

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

ANNETTE CAMPOREALE,)

Petitioner.)

Charge No.: 2023CF1142
EEOC No.: 21BA30627
ALS No.: 23-0308

ORDER

This matter coming before the Commission on April 24, 2024, by a panel of three, Chair Mona Noriega and Commissioners Jacqueline Y. Collins and Janice M. Glenn presiding, upon the Request for Review (“Request”) of Annette Camporeale (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2023CF1142, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, 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** for **LACK OF SUBSTANTIAL EVIDENCE**.²

DISCUSSION

On December 14, 2022, the Petitioner filed a charge of discrimination with the Respondent, perfected on May 1, 2023, alleging that LasikPlus (“Employer”) subjected her to harassment based on her disability, right wrist injury (Count A), and in retaliation for engaging in a protected activity (Count B); subjected her to unequal terms and conditions of employment based on her disability (Count C) and in retaliation for engaging in a protected activity (Count D); denied her a pay increase based on her disability (Count E); denied her a promotion (Co-Management Group Sales position) based on her disability (Count F); denied her a promotion (Research Home Office Associate position) based on her disability (Count G); denied her a promotion (Quality Assurance Team position) based on her disability (Count H); denied her a promotion (Clinical Chart Review position) based on her disability (Count I); and denied her a promotion (Surgical Enhancement Evaluation Team position) based on her disability (Count J); in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On November 17, 2023, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

¹ In a Request for Review proceeding, the party filing the Request for Review is the “Petitioner” and the Illinois Department of Human Rights is the “Respondent.”

² This order is entered pursuant to a 3-0-0 vote by the Commissioners.

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. 775 ILCS 5/7A-102(D)(3). Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2).

The Petitioner was hired in August 2020 as a Surgical Technician for the Employer's surgical center. She stated that on March 11, 2021, she sustained a traumatic injury at work with injury to her hand and wrist.³ The Petitioner stated that, initially, she was still going to the center and working with her left hand, but was unable to work in surgery. The Petitioner stated that she underwent surgery on her hand, and afterwards the Employer provided her with a work accommodation, setting her up with a laptop computer so she could work from home until her hand improved. The Petitioner stated that she was able to call patients and perform consultations through internet conferencing.

The Petitioner stated that immediately after she was injured, Human Resources Business Partner Alice Blaney threatened her job and accused her of being insubordinate because she was working remotely and was not performing her regular shop duties. The Petitioner provided an email dated March 22, 2021, from Blaney, stating that it had been brought to her attention that the Petitioner was saying that she was unable to see patients, hold a pen to write, do scans, etc., which went beyond the accommodations noted by her doctor. Blaney stated that the Employer needed her to commit to working with them as to not cause further stress on the patients or the team, and would like to note the expectations that she fulfill all position responsibilities needed, and any further instances that deviated against that would result in further disciplinary action, including possible loss of bonus payments up to and including termination.

The Petitioner stated that about six months after her injury, CCSST⁴ Jeanne Delahunty started giving her negative feedback, said she was not meeting expectations, and said that she was not working fast enough and not meeting enough patients. The Petitioner stated that she told Delahunty that she was no longer able to work in surgery due to her injury. Delahunty called her a slacker and told her she was not part of the team. The Petitioner stated that Delahunty excluded her from weekly team meetings that were held virtually; shouted at her and humiliated her in front of coworkers at every team meeting; and would mute her and tell her that the meeting was not the platform to discuss certain things and that her questions were not important.

The Petitioner stated that Human Resources Manager Kim Ward told her that she needed to punch out in order to use the restroom, and that if she needed to use the restroom more often, she would need to get a doctor's note.

³ The Petitioner provided a verification of disability form which indicated that she had a "right wrist injury condition" which was not minor and was permanent.

⁴ The Respondent's investigation report did not provide further information on Delahunty's job title.

The Petitioner stated that, beginning in April 2022, she contacted the human resources department about 20 times complaining about the way that Delahunty spoke to her, but received no response. The Petitioner stated that she emailed Blaney on August 3, 2022, that the workplace was toxic, and emailed Ward on October 21, 2022, expressing how she had been treated, disrespected, targeted, and demoralized, and that she “never had a single, positive word spoken about her by leadership after her injury.” The Petitioner provided copies of those emails as well as additional emails on November 7, 2022, to Ward complaining about the way that Delahunty, Workforce Manager Callen Gobernatz, and Alicia Pennington treated her; on November 8, 2022, to Ward complaining about the way that Delahunty and Gobernatz treated her, and stating that “she ha[d] been utterly demoralized and devalued since she had been put on her work accommodation”; and on December 19, 2022, to Ward complaining about the way she was treated, including harassment by Delahunty.

