

IN THE MATTER OF THE  
REQUEST FOR REVIEW BY:

Petitioner.

ALS No.: 23-0355

<sup>2</sup> This Order is entered pursuant to a 3-0-0 vote by the Commissioners.

## Factual Background

Petitioner was hired by Employer on October 22, 2018, as a Clinical Quality Coordinator on Employer's Quality Team and was assigned to Employer's Stem Cell Transplant Program. Clinical Quality Manager Jeanne Martinez was also on the Quality Team with Petitioner. Petitioner stated that her initial supervisor was Operations Manager Sarah Houlihan but, on September 16, 2020, Operations Manager Cassandra Davis became her immediate supervisor. Director of Patient Care Andrew Bresnahan and Operations Manager Yvonne Rucker were also able to assign Petitioner deadlines for her work.

Petitioner stated that from January 2021 through November 2021, she was given unreasonable deadlines for the completion of her work. Petitioner stated that during weekly meetings with Davis, Bresnahan, Rucker, and Martinez, she and Martinez would be asked about the timeline for certain tasks. According to Petitioner, Martinez would respond by saying "I'm working on it," while she would be pressed to give a more specific date or would be assigned a specific date to complete her tasks. Petitioner stated that Martinez did not have any deadlines.

Petitioner stated that from February 17, 2021, through March 2021, while Employer was undergoing construction of its facility, she was not allowed to sit at her regular desk because Martinez was using her desk. Instead, Petitioner used another employee's desk.

Petitioner stated that in April 2021, she requested that Davis and Bresnahan allow her to work from home, as she had been attacked in February 2021 at the Clark and Lake Blue Line Train Station. Petitioner was not permitted to work from home and was required to work in-person five days a week. Petitioner stated that other employees had the flexibility to work from home.

In a complaint that Petitioner submitted to Employer, dated May 7, 2021, Petitioner indicated that she had been experiencing workplace violence as a part of the Quality Team. Petitioner further indicated that Davis sought control and authority over her work and that she had been silenced when she tried to push back. Also, Petitioner indicated that her opinions were being ignored.

In a complaint that Petitioner submitted to Employer, dated June 15, 2021, Petitioner indicated that Bresnahan subjected her to marginalization and microaggressions. According to Petitioner, on one occasion, Bresnahan told her "You will get it done. I don't want to talk about it. You are being defensive. Why are you being defensive?"

In July 2021, Petitioner submitted a request to work a hybrid-remote work schedule, three days in the office and two days at home. Petitioner's request was denied, as Bresnahan and Davis informed her that her role required that she be in the office, even though Martinez was permitted to do whatever she wanted. Petitioner stated that she was not privy Martinez's schedule.

In an incident report that Petitioner submitted to Employer, dated September 10, 2021, Petitioner indicated that Martinez began harassing her in February 2021 when Martinez kept tabs on Petitioner

and followed her to the bathroom or other places she went. Petitioner stated that she did not ask why Martinez was following her because she was afraid of Martinez. Petitioner further stated that Martinez would accuse her of not working, threatened to have more work assigned to her, and would say things such as, "it's a problem because you are refusing to do your share of the work," "I'm ending this meeting since we're not getting anything done," "I'm not having another crazy conversation," "you have far less to do," "since you're in a jam, I'm not helping you," "this is such a waste of time," "you're only choosing what you want to do," and "fine, report me." Petitioner stated that Martinez would exhibit intimidating non-verbal behavior towards her and that if she spoke during meetings Martinez would roll her eyes, smirk, laugh, and sigh heavily. Petitioner stated that, although Martinez was not her supervisor, Martinez would scrutinize her work as if she was.

On October 1, 2021, Petitioner met with Davis and Bresnahan to discuss putting Petitioner on a Personal Improvement Plan ("PIP"). Petitioner stated that, during the meeting, Bresnahan informed her that the PIP was for 60 days. Petitioner stated that she was not aware of any other employee that was put on a PIP. In a complaint that Petitioner submitted to Employer, dated October 4, 2021, Petitioner indicated that she felt threatened by Davis and Bresnahan and that she felt she was not valued or supported and felt alienated. Petitioner indicated that she felt her role was in jeopardy. Petitioner stated that she did not know whether Davis or Bresnahan knew about the October 4, 2021 complaint, or any of the other complaints she submitted.

On December 2, 2021, Petitioner was discharged for failing to complete the PIP. Petitioner stated that she was not aware of any other employee that was discharged for failing to complete a PIP. Petitioner stated that there were no derogatory comments made about her race, sex, and/or the color of her complexion during her time at Employer.

