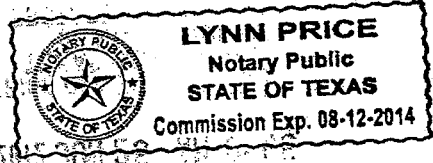
[Handwritten Signature]
MONICA MCFARLAND

THE STATE OF Texas
COUNTY OF County Denton

Before me, Lynn Price, on this day personally appeared MONICA MCFARLAND, known to me (or proved to me under oath or through work badge) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 21 day of June, 2012.

Lynn Price
NOTARY PUBLIC IN AND FOR
THE STATE OF Texas
COMMISSION EXPIRES: 8-12-2014



1 NO. 11-13467
 2 CARLOTTA HOWARD, § IN THE DISTRICT COURT
 3 §
 4 Plaintiff, §
 5 §
 6 VS. § 160TH JUDICIAL DISTRICT
 7 §
 8 STATE OF TEXAS, TEXAS §
 9 DEPARTMENT OF FAMILY AND §
 10 PROTECTIVE SERVICES, §
 11 §
 12 Defendant. § DALLAS COUNTY, TEXAS

13 REPORTER'S CERTIFICATION
 14 DEPOSITION OF MONICA MCFARLAND
 15 MAY 31, 2012

16 I, Natasha Benchimol, Certified Shorthand Reporter
 17 in and for the State of Texas, hereby certify to the
 18 following:

19 That the witness, MONICA MCFARLAND, was duly sworn
 20 by the officer and that the transcript of the oral
 21 deposition is a true record of the testimony given by
 22 the witness;

23 That the deposition transcript was submitted on
 24 _____ to the witness or to the attorney
 25 for the witness for examination, signature and return to
 me by _____;

That the amount of time used by each party at the
 deposition is as follows:

MR. COLIN WALSH - 00 HOURS:43 MINUTE(S)


1 That pursuant to information given to the
 2 Deposition officer at the time said testimony was taken,
 3 the following includes counsel for all parties of
 4 record:

5 MR. COLIN WALSH, Attorney for Plaintiff
 6 MS. MADELEINE CONNOR, Attorney for Defendant

7 I further certify that I am neither counsel for,
 8 related to, nor employed by any of the parties or
 9 attorneys in the action in which this proceeding was
 10 taken, and further that I am not financially or
 11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to
 13 Rule 203 of TRCP will be certified to after they have
 14 occurred.

15 Certified to by me this _____ day of
 16 _____.

17
 18
 19 
 NATASHA BENCHIMOL, Texas CSR

20 CSR Expiration Date: 12/31/2013
 21 NOTARIUS REPORTING, INC.
 22 Firm Registration No. 659
 23 3270 Darvany Drive
 24 Dallas, Texas 75220
 25 (214) 324-3733 * Telephone
 (214) 432-5415 * Facsimile
 1-(888) 848-8845 * Toll Free

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the
 3 deposition officer on _____;

4 If returned, the attached Changes and Signature
 5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
 7 to MR. COLIN WALSH, Custodial Attorney;

8 That § _____ is the deposition officer's
 9 charges to the Plaintiff for preparing the original
 10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
 12 with Rule 203.3, and that a copy of this certificate was
 13 served on all parties shown herein on and filed with the
 14 Clerk.

15 Certified to by me this _____ day of
 16 _____.

17
 18
 19
 20 NATASHA BENCHIMOL, Texas CSR 8514
 CSR Expiration Date: 12/31/2013
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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition ~~was~~ was not returned to the deposition officer on July 25, 2012;


If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. COLIN WALSH, Custodial Attorney;

That \$ 299.80 is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 25th day of July, 2012.


NATASHA BENCHIMOL, Texas CSR 8514
CSR Expiration Date: 12/31/2013
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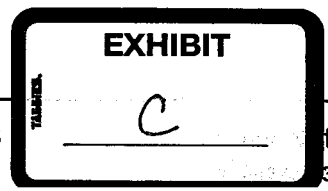
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NO. 11-13467

CARLOTTA HOWARD,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
VS.	§	160TH JUDICIAL DISTRICT
	§	
STATE OF TEXAS, TEXAS	§	
DEPARTMENT OF FAMILY AND	§	
PROTECTIVE SERVICES,	§	
	§	
Defendant.	§	DALLAS COUNTY, TEXAS

ORAL DEPOSITION OF
NICOLE OGLE
MAY 31, 2012
VOLUME 1

ORAL DEPOSITION OF NICOLE OGLE, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on May 31, 2012, from 2:25 p.m. to 3:37 p.m., before Natasha Benchimol, CSR in and for the State of Texas, reported by machine shorthand, at 1200 East Copeland Road, Suite 400, Arlington, Texas 76011, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.



2

A P P E A R A N C E S

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4

P R O C E E D I N G S

1
2 THE REPORTER: Twenty days on the
3 transcript going to Ms. Connor, objections according to
4 the Rules, and we're starting over on our exhibits.
5 NICOLE OGLE,
6 having been first duly sworn, testified as follows:
7 EXAMINATION
8 BY MR. WALSH:
9 Q. Okay. Could you please state your name and
10 spell it for the record.
11 A. Sure. Nicole Ogle, N-I-C-O-L-E, O-G-L-E.
12 Q. And have you ever gone by any other names?
13 A. My maiden Chisolm, C-H-I-S-O-L-M as in Mary.
14 Q. Okay. And what was the name that you used 2008
15 to 2009?
16 A. Ogle.
17 Q. Okay. And have you ever had your deposition
18 taken before?
19 A. Yes.
20 Q. What were the circumstances of that?
21 A. Gosh, it was a long time ago. It was for a
22 child abuse case of some sort. It was, maybe, back in
23 '04.
24 Q. Okay. And that's the only other time?
25 A. Yes.

3

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5

1 Q. Are you -- is there anything that's going to
2 prevent you from giving your full testimony?
3 Are you on any medications or are there any
4 impairments or anything like that?
5 A. No.
6 Q. Okay. If you don't understand a question, just
7 let me know and I'll rephrase it. If you need to take a
8 break, that's fine. Just let me know. But if I've
9 asked you a question, I would ask that you answer it
10 first, then we can take the break.
11 A. Okay.
12 Q. Just so there's no hanging -- hanging
13 questions.
14 A. Okay.
15 Q. If your attorney does object to any of the
16 questions that I ask, unless she instructs you not to
17 answer, you can go ahead and answer that.
18 A. Okay.
19 Q. And don't worry about that.
20 Did you meet with anyone to prepare for
21 your deposition today?
22 A. No.
23 Q. Did you review any documents to prepare for
24 your deposition today?
25 A. Yes.

6

1 Q. And what did you look at?

2 A. I looked at what Rosa had sent in an e-mail.

3 Q. And what did Rosa send you?

4 A. She sent multiple documents.

5 Do you want to take a look at them?

6 Q. Oh, sure.

7 A. Okay.

8 MS. CONNOR: Can we look at that?

9 Is there anything --

10 MR. WALSH: Sure.

11 MS. ROHR: It's all documents that's been

12 produced in discovery.

13 MS. CONNOR: Okay.

14 Q. (BY MR. WALSH) Let's see. What is -- I want

15 to ask you a little bit about your education background.

16 Where did you go to high school?

17 A. Harlingen High School.

18 Q. And where is that?

19 A. Harlingen, Texas.

20 Q. Okay. And where did you go to college?

21 A. The University of Texas at Austin for my

22 undergraduate. The University of Texas at Arlington for

23 my master's.

24 Q. And what did you get a master's in?

25 A. Social work.

8

1 Services.

2 Q. And what was the position you held there?

3 A. Actually, I worked there concurrently, but...

4 Q. Okay. And what did you do for CPS?

5 A. I was an investigation supervisor.

6 Q. And what position did you have in 2009?

7 A. Investigation supervisor.

8 Q. And have you held any other positions with CPS?

9 A. Yes. I was a conservatorship worker when I was

10 first hired.

11 Q. What is a conservatorship?

12 A. It's an entry level case worker. I managed

13 cases of children who have been removed from their

14 parents and are in foster care.

15 Q. Okay. And when did you become a supervisor?

16 A. I became a supervisor mid-May of 2006.

17 Q. And how many people did you supervise at CPS?

18 A. Collectively or in a given -- how -- is there a

19 specific time period or?

20 Q. Yeah.

21 When you first became a supervisor, how

22 many people were you put in charge of, I guess?

23 A. Probably seven.

24 Q. And who -- what positions were you supervising?

25 A. Investigators, a secretary, and a transporter

7

1 Q. And what did you get an undergraduate degree

2 in?

3 A. Advertising.

4 Q. Okay. And what is your current position?

5 A. I'm sorry, for the department?

6 Q. Well, yeah.

7 Who's your current employer?

8 Let's start it that way.

9 A. I am employed with a consulting agency called

10 McKay-Keller, M-C-K-A-Y dash K-E-L-L-E-R.

11 Q. And what is your position there?

12 A. I'm a health care social worker.

13 Q. And what does that entail?

14 A. I visit patients who are home health patients

15 in their homes and work with them on getting services

16 that they need.

17 Q. Okay. And do you supervise anybody in that

18 job?

19 A. No.

20 Q. All right. And when did you start working

21 there?

22 A. I began working there as a contractor in

23 January of 2010 -- no, I'm sorry. January of 2011.

24 Q. And where did you work before that?

25 A. Before that, I worked for CPS, Child Protective

9

1 or a case aide.

2 Q. Okay. And what -- and how many people were you

3 supervising in 2009?

4 A. I couldn't tell you. Maybe somewhere around

5 the same number.

6 Q. Was it a different unit?

7 A. Uh-huh, it was.

8 Q. And what unit was it in 2009?

9 A. 70.

10 Q. And did you supervise the same types of people

11 in Unit 70?

12 A. Yes.

13 Q. So you -- investigator, secretary, and a case

14 aide?

15 A. Yes.

16 Q. Was there more than one case aide?

17 A. No.

18 Q. Was there more than one secretary?

19 A. No.

20 Q. Okay. So why did you decide to leave Child

21 Protective Services?

22 A. I decided to pursue a career with health care

23 social work.

24 Q. All right. And what made you decide to do

25 that?

10

1 A. Career goals.

2 Q. Okay. So when you were -- when did you become

3 the supervisor of Unit 70?

4 A. I became the supervisor of Unit 70, probably,

5 November of '07.

6 Q. Okay. And when did Carlotta Howard start

7 working for you?

8 A. Sometime in mid-December of '08.

9 Q. Do you remember -- can you be any more exact

10 than that?

11 A. It's in my documents.

12 Q. Let me -- what -- well, let me ask you, were

13 you her supervisor on December 17th, 2008?

14 A. I couldn't tell you the exact date without

15 looking at the documents. I was on maternity leave

16 during that time.

17 Q. And you were still supervising employees while

18 on maternity leave?

19 A. No, I was on FLMA maternity leave.

20 Q. Who was taking your place as a supervisor of

21 Unit 70?

22 A. I couldn't tell you. Everybody got farmed out

23 to somebody different, a different supervisor.

24 Q. What does that mean?

25 A. So if I had five investigators, five

12

1 for an accommodation?

2 A. No.

3 Q. If somebody had asked you for an accommodation,

4 what would you have done?

5 MS. CONNOR: Objection. Form.

6 A. I would have sought the advice of Regional

7 Office.

8 Q. (BY MR. WALSH) And what -- what do you mean by

9 that?

10 A. I would have contacted, at the time, either

11 Larry Barnes or Melissa Hobbs and asked them how to

12 proceed.

13 Q. Is there -- do you have a policy manual or was

14 there a policy manual in place at that time?

15 A. I don't know.

16 Policy manual for?

17 Q. For Child Protective Services?

18 A. There's lots of policy manuals.

19 Specifically for accommodations?

20 Q. Yeah.

21 A. I don't know.

22 Q. You're not aware of any specific process for

23 accommodations?

24 A. I'm not. We just seek advice from Regional

25 Office as to what to do next or that's what I would do.

11

1 investigators got sent to an individual supervisor. So

2 five supervisors took five -- a single individual

3 investigator out of my unit.

4 Q. And then after you finished maternity leave,

5 what happened?

6 A. Then I came back and resumed supervision.

7 Q. And they left their supervisors -- I guess

8 interim supervisors?

9 A. Yes.

10 Q. Okay. Let me -- have any of the -- so how many

11 different units did you work for as an investigator

12 supervisor?

13 A. Two.

14 Q. Two.

15 Okay. So Unit 70 and then there was a

16 unit --

17 A. Before that, 72.

18 Q. 72 before that.

19 Okay. And were any of those employees ever

20 disabled?

21 A. Not to my --

22 MS. CONNOR: Objection. Form.

23 Go ahead.

24 A. Not to my knowledge.

25 Q. (BY MR. WALSH) Did any of them ever ask you

13

1 Q. Okay. And has anybody -- and you said nobody's

2 ever asked you for an accommodation?

3 A. No.

4 Q. Have you ever known of anybody who's asked for

5 an accommodation?

6 A. No. Not off the top of my head, no.

7 Q. Okay. Let me see. Have you yourself ever

8 asked for an accommodation?

9 A. No.

10 Q. Have you ever suggested an accommodation for

11 someone?

12 A. No.

13 Q. Do you know what I mean when I say

14 accommodation?

15 A. I assume you mean a physical accommodation

16 or...

17 Q. Well, what -- what kind of physical

18 accommodations are available to CPS employees?

19 A. I don't know.

20 MS. CONNOR: Objection. Form.

21 Q. (BY MR. WALSH) Are there any other kinds of

22 accommodation available for CPS employees?

23 A. I don't know.

24 Q. So if an employee came to you and asked for a

25 modification of their work, what would you do?

14

1 A. I would call Regional Office.
2 Q. And then what would happen?
3 MS. CONNOR: Objection. Form.
4 A. I would do whatever they instructed me to do.
5 Q. (BY MR. WALSH) Would you refer the employee to
6 the policy manual?
7 MS. CONNOR: Objection. Form.
8 A. No.
9 Q. (BY MR. WALSH) Would you look in the policy
10 manual?
11 A. No.
12 Q. Would you be surprised to find out that there
13 was a reasonable accommodation section in the policy
14 manual?
15 MS. CONNOR: Objection. Form.
16 A. No.
17 MR. WALSH: Let me go ahead and enter
18 Exhibit Number 1.
19 (Exhibit Number 1 marked.)
20 Q. (BY MR. WALSH) Have you ever seen that
21 document?
22 A. No.
23 Q. Okay. What is this document?
24 A. Reasonable accommodation.
25 Q. Do you know where it's from?

16

1 A. I don't know.
2 Q. (BY MR. WALSH) You don't know if an employee
3 is allowed to have their work schedule modified?
4 A. I don't.
5 Q. Were you a supervisor -- so you weren't a
6 supervisor of Carlotta Howard -- I'm sorry. Let me
7 rephrase that.
8 So you don't know whether or not somebody
9 can have light duty?
10 A. I do not. I do not know if that's an option or
11 not.
12 Q. So if somebody had -- so if Carlotta Howard
13 said that she asked you for light duty and you said no,
14 that -- would you agree with that?
15 MS. CONNOR: Objection. Form.
16 A. No. That's not my decision to make.
17 Q. (BY MR. WALSH) Who's decision is it?
18 A. That's a Regional Office decision to make.
19 Q. Who's in the Regional Office?
20 A. I would have spoken to Larry Barnes or Melissa
21 Hobbs.
22 Q. What about Lisa Black?
23 A. I would not have spoken to Lisa Black
24 personally.
25 Q. Would Larry Barnes have gone to Lisa Black?

15

1 A. It appears to be from the HHS human resources
2 manual, Section -- not sure what section.
3 Q. Okay. So let me go to Page -- let me see.
4 Actually, so you've not seen this document,
5 then?
6 A. No.
7 Q. Okay. If a particular accommodation is listed
8 in the policy manual, would that be a reasonable
9 accommodation?
10 MS. CONNOR: Objection. Form.
11 A. I don't know. I don't know what you mean by
12 that.
13 Q. (BY MR. WALSH) Well, if somebody with a
14 disability came to you and asked for a modification and
15 they pointed to a section of the manual, would that be a
16 reasonable accommodation for them?
17 MS. CONNOR: Objection. Form.
18 A. I don't know.
19 Q. (BY MR. WALSH) Is light duty an
20 accommodation --
21 MS. CONNOR: Objection. Form.
22 Q. (BY MR. WALSH) -- available to CPS employees?
23 A. I don't know.
24 Q. Can an employee work light duty?
25 MS. CONNOR: Objection. Form.

17

1 A. I don't know.
2 Q. Would Melissa Hobbs have gone to Lisa Black?
3 A. I don't know.
4 MS. CONNOR: Objection. Form.
5 Q. (BY MR. WALSH) Who is Melissa Hobbs?
6 A. I don't know what her title was. I don't even
7 know if she's still here, but she worked over here and
8 worked with Larry.
9 Q. Did Carlotta Howard ever ask for a modification
10 of her work schedule?
11 A. I don't know.
12 From me?
13 Q. Yeah.
14 A. I couldn't -- I have no idea. I can't recall.
15 I would have to look back through whatever my
16 documentation says.
17 MR. WALSH: Let me help you. I'm going to
18 go ahead and enter Exhibit Number 2.
19 (Exhibit Number 2 marked.)
20 Q. (BY MR. WALSH) Have you ever seen that form
21 before?
22 A. Yes.
23 Q. And what is it?
24 A. Workman's Compensation Work Status Report.
25 Q. Okay. And what does it say on Part 2 under

18

1 Subsection B?

2 A. "Will allow the employee to return to work as

3 of 10/12/09 with the restrictions identified in Part 3,

4 which are expected to last through," blank date.

5 It's empty.

6 Q. Okay. So would you say this is a work release

7 from a doctor?

8 MS. CONNOR: Objection. Form.

9 A. No -- well, I guess. I don't know.

10 Q. (BY MR. WALSH) Have you ever seen a work

11 release from a doctor?

12 A. No.

13 Q. So you've never had -- have you ever seen this

14 Texas Workers' Compensation form outside of this case?

15 A. No.

16 Q. You've never had an employee on workers'

17 compensation before?

18 A. No.

19 Q. Have you ever been contacted by workers'

20 compensation?

21 A. For this case? Yes.

22 Q. Okay. Why don't you tell me about each time

23 workers' compensation contacted you.

24 A. I would need my documentation.

25 Q. You would need your documentation.

20

1 Q. (BY MR. WALSH) It looks like it was sent on

2 January 6th, 2009?

3 A. Uh-huh.

4 Q. Did you read it at that time?

5 A. No.

6 Q. When did you first see it?

7 A. I couldn't tell you. Probably when I got back

8 to the office.

9 Q. When did you get back to the office?

10 A. Probably the beginning of February.

11 Q. Okay. And what did you do once you returned to

12 the office with regards to this workers' compensation

13 claim?

14 A. Oh, gosh, I don't know. I probably spoke to

15 our PD or sent it to Larry Barnes or Melissa.

16 Q. Why?

17 A. Because I wouldn't have known what to do with

18 it or what the situation was.

19 Q. What did they tell you to do with it?

20 A. I don't know.

21 Q. You don't remember what they told you?

22 A. I don't remember.

23 Q. Let's see. Were you ever contacted by workers'

24 compensation again after that?

25 A. I don't believe so.

19

1 What specific documentation do you need?

2 A. I think there's an e-mail in there from

3 workman's comp regarding her time and leave. That would

4 be the time that I was contacted by them.

5 (Exhibit Number 3 marked.)

6 Q. (BY MR. WALSH) All right. Do you recognize

7 that document?

8 A. Yes.

9 Q. What is it?

10 A. It's an e-mail from Ami Labrecque.

11 Q. Who is Ami Labrecque?

12 A. It looks like she works at accessHR. She's a

13 workman's compensation specialist.

14 Q. What is accessHR?

15 A. I guess it was the managing human resources

16 company that managed our human resources services.

17 Q. Are they part of CPS?

18 A. No.

19 Q. They're a private company?

20 A. I assume.

21 Q. Okay. And was this the first time you were

22 notified about Carlotta Howard?

23 MS. CONNOR: Objection.

24 A. I would assume this was while I was on

25 maternity leave. So I would assume so.

21

1 Q. You were never given another status report?

2 MS. CONNOR: Objection. Form.

3 A. I'm sorry. Do you mean by these folks at

4 accessHR when you say worker's compensation?

5 Q. (BY MR. WALSH) No.

6 I'm talking about with regards to -- I'm

7 sorry. I should have been clear.

8 Were you ever contacted regarding

9 Ms. Howard's worker's compensation claim again?

10 A. I don't know that I was specifically contacted.

11 I know that I initiated contact to get documentation.

12 Q. Initiated contact with who?

13 A. With whomever manages this. I don't know who

14 that is. Risk Management.

15 Q. So you contacted --

16 A. Matt.

17 Q. Matt?

18 A. Somebody. Jones, maybe.

19 Q. And what did Matt Jones say?

20 A. I don't recall. He probably gave me a summary

21 of what was going on, I presume.

22 Q. And when did you contact him?

23 A. I don't know.

24 Q. Was it in February?

25 A. I don't know.

1 Q. Was it in March?
 2 A. I don't know. It's probably in my e-mail
 3 chain.
 4 Q. Did you review these e-mails before you came
 5 here?
 6 A. I glanced over them, yes.
 7 Q. Let's see here. Did you ever receive any
 8 doctor's notes regarding Carlotta Howard?
 9 A. I received this. Whatever else is in that
 10 packet is everything else that I would have received.
 11 Q. So you knew Carlotta Howard was on workers'
 12 compensation?
 13 A. Yes.
 14 Q. Did you know she was seeing a doctor?
 15 A. Yes.
 16 Q. Did you know she was being treated by the
 17 doctor?
 18 A. Yes.
 19 Q. Did you know that the doctor was -- could
 20 release her for work?
 21 A. I assume.
 22 Q. You knew he had that ability?
 23 MS. CONNOR: Objection. Form.
 24 A. Yeah.
 25 Q. (BY MR. WALSH) Did you have any -- okay. Let

1 Q. And did any of them respond to you about this
 2 letter?
 3 A. Likely so.
 4 Q. What did they say?
 5 A. I don't know without looking at the e-mails.
 6 Q. Did they agree with it?
 7 A. Well, Nancy and Annie, yes. They signed it in
 8 agreement. Larry and Melissa, I wouldn't know without
 9 looking to see if they had any changes to make to it in
 10 the e-mail.
 11 Q. Did they suggest any changes -- oh, I'm sorry.
 12 So they may have suggested changes to it?
 13 A. They could have.
 14 Q. Okay. If you'll go to Page -- or Attachment A.
 15 It's on 117 at the bottom.
 16 A. Okay.
 17 Q. That's a workers' compensation status report?
 18 A. Uh-huh.
 19 Q. Do you recognize it?
 20 A. Sure.
 21 Q. Do you know when you received it?
 22 A. I don't.
 23 Q. It's dated January 13th, 2009?
 24 A. Okay.
 25 Q. Would you have received it then?

1 me see here. You know what, let's go -- let's do this.
 2 We are on Exhibit Number 4?
 3 A. 4.
 4 (Exhibit Number 4 A marked.)
 5 Q. (BY MR. WALSH) Do you recognize this document?
 6 A. Just from the e-mail. I never saw the first
 7 page of this prior to the e-mail that was sent to me
 8 yesterday.
 9 Q. Okay. Well, what is it?
 10 A. It's a letter to Ms. Howard from Lisa Black.
 11 Q. Okay. Well, let's go to the second page of
 12 that. What is the second page?
 13 A. It is my memo to Regional Office regarding
 14 Ms. Howard's recommendation for termination.
 15 Q. And who did you send it to, this letter -- this
 16 recommendation of termination?
 17 A. First, it was sent to Nancy Garcia and Annie
 18 Flores for approval, and then it was sent to Larry
 19 Barnes and Melissa Hobbs.
 20 Q. Who is this letter addressed to up at the top?
 21 A. Lisa Black.
 22 Q. Okay. Did you send this exact letter to
 23 Larry -- to all of those other people?
 24 A. I sent this letter to Nancy Garcia, Annie
 25 Flores, Larry Barnes, and Melissa Hobbs.

1 A. No.
 2 Q. Why not?
 3 A. Because I was on maternity leave.
 4 Q. When would you have received it?
 5 A. I don't know.
 6 Q. Would it have been in February?
 7 A. I don't know.
 8 Q. When did you return in February from maternity
 9 leave?
 10 A. Sometime in the beginning of February. I don't
 11 recall exactly. It would have been within the first
 12 week.
 13 Q. And what did you do that first week back?
 14 A. I don't know. Other than day-to-day business,
 15 I don't know.
 16 Q. Were you ever contacted by Monica McFarland?
 17 A. I don't know.
 18 Q. You don't remember?
 19 A. I don't remember. It was a long time ago.
 20 Q. Is it possible that she contacted you?
 21 A. It could be possible.
 22 Q. When did you find out that Carlotta Howard had
 23 been transferred to your unit?
 24 A. When I returned to work.
 25 Q. In early February?

26

1 A. Yes.

2 Q. You would not have known before that, that

3 Carlotta was going to be transferred?

4 A. I could have had a coworker, if I had talked to

5 them in passing on the phone in maternity leave. But I

6 don't really recall the specifics of caring at the

7 moment, quite honestly, if we did have that

8 conversation.

9 Q. Okay. And you said that -- I believe you said

10 earlier that Carlotta Howard was transferred into your

11 department in December of 2008?

12 A. Mid-December I think, yeah.

13 Q. And how long were you on maternity leave, from

14 when to when?

15 A. Let's see. It would have been October 20th of

16 '08 through whatever that first week of February is.

17 Whatever that first Monday was.

18 Q. And you didn't have any contact with anybody

19 during that time about Carlotta Howard?

20 A. I don't recall specifically.

21 Q. Did you know before you went on maternity leave

22 that Carlotta Howard would be transferred into your

23 unit?

24 A. No.

25 Q. And so you -- okay. And what position was

28

1 of my time there. So that would have been whatever her

2 last day was through my leaving in March of last year.

3 Q. And how did your unit operate during that time?

4 Did it operate normally?

5 A. Uh-huh. You would either ask -- make a request

6 from different case aides or just do it yourself.

7 Q. Okay. Could a case aide work part-time?

8 A. I don't know.

9 Q. Well, I mean would it be possible for her to do

10 her job duties only, let's say, four hours a day?

11 MS. CONNOR: Objection.

12 A. I don't know.

13 Q. (BY MR. WALSH) You don't know if a case aide

14 could do their duties in four hours?

15 MS. CONNOR: Objection. Form.

16 A. I don't.

17 Q. (BY MR. WALSH) Could they do it in eight

18 hours?

19 MS. CONNOR: Objection. Form.

20 A. I don't know.

21 Q. (BY MR. WALSH) Okay. Did you investigate

22 whether it was possible for a case aide to perform her

23 duties in four hours a day?

24 MS. CONNOR: Objection. Form.

25 A. That's not my decision to make.

27

1 Carlotta Howard transferred into your unit as?

2 A. A case aide.

3 Q. And what does a case aide do, again?

4 A. They do transportation of clients -- children.

5 They deliver documents. They do administrative duties.

6 Q. What kind of administrative duties?

7 A. Filing, faxing, typing, copying.

8 Q. Is there a lot of that?

9 A. Oh, I don't know. It's unit specific, I think.

10 Q. Are there any units that operate without case

11 aides?

12 A. Yes.

13 Q. How do that do that?

14 A. They do it themselves.

15 Q. Have you ever --

16 A. The workers do it or --

17 Q. I'm sorry.

18 A. That's okay.

19 Q. You can continue.

20 A. Oh, they just do it themselves, the workers.

21 Q. Have you ever been a part of those units?

22 A. Let me think. Let me think. Yes. After

23 Ms. Howard left, we didn't have a case aide.

24 Q. For how long?

25 A. We didn't have a case aide throughout the rest

29

1 Q. (BY MR. WALSH) Did you ask anybody whose

2 decision it was to make?

3 MS. CONNOR: Objection. Form.

4 A. I asked Larry Barnes and Melissa Hobbs.

5 Q. (BY MR. WALSH) And what did they say?

6 A. I don't recall.

7 Q. Did they say -- you don't remember whether or

8 not they said that the person could perform the duties

9 of a case aide worker in a part-time capacity?

10 MS. CONNOR: Objection. Form.

11 A. I don't recall.

12 Q. (BY MR. WALSH) Okay. So let me move on. I'm

13 sorry for being so jumbled.

14 A. That's okay.

15 Q. But do you have the ability to hire and fire

16 people --

17 A. No.

18 Q. -- when you were a supervisor?

19 Okay. Who would do the hiring?

20 A. The hiring specialists.

21 Q. How would they determine who was hired?

22 MS. CONNOR: Objection. Form.

23 A. Oh, I don't know.

24 Q. (BY MR. WALSH) Well, could you recommend --

25 let me see. Could you recommend people to be hired?

30

1 A. No.

2 Q. Did you ever interview potential new employees?

3 A. I have sat in with the hiring specialist on

4 interviews, yes, for investigators.

5 Q. Do you have any sort of say in whether or not

6 somebody is hired?

7 A. Not really, no.

8 Q. When you want -- and so you said you don't have

9 the ability to terminate employees?

10 A. Correct.

11 Q. Okay. Who's in charge of that?

12 A. Regional Office.

13 Q. And what is the process -- so let's say you

14 want to terminate an employee, what is the process you

15 go through?

16 A. You would start with your program director,

17 your program director would go to the area director. I

18 don't know the correct terminology. That person would

19 go to Regional Office. And then they would request

20 documentation from you, and then they would make that

21 decision. Lisa Black would make that decision.

22 Q. And so Lisa Black could decide to terminate or

23 not terminate somebody you wanted terminated?

24 A. Yes. That's my understanding, yes.

25 Q. Okay. And is it your understanding that Lisa

32

1 MS. CONNOR: Objection.

2 A. I would assume so. I don't know an exact

3 protocol for -- anything that happens after this memo

4 gets sent.

5 Q. (BY MR. WALSH) Okay. You don't know -- well,

6 let me ask you about Carlotta Howard specifically. Why

7 did you recommend her for termination?

8 A. Because she had been on an extended period of

9 leave.

10 Q. Okay. Why was -- why did that merit

11 termination?

12 A. I believe that she had ran through her FMLA.

13 The position needed to be filled. I really couldn't

14 recall. That would have been something that I would

15 have had a conversation with Nancy Garcia about.

16 Q. The position needed to be filled?

17 A. I'm talking off the cuff. Presumably. There

18 could be thousands of reasons why.

19 Q. Well, but you list specific reasons in your

20 recommendation?

21 MS. CONNOR: Objection.

22 A. Are you talking about 1 and 2, "Be familiar

23 with and follow all HHS policies"?

24 Q. (BY MR. WALSH) Well, I'm talking about the

25 entire memo.

31

1 Black could terminate somebody for different reasons

2 than why you wanted them terminated?

3 MS. CONNOR: Objection. Form.

4 A. I don't know. I don't know why she would have

5 any grounds to do that, but I don't know the answer to

6 that.

7 Q. (BY MR. WALSH) Well, then let me -- I guess

8 let me put it this way. Your recommendation of

9 termination is not necessarily the reason somebody is

10 terminated?

11 MS. CONNOR: Objection. Form.

12 A. My -- say it again.

13 Q. (BY MR. WALSH) The reasons you state in your

14 recommendation for termination are not necessarily all

15 of the reasons somebody's terminated?

16 MS. CONNOR: Objection. Form.

17 A. I would think those are the exact reasons that

18 they're terminated.

19 Q. (BY MR. WALSH) But if Lisa Black's letter

20 differed from your recommendation, her letter would

21 govern?

22 MS. CONNOR: Objection.

23 A. I assume.

24 Q. (BY MR. WALSH) Because she's able to fire

25 people?

33

1 A. But I'm asking specifically what

2 recommendations?

3 Q. Let's see.

4 A. Sentence three --

5 Q. Well, let me -- why don't you let me put it

6 this way. What reasons did you terminate -- what were

7 the reasons you terminated Carlotta Howard?

8 A. What is says here is, [as read] I'm

9 recommending the dismissal of Carlotta Howard based on

10 violations of the following DFPS Employee Work Rules:

11 Be familiar with and follow all HHS policies and

12 procedures relating to job performance and work rules,

13 and perform job duties, meet HHS standards for job

14 performance, and follow job-related instructions from

15 HHS supervisors.

16 Q. Okay. Well, let's unpack that a little bit.

17 How was she not familiar with all HHS

18 policies and procedures?

19 A. I don't know.

20 Q. You don't remember what conduct led to you for

21 her -- led you to recommend her for termination?

22 A. These are the two rules I was told to put in

23 the memo.

24 Q. Who told you to put them in the memo?

25 A. It could have been a collection of Nancy

34

1 Garcia, Melissa Hobbs, and Larry Barnes.
2 Q. Why did they tell you to put them in the memo?
3 A. I don't know.
4 Q. You don't know why?
5 A. No.
6 Q. So these aren't the reasons you recommended her
7 be terminated?
8 MS. CONNOR: Objection. Form.
9 A. I would presume so, if that's the conversation
10 we had at the time. I'm not going to be able to recall
11 specifics from three years ago. That's -- that's what I
12 know is whatever was written here.
13 Q. (BY MR. WALSH) Well, sure. I totally
14 understand that. I'm just trying to get to why she was
15 recommended for termination.
16 And what I'm hearing from you is that you
17 put these two rules in here, but you can't remember what
18 her conduct was that led you to recommend her for
19 termination?
20 MS. CONNOR: Objection. Form.
21 Q. (BY MR. WALSH) Is that a fair statement?
22 A. Sure.
23 Q. Okay. So was she terminated for exhaustion of
24 leave?
25 A. I don't have any idea.

36

1 A. Yes.
2 Q. Well, let's see. So I'm on Page 115 right now.
3 A. Okay.
4 Q. It says you found out she was in a car accident
5 on December 16th -- or that she was in a car accident.
6 Is that -- so you were aware that she was in a car
7 wreck?
8 A. Yes.
9 Q. You were aware that she had filed a workers'
10 compensation claim?
11 A. Yes.
12 Q. Why do people file workers' compensation
13 claims?
14 MS. CONNOR: Objection. Form.
15 A. I would assume because they were injured
16 performing a work duty.
17 Q. (BY MR. WALSH) Do you remember what her
18 particular injuries were?
19 A. I don't.
20 Q. Did she ever, in your conversations with her,
21 describe her work injuries to you -- I'm sorry -- her
22 injuries to you?
23 A. It looks like in April, she told me she was
24 suffering from back pain.
25 Q. Do you remember anything more specifically?

35

1 Q. Was she terminated for performance issues?
2 A. I don't know.
3 Q. So is it possible that she had not violated
4 these two rules?
5 A. I don't know.
6 Q. It's possible, through, right?
7 A. I don't know.
8 Q. You don't know if it's possible?
9 A. I don't know that it's possible.
10 Q. Why would it not be possible?
11 A. I don't know.
12 Q. Did you ever directly tell Carlotta Howard that
13 she was going to be terminated -- I mean that you
14 recommended her for termination?
15 A. No.
16 Q. Did you ever talk to Carlotta Howard prior to
17 recommending her for termination?
18 A. Prior to recommending her? Yes.
19 Q. Do you remember those conversations?
20 A. No. But I can read them off of my memo.
21 Q. Okay. And this would be an accurate
22 description of those things?
23 A. Yes.
24 Q. This was written at the time you when you had
25 that fresh in your mind?

37

1 Did she talk about anything else?
2 A. Not that I recall.
3 Q. Okay. Would back pain prevent her from being
4 able to be a case aide?
5 MS. CONNOR: Objection. Form.
6 A. I don't know.
7 Q. (BY MR. WALSH) Why -- do you know the duties
8 of a case aide?
9 A. Yes.
10 Q. Would you have the ability to recommend -- I
11 don't know. Let me start over.
12 So let's go back to Exhibit 1, the
13 reasonable accommodation from the HHS manual.
14 A. Okay.
15 Q. So here, was -- were you the direct supervisor
16 of Carlotta Howard?
17 A. As of mid-December of '08, I was.
18 Q. Okay. So here on the first page of Exhibit 1,
19 it says, "The employee" -- I'm looking at the very
20 bottom.
21 [As read] The employee should notify his or
22 her immediate supervisor of the need for reasonable
23 accommodation. This notification may be made orally or
24 in writing.
25 Do you see that?

1 A. No, I'm sorry.
 2 Oh, yes, right. Okay.
 3 Q. Okay. So the policy governing Carlotta Howard
 4 required her to go to you to request reasonable
 5 accommodation?
 6 MS. CONNOR: Objection. Form.
 7 A. Okay.
 8 Q. (BY MR. WALSH) Is that true?
 9 A. Sure. Based on what this says.
 10 Q. Okay. Did she contact you asking for
 11 reasonable accommodation?
 12 A. No.
 13 Q. Did she contact you asking to return to work?
 14 A. I don't believe so, no.
 15 Q. Did she contact you about returning to work?
 16 A. No.
 17 Q. Did you contact her about returning to work?
 18 A. Yes.
 19 Q. Did she ever tell you that she would be able to
 20 return to work?
 21 A. No.
 22 Q. All right. Were you aware that -- let me see.
 23 I guess let me ask it this way. Do you know that
 24 Carlotta Howard had a disability?
 25 MS. CONNOR: Objection. Form.

1 A. I never received this.
 2 Q. You attached it to your recommendation for
 3 termination?
 4 A. Okay. I don't recall ever seeing it, but...
 5 Q. Okay. Well, you may have already answered my
 6 next question that I was going to ask; if you knew who
 7 wrote the handwritten notes at the bottom?
 8 A. Huh-uh, no.
 9 Q. You don't think that was you?
 10 A. That was definitely not me.
 11 Q. Could it have been somebody else that worked at
 12 CPS?
 13 A. I have no idea.
 14 Q. On April 16th, 2009, you would have been
 15 Ms. Howard's supervisor; is that correct?
 16 A. Uh-huh, yes.
 17 Q. Would you have asked anybody else to
 18 investigate her workers' compensation claim?
 19 A. No.
 20 Q. Okay. And so where it says, "Confirmed this
 21 information with Dr. McHenry's office on 4/16/2009."
 22 So you don't recall doing that?
 23 A. That's not my handwriting. I didn't write that
 24 note.
 25 Q. Okay. You don't recognize the handwriting?

1 A. No.
 2 Q. (BY MR. WALSH) Did you know that she was
 3 injured in a car wreck?
 4 A. Yes.
 5 Q. And you read through the workers' compensation
 6 status report when they were sent to you?
 7 A. Yes.
 8 The reports that don't indicate anything?
 9 Q. I'm looking at Exhibit -- or Attachment A to
 10 your recommendation for termination.
 11 A. Right. Okay.
 12 Q. It says cervical -- or C radiculitis,
 13 L radiculitis among other things. Did you read through
 14 this form when you -- before you attached it to your
 15 recommendation?
 16 A. Probably so.
 17 Q. Okay. Did you read through Attachment B, which
 18 is a return to work certificate from her doctor?
 19 A. Yes.
 20 Q. Where it says, "The patient is medically unable
 21 to work until further notice"?
 22 A. Yes.
 23 Q. Okay. Did you read through Exhibit C -- I'm
 24 sorry -- Attachment C on Page 119 before you attached it
 25 to the recommendation for termination?

1 A. That's not my handwriting.
 2 Q. All right. But do you recognize the
 3 handwriting?
 4 A. No. I don't even recognize the note. I don't
 5 even recognize the document.
 6 Q. Okay. So you attached documents that you don't
 7 remember receiving or reading through to a
 8 recommendation to terminate --
 9 MS. CONNOR: Objection. Form.
 10 Q. (BY MR. WALSH) -- Carlotta Howard?
 11 A. That's possible.
 12 Q. Have you done that with other employees?
 13 A. No.
 14 Q. Why would you have done that with Carlotta
 15 Howard?
 16 MS. CONNOR: Objection. Form.
 17 A. I have no idea. I don't remember. I just
 18 don't remember seeing the document is all I'm saying.
 19 Q. (BY MR. WALSH) Right. But I guess --
 20 A. If you're asking me if I knew she had vision
 21 impairment, the answer is yes. In my chain of e-mails,
 22 you'll see an e-mail where I was contacted by DARS, the
 23 Department of Aging and Rehabilitative Services,
 24 regarding her blindness. So --
 25 Q. Okay.

1 A. -- whether or not I knew about this or not I
 2 think is a little obsolete. The e-mail is already in
 3 there. I've never seen this document, and that's not my
 4 handwriting. So whether or not I forgot or not is a
 5 great possibility.
 6 Q. I want to be absolutely clear that you're
 7 stating that Attachment C to your recommendation for
 8 termination is a document you have never seen before?
 9 MS. CONNOR: Objection. Form.
 10 A. Not to my knowledge.
 11 MS. CONNOR: Asked and answered about 12
 12 times.
 13 A. I don't recall seeing it.
 14 Q. (BY MR. WALSH) Okay. Great. Let's talk about
 15 that meeting with DARS.
 16 Do you remember when that happened?
 17 A. I didn't have a meeting. We spoke on the
 18 phone.
 19 Q. Okay. Do you remember who you talked to?
 20 A. I don't, but it's in my e-mail. If I can look
 21 at my e-mail.
 22 Q. Would April Gonzalez sound --
 23 A. I don't know without looking at my e-mail.
 24 Q. What happened to -- I'm going to go ahead and
 25 let you have this. I think it might make it go a lot

1 didn't know, but that all she could think of would be
 2 special glasses, yes.
 3 Q. Did you suggest any other sort of fixes or
 4 accommodations?
 5 A. I don't have the ability to make that
 6 decision --
 7 MS. CONNOR: Objection. Form.
 8 A. -- or recommendation.
 9 Q. (BY MR. WALSH) Well, according to the policy,
 10 which you can look at in Exhibit 1 on Page 3, if you
 11 will look under the specific paragraph under "Denial" on
 12 Page 3.
 13 A. Uh-huh.
 14 Q. It says, [as read] If a specific accommodation
 15 is determined not to be reasonable, alternative
 16 accommodations must be discussed with the applicant or
 17 employee by the immediate supervisor.
 18 A. Okay.
 19 Q. Did you discuss any alternative accommodations?
 20 A. I didn't even know this form existed. So that
 21 would be a no.
 22 Q. Okay. Were you ever contacted again by DARS?
 23 A. I don't think so. I think we only had one
 24 conversation.
 25 Q. Let me go to Page 2 of this Exhibit 4 that I

1 easier.
 2 A. Okay. Let's see.
 3 THE WITNESS: There's another set of
 4 e-mails.
 5 Do you have the other set of e-mails?
 6 There's an e-mail in there where I
 7 specifically reference to Larry or Melissa that somebody
 8 from the Department of Aging and Rehabilitative Services
 9 contacted me.
 10 MR. WALSH: Yeah. Let me go ahead and
 11 enter this as Exhibit Number 4.
 12 (Exhibit Number 4 B marked.)
 13 Q. (BY MR. WALSH) Is that the middle e-mail that
 14 you're talking about?
 15 A. Oh, yes. Okay. Yeah.
 16 I don't know who it was specifically, but I
 17 did speak to somebody from there.
 18 Q. Okay. And you found out she was having blurry
 19 vision in one of her eyes?
 20 A. Yes.
 21 Q. Okay. And it was suggested that special
 22 glasses might fix it?
 23 MS. CONNOR: Objection. Form.
 24 Q. (BY MR. WALSH) Is that correct?
 25 A. It sounds like what the rep said was that she

1 just entered.
 2 A. Okay.
 3 Q. Just so -- in the second paragraph, it says
 4 that you talked with her. And I guess this would have
 5 been sometime in June. And it says that she said that
 6 if she comes back to work, she would need light duty.
 7 Do you see where I'm reading?
 8 A. Yes.
 9 Q. Okay. "And I asked her what that meant
 10 specifically, and she stated she didn't know."
 11 You -- did you suggest any other
 12 alternatives?
 13 A. I did.
 14 Q. Okay. Would you agree that she was following
 15 the policy in the manual by asking you for an
 16 accommodation?
 17 A. Sure.
 18 MS. CONNOR: Objection. Form.
 19 Q. (BY MR. WALSH) Okay. If she wanted an
 20 accommodation, who else should she have talked to?
 21 MS. CONNOR: Objection. Form.
 22 A. I don't know.
 23 Q. (BY MR. WALSH) Okay. Let me see. So here it
 24 also says that she has back spasms and blurry vision. So
 25 you knew about those --

46

1 A. Uh-huh, yes.

2 Q. -- impairments as well?

3 A. Yes.

4 Q. Okay. Let me see. Do you know if -- when you

5 recommended that she be terminated, did you know if she

6 had any leave available?

7 A. I think she had annual leave available.

8 Q. Tell me about annual leave.

9 A. It's vacation. Annual vacation leave.

10 Q. Okay. And how is that used?

11 MS. CONNOR: Objection. Form.

12 Q. (BY MR. WALSH) I mean if you want to take --

13 if an employee wants to take annual leave, what do they

14 have to do?

15 MS. CONNOR: Objection. Form.

16 A. They just request whatever their vacation time

17 is going to be from their supervisor and put it in the

18 system when they go on vacation.

19 Q. (BY MR. WALSH) So when you were a supervisor,

20 people requested annual leave from you?

21 A. Uh-huh, yes.

22 Q. Did you ever have employees not show up?

23 A. Employees not show up to work?

24 Q. Yeah.

25 A. No.

48

1 A. Not that I recall. We weren't supposed to use

2 her annual leave.

3 Q. (BY MR. WALSH) Do you remember why you weren't

4 supposed to do that?

5 A. Uh-huh. Because the folks at accessHR

6 workman's compensation program told us not to.

7 Q. Do you remember why they told you not to?

8 Do you remember what sort of rule -- or I

9 mean what --

10 A. The e-mail on January 6th says she -- based on

11 the election she took, that we were to only use her sick

12 leave.

13 Q. Was it possible for her to change that

14 election?