The Petitioner stated that Delahunty sent her a performance review saying that she was doing the worst on her team. The Petitioner provided an email from Ward dated November 3, 2022, in which Ward stated that she wanted to provide constructive feedback that the Petitioner’s “queue stats were showing that she had been available, but she had not taken calls for over 30 minutes and patients were waiting.”

The Petitioner stated that on August 11, 2022, she asked Blaney about an annual merit increase. The Petitioner stated that Ward informed her that she was making enough for her job accommodation, so there was no pay increase for her. The Petitioner stated that it was the first time that she asked about a pay increase because she believed it was given automatically. She stated that other employees were given increases, but she did not know their names.

The Petitioner stated that she applied for several promotional positions. She stated that in June 2021, she applied for the Co-Management Group Sales position, but did not receive a response. The Petitioner stated that she asked Training and Development Team Sandra Hagar about the open positions for which she was qualified, and Hagar told her that they put a hold on them and no one was placed in the positions. The Petitioner alleged in her charge that she applied for a Research for Home Office Associate position on December 21, 2022; a Quality Assurance Team position on December 21, 2022; a Clinical Chart Review position in June 2022; and a Surgical Enhancement Evaluation Team position in June 2022. She alleged that the Employer failed to promote her for all the positions on December 28, 2022.

Counsel Kyle Hackett stated that the Petitioner, as Surgical Technician, assisted in the operating room on treatment days, and supported the optometrist with pre-operating exams, vision testing, and paperwork on non-treatment days. Hackett stated that the Petitioner hurt her hand in March 2021 and filed a workers’ compensation claim because she was unable to perform her duties as Surgical Technician. Hackett stated that there was no light duty available because all staff took in patients. Hackett stated that the Petitioner’s options were to pursue long-term disability or a position as a JCOMMS Associate, where she would talk to patients about Lasik from home. Hackett stated that the Petitioner accepted this home position with the same pay and benefits in April 2021. Hackett stated

that for the first three months, the Petitioner could not see more than one patient per hour. At some point in 2022, the Petitioner provided a letter from her doctor indicating that she was “good to go” and had no restrictions on remote work, although still could not work in the center.

Delahunty stated that she was the Petitioner’s direct supervisor and that, at some point after the Petitioner was released, Delahunty told her that she was not meeting expectations. Delahunty stated that the Petitioner would consistently be idle for 15 minutes after a patient call multiple times per day, whereas most other agents would be idle for 5 minutes or less after a call. Delahunty stated that weekly team meetings were scheduled for half an hour, so there were times when employees did not get to ask questions. Delahunty stated that there was no exclusion of the Petitioner specifically, and that she could have asked questions after the meeting concluded at any time. Delahunty stated that there were times when the Petitioner tried to derail questions or bring up things that were not applicable, and there were times she told the Petitioner that she wanted to move on from a topic so that no one received incorrect information.

Ward stated that she stepped in to mitigate the Petitioner’s issues with her teammates and arguments with other people. Ward stated that the Petitioner felt that people did not respect her position. Ward stated that the Petitioner did not report that she felt discriminated against based on her disability. Delahunty stated that the Petitioner was not singled out; a quality team monitored calls for performance, more frequently for past poor performance. Hackett stated that the Petitioner was subjected to quality assurance because her metrics were low, and as she got better the monitoring went away.

Ward stated that in mid-2022 the Petitioner asked if she could have her pay reviewed for an increase. Ward stated that she asked the Petitioner to wait until July, which was when everyone was reviewed. Blaney stated that the Employer did not adjust the Petitioner’s pay when she went to the JCOMM’s position, so she was overpaid for the position, and thus the Employer decided not to give her a pay increase. Hackett stated that the Petitioner was the second-highest-paid person in her position, and that pay increases were earned rather than owed to employees. The Employer provided documentation indicating that 2 of the 19 JCOMM employees were paid more than the Petitioner.

The Employer provided its virtual consultation shadowing forms for the Petitioner dated April 26, 2022, indicating that she did a great job getting a patient to book quickly; dated July 17, 2022, indicating that she received 29 points out of a possible 28 points plus bonus; and dated December 6, 2022, indicating that she received 14 points out of a possible 28 points plus bonus, and that there were significant areas in most of the sections that were missed or omitted.

Blaney stated that the positions that the Petitioner pointed out were not job postings, and that there were no job openings. Hackett stated that the Employer never received any applications from the Petitioner, that she misunderstood that there were job openings, and that the “positions” listed were names of departments and not job titles. Hackett stated that the Petitioner signed up for non-patient-facing work assignments, which were things that employees at the center could do when they were not

seeing patients. Hackett stated that because the Petitioner was working from home doing JCOMM, she was ineligible to do the non-patient-facing work assignments.

Additionally, the Respondent's investigation report indicated that when asked how she was subjected to harassment, the Petitioner failed to identify specific incidents, how often they occurred, and by whom. The Respondent's investigation report indicated that when asked how she was subjected to unequal terms and conditions of employment, the Petitioner failed to identify specific incidents, how often they occurred, and by whom. The report also noted that the Petitioner did not attend the Respondent's fact-finding conference.

Counts A and B

The Petitioner first argues that the Employer subjected her to harassment based on her disability (Count A). In order to establish a *prima facie* case of harassment, the petitioner must allege misconduct that is "sufficiently severe or pervasive 'to alter the conditions of [her] employment and create an abusive work environment.'" *Motley v. Ill. Human Rights Comm'n*, 263 Ill. App. 3d 367, 374 (4th Dist. 1994). The harassment must be related in some way to the petitioner's claimed protected class. See *Sola v. Ill. Human Rights Comm'n*, 316 Ill. App. 3d 528, 542 (1st Dist. 2000). The Commission will consider "the severity of the alleged conduct, its frequency, whether it is physically threatening or humiliating (or merely offensive), and whether it unreasonably interferes with the employee's work performance" in determining whether it is severe or pervasive enough to alter the conditions of the petitioner's employment. See *Robinson v. Perales*, 894 F.3d 818, 828 (7th Cir. 2018).

In her charge of discrimination, the Petitioner alleged that she had been subjected to harassment starting in April 2022. The Petitioner stated that the harassment consisted of Blaney threatening her job and accusing her of being insubordinate; Delahunty giving her negative feedback, telling her she was not meeting expectations, calling her a slacker, excluding her from weekly team meetings, shouting at her and humiliating her in front of her coworkers at the meetings, and muting her and dismissing her questions; and Ward telling her that she needed to punch out to use the restroom and get a doctor's note if she needed more frequent access. Most of the aggrieved actions were within the purview of supervisory authority, even if heavy handed. See *Motley*, 263 Ill. App. 3d at 374 (noting that heavy-handed management does not constitute harassment). Regarding the allegations about Blaney, the Petitioner provided Blaney's email, which did not include threats or accusations, but rather an employer's caution that her refusal to perform tasks within her job description and her doctor's report might lead to disciplinary action. Review of the Petitioner's allegations reveals that there is insufficient evidence that the Employer subjected the Petitioner to severe or pervasive harassment and, significantly, that any misconduct was based on her disability.

The Petitioner also argues that she was subjected to harassment in retaliation for engaging in a protected activity (Count B). A *prima facie* case of retaliation requires evidence that 1) the petitioner engaged in a protected activity, 2) she suffered an adverse action, and 3) a causal connection exists

between the protected activity and the adverse action. See *Welch v. Hoeh*, 314 Ill. App. 3d 1027, 1035 (3d Dist. 2000).

Here, it is unclear whether the Petitioner engaged in a protected activity; the Petitioner only provided the investigator five emails that she sent to the Employer from August 3, 2022, to December 19, 2022, complaining about the way she was treated. However, Article 6 does not protect an employee from employer retaliation for any employee complaints, but only for complaints of unlawful discrimination. 775 ILCS 5/6-101(A) (“It is a civil rights violation for a person to ... [r]etaliat[e] against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination”); 775 ILCS 5/1-103(Q) (“‘Unlawful discrimination’ means discrimination against a person because of his or her actual or perceived: race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service”). Review of the Petitioner’s emails reveals that the only reference to a protected class, presumptively her disability, was in her October 21, 2022, email to Ward complaining that she had not been spoken to in a positive manner by leadership “after her injury,” and in her November 8, 2022, email to Ward complaining that she had been demoralized and devalued “since she had been put on her work accommodation.” Although the references to her injury and change in position due to her injury appear to address when the acts of harassment occurred, rather than why the acts of harassment occurred, the Commission will liberally construe the Petitioner’s emails as opposing discrimination based on her disability.

Even so, the Petitioner’s claim of retaliation still fails because the October and November 2022 protected activity occurred after the harassment began in April 2022, and therefore the harassment could not have occurred because of the protected activity. See *In re Request for Review by: Jilian Musielak*, IHRC, ALS No. 22-0311, 2023 ILHUM LEXIS 66, *17 (April 18, 2023) (noting that if harassment began prior to the protected activity, then it cannot have occurred because of it). Moreover, as stated above, she did not suffer an adverse action because the aggrieved harassment was not severe or pervasive misconduct.

The Commission sustains the dismissal of Counts A and B.

Counts C and D

The Petitioner argues that she was subjected to unequal terms and conditions of employment based on her disability (Count C). A *prima facie* case of disability discrimination must show that 1) the petitioner is disabled within the definition of the Act; 2) her disability was unrelated to her ability to perform the functions of her job; and 3) an adverse job action was taken against her related to her disability. *Truger v. Dep’t of Human Rights*, 293 Ill. App. 3d 851, 859 (2d Dist. 1997).

In her charge of discrimination, the Petitioner alleged that she was subjected to unequal terms and conditions of employment in that the Employer “subjected [her] to constant and routine ‘quality monitoring,’ gave [her] poor work performance reviews that were false, excluded [her] from offering surgical discounts and surgery scheduling options to be used with patients to allow for higher

conversion rates, and excluded [her] from ‘LASIK University’ company weekly meetings;” assigned her inferior work in the form of high-volume typing; subjected her to “humiliating ‘retraining’ multiple times, unnecessarily”; asked her to clock in and out from work for bathroom breaks; advised her not to read work emails or watch work videos on company time or she would be docked pay or discharged; and asked for a doctor’s note to use the restroom. When asked by the Respondent’s investigator to provide information on the alleged unequal terms and conditions of employment such as specific incidents, how often they occurred, and by whom, however, the Petitioner did not comply. She only stated that Delahunty once sent her a negative performance review, and provided an email from Ward dated November 3, 2022, in which Ward stated that she was reaching out because the Petitioner’s queue stats were showing that she had been available but did not take calls for over 30 minutes while patients were waiting.

Here, the Petitioner’s claim fails because she was not subjected to an adverse action, as negative performance evaluations or critical feedback alone do not alter the terms and conditions of employment. See *Owens v. Ill. Dep’t of Human Rights*, 403 Ill. App. 3d 899, 919-20 (1st Dist. 2010) (stating that an adverse employment action significantly alters the terms and conditions of employment, such as hiring, denial of promotion, reassignment to a position with significantly different job responsibilities, or an action that causes a substantial change in benefits); *In re Request for Review by: Carl R. Menefee*, IHRC, ALS No. 15-0457, 2019 ILHUM LEXIS 427, *5 (March 27, 2019) (noting that negative performance evaluation is not an adverse action). In addition, there is insufficient evidence that any of the alleged unequal treatment was because of the Petitioner’s disability.

The Petitioner argues that she was subjected to unequal terms and conditions of employment in retaliation for opposing unlawful discrimination (Count D). Similar to the above analysis in Count B, assuming that the Petitioner engaged in a protected activity on October 21, 2022, and November 8, 2022 (complaining that she was being treated poorly because of her disability), her retaliation claim fails because the allegedly retaliatory unequal terms and conditions occurred prior to her complaint. In other words, there is no evidence that the alleged wrongdoing occurred because the Petitioner engaged in an activity that is protected by the Act.

The Commission sustains the dismissal of Counts C and D.

Count E

The Petitioner argues that she was denied a pay raise on August 11, 2022, because of her disability. Under the *Truger* standard, the Petitioner’s claim fails because there was insufficient evidence that the Employer denied her a pay raise because of her disability, which could have been established if, for example, there were an employee who did not have a disability who asked for and received a pay raise outside of July (the month in which the Employer assessed and issued raises). The Commission sustains the dismissal of Count E.

Counts F, G, H, I, and J

The Petitioner argues that she applied for and was qualified for the position of Co-Management Group Sales (Count F), Research Home Office Associate (Count G), Quality Assurance Team (Count H), Clinical Chart Review (Count I), and Surgical Enhancement Evaluation Team position (Count J), and was denied the positions because of her disability. In a failure-to-hire case, the petitioner must show that 1) she is a member of a protected class; 2) she applied and was qualified for a job for which the employer was seeking applicants; 3) she was rejected despite her qualifications; and 4) after she was rejected, the position remained open and the employer sought other applicants from persons of the petitioner's qualifications, or the position was subsequently filled by a person not in the petitioner's protected class. *Stone v. Dep't of Human Rights*, 299 Ill. App. 3d 306, 315 (4th Dist. 1998); *In re Bennie Patrick, Jr., and City of Centralia Police Dep't*, IHRC, ALS No. S-6648, 1999 WL 33256255, *6 (November 16, 1999).

Here, there is no evidence that the Employer was seeking applicants for any positions, that the Petitioner applied for and was qualified for any position, that the Employer rejected her for any open position, or that the Employer subsequently sought non-disabled applicants or hired a non-disabled person for any of the positions. The Commission sustains the dismissal of Counts F, G, H, I, and J.

For the aforementioned reasons, the Commission concludes that the Respondent's dismissal of the charge was in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Petitioner's charge for lack of substantial evidence is hereby **SUSTAINED**.
2. This is a final Order. A final Order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and LasikPlus as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 30th day of APRIL 2024.**
HUMAN RIGHTS COMMISSION)

Chair Mona Noriega

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn