

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**DAVID E. HOOD,** )  
 )  
Petitioners. )

CHARGE NO.: **2010CF2346**  
EEOC NO.: **21BA01105**  
ALS NO.: **11-0740**

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic<sup>1</sup>, Terry Cosgrove<sup>2</sup>, and Patricia Bakalis Yadgir presiding, upon David E. Hood's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>3</sup> of Charge No. 2010CF2346; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

**A. PROCEDURAL HISTORY**

1. On February 11, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioners alleged Great Lakes Resources, Inc. ("Employer") harassed him from August 2009, through January 2010, due to his race, Black (Count A) and in retaliation for opposing unlawful discrimination (Count B); discharged him because of his race (Count C); and harassed him on January 21, 2010 in retaliation for opposing unlawful discrimination (Count D), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").
2. In Counts A and C, the Petitioner alleged that from on or about August 2009 through January 21, 2010, he was harassed by Rick Fransk ("Fransk") (non-Black), Food Service Manager/Procurement Analyst, and subsequently discharged because of his race, Black. The Petitioner alleged that he was satisfactorily performing his duties and met the Employer's expectations. The Petitioner alleged that he was constantly harassed by Fransk for leaving his assigned work area even after getting permission from his supervisor and was discharged after being accused of using threatening and abusive language towards a supervisor. The Petitioner alleged that other similarly situated non-Black shelf stockers such as Angelo (last name unknown), (non-black) were not harassed or discharged and treated more favorably for similar behavior.
3. In Counts B and D, the Petitioner alleged that from on or about August 2009 through January 21, 2010, he was harassed because of his race, black and subsequently discharged in retaliation for opposing unlawful discrimination. The Petitioner alleged that he was satisfactorily performing his duties and met the Employer's expectations. The Petitioner alleged that after filing a complaint against Fransk, for harassment he was treated differently than the other shelf stockers because that he was constantly harassed for leaving his assigned work area even after getting permission from his supervisor and was discharged after being accused of using threatening and abusive language towards a supervisor. The Petitioner alleged that the harassment and

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Baricevic prior to the expiration of her term.

<sup>2</sup> This Order is in accordance with a vote cast by Commissioner Cosgrove prior to the expiration of his term

<sup>3</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

subsequent discharge occurred within such a period of time following his opposition of unlawful discrimination as to raise an inference of retaliatory motivation.

4. On July 26, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
5. On October 26, 2011, the Petitioner filed a timely Request. On December 7, 2011, the Respondent filed its Response to the Petitioner's Request.

## **B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner was employed as a Shelf Stocker by the Employer.
2. The Employer work policy states that the Employer expects its employee to stay in their assigned work area. As a Supervisor, Fransk can be counseled and/or disciplined for failing to instruct the Petitioner to comply with the Employer's policy when the Petitioner was out of his assigned work area. The Employer's Corrective Action Policy 606-19A ("Corrective Action Policy") identifies failure to remain in one's assigned work area during work hours as misconduct that is subject to discipline.
3. In October 2009, the Petitioner reported an incident to Yolanda Hosbey ("Hosbey") (Black, no p/a), Human Resource Manager, involving Arlan Owens (Black, no p/a), Supervisor, and another female employee. The Petitioner also advised Hosbey and Fransk that he was being harassed by Fransk because he was told to stay in his assigned work area and do his job. Hosbey explained to the Petitioner that he was not being harassed and that all employees are expected to remain in their assigned work areas/galleys during work hours and failure to do so could result in counseling or a disciplinary action.
4. During November 2009, the Petitioner again met with Hosbey regarding issues he had with Owens. The Petitioner believed that Owens had made some false accusations about him to management and had intimidated other employees to lie about the Petitioner. Hosbey assured the Petitioner that any complaints or allegations of misconduct would be thoroughly investigated.
5. On December 21, 2009, Owens told the Petitioner that he was going to report him to Fransk because he was in galley 7107, and Owens escorted the Petitioner out of the building.
6. On December 22, 2009, Fransk met with the Petitioner, to remind the Petitioner that he was to remain in his assigned work area during work hours and was only to frequent other galleys with a supervisor's approval.
7. On or about December 22, 2009, the Petitioner spoke with Mike Emmons ("Emmons") (non-Black, no p/a), Supervisor, about the false reports made by Owens to Fransk, and about Fransk harassing him. Emmons advised the Petitioner that he would speak to Hosbey about the harassment.
8. On January 6, 2010, Fransk and Hosbey met with the Petitioner to discuss the Petitioner's concerns about being harassed by Owens. Fransk and Hosbey explained to the Petitioner that he was to remain in his assigned work area during work hours and that his allegations of harassment were taken seriously and would be thoroughly investigated.
9. On or about January 7, 2010, Hosbey and Mike Wynn ("Wynn") (non-Black, no p/a), Assistant Director, met with the Petitioner to discuss the Petitioner's allegations of harassment by Fransk and Owens. Hosbey explained to the Petitioner that it was Fransk's job to speak with him if it is reported that he was in another galley and not in his assigned work area. Hosbey and Wynn reiterated at least three times to the Petitioner not to go to galley 7101 or any other galley without prior approval from a supervisor. The Petitioner stated that he understood. The Petitioner did not complain that the alleged harassment was racially motivated at the October, November, December, or January meetings.