15 A. I have no idea.

16 Q. Did you suggest that she change that election?

17 A. I have no idea. I didn't suggest that. I

18 wouldn't have suggested it. I would have told her to go

19 through whoever her workman's comp representative is.

20 Q. Uh-huh.

21 (Exhibit Number 5 marked.)

22 Q. (BY MR. WALSH) Let me go ahead and give you

23 Exhibit 5.

24 A. Okay.

25 Q. Do you recognize that document?

47

1 Q. No.

2 What would you have done if an employee did

3 not show up for work?

4 A. I probably would have called Larry Barnes or

5 Melissa Hobbs.

6 Q. Would you have charged them -- would you have

7 docked leave from them?

8 A. Not without the approval from somebody from

9 Regional Office.

10 Q. Okay. Do you think they would have done that?

11 MS. CONNOR: Objection. Form.

12 A. I have no idea.

13 Q. (BY MR. WALSH) Do you have the ability to

14 monitor your employees' leave when you were a

15 supervisor?

16 A. Uh-huh, yes.

17 Q. So you could go in and see how much leave was

18 available?

19 A. Yes.

20 Q. Okay. Did you ever notify Carlotta Howard

21 about the leave she had available?

22 A. I don't believe so.

23 Q. Did she ever tell you about her 72 hours annual

24 leave?

25 MS. CONNOR: Objection. Form.

49

1 A. Yes.

2 Q. Okay. And what is it?

3 A. Oh, wait. This wasn't a document that was sent

4 to me, but I read this. It was sent to me yesterday.

5 Q. Okay. Do you recognize the second page?

6 A. Yes.

7 Q. Okay. Do you remember sending those e-mails?

8 A. I don't recall specifically, but it's here. So

9 I did.

10 Q. Okay. And the point -- well, I guess -- so you

11 knew about her 72 hours of annual leave, as you can tell

12 from these e-mails; is that correct?

13 A. I'm reading through it.

14 Q. Oh, sure.

15 A. I would assume so, right. Yeah. She shows to

16 have 72 hours of annual leave, yes.

17 Q. Did you notify her about -- but you didn't

18 notify her that she had these hours?

19 MS. CONNOR: Objection. Form.

20 A. I don't understand why I would have.

21 Q. (BY MR. WALSH) Well, in your termination --

22 recommendation for termination, you say that she has

23 exhausted all leave?

24 A. Sick leave based on what we were told by

25 workman's compensation.

50

1 Q. Uh-huh.

2 But would annual leave have worked if she

3 had -- if she did not have that election, would she

4 still have had leave available?

5 MS. CONNOR: Objection. Form.

6 A. I have no idea. I don't know anything about

7 the comings and goings of the workman's comp program or

8 how they allot or approve how people are going to take

9 their time. This is the e-mail I got. This is what we

10 stuck to.

11 Q. (BY MR. WALSH) Okay. Did you know that

12 Ms. Black had decided to terminate Ms. Howard?

13 A. I'm sure that was e-mailed to me.

14 Q. Did you receive the termination letter?

15 A. No, I don't think. I may have.

16 MR. WALSH: Well, let's go ahead and do

17 Exhibit Number 6.

18 (Exhibit Number 6 marked.)

19 Q. (BY MR. WALSH) Do you recognize that document?

20 A. No.

21 Q. Okay. This is --

22 A. Other than seeing it yesterday.

23 Q. Yesterday.

24 That's the termination letter that Carlotta

25 Howard received in the mail?

52

1 decision to terminate. We're instructed on what to

2 write, and then we write it.

3 Q. (BY MR. WALSH) Well, tell me -- tell me how

4 that works. So who instructs you on what to write?

5 A. Your program director, your area director, your

6 regional office.

7 Q. Is it based on what you -- I guess --

8 A. It's based on my feedback, sure.

9 Q. Okay. So I guess walk me through each step of

10 how Carlotta Howard was recommended for termination and

11 how this memo came to be written.

12 A. I don't know the step of each detail.

13 MS. CONNOR: Objection. Form.

14 A. But I can tell you, in summary, that I would

15 have told my program director. She would have talked to

16 Annie Flores. They would have talked to Regional

17 Office, as would I have. And then Regional Office would

18 have said this is what you're going to do.

19 Q. (BY MR. WALSH) Okay. And it's your contention

20 that you weren't responsible for monitoring -- for

21 suggesting any ways for her to return to work?

22 MS. CONNOR: Objection. Form.

23 A. Say again.

24 Q. (BY MR. WALSH) When she asked for light duty

25 and you said no -- when she asked for light duty --

51

1 A. Okay.

2 Q. This -- have you ever seen termination letters

3 for other employees of Child Protective Services?

4 A. I've seen this letter, like this top letter.

5 The first page of Exhibit 4. I don't recall ever seeing

6 Exhibit 6 or anything of the such.

7 Q. Have you -- have you ever terminated other

8 employees?

9 A. Yes.

10 MS. CONNOR: Objection. Form.

11 Q. (BY MR. WALSH) Why did you terminate them?

12 A. Performance.

13 Q. Can you give me more specifics?

14 What kind of performance issues?

15 A. Workers not performing job duties. I can't

16 recall the specifics right now.

17 Q. Did you terminate Ms. Howard -- or did you

18 recommend her termination for performance issues?

19 A. Based on the direction of Regional Office.

20 Q. Okay. So then, let me just -- if it's not in

21 your memo, it was not a reason that you wanted

22 Ms. Howard terminated?

23 MS. CONNOR: Objection. Form.

24 A. It's not a reason that Regional Office would

25 have wanted her terminated. Supervisors don't make the

53

1 A. Uh-huh.

2 Q. -- it was not your responsibility to go and

3 suggest anything else, any alternatives?

4 A. I wouldn't know what those alternatives are.

5 Q. Is it your responsibility --

6 A. Hence the e-mail to Regional Office.

7 Q. Okay. And is it your responsibility to suggest

8 alternatives once Regional Office tells you what those

9 are?

10 MS. CONNOR: Objection. Form.

11 A. Sure. If they had told me there were

12 alternatives, I would have called her and given her the

13 alternatives.

14 Q. (BY MR. WALSH) Why would you have called her

15 and given her the alternatives?

16 A. Because I would have been instructed to do so.

17 Q. Okay. So you just follow the instructions from

18 Regional Office?

19 A. Definitely.

20 Q. Okay. Have you ever known any investigators

21 who have been -- who were allowed to work four hours a

22 day?

23 A. No.

24 Q. Okay. If -- if Ms. Howard had had sick leave

25 available, would you have recommended her for

1 termination?

2 A. I don't have any idea.

3 Q. Why don't you have any idea?

4 A. What does that have to do with anything?

5 Q. Well, I'm asking you if you fired her for

6 exhaustion of leave, and if she had leave, would she

7 have been fired?

8 MS. CONNOR: Objection. Form.

9 A. I don't have any idea.

10 Q. (BY MR. WALSH) So you don't know why you

11 terminated -- you wanted Ms. Howard terminated?

12 MS. CONNOR: Objection. Form.

13 A. What did I say in here?

14 It looks like I would have made that

15 recommendation based on her inability to provide us with

16 any further information on when she was going to be

17 returning to work and had run out her FMLA.

18 Q. (BY MR. WALSH) So if she had provided further

19 information, would you have recommended her for

20 termination?

21 A. It wouldn't be my decision.

22 MS. CONNOR: Objection.

23 Q. (BY MR. WALSH) At that point it would be

24 Regional Office?

25 A. It's always Regional Office's decision.

1 Q. Okay. But would you -- if she had contacted

2 you before you had drafted up that memo with further

3 information, would you have recommended her for

4 termination?

5 MS. CONNOR: Objection. Form.

6 A. It's not my decision. It would have gone to

7 the program director and to Regional Office.

8 Q. (BY MR. WALSH) But isn't it your decision to

9 recommend somebody for termination?

10 MS. CONNOR: Objection. Form.

11 A. That's a nuance in words. I mean it would be

12 my responsibility to bring that information to the

13 powers that be. But no, it wouldn't be my specific

14 recommendation. That's a nuance.

15 If we're going to talk about -- because the

16 title says recommendation, that's the title of the memo.

17 Does it mean I personally made that recommendation? No.

18 That was a collective decision.

19 Q. (BY MR. WALSH) Okay. Well, then -- so who

20 told you that they wanted Carlotta Howard terminated or

21 wanted you to recommend Carlotta Howard's termination?

22 A. Somewhere in here is an e-mail. I believe it's

23 from Larry Barnes. I don't have the second set of

24 e-mails I printed, but there's an e-mail that you have.

25 Q. I probably do.

1 Was it Exhibit 4?

2 A. Yes.

3 [As read] In any case, I suggest that you

4 prepare a dismissal recommendation packet.

5 MR. WALSH: Okay. I want to now enter

6 Exhibit Number 7.

7 (Exhibit Number 7 marked.)

8 Q. (BY MR. WALSH) This is another e-mail chain.

9 Do you remember sending those e-mails?

10 A. Sure.

11 Q. Okay. And so you knew that she had -- that

12 Ms. Howard met with Lisa Black on September 28th?

13 A. Yes.

14 Q. When you sent a recommendation for Ms. Howard

15 to be terminated, did you believe she should be

16 terminated?

17 A. I don't have a personal opinion on it.

18 Q. You were just following Regional Office's --

19 A. Yes.

20 Q. -- directives?

21 A. Yes.

22 Q. Okay. And you would have been fine if Lisa had

23 allowed her to -- not terminated her?

24 MS. CONNOR: Objection. Form.

25 A. Sure.

1 Q. (BY MR. WALSH) Would you have been able to run

2 your unit if she was only able to work four hours a day?

3 A. Absolutely. I would have run my unit

4 regardless.

5 Q. Okay. So you could have worked -- so the first

6 exhibit that we entered was a doctor's release --

7 A. Uh-huh.

8 Q. -- saying that she could work for four hours a

9 day?

10 A. Uh-huh.

11 Q. And just so we're clear, you're saying that

12 would have -- you would have been able to do -- that

13 would have been fine?

14 MS. CONNOR: Objection. Form.

15 A. I would have done whatever I was instructed to

16 do.

17 Q. (BY MR. WALSH) Okay. But she could have

18 worked in your unit, and your unit could have operated

19 that way?

20 A. Any unit can operate that way. It's not our

21 decision to make whether or not she's going to come back

22 on light duty and what responsibilities she's going to

23 have.

24 Q. That's all Regional Office?

25 A. Yes.

1 Q. Okay.

2 A. Here, yes.

3 Q. I'm sorry. I don't mean to be making you

4 angry. I was just a little confused at one point.

5 MS. CONNOR: Objection. Sidebar.

6 MR. WALSH: I've got Exhibit Number 8 right

7 here.

8 (Exhibit Number 8 marked.)

9 Q. (BY MR. WALSH) Have you ever seen this form

10 before?

11 A. Not until yesterday.

12 Q. Okay. So you would not have known to refer

13 somebody to fill out that form?

14 A. No.

15 MR. WALSH: I want to enter Exhibit

16 Number 9.

17 (Exhibit Number 9 marked.)

18 Q. (BY MR. WALSH) Are you aware of a return to

19 work program?

20 A. Nope.

21 Q. Okay. Do you recognize what I just handed you,

22 Exhibit 9?

23 A. No.

24 Q. Okay. So you would not have known to refer

25 anybody to that policy?

1 October of 2009?

2 MS. CONNOR: Objection. Form.

3 A. What -- I mean what specifically?

4 Q. (BY MR. WALSH) Who was performing her duties?

5 A. I'm certain that we all probably were.

6 Q. And then after she was terminated, who was

7 performing her duties?

8 A. Anyone who worked in my unit.

9 Q. So it continued on the same?

10 A. Uh-huh, yes. Or we would ask case aides from

11 other units. That's probably the more likely scenario

12 was that we were soliciting help from other units.

13 Q. Is that common for other units to solicit

14 help -- or for units to solicit help from other units?

15 A. Yes.

16 Q. And do those other units usually provide help?

17 A. If they can.

18 Q. I may have already asked you this, but I'm

19 going to go ahead and ask it. Do you know who Ami

20 Labrecque is?

21 A. The workman's compensation specialist from

22 accessHR.

23 Q. Were you receiving updates from her during the

24 period that Carlotta Howard was out?

25 A. I don't believe so, other than this e-mail.

1 A. Nope.

2 Q. And you would have not -- you would not have

3 known how to implement that policy?

4 A. No.

5 Q. Okay. Are you aware that Carlotta Howard filed

6 a complaint with the EEOC?

7 A. No.

8 Q. Were you ever contacted about a physician's

9 statement provided by CPS to the EEOC?

10 A. No.

11 Q. Were you ever contacted by any investigators

12 looking into the Carlotta Howard charge of

13 discrimination?

14 A. I don't believe so, no.

15 Q. It would have been in 2009, like the fall.

16 A. I don't believe so, no. It doesn't ring a

17 bell.

18 Q. Okay. Have you ever supervised disabled

19 employees?

20 A. No.

21 Q. Have you ever been required to implement any

22 accommodations for employees?

23 A. No.

24 Q. Okay. And let's see. How was your -- how were

25 you running your unit without Carlotta Howard until

1 Q. Were you notifying her or anybody in accessHR

2 about Carlotta's continued absence?

3 A. No. I don't think that would be my

4 responsibility. That would be their responsibility, I

5 would think.

6 Q. That would be the --

7 A. AccessHR or whoever these folks are. Workman's

8 compensation.

9 Q. Oh, okay.

10 Did you ever set a date for Carlotta Howard

11 to return to work?

12 A. No.

13 Q. So then she never failed to return to work?

14 MS. CONNOR: Objection. Form.

15 A. I don't know. I mean I don't know what that's

16 supposed to mean.

17 Q. (BY MR. WALSH) I guess to your knowledge, did

18 anybody ever set a date for Carlotta Howard to be back

19 working for your unit?

20 A. I didn't.

21 Q. And you would be the one who would do that?

22 A. No.

23 Q. Who would --

24 A. I wouldn't get caught up in the nuances of this

25 workman's compensation/Regional Office business. I

1 would seek guidance, and I would take that answer and
 2 relay it.
 3 Q. Okay. Well, do you know -- do you remember
 4 what Carlotta Howard's salary was?
 5 A. Oh, I have no idea.
 6 Q. Do you remember what benefits she got?
 7 A. I assume the same benefits we all received.
 8 Q. Okay. Well, I am just about out of questions.
 9 I don't really have anything else. I did want to give
 10 you the opportunity, since we've talked about so many
 11 different topics, to add anything to any of your answers
 12 that may have come up later that you thought of.
 13 A. No.
 14 MR. WALSH: Okay. Well, I have no further
 15 questions at this time. I will go ahead and pass the
 16 witness.
 17 MS. CONNOR: We will reserve our questions
 18 until trial.
 19 (Proceedings concluded at 3:37 p.m.)
 20 (End of proceedings.)
 21
 22
 23
 24
 25

1 CHANGES AND SIGNATURE
 2 WITNESS NAME: NICOLE OGLE DATE: MAY 31, 2012
 3 PAGE LINE CHANGE REASON
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1 I, NICOLE OGLE, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.
 4 _____
 5 NICOLE OGLE
 6
 7 THE STATE OF _____)
 8 COUNTY OF _____)
 9
 10 Before me, _____, on this day
 11 personally appeared NICOLE OGLE, known to me (or proved
 12 to me under oath or through _____)
 13 (description of identity card or other document) to be
 14 the person whose name is subscribed to the foregoing
 15 instrument and acknowledged to me that they executed the
 16 same for the purposes and consideration therein
 17 expressed.
 18 Given under my hand and seal of office this
 19 _____ day of _____,
 20
 21
 22 _____
 23 NOTARY PUBLIC IN AND FOR
 24 THE STATE OF _____
 25 COMMISSION EXPIRES: _____

1 NO. 11-13467
 2 CARLOTTA HOWARD, \$ IN THE DISTRICT COURT
 3 \$
 4 Plaintiff, \$
 5 \$
 6 Vs. \$ 160TH JUDICIAL DISTRICT
 7 \$
 8 STATE OF TEXAS, TEXAS \$
 9 DEPARTMENT OF FAMILY AND \$
 10 PROTECTIVE SERVICES, \$
 11 \$
 12 Defendant. \$ DALLAS COUNTY, TEXAS
 13
 14 REPORTER'S CERTIFICATION
 15 DEPOSITION OF NICOLE OGLE
 16 MAY 31, 2012
 17
 18 I, Natasha Benchimol, Certified Shorthand Reporter
 19 in and for the State of Texas, hereby certify to the
 20 following:
 21 That the witness, NICOLE OGLE, was duly sworn by
 22 the officer and that the transcript of the oral
 23 deposition is a true record of the testimony given by
 24 the witness;
 25 That the deposition transcript was submitted on
 _____ to the witness or to the attorney
 for the witness for examination, signature and return to
 me by _____;
 That the amount of time used by each party at the
 deposition is as follows:
 MR. COLIN WALSH - 01 HOURS:12 MINUTE(S)

CHANGES AND SIGNATURE

WITNESS NAME: NICOLE OGLE DATE: MAY 31, 2012

PAGE LINE	CHANGE	REASON
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I, NICOLE OGLE, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

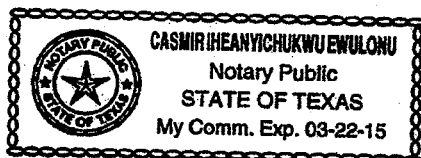
Nicole Ogle, [Signature]

NICOLE OGLE

THE STATE OF TEXAS)
COUNTY OF Dallas)

Before me, Casimir Ewulonu, on this day personally appeared NICOLE OGLE, known to me (or proved to me under oath or through TEXAS DRIVER LICENSE) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 25th day of June, 2012.



[Signature]
NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS
COMMISSION EXPIRES: 3-22-15


1 That pursuant to information given to the
2 Deposition officer at the time said testimony was taken,
3 the following includes counsel for all parties of
4 record:

5 MR. COLIN WALSH, Attorney for Plaintiff
6 MS. MADELEINE CONNOR, Attorney for Defendant

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in the action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Further certification requirements pursuant to
13 Rule 203 of TRCP will be certified to after they have
14 occurred.

15 Certified to by me this _____ day of
16 _____, ____.

17
18
19 
NATASHA BENCHIMOL, Texas CSR
20 CSR Expiration Date: 12/31/2013
NOTARIUS REPORTING, INC.
21 Firm Registration No. 659
3270 Darvany Drive
22 Dallas, Texas 75220
23 (214) 324-3733 * Telephone
(214) 432-5415 * Facsimile
24 1-(888) 848-8845 * Toll Free
25



1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the
3 deposition officer on _____;

4 If returned, the attached Changes and Signature
5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
7 to MR. COLIN WALSH, Custodial Attorney;

8 That \$ _____ is the deposition officer's
9 charges to the Plaintiff for preparing the original
10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
12 with Rule 203.3, and that a copy of this certificate was
13 served on all parties shown herein on and filed with the
14 Clerk.

15 Certified to by me this _____ day of
16 _____, ____.

17
18
19 _____
20 NATASHA BENCHIMOL, Texas CSR 8514
CSR Expiration Date: 12/31/2013
NOTARIUS REPORTING, INC.
21 Firm Registration No. 659
3270 Darvany Drive
22 Dallas, Texas 75220
23 (214) 324-3733 * Telephone
(214) 432-5415 * Facsimile
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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition ~~was~~ was not returned to the deposition officer on July 25, 2012 ;

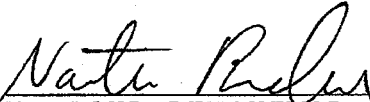
If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. COLIN WALSH, Custodial Attorney;

That \$ 253.⁵⁵ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 25th day of July, 2012.


NATASHA BENCHIMOL, Texas CSR 8514
CSR Expiration Date: 12/31/2013
NOTARIUS REPORTING, INC.
Firm Registration No. 659
3270 Darvany Drive
Dallas, Texas 75220
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MEMORANDUM

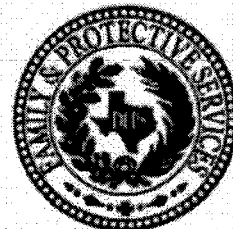
TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

TO: Lisa Black
CPS Regional Director
1200 E. Copeland Rd, Arlington, Texas

FROM: Nicole Ogle, MSW
Investigation Supervisor II
Unit 70

SUBJECT: Recommendation for Termination
Carlotta Howard
Human Services Technician (HST)

DATE: September 9, 2009



I am recommending the dismissal of Carlotta Howard, in accordance with Chapter 10 of the HHS Human Resource Manual. Carlotta Howard was hired by TDFPS on July 30, 2007.

I am recommending the dismissal of Carlotta Howard based on violations of the following DFPS Employee Work Rules:

#1 "Be familiar with and follow all HHS policies and procedures relating to job performance and work rules,"

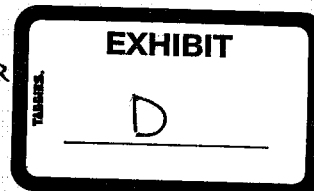
#2 "Perform job duties, meet HHS standards for job performance, and follow job-related instructions from HHS supervisors."

HR Policy States:

- If an employee is unable to return to work due to the employee's own serious health condition after exhausting the 12-week FMLA leave entitlement,
- the employee may exhaust any remaining paid leave accrued prior to taking FMLA leave;
- the agency head may grant leave without pay for up to a total of 12 months, including the 12 weeks of FMLA leave; or
- the employee may be dismissed. "

Carlotta Howard is a HST with the agency. She was originally hired into Unit 88, however during an agency reorganization that occurred in late 2008, Carlotta Howard was moved into Unit 70 with a start date of December 8, 2008. During

AN EQUAL OPPORTUNITY EMPLOYER



D-000114

this time I was out on maternity leave and was unaware of Carlotta's transfer into the unit until late January of 2009.

Upon returning from leave I learned that Carlotta Howard never reported to Unit 70 for work as she was in a car accident on December 16, 2008 while delivering Christmas gifts for the agency. I received an email from Access HR while I was out on leave on January 6, 2009 citing that Ms. Howard filed a claim for Workman's Compensation.

In February of 2009 I contacted The State Office of Risk Management Claim's Adjuster Matthew Jones. He provided contact information to me regarding how to reach Ms. Howard. I contacted Ms. Howard and inquired about her status. She explained that she had been in a car accident and that she was currently under the care of Dr. Louis Zegarelli at the Kiest Park Medical Clinic. I explained to her that her position had been transferred to Unit 70 and she stated she already knew. I asked her why she had not attempted to contact me and she stated she did not have my phone number. I asked her to please provide me with her medical documentation and she faxed over a one page doctor's summary (Attachment A). She stated she did not know how long she was expected to be out and that the doctor would be making all those decisions.

On April 15, 2009 I contacted Ms. Howard to inquire about her return to work status. She stated that she was not physically able to return to work because she was still suffering from pain in her back. She asked me to contact the doctor's office regarding her status. I contacted the office of Dr. Zegarelli and was routed to an administrative assistant. A fax was sent to me on April 15th that stated Ms. Howard is unable to return to work until further notice and that her next appointment was scheduled for May 6, 2009 (Attachment B).

During the later part of May I attempted to contact the office of Dr. Zegarelli to obtain an update regarding Ms. Howard's status and received no return phone call. I contacted Ms. Howard directly and she stated that she is now suffering from blurred vision and continues to have spasms in her back.

In the month of July I contacted Ms. Howard again to inquire about her return to work status. Ms. Howard became very verbally aggressive on the phone with me. She began yelling and screaming that she was being "harassed" and that the accident was not her fault. I explained to Ms. Howard that I was only calling to inquire about her status as she has been out for an extended period of time. She stated she would not be returning to work at this time and would not be making the decision to do so. At that time Ms. Howard stated that the agency could "do whatever they need to do".

On July 15, 2009 I received a fax (Attachment C) from the Department of Assistive and Rehabilitative Services, Division for Blind Services.

To date, Ms. Howard has yet to personally contact me to provide an update regarding her health and return to work status. At the beginning of this month I attempted to again contact Dr. Zegarelli's office. I spoke with "Norma V." the person who manages the Workman's Compensation files. She stated she would fax over Ms. Howard's records and has yet to do so. As a result of Ms. Howard's continued absence from the unit, there is a dire need to either fill the position or shift her workload to other staff who are already overburdened due to her continued absence from the unit.

Based on the above information it is recommended that Carlotta Howard be terminated from her position. Ms. Howard was in a work related car accident on December 16, 2008 and has yet to return to work. Although Ms. Howard has been out since December 16, 2008 she was not placed on FMLA until April due to the fact that I was out of the office and was unaware that she had transferred to my unit and had not been placed on FMLA. She was covered under FMLA from April 20, 2009 to July 25, 2009. Ongoing attempts have been made to gather medical records or speak to medical personnel regarding Ms. Howard's status and nothing has been obtained indicating that she would not be able to return to work after her last appointment on May 6, 2009. Additionally, I have received very little information from Ms. Howard herself. Ms. Howard has made no attempts to contact me. All communication to Ms. Howard has been initiated by me and the last attempt to talk with her resulted in her becoming verbally aggressive over the phone.

Wagle
Supervisor Signature

11-12-09
Date

Nancy Barco
PD Signature

11/17/09
Date

Ava Marie Thres
PA Signature

11/12/09
Date

A

Employees are entitled to report their injury to their employer or the Texas Workers' Compensation Commission. You have the right to file a claim with the Texas Workers' Compensation Commission and may be entitled to certain medical and wage benefits. For further information call your local Texas Workers' Compensation Commission office at 1-800-352-5311.



El empleado tiene el derecho de reportar su lesión a su empleador o a la Comisión Terasa de Compensación para Trabajadores. Usted tiene el derecho de presentar una demanda ante la Comisión Terasa de Compensación para Trabajadores y puede estar entitulado a ciertos beneficios médicos y de salario. Para mayor información llame a la oficina local de la Comisión Terasa de Compensación para Trabajadores al 1-800-352-5311.

TEXAS WORKERS' COMPENSATION WORK STATUS REPORT

PART I GENERAL INFORMATION		3. Doctor's Name and Degree Louis D Zegerall, D.O.	For transmission purposes only	Date Using Form
1. Injured Employee's Name Charlotte Howard	4. Clinic/Facility Name Kiest Park Medical Clinic	5. Employer's Name Child Protective Service		
2. Date of Injury 12-16-08	6. Clinic/Facility Phone & Fax (214)333-3383 Fax (214)333-0809	7. Employer's Fax or Email Address (if known)		
8. Employee's Description of Injury/Incident See Initial Report	9. Clinic/Facility/Center Address (street address) 2225 Vulcan Ln Dallas TX 75224	10. Insurance Carrier Risk Management		

PART II WORK STATUS INFORMATION

13. The injured employee's medical condition resulting from the workers' compensation injury:

(a) will allow the employee to return to work as of _____ (date) without restrictions.

(b) will allow the employee to return to work as of _____ (date) with the restrictions identified in PART III, which are expected to last through _____ (date).

(c) has prevented and still prevents the employee from returning to work as of 12/16/08 (date) and is expected to continue through 4/16/09 (date). The following describes how this injury prevents the employee from returning to work:
(RSP) Pac. weakness, 1/4 side effects & functional

PART III ACTIVITY RESTRICTIONS (BASED ON PHYSICIAN'S RECOMMENDATION)

14. POSTURE RESTRICTIONS (if any):

Max Hours per day: 0 2 4 6 8 Other	17. MOTION RESTRICTIONS (if any):	19. MISC. RESTRICTIONS (if any):
Standing <input type="checkbox"/>	Max Hours per day: 0 2 4 6 8 Other	<input type="checkbox"/> Max hours per day of work: _____
Sitting <input type="checkbox"/>	Walking <input type="checkbox"/>	<input type="checkbox"/> SS/Stretch breaks of _____ per _____
Kneeling/Squatting <input type="checkbox"/>	Climb stairs/ladders <input type="checkbox"/>	<input type="checkbox"/> Must wear soft/casual work
Bending/Stooping <input type="checkbox"/>	Grasp/squeeze <input type="checkbox"/>	<input type="checkbox"/> Must use cutters at all times
Pushing/Pulling <input type="checkbox"/>	Wrist flex/extension <input type="checkbox"/>	<input type="checkbox"/> No driving/operating heavy equipment
Twisting <input type="checkbox"/>	Reaching <input type="checkbox"/>	<input type="checkbox"/> Can only drive automatic transmission
Other: <input type="checkbox"/>	Overhead Reaching <input type="checkbox"/>	<input type="checkbox"/> No work / <input type="checkbox"/> _____ hours/day work:
15. RESTRICTIONS SPECIFIC TO (if applicable):	Keyboarding <input type="checkbox"/>	<input type="checkbox"/> In extreme hot/cold environments
<input type="checkbox"/> L Hand/Wrist <input type="checkbox"/> R Hand/Wrist	Other: <input type="checkbox"/>	<input type="checkbox"/> at heights or on scaffolding
<input type="checkbox"/> L Arm <input type="checkbox"/> R Arm <input type="checkbox"/> Neck	18. LIFT/CARRY RESTRICTIONS (if any):	<input type="checkbox"/> Must keep _____
<input type="checkbox"/> L Leg <input type="checkbox"/> R Leg <input type="checkbox"/> Back	<input type="checkbox"/> May not lift/carry objects more than _____ lbs.	<input type="checkbox"/> Elevated <input type="checkbox"/> Clean & Dry
<input type="checkbox"/> L Foot/Ankle <input type="checkbox"/> R Foot/Ankle	<input type="checkbox"/> for more than _____ hours per day	<input type="checkbox"/> No skin contact with: _____
<input type="checkbox"/> Other: _____	<input type="checkbox"/> May not perform any lifting/carrying	<input type="checkbox"/> Dressing changes necessary at work
16. OTHER RESTRICTIONS (if any):	<input type="checkbox"/> Other: _____	<input type="checkbox"/> No Running
		20. MEDICATION RESTRICTIONS (if any):
		<input type="checkbox"/> Must take prescription medication(s)
		<input type="checkbox"/> Advised to take over-the-counter meds
		<input type="checkbox"/> Medication may make drowsy (possible safety/driving issues)

* These restrictions are based on the doctor's best understanding of the employee's essential job functions. If a particular restriction does not apply, it should be disregarded. If modified duty that meets these restrictions is not available, the patient should be considered to be off work. Note - these restrictions should be followed outside of work as well as at work.

PART IV TREATMENT/FOLLOW UP APPOINTMENT INFORMATION

21. Work Injury Diagnosis Information:

① ACTS PC ② Cervical
③ L5/S1 ④ LT Shoulder
⑤ C6/7 radiculopathy
⑥ Cervical
⑦ R100/101/102

22. Expected Follow-up Services include:

Evaluation by the treating doctor on 1/24 (date) at _____ : _____ am/pm

Referral for consult with _____ on _____ (date) at _____ : _____ am/pm

Physical medicine 3 X per week for 4 weeks starting on _____ (date) at _____ : _____ am/pm

Special studies (if any): _____ on _____ (date) at _____ : _____ am/pm

None. This is the last scheduled visit for this problem. At this time, no further medical care is anticipated.

Date / Time of Visit: 01/13/09
Discharge Time: _____

EMPLOYEE'S SIGNATURE: SDF

DOCTOR'S SIGNATURE: [Signature]

Visit Type: Initial Follow-up

Role of Doctor: Treating doctor Referral doctor Designated doctor Center-selected RIME Consulting doctor TWCC-selected RIME Other doctor





B

23822

RETURN TO WORK CERTIFICATE

Date: 04/15/2009

**Patient: Carlotta Howard
DOI: 12/16/2008**

TO WHOM IT MAY CONCERN:

**Mrs. Howard was seen in my office today due to work injury.
The patient is medically unable to work until further notice.
Her next appointment is scheduled for 05/06/2009. If you have
any questions, please do not hesitate to call us.**

Sincerely,

A handwritten signature in black ink that reads "Louis D. Zegarelli".

Louis D. Zegarelli, D.O.P.A

C

**UT SOUTHWESTERN
MEDICAL CENTER**

Department of Ophthalmology

Chairman
James B. McCutley, MD, FACS, FRCOphth(UK)
The David Brion, Jr. Chair in Ophthalmology

Vice Chairman
H. Dwight Cavanagh, MD, PhD, FACS
The Dr. W. Maywood Thomas Chair
in Ophthalmology

Cornea, External Disease, Refractive, & Cataract Surgery

R. Wayne Bowman, MD
Irene Widel and Robert L. Aha, Jr.
Professorship in Ophthalmology
in Honor of R. Wayne Bowman, MD

H. Dwight Cavanagh, MD, PhD, FACS
Sudhva Iyer, MD
James P. McCutley, MD, FACS, FRCOphth(UK)
V. Vinod Mootha, MD
Steven M. Verity, MD

Comprehensive Ophthalmology & Cataract Surgery

Fredson H. Blankman, MD
Sudhva Iyer, MD
F. Ray Jones, Jr., MD
V. Vinod Mootha, MD
Brian R. Sullivan, MD

Glaucoma & Cataract Surgery

Nalini K. Aggarwal, MD
Karanjit S. Kooner, MD, MBA, FRCOphth(UK)
Martin B. Wax, MD
Jerr T. Whitson, MD, FACS

Macular Degeneration

Yu-Guang He, MD
Zora Meszger Macular Degeneration
Research Professor
Rafael L. Ufret-Vincenty, MD

Neuro-Ophthalmology

Elliot M. Frohman, MD, PhD
R. Nick Hogan, MD, PhD
F. Ray Jones, Jr., MD
John G. McHenry, MD, MPH

Ocular Pathology

R. Nick Hogan, MD, PhD

Oculoplastic & Orbital Surgery

Kamel M. Itani, MD
John G. McHenry, MD, MPH

Oncology

R. Nick Hogan, MD, PhD
Kamel M. Itani, MD

Pediatric Ophthalmology & Adult Strabismus

Serena X. Wong, MD
David H. Weakley, Jr., MD

Retina & Vitreous

Yu-Guang He, MD
Carol G. Reibert, MD
Rafael L. Ufret-Vincenty, MD
Richard L. Winslow, MD

Ultrasonid

Kamel M. Itani, MD

VA Medical Center

Carol G. Reibert, MD (Chief of Service)
Ziad M. Hussein, MD
Kamel M. Itani, MD
Karanjit S. Kooner, MD, MBA, FRCOphth(UK)
Brian R. Sullivan, MD

Contact Lens & Low Vision

Kun Du, OD
Randy Hita, OD
Linda Jackson, OD
Lbert Lopez, OD
Edward N. Mendelsohn, OD
Indu M. Vep, OD

Research Director, Ophthalmic Research

Kim Y. Naderlona, PhD
The George V and Nancy P. Shull
Professor of Medical Science

Basic Ophthalmic Researchers

Hassan Muzak, PhD
Igor Hutvach, PhD
Peter Chen, PhD
Wojciech Kozubski, PhD
W. Matthew Petroll, PhD
Barbara A. Robertson, OD, PhD

Visual Electrophysiology

David A. Birch, PhD

Director, I (SWSR), Transplant Services Center

Jean Beck, MEd, MA

January 26, 2009

Carlotta Howard
1003 Greenbriar Trail
Cedar Hill, TX 75104

MR#: 90065226 / DOB: 09/08/1960

To Whom It May Concern:

We have been following Carlotta Howard for a blind painful eye.

She has a prosthesis on the right and visual acuity is 20/25 on the left. She has a constricted visual field on the left and significant pain.

She requires visual accommodations.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

John G. McHenry, M.D., M.P.H.
Associate Professor of Ophthalmology
Neuro-Ophthalmology & Related Orbital Diseases
Oculoplastic & Orbital Surgery

JGM:at9031

D: 01/25/2009 17:24:55 T: 01/24/2009 15:01:41 Job: 238174

4/16/09
Per Monisha, with Dr. McHenry's
office. Mrs. Howard has full
temporal loss with VF restriction
15° on the right side of the left eye.
Confirmed this information with
Dr. McHenry's office on 4/16/09

Rohr, Rosa L (DFPS)

From: Barnes, Larry G (DFPS)
Sent: Monday, August 03, 2009 7:31 AM
To: OGLE, NICOLE
Cc: Hobbs, Melissa (DFPS); Garcia, Nancy J (DFPS)
Subject: RE: Employee: Carlotta Howard

Nicole,
I can't remember if I have already responded to this or not. In any case, I suggest that you prepare a dismissal recommendation packet and send to Melissa and myself so that we can present to the Positive Performance Committee for review. At that time, we can decide what specific actions we can take.
Larry

From: OGLE, NICOLE
Sent: Monday, July 27, 2009 10:35 AM
To: BARNES, LARRY G
Cc: HOBBS, MELISSA; GARCIA, NANCY J
Subject: Employee: Carlotta Howard
Importance: High

Larry,

The employee (HST) that you and I discussed below is still out on workman's comp and her FMLA status is now expired. She had someone from DARS call me asking me if they could come meet with me personally about how they could help save her job. They said that she was having blurry vision in one of her eyes. I specifically asked what services they could offer her in an effort to better help her job and the rep said she didn't know and that all she could think of would be special glasses. At this point, Carlotta has been off of work since December of last year. How do I proceed with this?

Nicole Ogle, MSW
CPS Supervisor II - Unit 70
214-267-5304

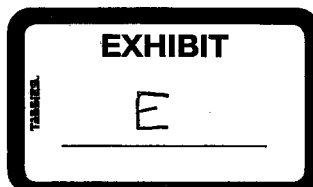
From: BARNES, LARRY G
Sent: Monday, June 01, 2009 1:10 PM
To: OGLE, NICOLE
Subject: RE: Employee: Carlotta Howard

Nicolè,
Has Carlotta been placed on FMLA? If not, please call me at 817/792-5242 so that we can discuss further. If so, when does it expire? How much leave does she have remaining? We probably need to talk further.

Larry

From: OGLE, NICOLE
Sent: Monday, June 01, 2009 11:45 AM
To: BARNES, LARRY G
Subject: Employee: Carlotta Howard
Importance: High

Hi Larry,



I have a HST (transporter) named Carlotta Howard who was reassigned to my unit back in December of '08 when the reorganizing was taking place. Ms. Howard was involved in a car accident while delivering Xmas gifts for the agency on 12/16/08. She was placed on workman's compensation shortly afterwards under the care of Dr. Louis Zegarelli. To date, Ms. Howard is still on workman's comp. I have been in contact with the office of Risk Management as well as her pain management doctor, Dr. Revel, as it has now been 5.5 months since the time of her injury. I've just left a message to speak with her primary doctor as well as the pain management doctor. The last time I spoke with the pain management doctor was at the very beginning of May and I was told she would be ready to go back to work in 2-4 weeks.

I just spoke with Ms. Howard and she is stating that she has a follow up appointment with the main doctor, Dr. Zegarelli, on June 10th. I asked if she was going to be returning to work and she said it's not her decision. She said that if she's made to come back to work that she will need light duty. I asked her what that meant specifically and she stated she didn't know. I asked her if she was going to continue transporting and she said she does not want to. When asked why she said she has back spasms and blurry vision. The office of Risk Management has indicated that the doctor she was sent to is notorious for keeping clients out of work months longer than needed. At this point I'm at a loss for what to do. She is saying she does not want to transport and that is her job position. Furthermore, she's been assigned to my unit for the past 5.5 months and we have had no HST.

Can you advise me as to what the next steps should be with this? I appreciate your help!

Nicole Ogle, MSW
CPS Supervisor II - Unit 70
214-267-5304



TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
Anne Heiligenstein

September 18, 2009

Carlotta Howard
8700 N. Stemmons Freeway
Dallas, TX 75247

Dear Ms. Howard:

Enclosed is a recommendation for termination. You have two workdays from the date you receive this to recommendation to choose from the following options to respond to this recommended action:

- You can submit a written response to the action to your supervisor; and/or
You can request and schedule a meeting with Regional Director. The purpose of this meeting is to allow you the opportunity to present additional information before a final decision on the action is reached. Please contact Melissa Hobbs at 817-792-5259 and a time will be scheduled for you to meet with me. This meeting should be scheduled as soon as possible in order to expedite the action; or
You can choose not to respond; or
You can choose to resign.

Sincerely,

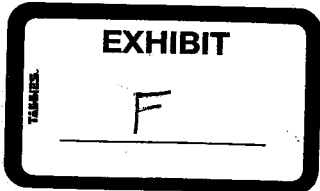
[Handwritten signature of Lisa Black]

Lisa Black, MSSW
Regional Director
Child Protective Services

cc: file

CERTIFIED MAIL # 7008

Domestic Return Receipt form with fields for Sender, Signature, Received by, Service Type, and Article Number. Includes handwritten address for Carlotta Howard and date 9/21/09.





TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

COMMISSIONER
Anne Heiligenstein

October 16, 2009

Carlotta Howard
1003 Greenbriar Trail
Cedar Hill, TX 75104

Dear Ms. Howard:

I sent you a recommendation for termination on September 18, 2009. Per your request, I met with you on September 28, 2009. At that time, you explained that you were able to return to work and would provide a doctor's note indicating such. On October 9, 2009 you provided a note from your doctor stating that you would be able to return to work on October 12, 2009 working only four hours per day. It did not indicate how long this restriction would remain in effect. As of this date you are not yet able to return to work full time and you do not have the leave balances to accommodate these restrictions.

I have made the decision to terminate you from Child Protective Services. The termination is based upon the following Work Rule/Policy violations:

#1 "Be familiar with and follow all HHS policies and procedures relating to job performance and work rules,"

#2 "Perform job duties, meet HHS standards for job performance, and follow job-related instructions from HHS supervisors."

HR Policy States:

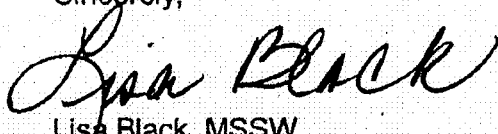
- If an employee is unable to return to work due to the employee's own serious health condition after exhausting the 12-week FMLA leave entitlement,
- the employee may exhaust any remaining paid leave accrued prior to taking FMLA leave;
- the agency head may grant leave without pay for up to a total of 12 months, including the 12 weeks of FMLA leave; or
- the employee may be dismissed. "

HR 1102 – Exhaustion of Leave

It is the policy of the Department of Family and Protective Services that if a DFPS employee exhausts all leave entitlements and does not to return to work, he or she may be dismissed.

You are not to report to work after 5:00 pm on October 16, 2009. A packet of forms related to merit status request for retirement contributions refund and insurance continuation conversion will be mailed to your home address within the next month. Please read the material carefully.

Sincerely,



Lisa Black, MSSW
Regional Director
Child Protective Services

cc: file
Regular Mail

Certified Mail # 7009 1680 0002 1287 7411

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature: <i>[Signature]</i> <input type="checkbox"/> Agent</p> <p>B. Received by: <i>[Signature]</i> <input checked="" type="checkbox"/> Addressee</p> <p>C. Date of Delivery: <i>10-17-9</i></p>
1. Article Addressed to: <i>Carlotta Howard 1003 Greenbriar Trail Cedar Hill TX 75104</i>	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
2. Article Number (Transfer from service label)	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
PS Form 3811, February 2004	4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes

7009 1680 0002 1287 7411

Domestic Return Receipt

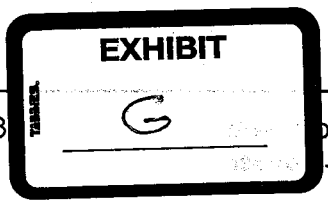
102595-02-14-1540

NO. 11-13467

1		
2	CARLOTTA HOWARD,	§ IN THE DISTRICT COURT
		§
3	Plaintiff,	§
		§
4	VS.	§ 160TH JUDICIAL DISTRICT
		§
5	STATE OF TEXAS, TEXAS	§
	DEPARTMENT OF FAMILY AND	§
6	PROTECTIVE SERVICES,	§
		§
7	Defendant.	§ DALLAS COUNTY, TEXAS

ORAL DEPOSITION OF
LISA BLACK
MAY 31, 2012
VOLUME 1

ORAL DEPOSITION OF LISA BLACK, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and -numbered cause on May 31, 2012, from 9:35 a.m. to 11:18 a.m., before Natasha Benchimol, CSR in and for the State of Texas, reported by machine shorthand, at 1200 East Copeland Road, Suite 400, Arlington, Texas 76011 pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.



6

1 before?

2 A. Yes.

3 Q. Okay. So you know that you're under oath, and

4 it's the same oath as in the court and all of that.

5 I just wanted to make sure you're not

6 taking any medications or on anything that might prevent

7 you from answering questions today or impair your

8 ability --

9 A. No, I am not.

10 Q. -- to answer or understand?

11 Okay. And I also want to make sure if you

12 don't understand a question, just ask me to repeat it or

13 rephrase it. Sometimes I can talk really fast or be

14 unclear.

15 A. Okay.

16 Q. So just feel free to ask me.

17 A. Okay.

18 Q. If you need a break, just let me know. I would

19 ask that if you haven't answered that question that I've

20 asked you, if you would answer that question, and then

21 we can take a break --

22 A. Okay.

23 Q. -- so we don't leave any hanging questions

24 because the suspense will kill me.

25 A. Okay.

8

1 It's the memo that's prepared when they're getting ready

2 to dismiss an employee, and I also reviewed some e-mails

3 that were in that packet.

4 MR. WALSH: Just so we're clear, I'm going

5 to go ahead and enter this exhibit.

6 (Exhibit Number 1 marked.)

7 Q. (BY MR. WALSH) Is this the packet that you

8 were talking about, the recommendation?

9 MS. CONNOR: Can you identify the exhibit,

10 please, for the record, Colin?

11 MR. WALSH: Oh, this is --

12 MS. CONNOR: See what she's looking at?

13 MR. WALSH: Right. This is Exhibit

14 Number 1. It's a recommendation for termination of

15 Carlotta Howard.

16 MS. CONNOR: I like to hear Exhibit 1 -- or

17 exhibit number somewhere around where they're looking at

18 it.

19 MR. WALSH: Uh-huh.

20 Q. (BY MR. WALSH) Have you seen that document

21 before?

22 A. Yes, sir.

23 Q. Okay. And what is it?

24 A. It is a recommendation -- it's a recommendation

25 for termination. It's also some doctor's notes, and a

7

1 Q. And the other issue is, as you probably know

2 from your past depositions, if your attorney objects,

3 unless she instructs you not to answer, you can go ahead

4 and answer whatever question I just asked you.

5 All right. Did you meet with anyone to

6 prepare for your deposition?

7 A. I met with my counsel.

8 Q. Okay. And when did that happen?

9 A. Just a few minutes ago.

10 Q. Did you meet with her before that?

11 A. No, huh-uh.

12 Q. Okay. And how long would you say you met with

13 her?

14 A. Five to seven minutes.

15 Q. Okay. Was anybody else present during that

16 meeting?

17 A. Ms. Rohr.

18 Q. Okay. Did you review any documents to prepare

19 for the deposition today?

20 A. Yes, I did.

21 Q. What documents did you look at?

22 A. I've looked at the recommendation for

23 termination on Ms. Howard.

24 Q. Okay.

25 A. It's a packet of information. It's the memo.

9

1 Texas Workman's Compensation status report.

2 Q. Okay. And we'll talk about that a bit more

3 later, but I just wanted to make sure is that the

4 document you reviewed in preparing --

5 A. Uh-huh, yes, sir.

6 Q. Okay. Excellent.

7 Let's see. Have you ever gone by any other

8 names besides Lisa Black?

9 A. My married name is Lisa Flanagan.

10 Q. Could you spell that?

11 A. L-I -- oh, I'm sorry. F-L-A-N-A-G-A-N.

12 But it has never -- I've never -- on my

13 job, it's always been Lisa Black.

14 Q. Okay.

15 A. Lisa Flanagan has never been on any information

16 associated with my employment.

17 Q. Okay. And I would like to ask you a little bit

18 about your education background. Where did you go to

19 high school?

20 A. Plainview High School.

21 Q. And where did you go to college?

22 A. Texas Woman's University in Denton.

23 Q. Okay. Did you get any graduate degrees?

24 A. Yes, I did. I went to the University of Texas

25 at Arlington, and I have a master's in social work.

10

1 Q. All right. So you're from the Dallas area?

2 A. I live here now, uh-huh.

3 Q. Okay. And where are you from originally?

4 A. Plainview, Texas. It's in the Panhandle in

5 between Lubbock and Amarillo.

6 Q. Okay. Let's see. So why don't you tell me a

7 little bit about your current position as the regional

8 director.

9 A. I am responsible for the overall operation of

10 Child Protective Services in Region 3 of the Texas

11 Department of Family and Protective Services. I

12 directly supervise six -- I have direct -- I have six

13 direct reports. Five of them are program administrators

14 that run -- that are over different areas in the region.

15 I have a deputy regional director who is over our

16 operations and support services, and we have

17 approximately a \$90 million budget in this region. I'm

18 responsible for the budget, and I'm also responsible for

19 making the final decisions regarding dismissal of

20 employees and other various and sundry things.

21 Q. So you said you're in charge of dismissal of

22 employees. And that's true -- so you're the final say

23 on all employee terminations?

24 A. I am the final say in this region.

25 Q. Okay. And let me ask you about the

12

1 committee. So I've been in this region over 20 years.

2 It's always been a process like that. But certainly

3 throughout the years, I'm sure it's been tweaked and,

4 you know, changed.

5 Q. Uh-huh.

6 And so after it goes to that personnel

7 committee and it comes to you, you then decide whether

8 or not to terminate them?

9 A. Yes. I get information from them, I listen --

10 you know, I listen to whatever information they bring --

11 whatever information they tell me. If it's something

12 that compels me to look further into it, I will. If its

13 additional information I need to obtain, I will. And at

14 that point, I'll make -- I will make the decision of

15 whether or not I'm going to uphold the recommendation or

16 I will make the decision to perhaps not uphold it and

17 send them back to the unit or transfer an employee, just

18 depending on what the situation is.

19 Q. Okay. And just so I understand what the

20 personnel committee tells you, they say -- so we have

21 this recommendation. What do they tell you, I guess?

22 A. Usually what I end up getting --

23 MS. CONNOR: Objection. Form.

24 Go ahead.

25 A. Usually, I end up getting the memorandum that

11

1 terminations. How does that come about?

2 How does it get up to your desk?

3 A. And I can speak -- this is how it should happen

4 is that the supervisor of that employee makes the

5 recommendation to her program director. If the program

6 director reviews it and says, Oh, yeah, this is

7 something that we -- we need to proceed on, and they

8 will write it up and send it up to the PA. And if --

9 the program administrator. And if that's something that

10 the program administrator feels we need to proceed with,

11 it will go to our personnel committee. And if the

12 personnel committee decides this is something that we

13 should move forward towards dismissal, it is -- and

14 they've checked with our legal counsel that is something

15 that's defensible, that we will -- then it will get to

16 my desk.

17 Q. And you said that's how it should happen. Is

18 that not how it usually happens?

19 A. No, no. I can't go on record and say all of

20 them happen that way. That's how it should happen.

21 Q. Okay. And how long has that procedure been in

22 place?

23 A. Since -- I've been in this region for over 20

24 years. There was always a personnel committee since --

25 when I was a PD and a PA, there was a personnel

13

1 you see here, and I'm looking -- it's a packet. And so

2 I'm looking to see if they've talked to our attorneys,

3 and what the attorneys are saying. And then that's

4 usually the process. We send out a letter. It's the

5 letter that's on the top of this Exhibit 1 that you gave

6 me, and they -- and the employee at that time gets her

7 options whether or not, you know, they can resign, they

8 could choose not to respond, or they can request a

9 meeting with me.

10 Q. (BY MR. WALSH) Okay. And is there anything

11 the personnel committee writes when they --

12 MS. CONNOR: Objection. Form.

13 THE WITNESS: Did you want me to answer?

14 MS. CONNOR: Yeah.

15 A. Anything they write? No. These packets are --

16 are -- the recommendations come from the supervisor.

17 Does that make sense?

18 Q. (BY MR. WALSH) Right.

19 A. It comes from the supervisor. It's nothing

20 that our personnel committee per se writes, you know,

21 other than e-mails. It might be an e-mail to the

22 attorneys or something like that.

23 Q. Okay. Who is Ami Labrecque?

24 A. I have no idea.

25 Q. Okay. Do you know -- what is accessHR?

14

1 A. That is our system of how we keep our time and
 2 leave. They are basically our -- like our HR, human
 3 resources department.
 4 Q. They're within the department -- the TDFPS?
 5 A. They -- that is a Health and Human Services
 6 program. Like every agency within Health and Human
 7 Service uses accessHR to record time and leave, to, you
 8 know, find out, Oh, am I eligible for this, am I
 9 eligible for that?
 10 So that's what they are. It's an HR
 11 department within the Health and Human Services.
 12 Q. Okay. And what employees -- so employees use
 13 that as the human resource department?
 14 A. Yes, sir.
 15 Q. And they're told to go to accessHR?
 16 A. Yes, sir. They should be. And we also have an
 17 online handbook which directs you to accessHR. We have
 18 an online HR handbook -- human resource handbook which
 19 is -- anything you want to know about your employment,
 20 your benefits, all of that is online. So it directs
 21 employees to go to accessHR. And our employees like
 22 supervisory staff, managerial staff, if you have an
 23 employee out on leave and you have to put that leave in
 24 for the employee and things like that, they can assist
 25 you with that.

16

1 Q. (BY MR. WALSH) Okay. I think you mentioned
 2 there was a policy manual?
 3 A. Yes.
 4 Q. Okay. Is that usually followed?
 5 A. It should be.
 6 Q. What happens if it's not followed?
 7 MS. CONNOR: Objection. Form.
 8 You can answer.
 9 A. If it's not followed? You know, if certain
 10 policies -- and so we have several handbooks, but are
 11 you referring to the HR handbook policy?
 12 That handbook?
 13 Q. (BY MR. WALSH) Well, let's -- let's slow down,
 14 and tell me about all of the policy handbooks that you
 15 have.
 16 A. We -- we're governed by the Child Protective
 17 Services handbook, which has policies and procedures for
 18 the program of Child Protective Services. We have our
 19 HR handbook, our human resource handbook.
 20 Q. Uh-huh.
 21 A. We have policies that are sent forth by -- by
 22 the commission that are in different -- it's in a
 23 different area on our -- on our intranet. We have the
 24 Texas Administrative Code, the Texas Family Code. All
 25 of that information is online.

15

1 Q. Okay. And -- well, so then an employee goes
 2 out on leave and they contact accessHR; is that correct?
 3 A. Yes, an employee can do that, yes.
 4 Q. And then does accessHR contact the supervisor
 5 about that leave?
 6 A. If the supervisor has a question about it. If
 7 it's the employee that's calling and asking, they're
 8 going to talk directly to the employee. If it's a
 9 supervisor that's making that call, Hey, how do I do
 10 this; is there any way we can do that, they will contact
 11 the staff that made that call. The supervisor.
 12 Q. Okay. So when an employee requests leave, who
 13 do they go to request it from?
 14 A. Their supervisor.
 15 Q. Okay. And why would they then contact
 16 accessHR?
 17 A. It might --
 18 MS. CONNOR: Objection. Form.
 19 You can answer.
 20 A. Okay. It might be issues with leave being
 21 entered incorrectly. It might be issues with -- well,
 22 say that they've been out on sick leave. What other
 23 options do I have if I run out of leave; what other
 24 types of leave can I use?
 25 That type of stuff.

17

1 Q. Okay. So if an employee were requesting leave,
 2 which handbook would they look at?
 3 A. They would want to look at our human resource
 4 handbook.
 5 Q. And what would they find in there about leave?
 6 MS. CONNOR: Objection. Form.
 7 You can answer.
 8 A. They would find how to request it, what the
 9 policy says, you know. They would find what types of
 10 leave you can accrue, what types of leave you can take.
 11 They would find out about comp time, overtime, all of
 12 that type of stuff. They will find out, also, our
 13 disciplinary policies. You know, how we look at -- what
 14 is done when you're disciplined. They could also find
 15 how to file a grievance, how to file an administrative
 16 complaint.
 17 Q. (BY MR. WALSH) Okay. If an employee were
 18 looking for reasonable accommodation, which handbook
 19 would that be?
 20 A. That would be in the human resources handbook.
 21 Q. And what does the human resources handbook say
 22 about reasonable accommodation?
 23 MS. CONNOR: Objection. Form.
 24 You can answer.
 25 A. I've never -- I've never had to ask for

18

1 reasonable accommodation, so I don't know. I'm sure
 2 there are certain forms. So I'm not -- I couldn't be
 3 specific on what it tells you to do. I know that
 4 paperwork is submitted. And see, I don't -- I couldn't
 5 tell you what to do. I've never done that before. I
 6 just know that it doesn't come through me.
 7 Q. (BY MR. WALSH) So an employee does not ask you
 8 for reasonable accommodation?
 9 A. No. That starts at the supervisor level.
 10 Q. Would the supervisor ask you if an
 11 accommodation is reasonable?
 12 A. That would go --
 13 MS. CONNOR: Objection. Form.
 14 Go ahead.
 15 A. That would go through their chain of command.
 16 That -- that type of stuff very seldom comes to me
 17 because those forms are sent to either accessHR or
 18 either the Office of Civil Rights.
 19 Q. (BY MR. WALSH) What is the Office of Civil
 20 Rights?
 21 A. That is -- that is -- they're with HHSC, which
 22 is Health and Human Services Commission. And where
 23 there are administrative complaints filed or grievances
 24 filed or request for reasonable accommodation, it goes
 25 through that office.

20

1 Q. Okay. So you find out when you have to pay
 2 for --
 3 A. Right. Because I'm usually the one -- if it's
 4 an extraordinary amount of money, say if we -- if the
 5 setup is 3 to \$4,000, that's going to come to me.
 6 Q. Okay. Can you tell me some other types of
 7 accommodation that you know?
 8 A. Those are the only ones that I know of in terms
 9 of the work station. You know, people being able to do
 10 their job with the equipment we have.
 11 Q. Would you say if an accommodation is listed in
 12 the manual, it would be a reasonable accommodation?
 13 MS. CONNOR: Objection. Form.
 14 You can answer.
 15 A. If it's -- yeah. And I don't know which
 16 accommodations are listed in the manual. You know, they
 17 might have some examples of them, but I wouldn't know.
 18 Q. (BY MR. WALSH) But those would be appropriate
 19 accommodations?
 20 MS. CONNOR: Objection. Form.
 21 A. Uh-huh.
 22 Q. (BY MR. WALSH) So I wanted to ask you about
 23 something you just said. You said you give
 24 accommodations for people who aren't necessarily
 25 disabled?

19

1 Q. Okay.
 2 A. And they also investigate discrimination
 3 complaints and things like that.
 4 Q. So you said you've never had to ask for
 5 reasonable accommodation?
 6 A. Huh-uh.
 7 Q. Do you know if other employees have?
 8 A. Oh, yes.
 9 Q. So there are disabled employees that work for
 10 TDFPS?
 11 A. There are employees that need accommodations
 12 for certain things. So I would say -- I don't know if
 13 they are disabled. What I can tell you is that I
 14 have -- we have -- because when you -- sometimes when
 15 you accommodate an employee, it has to do with not
 16 necessarily a disability. It could be the eyesight that
 17 they haven't been -- you know, that has not been deemed
 18 a disability, and we might have to order a magnifier for
 19 the computer. That's when I find out about stuff. Or
 20 it might be something about ergonomically-correct
 21 furniture because, you know, they might have pain in
 22 their hands when they're typing. Stuff like that. But
 23 that doesn't mean they are disabled. So when I find out
 24 about it, it's usually me approving to pay for the
 25 equipment.

21

1 A. Right.
 2 Q. Could you sort of tell me what you think of is
 3 a disabled person?
 4 MS. CONNOR: Objection. Form.
 5 You can answer.
 6 A. I would think you -- if you're disabled, it's
 7 going to be written somewhere or somewhere down. I mean
 8 maybe through the Social Security Office. I don't know.
 9 If I saw you in a wheelchair, I would think you were
 10 disabled. And I guess it would be those people who fit
 11 in under the American Disabilities Act. You know, I
 12 wouldn't know that offhand just looking at -- you know,
 13 just looking at you. I don't know, you know.
 14 I don't know if you're disabled or if you
 15 have some type of disability. You see people that park
 16 in handicap parking spaces, and they get out and walk
 17 better than you. I don't know, I guess, is what I'm
 18 saying. I don't know, and I wouldn't know if an
 19 employee was disabled --
 20 Q. (BY MR. WALSH) Uh-huh.
 21 A. -- unless they told me.
 22 Q. Uh-huh.
 23 A. That's not something I ask.
 24 Q. And when you're deciding whether or not -- so
 25 let me start over.

22

1 You -- you approve certain reasonable
2 accommodations that involve purchasing equipment?
3 A. I approve only the purchase of equipment. I
4 think I said when an employee completes that reasonable
5 accommodation form, it goes to either the Office of
6 Civil Rights or accessHR, and there the decision is made
7 because it's a lot of paperwork that has to be attached
8 to that reasonable accommodation in terms of things from
9 your doctor and whatever else to determine whether or
10 not this is something we can accommodate you on.

11 Q. So then when you get that request for
12 reasonable accommodation, it's already been determined
13 that that's what would work for them?
14 A. When I approve --
15 MS. CONNOR: Objection. Form.
16 You can answer.
17 A. When I approve -- if -- if I have to approve
18 the purchase of something that is an extraordinary
19 amount, it has been approved for them to have reasonable
20 accommodation.
21 Q. (BY MR. WALSH) Okay. And do you know what
22 goes into approval of the reasonable accommodation?
23 A. I'm sorry, I do not. That is done outside of
24 my jurisdiction.
25 Q. Okay. Have you ever approved leave as a

24

1 Lisa, I can't lift these kids. Can you
2 bring -- can I bring so and so with me to help me?
3 That would be light duty. I've done that
4 as a supervisor.
5 Q. So you would approve somebody coming in
6 part-time?
7 A. No, I didn't say that. If they have to go to
8 the doctor, you know, something like that and they have
9 their leave, yes. I would approve them doing that,
10 yeah.
11 Q. Have you -- let's see. So when a reasonable
12 accommodation comes into your office, it's -- you said
13 it's already been found out that they need it or it's
14 already been approved for them?
15 MS. CONNOR: Objection. Form.
16 A. Usually, they don't come to my office. They go
17 to, like I said, HHSC. If I am to -- if I am approving
18 the purchase of equipment for reasonable accommodation,
19 it has been approved. That means it has been approved.
20 Q. (BY MR. WALSH) Okay. So that means that that
21 person would be able to perform their job with that
22 accommodation?
23 MS. CONNOR: Objection. Form.
24 A. Yes.
25 Q. (BY MR. WALSH) Okay. Let's see. Have you --

23

1 reasonable accommodation?
2 A. No. I have never approved leave as a
3 reasonable accommodation.
4 Q. Have you ever approved light duty as reasonable
5 accommodation?
6 MS. CONNOR: Objection. Form.
7 A. And usually that's done at the supervisory
8 level, and it's determined on what is actually light
9 duty. I mean what is the employee requesting that would
10 be light duty and what type of impact would it have on
11 our operation, what type of impact would it have on that
12 unit, what type of impact would it have on us being able
13 to respond and to protect children. So that's usually
14 done at the supervisory level.
15 Q. (BY MR. WALSH) So you have never approved
16 light duty?
17 A. No. Not in -- I've never -- in my position as
18 reasonable director, no.
19 Say when I was a supervisor, if I had a
20 worker that, maybe, had an appendectomy or something
21 like that and had to come in, you know, and had been out
22 eight weeks, you know, light duty for that would be,
23 Lisa, do you mind if -- if I take off at -- you know,
24 every now and then they have to take off and go to a
25 doctor's appointment or something like that.

25

1 so let me ask you this. When somebody presents a
2 reasonable accommodation for you to approve, have you
3 ever suggested other accommodations?
4 MS. CONNOR: Objection. Form.
5 A. I've never approved reasonable accommodation.
6 Like I said, it goes through HHSC. That is not in my
7 purview. That goes through another part of our agency
8 to be approved, and I don't know that process. I do
9 know, as the regional director, if I -- if I have to
10 approve the purchase of equipment for reasonable
11 accommodation, that it has been approved by the powers
12 that be.
13 Q. (BY MR. WALSH) Uh-huh.
14 Okay. So let me ask about if somebody gets
15 in a car wreck, what is the process that usually -- if
16 somebody has a work-related injury, what is the process
17 that happens?
18 MS. CONNOR: Objection. Form.
19 You can answer it.
20 A. What the supervisor does is tell the person
21 that, Okay, go ahead and fill out the incident form.
22 And the incident -- it's an incident form
23 that is filled out, and it has what happened. You know,
24 you tell what happened, did you go to the doctor, is it
25 workman's comp. They do that, and that's pretty much

26

1 it. They do that.

2 And if they have to be on leave -- and

3 after that, I don't know what they do with the incident

4 form. It's sent to HHSC, Health and Human Services

5 Commission, and I don't know what they do with the

6 incident form. So if they are injured on the job, they,

7 you know, have the option of utilizing workman's comp.

8 Q. (BY MR. WALSH) Uh-huh.

9 And do they have to take a leave while

10 they're off?

11 A. Yes, uh-huh.

12 Q. And what happens when that leave runs out?

13 A. When --

14 MS. CONNOR: Objection. Form.

15 You can answer.

16 A. Okay. When the leave runs out, it's out. We

17 have other options. Well, when the leave runs out, it's

18 out. Again, employees can always call accessHR and ask

19 them, Are there any other options for me?

20 Q. (BY MR. WALSH) What other options are

21 available?

22 A. What I know of is extended sick leave, sick

23 leave pool. And that's depending on how long -- your

24 eligibility for that is contingent on how long you've

25 been with the agency, and it's the employee's

28

1 Q. So this is a program offered by Child

2 Protective Services; is that correct?

3 MS. CONNOR: Objection. Form.

4 A. I don't know. I really don't know. This is

5 the first time I have ever seen this. I will tell you

6 that every agency has an -- under HHSC, every agency has

7 a handbook for human resources. I've never seen this in

8 the Child Protective Services human resource handbook.

9 Q. (BY MR. WALSH) Okay. So you're saying you do

10 not -- do you think this is part of the handbook?

11 MS. CONNOR: Objection. Form.

12 A. I'm sure if it's under HHSC, it should apply to

13 all HHSC employees. But I've never seen this. I've

14 never seen this policy.

15 Q. (BY MR. WALSH) Okay. Well, if it's in the

16 handbook, should it be followed?

17 MS. CONNOR: Objection. Form.

18 A. It depends on the -- to me, it depends on the

19 impact of following something like this would have on my

20 overall operation of my program.

21 Q. (BY MR. WALSH) Okay. Can you turn to Page 3

22 of this exhibit, please, under "Required and Voluntary

23 Participation."

24 Do you see where I'm talking about?

25 A. Where are you?

27

1 responsibility to request that. And it depends on how

2 long you've been with the agency whether or not you're

3 eligible for it.

4 Q. Is there any return to work program?

5 A. Not to my knowledge. Not to my knowledge.

6 Return to work.

7 Q. Would it surprise you if there was a return to

8 work program in the manual?

9 MS. CONNOR: Objection. Form.

10 A. It wouldn't surprise me. I said not to my

11 knowledge. I mean I've never had to do anything -- I

12 never had an employee that had to do that.

13 MR. WALSH: I would like to enter Exhibit

14 Number 2 here.

15 (Exhibit Number 2 marked.)

16 Q. (BY MR. WALSH) Have you ever seen that

17 document before?

18 A. No, I haven't.

19 Q. You don't know what that is?

20 A. I've never seen -- I've never seen -- it looks

21 like it's part of our handbook. Well, it says "Human

22 Resources Manual," and it looks like it came off of the

23 our -- the Health and Human Services Web site.

24 Q. Uh-huh.

25 A. I've never seen it.

29

1 Q. It's down at the bottom of the page, right

2 above the box.

3 A. Okay.

4 Q. For certain types of injuries and disabilities,

5 this is required.

6 A. Okay.

7 MS. CONNOR: Objection. Form.

8 Q. (BY MR. WALSH) Do you see where it says that?

9 A. Uh-huh. You said required and voluntary

10 participation, yeah.

11 Q. Okay. Do you see where it says, [as read] An

12 illness or injury that is compensable under workers'

13 compensation, participation in the return to work

14 program is required?

15 A. Uh-huh, and then I see the exception.

16 Q. Uh-huh.

17 Okay. So there's certain circumstances

18 where this has to be offered?

19 MS. CONNOR: Objection. Form.

20 A. The way I'm interpreting it, is an employee --

21 it says, "Exception: An employee on worker's

22 compensation who also is approved for FMLA leave is not

23 required to participate, but may do so voluntarily."

24 Q. (BY MR. WALSH) Uh-huh.

25 So an employee makes that decision?

30

1 A. If it's voluntary, yeah.

2 Q. Okay. That would not be a decision made by the

3 employer?

4 A. Right.

5 MS. CONNOR: Objection. Form.

6 A. That's the way I'm interpreting it.

7 Q. (BY MR. WALSH) Okay. So then if an employee

8 asks to work -- do the return to work program, the

9 employer would allow it?

10 MS. CONNOR: Objection. Form.

11 A. It depends on the impact that it would have on

12 the operation of that unit, on the operation of us

13 delivering mandated child protective services -- child

14 protective services to children and families. It

15 depends on the impact. It depends on what that

16 employee's role is. If it's going to be a significant

17 impact, you know, it's up to the management to approve

18 it.

19 Q. (BY MR. WALSH) Okay. So I want to shift gears

20 on you slightly and talk more specifically about

21 Carlotta Howard.

22 A. Okay.

23 Q. Do you know who Carlotta Howard is?

24 A. I remember -- I vaguely remember Ms. Howard --

25 meeting with Ms. Howard. I vaguely remember meeting

32

1 A. Uh-huh.

2 Q. Did that happen with Carlotta Howard?

3 A. Yes, it did.

4 Q. And the -- what did the personnel committee say

5 to you about Carlotta Howard?

6 MS. CONNOR: Objection. Form.

7 A. The recommendation was for dismissal. It was

8 for dismissal. They -- the personnel committee looked

9 at it after all was presented and, again, ran it through

10 our attorneys. And the recommendation was for

11 dismissal.

12 Q. (BY MR. WALSH) Did they put that in any sort

13 of written report?

14 MS. CONNOR: Objection. Form.

15 A. No. What I got -- what's written from them

16 that I get from them is the recommendation for

17 termination. That's what I get written, and it's really

18 not from the committee per se. It is from the

19 supervisor, program director, and program administrator.

20 Q. (BY MR. WALSH) So did the committee send you

21 any e-mails about Carlotta Howard?

22 A. I might have gotten e-mails from my assistants

23 who serve on the personnel committee.

24 Q. What did the program -- who was the program

25 director?

31

1 with her.

2 Q. What do you remember?

3 A. I remember she had been in an accident, and she

4 had -- she's one of our human services technicians. And

5 the accident occurred while she was on the job, and she

6 had been off for a while. I think she had been off for

7 about ten months before we made the decision to dismiss

8 her.

9 Q. And do you remember when that meeting was that

10 you had with her?

11 A. I don't. I don't. I don't remember.

12 Q. Okay. Do you remember --

13 A. Was it in -- I don't remember. I'm sorry. I

14 don't remember.

15 Q. You only had one meeting with Ms. Howard?

16 A. Yes, one meeting with Ms. Howard.

17 Q. Did you have any other meetings about

18 Ms. Howard?

19 A. No other meetings about her, huh-uh. I would

20 receive information from my assistants that -- you know,

21 in regard to Ms. Howard's situation.

22 Q. Okay. Did -- a little while ago, we talked

23 about the process a termination usually takes where the

24 supervisor recommends it, and it goes through several

25 people before it arrives to you.

33

1 A. Let's see. I think they signed it.

2 Nancy Garcia.

3 Q. And who was the program administrator?

4 A. Her name was Anna Flores.

5 Q. And you're looking at signatures. What do

6 those signatures signify?

7 A. That they are in agreement with the

8 recommendation.

9 Q. And the supervisor?

10 A. I believe this is -- is this Ogle?

11 I can't read that writing.

12 Q. I think you can be excused for that.

13 A. Yeah.

14 Q. But Ogle you said?

15 A. That's what it looks like.

16 Q. Do you remember a supervisor named Ogle?

17 A. Nicole Ogle, uh-huh.

18 Q. Okay. Does she still work here?

19 A. It's over 1,800 employees in this region, and I

20 don't know. I know we had some turnover with employees.

21 I am not really sure about Nicole.

22 Q. Okay. Let's now talk about Exhibit 1, which is

23 the recommendation for termination. You sent this to

24 Ms. Howard on September 18th?

25 A. Yeah.

34

1 Q. Okay. Did you send any other letters to
2 Ms. Howard at this time?

3 A. After I made the decision to uphold the
4 recommendation of dismissal, it was another letter sent
5 to her telling her that I was upholding it. And in that
6 letter -- I bet the day I talked to her is in that
7 letter.

8 I don't see it in your Exhibit 1 packet,
9 but it's a letter letting her know that I upheld her --
10 the recommendation for dismissal.

11 Q. Before you sent this letter, did you do any
12 investigation?

13 A. Not before I sent it, huh-uh. Only to make
14 sure that the staff had supporting documentation in the
15 packet, that it had been vetted through our attorneys.
16 So that's the only investigation I did.

17 Usually after I meet with staff, if there
18 are compelling things that they're telling me, I will
19 follow up on.

20 Q. But they didn't tell you any compelling things?
21 MS. CONNOR: Objection. Form.

22 A. Not my staff. Usually when I meet with the
23 staff person that's being dismissed, if there is some
24 compelling information that is relayed to me during that
25 meeting, I will follow up on it.

36

1 terminated?

2 MS. CONNOR: Objection. Form.

3 A. No. We looked at -- you know, when I met --
4 what I recall, when I met with her, she talked about
5 coming back, that her doctor was going to release her,
6 and that she could come back. Things like that. And so
7 we -- I asked for additional information from her
8 doctor, and I can't recall if she sent -- if that was
9 sent. But I do know that when it was sent, it was like
10 she wasn't really released to do her job.

11 Q. (BY MR. WALSH) Uh-huh.
12 Let's go through -- to these attachments.

13 A. Okay.

14 Q. So Attachment A is a Texas Compensation Status
15 Report?
16 A. Uh-huh.

17 Q. And this was something you considered in
18 Carlotta Howard's case?
19 A. Yes. Looking at when she could, you know --
20 Q. Okay.
21 A. -- how she could do her job, what her capacity
22 was, she could do her job physically and mentally.
23 Q. Uh-huh.
24 Okay. So do you see up at the top, it says
25 "Employee's Description of Injury"?

35

1 Q. (BY MR. WALSH) Okay. So when you got this
2 recommendation, you just sent it out?

3 A. Again, I reviewed everything to make sure that
4 everything was in the packet, everything -- you know,
5 reviewed the attachments. Those type of things.
6 Reviewed the information we received from the attorneys.
7 That's what I do.

8 Sometimes I'll have questions. It's
9 like -- okay, if it's something that I think -- I think
10 should have been in there, before I sign it, I'll have
11 them to go back and say -- ask the supervisor, Where is
12 this; where is that?

13 So yes, I do some preliminary
14 investigation. On this particular one, I did not -- did
15 not do preliminary because it was -- you know,
16 everything I needed, I had.

17 Q. Okay. So then this is the only basis for which
18 you thought Ms. Howard should be terminated?
19 MS. CONNOR: Objection. Form.

20 A. This -- this was the information --
21 Q. (BY MR. WALSH) I'm sorry. Let me put that a
22 different way.
23 A. Okay.
24 Q. So you -- this is all you considered in your
25 determination of whether or not Ms. Howard should be

37

1 A. Is that Part 1 or Part 2?
2 Q. It's going to be Part 1. Right above Part 2,
3 though.
4 A. It says, "See initial report."
5 Q. Right.
6 A. Uh-huh.
7 Q. Did you look at the initial report?
8 A. If it was in the packet, I did.
9 Q. Okay.
10 A. And I'm not recalling. You know, if it was in
11 the packet, I looked at it.
12 Q. Okay. But if it's not in this packet right
13 here that you're -- if it's not in Exhibit 1, then you
14 didn't look at it?
15 MS. CONNOR: Objection. Form.
16 A. I'm not saying that. I'm just saying if it was
17 in the packet given to me, I looked at it.
18 Q. (BY MR. WALSH) Uh-huh.
19 I guess I'm wondering what was in the
20 packet. I know that we're rehashing this over and over.
21 A. I know.
22 Q. What was in the packet you looked at?
23 A. It was this. It was this information here.
24 There were other things in that packet, but I'm not
25 really -- it was other things. There was some e-mails

38

1 in there. That kind of stuff.

2 Q. Do you remember what the e-mails said?

3 A. The e-mails were from our attorneys. Most --

4 they were mostly from the attorneys -- from the

5 attorneys letting us know that it was okay to move

6 forward.

7 Q. When were those e-mails sent, the dates?

8 A. Sir, I have no idea. I mean I didn't look at

9 the dates of them. This has been -- this was in 2009,

10 and I didn't look at the dates of them.

11 Q. What were the attorneys' names in 2009?

12 A. I believe we sent this one to Matt Guedea.

13 Q. Anyone else?

14 A. No, not that I recall. I think all of the

15 e-mail correspondence was with Matt.

16 Q. Okay. Do you know what radiculitis is?

17 A. Say that again.

18 Q. Do you know what radiculitis is?

19 A. No, I don't.

20 Q. So if I said cervical radiculitis, you wouldn't

21 know what that is?

22 A. Huh-uh.

23 Q. What about lumbar radiculitis?

24 A. Well, I know it has something to do with the

25 back, and I know cervical has something to do with

40

1 MS. CONNOR: Objection. Form.

2 A. That's not for me to determine. I don't -- I

3 can't determine that. That's determined by a medical

4 doctor. I don't know. I don't know. I mean was it

5 something that was going to be permanent?

6 I don't know.

7 Q. (BY MR. WALSH) So if a doctor was treating her

8 for this, it would be a disability?

9 MS. CONNOR: Objection. Form.

10 A. I have -- I don't know.

11 Q. (BY MR. WALSH) Let me ask you this. Does

12 temporal loss with VF restriction 15 degrees on the

13 right side of the left eye sound like a disability?

14 MS. CONNOR: Objection. Form.

15 A. Sounds like an ill -- it could be an illness.

16 I don't know. I don't know if it's a disability. I

17 can't comment on a disability. I don't know.

18 Q. (BY MR. WALSH) Does it sound like it impairs

19 your ability to live your life?

20 MS. CONNOR: Objection. Form.

21 A. Is it correctable?

22 It doesn't say if this is correctable. I

23 don't know. I don't know. I'm not a doctor.

24 Q. (BY MR. WALSH) Uh-huh.

25 Okay. So you don't think that having

39

1 female parts. But I don't know the radiculitis. I

2 don't know what that is.

3 Q. Did you look up what that was?

4 A. Huh-uh, no.

5 Q. Why not?

6 A. I just didn't.

7 Q. Okay. Let's move on to Exhibit Number -- I

8 guess B or Attachment B to Exhibit Number 1.

9 A. Okay.

10 Q. What is this?

11 A. A return to work certificate for Ms. Howard,

12 and it just talks about when she'll be able to return to

13 work.

14 Q. Okay. Let's go to the last page, Attachment C.

15 What is this?

16 A. Let's see. This is from Southwestern Medical

17 Center. It's from the department of ophthalmology, and

18 it talks about her eye -- her eyes.

19 Q. Okay.

20 A. I'm not really sure.

21 She requires --

22 Q. Did you read this document?

23 A. It says she requires visual accommodation.

24 That's what it says.

25 Q. Okay. So do you consider this a disability?

41

1 vision problems impacts your life?

2 MS. CONNOR: Objection. Form.

3 A. I have vision problems, but it's correctable.

4 I mean I don't know.

5 Q. (BY MR. WALSH) Okay. Would it surprise you to

6 learn that that would be a disability?

7 MS. CONNOR: Objection. Form.

8 A. I don't know. I have never been determined to

9 have a disability because I wear glasses.

10 Q. (BY MR. WALSH) Well, glasses -- do glasses

11 help you see?

12 MS. CONNOR: Objection. Form.

13 A. Yes.

14 Q. (BY MR. WALSH) So they -- so would you agree

15 they correct your vision?

16 A. They correct my vision. It's correctable. To

17 me, that wouldn't be a disability if it's correctable.

18 Q. Okay. So if somebody -- so if they can -- so

19 your glasses are an accommodation; would you agree with

20 that statement?

21 MS. CONNOR: Objection. Form.

22 You can answer. It's ridiculous, but if he

23 wants to do it.

24 A. Well, I guess it would be an accommodation for

25 me. I mean something to correct. Something that I

42

1 need. So if that's what you want to call it, an
2 accommodation.
3 Q. (BY MR. WALSH) Okay. So just to make this
4 very clear, you read all of these documents?
5 A. Yes. I looked at all of these and whatever
6 else was in the packet.
7 MR. WALSH: Let me see. And then I would
8 like to now enter Exhibit Number 3.
9 (Exhibit Number 3 marked.)
10 Q. (BY MR. WALSH) I just handed you Exhibit 3.
11 What is that?
12 A. This is the final letter that I send out once I
13 make the decision to uphold the dismissal.
14 Q. Okay. Does this contain all of the reasons
15 Ms. Howard was terminated?
16 A. Yes.
17 Q. No other -- there were no other reasons for
18 Ms. Howard's termination?
19 MS. CONNOR: Objection. Form.
20 A. Not to my knowledge, if it wasn't listed here.
21 Q. (BY MR. WALSH) Okay. So what reason was
22 Ms. Howard terminated?
23 MS. CONNOR: Objection.
24 A. She had exhausted her leave.
25 Q. (BY MR. WALSH) Okay. So if -- what would have

44

1 you know, she had been in a wreck and, obviously, she
2 was under a doctor's care. She never told me she had a
3 disability.
4 Q. Did she tell you why she was under a doctor's
5 care?
6 A. Because she had been in a wreck.
7 Q. I'm sorry. What -- did she talk about her
8 injuries?
9 A. No, she didn't talk about that. She talked
10 about being in pain. She talked about -- she might have
11 mentioned her back or something like that, but I said
12 might have. I'm not, you know --
13 Q. But you knew she had injuries?
14 A. Oh, yes, uh-huh.
15 Q. Just by looking at her?
16 A. No. I will tell you this, she looked fine.
17 She looked fine. She wasn't on crutches or anything
18 like that. She looked fine, but that doesn't negate
19 that she was actually -- she was in a wreck. You know,
20 so that wouldn't -- you know, you look fine, but you can
21 be in pain.
22 She looked fine. She wasn't on crutches or
23 anything like that. She didn't have on glasses or
24 anything like that.
25 Q. Plus, you had seen the doctor's report --

43

1 happened if she hadn't exhausted her leave?
2 MS. CONNOR: Objection. Form.
3 A. She -- we wouldn't have even been in this place
4 to recommend dismissal. She had exhausted all her
5 leave.
6 Q. (BY MR. WALSH) So she would not be terminated
7 if she had leave?
8 MS. CONNOR: Objection. Form.
9 A. She had exhausted all of her leave. All of her
10 leave that she could actually use, she had exhausted it.
11 Q. (BY MR. WALSH) Uh-huh.
12 Okay. And that is the reason she was
13 terminated?
14 MS. CONNOR: Objection. Form.
15 A. Yes, sir.
16 Q. (BY MR. WALSH) So in this letter, it says you
17 had a meeting on September 28th, 2009?
18 A. Uh-huh.
19 Q. We talked about that earlier, if you remember?
20 A. Uh-huh.
21 Q. What -- just to recap, she -- did she tell you
22 that she was -- she had a disability?
23 A. She never told me she had a disability. Like I
24 said, this was in '09. She never told me she had a
25 disability. She never said that. It was obvious that,

45

1 A. Right.
2 Q. -- who filed a recommendation --
3 MS. CONNOR: Objection. Form.
4 A. Yes.
5 Q. (BY MR. WALSH) Did she ever ask -- did she ask
6 you for light duty?
7 A. She did. It's in here. She -- she asked to
8 work for only four hours a day. She asked for that.
9 Q. Okay.
10 A. Uh-huh.
11 Q. And what was your response?
12 A. When she told me about that, I went back and
13 asked about the leave -- her leave. You know, is this
14 something -- you know, does she have -- and I also
15 asked -- I asked her about her leave. I mean I went
16 back and asked my staff to check on how much leave she
17 had. She had exhausted all her leave, and also the
18 doctor would never commit to say how long she needed to
19 be working only four hours a day. You know what I'm
20 saying?
21 He never would commit to a time period. So
22 that made me know that, you know, it could have been a
23 year that she was coming in and had no leave and working
24 four hours a day. In the position she worked in, when
25 you make that decision, you have to look at the impact

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1 that will have on the way we do -- on the way we run our
 2 business.

3 Q. What amount of time would have been reasonable?
 4 MS. CONNOR: Objection. Form.

5 A. I can't answer. You know, if she would have
 6 said for the next month I need to come in for four
 7 hours, you know, a day, I would venture to say that I
 8 would have approved that. You know, I would have said,
 9 Okay, let's let her do that.

10 Q. (BY MR. WALSH) Even without leave?
 11 MS. CONNOR: Objection.

12 A. Leave without pay. She would have to take
 13 leave without pay. I would do -- I wouldn't have been
 14 unreasonable. But since we couldn't get a definitive
 15 date on when she was coming back, and she had been off
 16 almost a year, and it had an impact on that unit and us
 17 being able to provide services to the families and
 18 children. So had it been something like a month, that
 19 wouldn't have been unreasonable for me. Because if I
 20 remember -- how long had she been with the agency?
 21 She had been with us since 2007. In '09,
 22 that was two years. But I believe Ms. Howard might have
 23 worked for another state agency. It might have had
 24 state -- you know, like state tenure.

25 Q. (BY MR. WALSH) So did Ms. Howard ever give you

48

1 She passed it along to me, and I said, No,
 2 let's dismiss. I said, Let's move forward with the
 3 dismissal.

4 Q. Uh-huh.
 5 So you had a timeframe?
 6 MS. CONNOR: Objection. Form.

7 A. Only for what she said. Not from a doctor.
 8 And we had been working -- we had -- we had -- in good
 9 faith, we worked with her to get something from her
 10 doctor.

11 Q. (BY MR. WALSH) Why -- I guess why didn't you
 12 allow her to work for two to three weeks?
 13 MS. CONNOR: Objection. Form.

14 A. It wasn't definitive. We had nothing from her
 15 doctor in writing. It wasn't definitive that it would
 16 be two to three weeks.

17 Q. (BY MR. WALSH) Could you have terminated her
 18 after three weeks?
 19 MS. CONNOR: Objection. Form.

20 A. Yes. I could have. But it was nothing
 21 definitive, so that's why I made the decision to proceed
 22 with dismissal. And again, I will go back and say that
 23 Ms. Howard had been off work for almost a year. I mean
 24 it was -- I believe it was December of '08, and we were
 25 now into October of '09.

47

1 a timeframe?
 2 A. No, huh-uh.
 3 Q. Did anybody else ever tell you?
 4 A. Nobody ever gave me a timeframe. Nobody.
 5 MR. WALSH: I would like to enter Exhibit
 6 Number 4.
 7 (Exhibit Number 4 marked.)
 8 Q. (BY MR. WALSH) Have you ever seen this
 9 document before?
 10 A. Uh-huh.
 11 Q. Okay. And what is it?
 12 A. It's an e-mail from my assistant to me and --
 13 Q. Who is Melissa Hobbs?
 14 A. Melissa Hobbs, and it's an e-mail from her.
 15 Again, I guess Ms. Howard had been in contact with her,
 16 and she talks about she wanted to return for four days.
 17 And she said -- talked about he wanted to give her
 18 downtime from her meds.
 19 She said, [as read] She thinks this will
 20 only be from two to three weeks, but she has nothing
 21 from the doctor stating that. She said she would get
 22 something from the doctor that's more specific. I
 23 explained to her that she does not have any sick leave
 24 remaining to cover this time. She asked that we work
 25 with her. She wants to be able to come back to work.

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1 Q. (BY MR. WALSH) What efforts did you make to
 2 get something more specific from the doctor?
 3 MS. CONNOR: Objection. Form.
 4 A. At this point, I didn't. Well, when -- when --
 5 when we met -- I guess I'll go back. She provided me a
 6 note on October 19th -- October 9th, and this is dated
 7 October 12th. The doctor was saying that she would be
 8 unable to return to work on October 12th -- that she
 9 would be able to return to work on October 12th, working
 10 only four hours per day. It never indicated how long
 11 this would last.
 12 Q. (BY MR. WALSH) Uh-huh.
 13 In that conversation, she said she would
 14 get something more specific from her doctor?
 15 MS. CONNOR: Objection. Form.
 16 A. That is in the conversation with Melissa Hobbs.
 17 Q. (BY MR. WALSH) You knew about that
 18 conversation?
 19 A. I knew about -- I knew about this e-mail, yeah.
 20 I knew about the e-mail.
 21 Q. Okay. And then you said that you made a good
 22 faith -- you guys made good faith efforts to get
 23 something specific from the doctor?
 24 MS. CONNOR: Objection. Form.
 25 A. Yes -- no, not -- no. Not to get nothing --

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1 anything from the doctor. We did good faith with
 2 Ms. Howard because it is very seldom that an employee
 3 that is absent from the job for more than a year -- I
 4 mean almost a year. I believe we worked with her to our
 5 ability as it relates to the impact that it had on the
 6 unit and on our overall operation for providing services
 7 to the children and families. So I believe we worked in
 8 good faith with her.
 9 Q. (BY MR. WALSH) Well, this was dated
 10 October 12th; is that right?
 11 A. Uh-huh.
 12 Q. And what was the date she was terminated?
 13 A. It was October the 16th.
 14 Q. So four days later?
 15 A. Okay. Well, no. When I -- let me tell you
 16 this, this is dated October 12th. When I told her
 17 dismissal -- when I wrote in my e-mail dismissal that
 18 she has no leave, there might have been some time for
 19 them to generate this letter and everything. But,
 20 technically, you know, when I made that decision, I make
 21 the decision.
 22 Q. Okay. So you didn't give her any time to get
 23 something specific from her doctor?
 24 A. She --
 25 MS. CONNOR: Objection. Form.

52

1 Q. Okay. And who is that referring to when it
 2 says, "Right now she shows to have 72 hours"?
 3 A. Carlotta Howard.
 4 Q. Okay. So Carlotta Howard had 72 hours of
 5 annual leave left?
 6 A. Right, annual leave.
 7 Q. And eight hours of sick time?
 8 A. Right.
 9 Q. Okay. So she had leave left when you
 10 terminated her at 3:45 p.m. on October 12th?
 11 MS. CONNOR: Objection. Form.
 12 A. Yes. She had 72 hours of annual leave. But if
 13 you look up at the top of the e-mail, she couldn't use
 14 it because of some options she chose with workman's comp
 15 that she could only use sick leave.
 16 Q. (BY MR. WALSH) Can that option be changed?
 17 A. It probably could.
 18 Did she try to change it?
 19 I mean we didn't choose that option. The
 20 employee chooses that option. So to me, I would think
 21 that -- you know, if it was me, as an employee, I would
 22 be like, Whoa, whoa, let's go back and let me change
 23 this.
 24 I don't know if it can be changed. I don't
 25 know.

51

1 A. I gave her from September 28th to October 9th,
 2 when she finally got us a note.
 3 Q. (BY MR. WALSH) Uh-huh.
 4 A. So I gave her some time. And then when the
 5 note didn't say what, you know, I'm like, Okay.
 6 When the note didn't say how long this was
 7 going to take, she calls and says this. But we still
 8 have nothing specific from the doctor.
 9 Q. Uh-huh.
 10 And then you terminated?
 11 A. At that time, I made the recommendation to
 12 terminate.
 13 Q. Okay. Can we go to the second page of
 14 Exhibit Number 4?
 15 A. Okay.
 16 Q. Did you see any of these e-mails?
 17 A. Uh-huh.
 18 Q. Okay. So let's go down to the second from the
 19 bottom e-mail.
 20 A. Okay.
 21 Q. It says she has 72 hours of annual leave and
 22 eight hours of sick time. Do you see that?
 23 A. Uh-huh, yes.
 24 Q. And this is dated October 12th at 10:15 a.m.?
 25 A. Uh-huh, yes.

53

1 Q. Did you look -- so you didn't look into whether
 2 or not it could be changed?
 3 A. Huh-uh, I didn't.
 4 Q. Did you have your staff look into it?
 5 A. No, because she is the one. The employee,
 6 Ms. Howard, was the one that chose that code. You know,
 7 I don't know. If they gave you an option, and the
 8 option you chose was that you could only use sick leave.
 9 And once you run out of sick leave, to me, as an
 10 employee, I would go back and ask can I change it. I
 11 don't know. I don't know if it was locked in. I don't
 12 know.
 13 Q. And that is the employee's responsibility?
 14 A. That is the employee's responsibility.
 15 Q. The employer bears no responsibility for --
 16 MS. CONNOR: Objection. Form.
 17 A. No, because we don't complete workman's
 18 compensation forms. You know, we don't do that. I
 19 couldn't even tell you how she was even given these
 20 options. I don't know if it was through Texas Workman's
 21 Comp. I don't know.
 22 Q. (BY MR. WALSH) Well, so she comes in and she
 23 asks for -- to Melissa Hobbs, we'll say, two to three
 24 weeks of four hours of work?
 25 MS. CONNOR: Objection. Form.

54

1 A. She didn't come in. She called.

2 Q. (BY MR. WALSH) She called?

3 A. Uh-huh.

4 Q. Okay. I'm sorry. But that was a correct

5 statement that she asked for two to three weeks of four

6 hours a week?

7 A. She thinks --

8 Q. Four hours a day?

9 MS. CONNOR: Objection. Form.

10 A. "She thinks this will only be for two to three

11 weeks, but she has nothing from the doctor stating that.

12 She said she will get something from her doctor that's

13 more specific. I explained to her that she does not

14 have any sick leave remaining to cover this time. She

15 asked that we work with her."

16 Q. (BY MR. WALSH) Okay. And did you work with

17 her?

18 MS. CONNOR: Objection. Form.

19 A. I worked with her from September 28th until she

20 supplied the information to me on October the 9th.

21 Q. (BY MR. WALSH) Uh-huh.

22 A. And October the 12th.

23 Q. On October 12th, you knew she had 72 hours of

24 annual leave?

25 A. I knew she had 72 hours annual leave, and that

56

1 Q. This is not the -- okay. So this is not your

2 policy manual, then?

3 MS. CONNOR: Objection. Form.

4 A. It's HHSC's. Like I said, each of the agencies

5 within HHSC has -- have -- like Child Protective Service

6 has a human resource manual. They have incorporated

7 HHSC's policies into that handbook.

8 Does that make sense?

9 Q. (BY MR. WALSH) It does.

10 A. Okay.

11 Q. All right. Well, then let me just clarify. So

12 this governs how reasonable accommodation is given?

13 A. Uh-huh.

14 Q. And this is what you guys would follow in

15 giving reasonable accommodation?

16 A. In terms of -- again, I will say this. The

17 employee initiates that process. The employee has to

18 send the paperwork to wherever it says in here -- I just

19 looked it up -- send the paperwork to wherever it needs

20 to be sent, and then HHSC makes the determination of

21 whether or not the reasonable accommodation is approved.

22 Q. Okay. What happens if it's not approved?

23 MS. CONNOR: Objection. Form.

24 A. It's denied, and it's probably closed out.

25 Q. (BY MR. WALSH) Let me go to Page 3 again.

55

1 she couldn't use it because she was on workman's comp.

2 Q. You did not suggest to her that she could

3 switch her options?

4 A. I don't know if she could --

5 MS. CONNOR: Objection. Form.

6 A. I wouldn't have that information. Again, I

7 don't know. I don't know if she could have switched it.

8 I don't know, and that would have been something that an

9 employee would have to follow up with.

10 MR. WALSH: I would like to enter Exhibit

11 Number 5.

12 (Exhibit Number 5 marked.)

13 Q. (BY MR. WALSH) Do you recognize what that is?

14 A. It looks like policy from the human -- HHS

15 human resource manual, and it's policy regarding

16 reasonable accommodation.

17 Q. Okay. And this would govern Child Protective

18 Services?

19 A. Yes.

20 Q. Okay. So let me go to the third page of this

21 document. Have you seen this document before?

22 A. I've never seen this one. Again, like I said,

23 our agency has a handbook. Like this one came out of

24 HHSC's manual, but I'm sure the policies are the same as

25 it relates to reasonable accommodation.

57

1 A. Okay.

2 Q. Sorry to keep jumping around like that.

3 A. That's okay.

4 Q. We're looking at the second paragraph

5 underneath the boxes.

6 A. Uh-huh.

7 Q. It starts with, "HHSE's resources" --

8 A. Uh-huh.

9 Q. Okay. The second sentence says, "If a specific

10 accommodation is determined not to be reasonable,

11 alternative accommodations must be discussed with the

12 applicant or employee."

13 A. Where are we? I'm sorry.

14 Q. We're in the second paragraph underneath that

15 whole big box.

16 A. Oh, okay. Where it says "Denial"?

17 Q. Yeah.

18 A. Okay.

19 Q. That would have been a much better way to

20 describe it.

21 MS. CONNOR: Can we have a copy of that

22 real quick?

23 Do you have an extra copy?

24 MR. WALSH: I've only got the two.

25 MS. CONNOR: Well, let me see it.

58

1 Hold on just a second.

2 THE WITNESS: Can we take a break?

3 Was there a question hanging?

4 MS. CONNOR: Oh, can we take a break?

5 MR. WALSH: We can take a break.

6 (Break taken from 10:39 a.m. to 10:50 a.m.)

7 Q. (BY MR. WALSH) So we were talking about

8 Exhibit Number 5 --

9 A. Uh-huh.

10 Q. -- if you remember, and we were talking about

11 the second paragraph under "Denial" ---

12 A. Uh-huh.

13 Q. -- where it says, "If a specific accommodation

14 is determined not to be reasonable, alternative

15 accommodations must be discussed with the applicant or

16 employee."

17 Do you see where it says that?

18 A. Uh-huh.

19 Q. Okay. Did that happen in this case?

20 MS. CONNOR: Objection. Form.

21 A. I never saw where Ms. Howard completed a

22 request for reasonable accommodation. I never saw that.

23 Q. (BY MR. WALSH) Okay.

24 A. So if -- if she didn't complete a request for

25 reasonable accommodation, this process would never have

60

1 MS. CONNOR: Objection. Form.

2 A. We dismissed her. I mean we had been working

3 with her for a while, so we dismissed her. She was --

4 her leave was exhausted. We didn't have any definitive

5 answers from her regarding how long it would be that she

6 would need to work four days a week (sic). It was

7 nothing definitive. In the e-mail from Ms. Hobbs it

8 says she thinks.

9 Q. (BY MR. WALSH) Did you investigate whether or

10 not that was true?

11 MS. CONNOR: Objection. Form.

12 A. Whether or not the statement to --

13 Q. (BY MR. WALSH) Two to three weeks was true?

14 A. No, I didn't. No, huh-uh.

15 Q. To your knowledge, did Ms. Hobbs?

16 A. No.

17 Q. No, she did not investigate?

18 A. She did not, no.

19 MS. CONNOR: Objection. Form.

20 A. She wouldn't have investigated that.

21 MR. WALSH: Okay. So here I want to enter

22 just a few -- one more exhibit, at least. This is going

23 to be Exhibit Number 6.

24 (Exhibit Number 6 marked.)

25 Q. (BY MR. WALSH) Have you seen any of these

59

1 occurred. This entire process.

2 Q. Did she ever ask if Child Protective Services

3 would work with her?

4 MS. CONNOR: Objection. Form.

5 A. Yes. I mean you saw that in the e-mail in that

6 past exhibit, but yes. I mean through my assistant, she

7 asked if we would work with her.

8 Q. (BY MR. WALSH) Did she suggest two to three

9 weeks in talking to your assistant?

10 A. She said she thinks two to three weeks, but

11 there's nothing from her doctor to give us a specific

12 time.

13 Q. Did she offered to get something from her

14 doctor?

15 A. She offered, but we had already been dealing

16 with this for ten months. So she offered. I mean she

17 offered, but we had just received the notes from her

18 doctor on October the 9th and whatever other date that

19 was. On October 9th.

20 Q. Did Child Protective Services make any

21 counteroffer to her?

22 MS. CONNOR: Objection. Form.

23 A. No, sir.

24 Q. (BY MR. WALSH) What did Child Protective

25 Services do when she asked to be worked with?

61

1 e-mails?

2 A. I believe -- let me see. I don't recall seeing

3 these, no. I don't recall seeing these.

4 Q. Okay. Well, look at the bottom e-mail from

5 Melissa Hobbs to Nicole Ogle, Nancy Garcia, and Larry

6 Barnes. It says that if Ms. Howard is able to provide

7 verification from the doctor, you will most likely

8 approve her to return to work?

9 A. Uh-huh.

10 Q. Okay. Is that a -- would that be a true

11 statement?

12 A. If she -- yes. If she was able to provide

13 verification that she, you know, could return to work, I

14 would -- yes, I would have let her come back.

15 Q. Okay. Because -- let's see. In your Exhibit

16 Number 3, you reference a note from the doctor

17 stating --

18 A. Uh-huh.

19 Q. -- that Ms. Howard would be able to return to

20 work on October 12th; however --

21 A. Only four hours a day. It did not indicate how

22 long this restriction would remain in effect. And so

23 again, I go back to what she told me during our meeting

24 was that she could possibly get a note from her doctor

25 saying she could return to work. I didn't know it was

62

1 going to be four hours a week -- four hours per day.

2 Was it four hours per day?

3 Q. Yes.

4 A. Yeah.

5 I didn't know it was going to be that. I

6 thought she was going to get actually released to come

7 back to work full-time. This statement here is true.

8 It's true that if she was able to provide us

9 verification that she could come back to work, I would

10 have allowed her to come back.

11 Q. Well, I mean explain that a little bit.

12 Verification, what specifically were you --

13 A. A doctor releasing her because, you know, it's

14 a liability if she comes back to work and she's still

15 under a doctor's care and she's on that workman's comp

16 and that kind of stuff. And if she could have provided

17 where he said, you know, she could come back to work,

18 but I never got that. I never got that she could be --

19 she could fully come back to work.

20 MR. WALSH: I would like to enter Exhibit

21 Number 7.

22 (Exhibit Number 7 marked.)

23 A. Okay.

24 Q. (BY MR. WALSH) Have you seen that form?

25 A. Is this the same one that's in here?

64

1 A. Oh, yeah, this is it.

2 Q. -- 9th?

3 A. This had to be it, yeah. Yes, this had to be

4 it. I'm sorry.

5 Q. Okay.

6 A. It had to be it. Sorry.

7 Q. What is this, then?

8 A. It's another status report. A Texas Workers'

9 Compensation Work Status Report.

10 Q. And what is her status?

11 A. At the time this was filled out, which it

12 doesn't have on here the date being sent, it just says

13 [as read] Will allow employee to return to work as of

14 10/12/09 with the restriction of working four hours a

15 day.

16 Q. So this releases her to work?

17 A. Four hours a day.

18 Q. Okay. But this was not sufficient?

19 MS. CONNOR: Objection. Form.

20 A. She didn't have the leave. I mean she didn't

21 have the leave, and there wasn't an end date on when she

22 could -- you know, how long this would have to be in

23 effect that she could only work four days a week.

24 Q. (BY MR. WALSH) If she had leave, would you

25 still have terminated her?

63

1 Q. No.

2 A. No. I didn't see this one, huh-uh.

3 Q. Do you know what this is?

4 A. It's another one of these work -- Texas

5 Workers' Compensation Work Status Reports.

6 Q. Uh-huh.

7 Do you see under Part 2?

8 A. Uh-huh.

9 Q. There's a check mark under B?

10 A. [As read] Will allow employee to return to work

11 as of 10/12/09 with restrictions identified in Part 3.

12 Q. Okay.

13 A. Four hour day.

14 Q. This is -- and you've never seen this before?

15 A. I don't recall seeing this.

16 Q. This is not the note you refer to in Exhibit 3?

17 A. No, huh-uh.

18 Q. What did the note in Exhibit --

19 A. Wait a minute. It might not have been a note.

20 It was -- it might not have been that I got that on the

21 12th. Let me look.

22 In fact -- no, I don't recall getting this.

23 It might have been her information to us. I don't

24 recall getting a note on the 12th. Let me make sure.

25 Q. Well, this is from the --

65

1 MS. CONNOR: Objection. Form.

2 A. If she -- if she hadn't exhausted all her sick

3 leave -- I mean if she -- and it's unfortunate that

4 Ms. Howard chose that option that she exhausted her

5 leave. She had been off for ten months. Again, I'll go

6 back and say this, is that she -- had she been able to

7 return to work, you know, and we were able to verify

8 that it was going to be a month, you know, I would have

9 allowed her to come back. But that's -- but

10 unfortunately, it hadn't happened that way, so she was

11 dismissed.

12 Q. (BY MR. WALSH) Well, let me ask it this way.

13 With this Exhibit 7 doctor's release, if she had turned

14 that in and she still had leave available, would you

15 have brought -- would you have terminated her?

16 MS. CONNOR: Objection. Form.

17 A. If she had the correct type of leave because

18 she would have still been on workman's comp. She would

19 have still been, you know, under workman's comp because

20 she would have only been working four hours a day. She

21 would still have to use sick leave. She didn't have any

22 more sick leave.

23 Q. (BY MR. WALSH) Okay. And I hate to just beat

24 this dead horse --

25 A. That's right.

66

1 Q. -- but this, then, was a sufficient note to let
2 her come back to work?

3 MS. CONNOR: Objection. Form.

4 A. It didn't have the sufficient information in it
5 that I needed to make that decision.

6 Q. (BY MR. WALSH) And just one more time, what
7 was that information?

8 A. The information of how long she would need to
9 be on -- have this restriction of working four hours a
10 day.

11 Q. And you could not verify how long --

12 A. I did not verify.

13 MS. CONNOR: Objection. Form.

14 A. That is the employee's responsibility.

15 Q. (BY MR. WALSH) You did not attempt to verify?

16 A. Huh-uh, I did not.

17 Q. Your staff did not?

18 MS. CONNOR: Objection. Form.

19 A. No, did not.

20 Q. (BY MR. WALSH) Okay. Did Ms. Howard have any
21 performance issues?

22 A. Not to my knowledge.

23 Q. She was not terminated for performance issues?

24 MS. CONNOR: Objection. Form.

25 A. No. It was purely on the exhaustion of leave,

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1 approve them. They're sent to the Office of Civil
2 Rights, and it gives you clear instructions in the
3 handbook of what you need. So this would be the form if
4 this is the form that's identified in policy. This
5 would be -- this is how you start it, yeah.

6 Q. Melissa Hobbs is your assistant?

7 A. Not anymore.

8 Q. Okay. But she was --

9 A. Yeah, she was during this time.

10 Q. Okay. If she needed reasonable accommodation,
11 who would she go to?

12 A. As a supervisor -- you know, as a staff person,
13 she would come to me first, you know, and say, Lisa, I'm
14 going to request a reasonable accommodation.

15 Because I think in the handbook it says an
16 employee must, you know, talk to a supervisor -- talk to
17 his or her supervisor and let them know this is what I'm
18 going to be doing. So that's the way it should work.
19 Sometimes we have employees who will go straight,
20 without even talking to the supervisor, and do it. But
21 knowing Melissa, that's what would have happened.

22 Q. And you've never had anybody ask you for
23 accommodation?

24 A. No, huh-uh.

25 Q. Okay.

67

1 I think.

2 Yeah.

3 Q. (BY MR. WALSH) Now I want to talk about
4 requesting reasonable accommodation a little bit.

5 A. Uh-huh.

6 Q. We talked about that a little bit before. You
7 talked about paperwork.

8 MR. WALSH: I want to enter Exhibit
9 Number 8 right now.

10 (Exhibit Number 8 marked.)

11 A. Uh-huh.

12 Q. (BY MR. WALSH) Have you ever seen that form
13 before?

14 A. No, huh-uh. And again -- no. I have never
15 seen this form before.

16 Q. Okay. Do you know what it is?

17 A. It's a Health and Human Services form to
18 request a reasonable accommodation.

19 Q. Okay. And do you know what it's -- I guess do
20 you know what it's used for?

21 A. To request reasonable accommodation.

22 Q. Is this the only way to request reasonable
23 accommodation?

24 A. This is the process, yeah. If it's in the
25 handbook -- again, I think I said earlier, I don't

69

1 A. And you -- no, huh-uh.

2 Q. Would you ever -- let me ask you this. If
3 somebody came to you and said, I need reasonable
4 accommodation, would you ever see this form?

5 A. Yes. Because I would be their direct
6 supervisor, and I would have to sign it.

7 Q. Okay.

8 A. Okay?

9 Q. And if somebody requested one from you and did
10 not have this form, what would happen?

11 A. I'd refer them to policy. I'd refer them back
12 to policy, read over it, and do that and, you know, do
13 what policy dictates.

14 Q. Did you refer Ms. Howard to policy?

15 A. Ms. Howard never asked me for reasonable
16 accommodation.

17 Q. Did Ms. Howard ever ask you to return to work?

18 A. She asked to return -- she said her doctor had
19 released her to work four days a week -- four hours a
20 day.

21 Q. Okay. And did you refer her to policy?

22 A. No, huh-uh.

23 Q. Did you refer her to the return to work
24 program?

25 A. No.

70

1 Q. Okay. Why not, may I ask?

2 A. You know, again, our agency, other HHSC

3 agencies, everything that an employee needs to know

4 about HR policy is -- just like you pulled this off of

5 the Internet, they can do the same thing. Now, if --

6 some supervisors probably would have said, you know,

7 there's a process whereby you do this. I don't know

8 what happened at that level. I don't know if she

9 requested reasonable accommodation from her supervisor,

10 but usually they will tell them -- refer them to the

11 handbook.

12 Q. Is there any requirement they do that?

13 A. No, it is not a requirement. But as a manager,

14 you know, you would want to do that.

15 Q. Why would a manager want to do that?

16 A. In good faith. If an employee came to you and

17 said, I need to request reasonable accommodation, and if

18 they don't know to do this, well, you can say there's a

19 process. Go look in the handbook. You can tell them to

20 go look in the handbook and to fill out the proper

21 paperwork. But as far as you sitting down with them,

22 it's not something we approve. You know, it's not

23 something we approve.

24 Q. Can I refer you to Exhibit Number 5, and if we

25 can go to --

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1 She didn't. She didn't request reasonable

2 accommodation.

3 Q. (BY MR. WALSH) Did she ask for an adjustment

4 in her job?

5 A. She was released to come back to work for four

6 hours a day. Now, to me, that was a leave issue. It

7 wasn't an adjustment. It was a leave issue.

8 Q. Did you refer her to the leave policy?

9 A. No, I did not. I think we told her she was out

10 of leave. So no, I didn't.

11 Q. How does one use annual leave?

12 Tell me about annual leave.

13 MS. CONNOR: Objection. Form.

14 A. Annual leave is approved -- I think it's eight

15 hours -- well, it depends on your tenure with the

16 agency. But starting off -- and I'm just going to

17 assume. I don't know how long she had stayed -- you

18 know, state employment. But like if you had been here

19 for -- after a year, you start to accrue eight hours a

20 month of annual leave.

21 Q. (BY MR. WALSH) Okay.

22 A. Eight hours a month, and -- you know, but after

23 that, the more tenure you have, the more those hours go

24 up. Like for a person like me, I might get 13 hours a

25 month, but I'm not sure. But it's like that. Annual

71

1 A. Let me see. Exhibit 5.

2 Q. If we can go to the second page --

3 A. Uh-huh.

4 Q. -- under "Employee Responsibility" --

5 A. Uh-huh.

6 Q. -- I'm looking at the last sentence right above

7 "HHSE Responsibility".

8 A. Uh-huh.

9 Q. It says, "If an employee requests assistance or

10 some adjustment or change necessary to do the job

11 because of the individual's disability, then the person

12 receiving such request must refer the individual to

13 policy and necessary forms for completion."

14 A. Uh-huh.

15 Q. That's the policy of the Child Protective

16 Services?

17 A. Yeah.

18 Q. Okay.

19 A. I think I just said that if they didn't know

20 what to do, I would refer them to policy.

21 Q. But that --

22 A. Yeah.

23 Q. But that did not happen?

24 MS. CONNOR: Objection. Form.

25 A. She did not request reasonable accommodation.

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1 leave. It's vacation time. And for sick leave, you

2 accrue eight hours a month.

3 Q. How does one go about using annual leave?

4 A. You --

5 MS. CONNOR: Objection. Form.

6 A. First, you request it through your supervisor.

7 You say, I'm going to Hawaii. I need to have two weeks.

8 And the supervisor -- if the supervisor

9 approves it, you're approved to go out on annual leave.

10 Q. (BY MR. WALSH) Okay. There's no other

11 process?

12 A. Huh-uh. You put it in the little system but,

13 yeah, that's it. Supervisory approval.

14 Q. Does all leave have to be approved?

15 A. Yes.

16 Q. What happens if somebody just doesn't show up?

17 MS. CONNOR: Objection. Form.

18 A. Can you -- can you be more specific?

19 If they don't show up, what do you mean?

20 Q. (BY MR. WALSH) Let's say -- what would happen

21 if an employee just doesn't show up for work tomorrow?

22 MS. CONNOR: Objection. Form.

23 A. Without contacting a supervisor?

24 Q. (BY MR. WALSH) Yeah.

25 A. I would be -- at first -- I mean if it was me

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1 and I was the supervisor and they hadn't called, I would
 2 be concerned. So I would try to call them, What's going
 3 on?
 4 You know, that's what I would do.
 5 Q. Okay. And what would happen when they came
 6 back on Monday?
 7 MS. CONNOR: Objection. Form.
 8 A. It just depends on what they tell me. I mean
 9 it could have been anything that happened in a person's
 10 life. It could have been a death, and they just hadn't
 11 gotten around. It could have been that they died and
 12 hadn't gotten around -- you know, the family didn't know
 13 who to call. We've had that happen before. You know,
 14 so if it was just somebody just being -- you know, if it
 15 was a pattern of a person doing that all the time, oh,
 16 that would be addressed as an abuse of leave.
 17 Q. Would leave be -- well, I guess would leave be
 18 charged to that person?
 19 MS. CONNOR: Objection. Form.
 20 A. Yes, uh-huh.
 21 Q. (BY MR. WALSH) What kind of leave?
 22 MS. CONNOR: Objection. Form.
 23 A. It depends on -- the supervisor has the option
 24 of if they had overtime on the books, if they had comp
 25 time on the books, whatever. The supervisor has that

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1 didn't know that Ms. Howard had been assigned to her
 2 unit and didn't know Ms. Howard was off. And I think
 3 her previous supervisor had been on maternity leave or
 4 something, and I'm not really sure. But there was a
 5 time period where Ms. Howard was off, and nobody was
 6 putting her leave in.
 7 Q. (BY MR. WALSH) Why wasn't annual leave charged
 8 to Ms. Howard?
 9 A. The workman's comp, remember?
 10 MS. CONNOR: Objection. Form.
 11 A. Because she chose that option of sick leave
 12 workman's comp.
 13 Q. (BY MR. WALSH) So it couldn't be?
 14 A. It couldn't be.
 15 Q. She would have had to change that herself?
 16 A. Right.
 17 Q. Okay. So do you know what the human technician
 18 job position is -- I'm sorry -- yeah, human --
 19 A. Uh-huh, human service technician. We also call
 20 them case aides. They -- primarily within our agency,
 21 they serve as assistants to the caseworker. They do a
 22 lot of transportation. They supervise visits. They
 23 might enter information into IMPACT. Some of them have
 24 been called to testify in court. It's almost like a
 25 caseworker assistant. They interact frequently with

75

1 discretion.
 2 Q. (BY MR. WALSH) So then it can happen without
 3 approval?
 4 MS. CONNOR: Objection. Form.
 5 A. Oh, yeah. Staff will take -- they'll take
 6 leave if you tell them. If you tell them no -- go ahead
 7 and take leave without our approval, we still enter
 8 their leave in, and then they might get written up or
 9 something, you know, for not following a directive or
 10 abusing leave. It just depends on what the situation
 11 is.
 12 Q. (BY MR. WALSH) I'm sorry. Who might get
 13 written up?
 14 A. I said an employee.
 15 Did I say supervisor? I'm sorry.
 16 Q. Why wasn't leave just charged to Carlotta
 17 Howard?
 18 MS. CONNOR: Objection. Form.
 19 A. I'm assuming that her sick leave was being
 20 charged to her. I mean while she was out on FMLA, you
 21 know, she -- we had to enter it into the system. There
 22 was a time period where it was -- I do believe there was
 23 a time period when nobody was giving her leave. Nobody
 24 was putting her information in because we went through a
 25 reorg and she ended up in another unit, and this person

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1 children and parents, you know, foster parents, schools.
 2 Those type of things.
 3 Q. Uh-huh.
 4 Do you happen to know Carlotta Howard's
 5 salary?
 6 A. No, I don't -- I didn't.
 7 Q. What kind of benefits does a human service
 8 technician get?
 9 A. They get the same state benefits we get. You
 10 get your insurance, you get put into the employee
 11 retirement system, you get your leave, you get off on
 12 state holidays and federal holidays. Those are some of
 13 the -- I don't know if she was getting longevity pay.
 14 You know, after you've been here -- I think it's two
 15 years now. Every two years you get \$20 for being here.
 16 Yeah, yeah, exactly.
 17 I don't know if she was getting that. So
 18 those are some of the benefits.
 19 Q. Okay. Do you -- are there any human services
 20 technicians who work part-time?
 21 A. Not in my region. Not in my region. I don't
 22 have any part-time.
 23 Q. Could the job be performed part-time?
 24 A. Because of the way our positions are given to
 25 us from the legislators, you know, it would have to be a

1 split FT -- full-time equivalent. It would have to be
 2 another person willing to say, Okay, if she wants to do
 3 it part-time, and I want to do it part-time.
 4 I mean we just don't have part-time
 5 position within DFPS.
 6 Q. Okay.
 7 A. Does that make sense?
 8 We don't have -- in my region, we don't.
 9 We don't. We don't have any part-time. We used to a
 10 long time ago, but we don't right now.
 11 Q. All right. So could Carlotta Howard have
 12 performed her job four hours a day?
 13 MS. CONNOR: Objection. Form.
 14 A. I guess she could have, yeah. Yeah. But the
 15 necessity of the job -- the function is a full-time
 16 equivalent position. So that's eight hours a day.
 17 Q. (BY MR. WALSH) But she could have performed it
 18 four hours a day?
 19 MS. CONNOR: Objection. Form.
 20 MR. WALSH: You can still answer.
 21 MS. CONNOR: That's the same question. You
 22 can still answer, but soon I'm going to tell her to stop
 23 answering the same question over and over and over
 24 again. It's getting ridiculous.
 25 A. But yeah. She could have performed it four

1 hours a day. She could have if her doctor said so. I
 2 want to get that in.
 3 Q. (BY MR. WALSH) Well, I know we've talked about
 4 a lot of -- a lot of different topics today.
 5 A. Okay.
 6 Q. Some of them repeatedly.
 7 A. That's okay.
 8 Q. But I wanted to ask if you had anything to add
 9 to anything we talked about?
 10 Any of the specific questions I asked, if
 11 there's something you thought of that you wanted to make
 12 sure that I knew or that you said?
 13 MS. CONNOR: Objection. Form.
 14 A. Nothing. Nothing other that I can think of.
 15 MR. WALSH: Okay. Well, I have no further
 16 questions at this time.
 17 MS. CONNOR: We reserve our questions until
 18 trial.
 19 (Proceedings concluded at 11:18 a.m.)
 20 (End of proceedings.)
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1 CHANGES AND SIGNATURE

2 WITNESS NAME: LISA BLACK DATE: MAY 31, 2012

3 PAGE LINE	CHANGE	REASON
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1 I, LISA BLACK, have read the foregoing
 2 deposition and hereby affix my signature that same is
 3 true and correct, except as noted above.
 4
 5 LISA BLACK
 6
 7 THE STATE OF _____)
 8 COUNTY OF _____)
 9
 10 Before me, _____, on this day
 11 personally appeared LISA BLACK, known to me (or proved
 12 to me under oath or through _____)
 13 (description of identity card or other document) to be
 14 the person whose name is subscribed to the foregoing
 15 instrument and acknowledged to me that they executed the
 16 same for the purposes and consideration therein
 17 expressed.
 18 Given under my hand and seal of office this
 19 _____ day of _____, _____.
 20
 21
 22
 23 NOTARY PUBLIC IN AND FOR
 24 THE STATE OF _____
 25 COMMISSION EXPIRES: _____

1 NO. 11-13467
 2 CARLOTTA HOWARD, § IN THE DISTRICT COURT
 3 Plaintiff, §
 4 VS. § 160TH JUDICIAL DISTRICT
 5 STATE OF TEXAS, TEXAS §
 6 DEPARTMENT OF FAMILY AND §
 7 PROTECTIVE SERVICES, §
 8 Defendant. § DALLAS COUNTY, TEXAS

9 REPORTER'S CERTIFICATION
 10 DEPOSITION OF LISA BLACK
 11 MAY 31, 2012

12 I, Natasha Benchimol, Certified Shorthand Reporter
 13 in and for the State of Texas, hereby certify to the
 14 following:

15 That the witness, LISA BLACK, was duly sworn by the
 16 officer and that the transcript of the oral deposition
 17 is a true record of the testimony given by the witness;

18 That the deposition transcript was submitted on
 19 _____ to the witness or to the attorney
 20 for the witness for examination, signature and return to
 21 me by _____;

22 That the amount of time used by each party at the
 23 deposition is as follows:

24 MR. COLIN WALSH - 01 HOURS:32 MINUTE(S)

25 That pursuant to information given to the


1 Deposition officer at the time said testimony was taken,
 2 the following includes counsel for all parties of
 3 record:

4 MR. COLIN WALSH, Attorney for Plaintiff
 5 MS. MADELEINE CONNOR, Attorney for Defendant

6 I further certify that I am neither counsel for,
 7 related to, nor employed by any of the parties or
 8 attorneys in the action in which this proceeding was
 9 taken, and further that I am not financially or
 10 otherwise interested in the outcome of the action.

11 Further certification requirements pursuant to
 12 Rule 203 of TRCP will be certified to after they have
 13 occurred.

14 Certified to by me this _____ day of

15 _____,
 16
 17
 18 
 NATASHA BENCHIMOL, Texas CSR

19 CSR Expiration Date: 12/31/2013
 20 NOTARIUS REPORTING, INC.
 21 Firm Registration No. 659
 22 3270 Darvany Drive
 23 Dallas, Texas 75220
 24 (214) 324-3733 * Telephone
 25 (214) 432-5415 * Facsimile
 1-(888) 848-8845 * Toll Free

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to the
 3 deposition officer on _____;

4 If returned, the attached Changes and Signature
 5 page contains any changes and the reasons therefor;

6 If returned, the original deposition was delivered
 7 to MR. COLIN WALSH, Custodial Attorney;

8 That § _____ is the deposition officer's
 9 charges to the Plaintiff for preparing the original
 10 deposition transcript and any copies of exhibits;

11 That the deposition was delivered in accordance
 12 with Rule 203.3, and that a copy of this certificate was
 13 served on all parties shown herein on and filed with the
 14 Clerk.

15 Certified to by me this _____ day of

16 _____,

17
 18
 19
 20 NATASHA BENCHIMOL, Texas CSR 8514
 CSR Expiration Date: 12/31/2013
 NOTARIUS REPORTING, INC.
 21 Firm Registration No. 659
 22 3270 Darvany Drive
 Dallas, Texas 75220
 (214) 324-3733 * Telephone
 23 (214) 432-5415 * Facsimile
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 24
 25

CHANGES AND SIGNATURE

WITNESS NAME: LISA BLACK DATE: MAY 31, 2012

PAGE LINE CHANGE REASON

No Changes Lisa Black

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I, LISA BLACK, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.

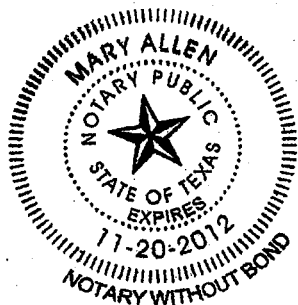
Lisa Black

LISA BLACK

THE STATE OF
COUNTY OF

Before me, MARY ALLEN, on this day personally appeared LISA BLACK, known to me (or proved to me under oath or through TX DFPS ID BADGE) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 5 day of July, 2012.



Mary Allen
NOTARY PUBLIC IN AND FOR
THE STATE OF
COMMISSION EXPIRES: - -

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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was was not returned to the deposition officer on July 25, 2012 ;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. COLIN WALSH, Custodial Attorney;

That \$ 440.²⁵ is the deposition officer's charges to the Plaintiff for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on and filed with the Clerk.

Certified to by me this 25th day of July, 2012.



NATASHA BENCHIMOL, Texas CSR 8514
CSR Expiration Date: 12/31/2013
NOTARIUS REPORTING, INC.
Firm Registration No. 659
3270 Darvany Drive
Dallas, Texas 75220
(214) 324-3733 * Telephone
(214) 432-5415 * Facsimile
1-(888) 848-8845 * Toll Free

Employee - You are required to report your injury to your employer within 30 days if your employer has workers' compensation insurance. You have the right to free assistance from the Texas Workers' Compensation Commission and may be entitled to certain medical and income benefits. For further information call your local Commission field office or (800) 352-7031.



Trabajador - Es necesario que usted reporte su lesión a su empleador dentro de 30 días a partir del día en que se lesionó, si su empleador tiene seguro de compensación para trabajadores. Le Costarán Tejeria de Compensación para Trabajadores le ofrece asistencia gratuita. También puede que usted tenga derecho a ciertos beneficios médicos e ingresos. Para mayor información llame a la oficina local de la Comisión o 1-800-252-7031.

TEXAS WORKERS' COMPENSATION WORK STATUS REPORT

PART I: GENERAL INFORMATION			Date Being Sent	
1. Injured Employee's Name Carlotta Howard	5. Doctor's Name and Degree Louis D Zegarell, D.O.	6. Clinic/Facility Name Klest Park Medical Clinic		
2. Date of Injury 12-16-09	3. Social Security Number 345-345-345	7. Clinic/Facility/Doctor Phone & Fax (214)333-3393 Fax (214)333-0809	9. Employer's Name Dept. of Family Protective	
4. Employee's Description of Injury/Accident See initials report	8. Clinic/Facility/Doctor Address (street address) 2225 Vatican Ln	10. Employer's Fax # or Email Address (if known)		11. Insurance Carrier Risk Management
	City State Zip Dallas TX 75224	12. Carrier's Fax # or Email Address (if known) 512-472-0228		

PART II: WORK STATUS INFORMATION (FULLY COMPLETE ONE INCLUDING ESTIMATED DATES AND DESCRIPTION IN 13(C) AS APPLICABLE)

13. The injured employee's medical condition resulting from the workers' compensation injury:

(a) will allow the employee to return to work as of _____ (date) without restrictions.

(b) will allow the employee to return to work as of 10/2/09 (date) with the restrictions identified in Part III, which are expected to last through _____ (date).

(c) has prevented and still prevents the employee from returning to work as of _____ (date) and is expected to continue through _____ (date). The following describes how this injury prevents the employee from returning to work:

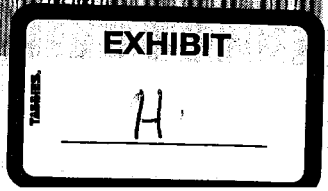
PART III: ACTIVITY RESTRICTIONS* (ONLY COMPLETE IF BOX 13(B) IS CHECKED)

<p>14. POSTURE RESTRICTIONS (if any):</p> <p>Max Hours per day: 0 2 4 6 8 Other _____</p> <p>Standing <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Sitting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Kneeling/Squatting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Bending/Stooping <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Pushing/Pulling <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Twisting <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Other: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p>	<p>17. MOTION RESTRICTIONS (if any):</p> <p>Max Hours per day: 0 2 4 6 8 Other _____</p> <p>Walking <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Climb stairs/ladders <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Grasp/Squeeze <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Wrist flex/extension <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Reaching <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Overhead Reaching <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Keyboarding <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p> <p>Other: <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> _____</p>	<p>19. MISC. RESTRICTIONS (if any):</p> <p><input type="checkbox"/> Max hours per day of work _____</p> <p><input type="checkbox"/> Sit/Stretch breaks of _____ per _____</p> <p><input type="checkbox"/> Must wear splint/cast at work</p> <p><input type="checkbox"/> Must use crutches at all times</p> <p><input type="checkbox"/> No driving/operating heavy equipment</p> <p><input type="checkbox"/> Can only drive automatic transmission</p> <p><input type="checkbox"/> No work / <input type="checkbox"/> _____ hours/day work:</p> <p><input type="checkbox"/> In extreme hot/cold environments</p> <p><input type="checkbox"/> at heights or on scaffolding</p>
<p>15. RESTRICTIONS SPECIFIC TO (if applicable):</p> <p><input type="checkbox"/> L Hand/Wrist <input type="checkbox"/> R Hand/Wrist</p> <p><input type="checkbox"/> L Arm <input type="checkbox"/> R Arm <input type="checkbox"/> Neck</p> <p><input type="checkbox"/> L Leg <input type="checkbox"/> R Leg <input type="checkbox"/> Back</p> <p><input type="checkbox"/> L Foot/Ankle <input type="checkbox"/> R Foot/Ankle</p> <p>Other: _____</p>	<p>18. LIFT/CARRY RESTRICTIONS (if any):</p> <p><input type="checkbox"/> May not lift/carry objects more than _____ lbs. for more than _____ hours per day</p> <p><input type="checkbox"/> May not perform any lifting/carrying</p> <p>Other: _____</p>	<p><input type="checkbox"/> Must keep _____</p> <p><input type="checkbox"/> Elevated <input type="checkbox"/> Clean & Dry</p> <p><input type="checkbox"/> No skin contact with: _____</p> <p><input type="checkbox"/> Dressing changes necessary at work</p> <p><input type="checkbox"/> No Running</p>
<p>16. OTHER RESTRICTIONS (if any): Sed. level 40/Day</p>		<p>20. MEDICATION RESTRICTIONS (if any):</p> <p><input type="checkbox"/> Must take prescription medication(s)</p> <p><input type="checkbox"/> Advised to take over-the-counter meds</p> <p><input type="checkbox"/> Medication may make drowsy (possible safety/driving issues)</p>

* These restrictions are based on the doctor's best understanding of the employee's essential job functions. If a particular restriction does not apply, it should be disregarded. If modified duty that meets these restrictions is not available, the patient should be considered to be off work. Note - these restrictions should be followed outside of work as well as at work.

PART IV: TREATMENT/FOLLOW-UP APPOINTMENT INFORMATION

21. Work Injury Diagnosis Information:	22. Expected Follow-up Services Include:
	<input type="checkbox"/> Evaluation by the treating doctor on _____ (date) at _____ : _____ am/pm
	<input type="checkbox"/> Referral to/Consult with _____ on _____ (date) at _____ : _____ am/pm
	<input type="checkbox"/> Physical medicine ___ X per week for ___ weeks starting on _____ (date) at _____ : _____ am/pm
	<input type="checkbox"/> Special studies (list): _____ on _____ (date) at _____ : _____ am/pm
	<input type="checkbox"/> None. This is the last scheduled visit for this problem. At this time, no further medical care is anticipated.
Date / Time of Visit 10-9-09	EMPLOYEE'S SIGNATURE Carlotta Howard
Discharge Time	DOCTOR'S SIGNATURE Louis D Zegarell
	Visit Type: <input checked="" type="checkbox"/> Initial <input type="checkbox"/> Follow-up
	Role of Doctor: <input type="checkbox"/> Designated doctor <input type="checkbox"/> Referral doctor <input type="checkbox"/> Carrier-selected RME <input type="checkbox"/> Consulting doctor <input type="checkbox"/> TWCC-selected RME <input type="checkbox"/> Other doctor



CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA
 EEOC

450-2010-00234

Texas Workforce Commission Civil Rights Division

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Ms. Carlotta Howard

Home Phone (Incl. Area Code)

(972) 293-0246

Date of Birth

09-08-1960

Street Address

City, State and ZIP Code

1003 Greenbrair Trail, Cedar Hill, TX 75104

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

TEXAS DEPT. OF FAMILY PROTECTIVE SERVICES

No. Employees-Members

500 or More

Phone No. (Include Area Code)

(214) 331-7700

Street Address

City, State and ZIP Code

1050 N. Westmoreland, Dallas, TX 75211

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

RACE COLOR SEX RELIGION NATIONAL ORIGIN
 RETALIATION AGE DISABILITY OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest: **10-09-2009** Latest: **10-12-2009**

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

PERSONAL HARM:

On October 9, 2009 I was denied a reasonable accommodation of working four (4) hours work days, due to my medical condition.

On October 12, 2009 my employment was terminated.

RESPONDENT'S REASON FOR ADVERSE ACTION:

In a letter dated October 16, 2009 from Lisa Black, Regional Director, states that I was not yet able to return to work full time and I had not leave balances to accommodate these restrictions, therefore the decision to terminate my employment was based on the following Work Rule/Policy violations: 1) Be familiar with and follow all HHS policies and procedures relating to job performance and work rules; 2) Perform job duties, meet HHS standards for job performance, and follow job related instructions from HHS supervisor. The letter also stated that, 'it is the policy of the Department of Family & Protective Services that if a DFPS employee exhausts all leave entitlements and does not to return to work; he or she may be dismissed'.

DISCRIMINATION STATEMENT:

I believe that I have been discriminated against because of my disability in violation of the Americans with Disabilities Act of 1990.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY - When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Carlotta Howard
SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Oct 20, 2009

Date

Carlotta Howard
Charging Party Signature

EXHIBIT

I

D-000823

HOBBS, MELISSA

From: OGLE, NICOLE
Sent: Monday, October 12, 2009 10:30 AM
To: HOBBS, MELISSA
Cc: GARCIA, NANCY J
Subject: FW: Election choice for payable time summary.

Here's the email I got in early January about her leave.

Nicole Ogle, MSW
CPS Supervisor II - Unit 70
214-267-5304

From: Ami.Labrecque [mailto:Ami.Labrecque@convergys.com]
Sent: Tuesday, January 06, 2009 7:48 AM
To: OGLE, NICOLE
Cc: HOWARD, CARLOTTA
Subject: Election choice for payable time summary.

Election I-C Sick only

Hello!

Date: 1/6/9

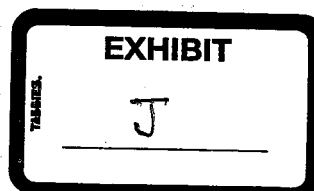
A workers' compensation claim has been filed for employee Carlotta Howard. Ms. Howard has chosen to use only her available sick leave to cover time lost from work. At the time of the injury, Ms. Howard had 123 hours of sick leave available. We estimate that this amount of leave will run out at the end of the day on 1/13/9. Please adjust the time and leave record accordingly and if the employee has not returned to work by this date, you should submit a request to accessHR asking to have Ms. Howard's status changed to LOA (Leave Without Pay Work Comp) until she returns to work. If you have any questions or need assistance please contact me.

Sincerely,

Ami Labrecque
accessHR
Workers Compensation Specialist
Ph- 512-382-2686
Fax- 1-866-244-8653
ami.labrecque@convergys.com

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11/18/2009



D-000130

KIEST PARK MEDICAL CENTER
2225 Vatican Lane
Dallas, Texas 75224-4719
214.333.3393
FAX: 214.333.0809

RE: Carlotta Howard

DOI: 12/16/2008
DOE: 06/10/2009
MR: 023822

S: The patient is seen in follow-up. The patient rates pain at best and worst a 5 and 7 on a scale of 0 to 10 with 0 being no pain and 10 being intolerable pain. She states that symptoms still persist and are more prominent in the low back region than in the neck/upper back area.

The patient states increased activity causes increased discomfort.

Cymbalta was increased to 60 mg and the patient feels it is providing some benefit. Orthopedic consult with Dr. Hayden is still pending.

I again reviewed with the patient the pathology noted on the MRI study (specifically right neural foraminal parasagittal disc extrusion that measures 5 mm). This abnormality is of the greatest concern.

O: Vital signs are stable. Complaints of stiffness continue involving the neck/upper back region. Range of motion is essentially normal. Myalgias extend across the upper back region with pain radiating towards the right/left shoulder. Pain is more prominent in the lumbosacral spine region (increased on flexion/extension). The patient has persistent radicular symptoms extending into the right/left leg. She was emotionally distraught today as well.

- A:
1. Mechanical chronic cervicothoracic sprain/pain syndrome.
 2. Mechanical chronic lumbosacral dorsal sprain/pain syndrome.
 3. Herniated nucleus pulposus (extrusion at L4-5).
 4. Bilateral lumbar radiculitis/radicular syndrome.
 5. Anxiety/depression associated with chronic pain.

- P:
1. Consult pain specialist for lumbar epidural steroid injections.
 2. Await Dr. Hayden (orthopedic specialist) consult pertaining to persistent symptoms and possible surgical intervention.
 3. Reemphasize the importance of biomechanics.

We will see the patient in follow-up here in approximately two to three weeks.

Louis D. Zegarelli, D.O.

LDZ:dts

*Dictated/Not Edited
Subject to Transcription Variance*

EXHIBIT

K

Howard 0044