According to Bresnahan, Employer maintained a flexible work from home policy. Bresnahan stated that Employer evaluates business needs, individual job requirements, employee performance, and equity when determining whether an employee may work from home. Bresnahan also stated that working from home was not a term and condition of employment at Employer, but a privilege. To that end, Bresnahan further stated that Petitioner was informed by Davis that no one on the Quality Team was approved for remote work and that Petitioner's work was best done on site.

According to Bresnahan, Petitioner was generally responsible for the interpretation and implementation of quality standards as they related to the Stem Cell program. Petitioner was also responsible for specific tasks such as performing internal audits to assess compliance and actively participating in preparations for inspections and audits from regulators. Bresnahan stated that Petitioner was engaged in helping Employer receive accreditation, which was an intense process and involved deadlines for the completion of work. Bresnahan stated that Petitioner was required to have routine one-on-one meetings with Petitioner's supervisor, Davis, and that in May 2021, Davis met with Petitioner to address some performance concerns with her, including time management and knowing her role and responsibilities. Bresnahan stated that, according to Petitioner's 2021 annual review, Davis noted Petitioner struggled with time management, communication, and proactiveness, as well as exhibited resistance to meeting deadlines. Bresnahan stated that despite the feedback in her review,

Petitioner's performance did not improve, as she pushed back when asked to perform tasks related to her scope of work and had difficulty accepting feedback. Thus, on October 1, 2021, Employer decided to utilize a PIP to set clear expectations for Petitioner. Bresnahan stated that a PIP is not a disciplinary measure per se, but if an employee's performance does not improve, the employee can be discharged.

The PIP indicated that it was to be administered by Davis and that Davis shared concerns regarding Petitioner's work performance with her. The PIP also stated that successful completion of the PIP was a requisite for maintaining employment with Employer and that the timeline for completion was 60 calendar days (or until December 1, 2021). The PIP indicated that Petitioner was to focus on time management/deadlines and prioritization, personal conduct, communication, written and verbal, and initiative and critical thinking. Bresnahan stated that due to the lack of progress on Petitioner's part in improving her job performance, even after receiving coaching and weekly PIP check-ins, Petitioner was discharged on December 2, 2021.

### Analysis

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). 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). Accordingly, the Commission concludes that Respondent properly dismissed Petitioner's charge for lack of substantial evidence.

### Counts A-C

In order to establish a *prima facie* case of race, sex, or color-based harassment, the evidence must show: (1) Petitioner was subjected to unwelcome harassment; (2) the harassment was based on the asserted protected class or classes; (3) the harassment was so severe or pervasive that it altered the conditions of employment and created a hostile or abusive working environment; and (4) there is a basis for employer liability. See *Smith v. Ill. Dep't of Transp.*, 936 F. 3d 554, 560 (7th Cir. 2019). The determination of whether a work environment is hostile or abusive is contextual and depends on factors such as the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating or is a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. *Zoepfel-Thuline v. Black Hawk Coll.*, 2019 IL App (3rd) 180524 ¶ 34 (citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993)). To trigger the protective measures of the Act, an employee must be faced with a "steady barrage" of offensive comments and "more than a few isolated incidents of harassment[.]" *Vill. of Bellwood Bd. of Fire and Police Comm'rs v. Human Rights Comm'n*, 184 Ill. App. 3d 339, 350 (1989).

Here, Petitioner claims that Employer subjected her to harassment by Martinez on account of her race, sex, and color. However, even if prongs one, three, and four of the *prima facie* test were met, prong two is unsatisfied—none of the harassing conduct alleged by Complainant is predicated on her race, sex, or skin complexion. There is no evidence in the Commission's record suggesting that

Martinez's harassing conduct, which generally amounted to keeping tabs on Petitioner, pressing her to complete portions of her work, and intimidating non-verbal behavior during meetings, was motivated by Martinez's discriminatory animus against Petitioner's race, sex, or skin complexion. Accordingly, there is insufficient evidence to support a *prima facie* case of harassment as to Counts A-C.

Counts D-O, Q-S, & U-W

In order to establish a *prima facie* case of unlawful employment discrimination, the evidence must show: (1) Petitioner is a member of a protected class; (2) she was meeting the employer's legitimate business expectations; (3) she suffered an adverse employment action; and (4) the employer treated similarly situated employees outside the class more favorably. *Owens v. Dep't of Hum. Rts.*, 403 Ill. App. 3d 899, 919 (2010). "A materially adverse employment action is 'one that significantly alters the terms and conditions of the employee's job' or causes a material change in the employment relationship." *Id.* at 919. Adverse employment actions include things 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; the evidence must show the employee was subjected to some sort of "real harm." *Id.* at 919-20.

Here, Petitioner claims that Employer subjected her to unequal terms and conditions of employment from February 17, 2021, through March 2021 on account of her race (Count D), sex (Count E), and color (Count F) when she was not permitted to sit at her regular desk, that Employer subjected her to unequal terms and conditions of employment from February 17, 2021, through November 22, 2021, on account of her on account of her race (Count G), sex (Count H), and color (Count I) when she was given unreasonable deadlines for the completion of her work, that Employer denied her the opportunity to work from home on account of her race (Count J), sex (Count K), and color (Count L), that Employer denied her request for a hybrid-remote work schedule on account of her race (Count M), sex (Count N), and color (Count O), that Employer placed her on a PIP on account of her race (Count Q), sex (Count R), and color (Count S), and that Employer discharged her on account of her race (Count U), sex (Count V), and color (Count W).

However, as to Counts D through O, and Q through S, prong three of the *prima facie* test is not met—there is no evidence in the Commission's record indicating that Petitioner was subjected to an adverse act. As to these counts, Petitioner does not allege that she was subjected to an adverse hiring, firing, or demotion, nor does she allege that she was reassigned to a position with significantly different job responsibilities or subjected to a substantial change in benefits. In other words, none of the allegations related to these select counts describe an adverse employment action that "significantly altered the terms and conditions" of Petitioner's job. *Owens*, 403 Ill. App. 3d at 919-920.

As to Counts U through W, prong four of the *prima facie* test is not met, as there is no evidence that Employer elected not to discharge a similarly situated employee outside of Petitioner's protected classes that had previously been placed on a PIP. Accordingly, there is insufficient evidence to support a *prima facie* case of unlawful employment discrimination as to Counts D through O, Q through S, and U through W.

Counts P, T, & X

In order to establish a *prima facie* case of retaliation for engaging in a protected activity, the evidence must show: (1) Petitioner was engaged in a protected activity; (2) her employer committed a material adverse act against her; and (3) a causal nexus existed between the protected activity and the adverse act. See *Spencer v. Ill. Human Rights Comm’n*, 2021 IL App (1st) 170026, ¶ 40. Engaging in a “protected activity” under the Act consists of opposing unlawful discrimination, such as discrimination based on, race, gender, age, disability, religion etc. *In re Request for Review by: Frank J. Campobasso*, IHRC, ALS No. 13-0179, 2018 ILHUM LEXIS 350, \*8 (October 29, 2018); see also 775 ILCS 5/6-101(A) (engaging in a protected activity means to “[m]ake a charge, file a complaint, testify, assist, or participate in an investigation, proceeding, or hearing under the Act, or request, attempt to request, use, or attempt to use a reasonable accommodation as allowed by the Act.” In the context of a retaliation claim, a materially adverse act is one that “might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” *Id.* (citing *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 66-67 (2006)); see also *In re Michael Kennedy and School District #203 and Northfield New Trier High School*, IHRC, ALS No. 20-0142, 2024 ILHUM LEXIS 107, \*13 (May 10, 2024) (finding that threat of suspension without pay would have dissuaded a reasonable worker from making or supporting a charge of discrimination). Generally, “petty slights, minor annoyances, and simple lack of good manners will not create such deterrence.” *Stachler v. Board of Education of Chicago*, 2023 IL App (1st) 221092, ¶ 31 (quoting *Burlington*, 548 U.S. at 68).

Here, Petitioner claims that Employer retaliated against her when it denied her request for a hybrid-remote work schedule (Count P), placed her on a PIP (Count T), and discharged her (Count X). However, the evidence shows that as to Counts P, T, and X, the first prong of the *prima facie* test is not met. Although Petitioner submitted several complaints to Employer from May 2021 through her discharge in December 2021, none of those complaints alleged that Petitioner was being subjected to unlawful employment discrimination based on a protected class. Thus, Petitioner was not participating in a protected activity as contemplated under the act. Further, as to Counts P and T, specifically, the evidence shows that prong two of the *prima facie* test is not met—Petitioner was not subjected to a material adverse act. There is no evidence in the Commission’s record indicating that Employer denying Petitioner’s request for a hybrid-remote schedule or placing Petitioner on a PIP would have dissuaded a reasonable employee from making or supporting a charge of discrimination. Accordingly, there is insufficient evidence to support a *prima facie* case of retaliation as to Counts P, T, and X.

CONCLUSION

After reviewing the record, the Commission concludes that Respondent’s dismissal of the charge for lack of substantial evidence was in accordance with the Act.

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

1. Respondent's dismissal of Petitioner's charge is **SUSTAINED** for **LACK of SUBSTANTIAL EVIDENCE**.
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 Northwestern Memorial Hospital d/b/a/ Northwestern Health Care Corporation as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**

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**HUMAN RIGHTS COMMISSION**

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**Entered this 17th day of SEPTEMBER 2024.**

Commissioner Elizabeth A. Coulson

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II