10. On January 19, 2010, the Petitioner was in galley 7101 without the approval of any supervisor. Fransk spoke to the Petitioner about being out of his work area and the Petitioner stated he "forgot".
11. The Employer's Corrective Action Notices state that since May 2004, and continuing until the present, the Petitioner had been counseled and disciplined on numerous occasions for the same violation of being out his assigned work area.
12. The Employer's Corrective Action policy states that the Employer maintains a progressive disciplinary procedure, which depending on the circumstances, consists, of a first written warning, second written warning, decision day, and discharge. Failure to remain in one's assigned work area during working hours is a violation of the Corrective Action policy. The Corrective Action policy states that action may be taken to a higher step than normal for serious offenses, depending on the circumstances of misconduct. The Employer has the right to immediately terminate employment when a serious breach of employee conduct has occurred such as; verbal, physical, or psychological abuse of any participant, employee, or other at the Employer's facility, or for using rude, abusive, obscene or threatening language toward participants, supervisors, employees or visitors. The Corrective Action policy further states that the Employer can terminate an employee whenever in the opinion of administration, the best interest of the Employer will be served by the employee's immediate termination.
13. On January 21, 2010, Owens was in galley 7103 to retrieve some documents and reported that the Petitioner walked past him and called him a "nigga bitch" and also stated that he "needed to know your course hoe". Owens immediately reported the incident to Human Resources and that he felt threatened by the Petitioner's behavior because this was not the first time the Petitioner had made threatening or derogatory comments to him. Subsequently, Hosbey, Wynn and Troy Hans ("Hans") (non-Black), Director of Operations, met and decided to terminate the Petitioner's employment based on the Petitioner's overall work record/history along with Complainant's latest incident of misconduct.
14. There was no evidence that a similarly situated, non-Black, employee, who using rude, abusive, and threatening language towards a supervisor and was not discharged.
15. In his request the Petitioner argues that the Respondent lacked documentation and had inconsistent/incomplete evidence when it made its determination. The Petitioner further disputed the Employer's contention that he was not in his assigned work area.
16. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge because the evidence is insufficient to establish even a *prima facie* case of discrimination or retaliation. The Respondent further argues that the Employer articulated a non-discriminatory business reason for its actions and that its investigation did not reveal any evidence of pretext.

### C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

In Counts A, B, and D, the Commission concludes that the alleged harassment did not rise to the level of actionable harassment under the Act. Actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295. Additionally, "heavy-handed management" does not constitute actionable harassment. In the Petitioner's

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case, the alleged harassment consisted of the Petitioner's supervisor exercising his supervisory duties. Furthermore, the alleged harassment was sporadic and was not sufficiently severe or pervasive so as to alter the terms and conditions of the Petitioner's employment.

In Count C, the Commission finds the evidence insufficient to establish even a *prima facie* case of discrimination. Generally, to establish a prima facie case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994). In the Petitioners' case there was no evidence that the Employer treated a similarly situated a non-Black employee more favorably under similar circumstances.

The Commission concludes that the Employer articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext. In the Petitioner's case, the Petitioner failed to remain in his assigned work area on more than one occasion and used rude, abusive, obscene and threatening language toward supervisors and co-workers. Based on the Petitioner's disciplinary history, the Employer discharged the Petitioner. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for the Landlord's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997).

#### D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' Request is not persuasive.

#### THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Great Lakes Resources, Inc. as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS                    )  
  )  
HUMAN RIGHTS COMMISSION        )

**Entered this 7<sup>th</sup> day of December 2018.**

Commissioner Marti Baricevic

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir