

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

TONI BOGAN,

Petitioner.

Charge No.: 2023CF2544
EEOC No.: 21BA40196
ALS No.: 24-0140

ORDER

This matter coming before the Commission on August 28, 2024, by a panel of three, Chair Selma D'Souza and Commissioners Jacqueline Y. Collins and Janice M. Glenn presiding, upon the Request for Review ("Request") of Toni Bogan ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2023CF2544, 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 Count A of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**, and the dismissal of Count B is **VACATED** and the count **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and the Illinois Human Rights Act ("Act").²

DISCUSSION

On April 26, 2023, the Petitioner filed a charge of discrimination with the Respondent, perfected on December 6, 2023, alleging that Comcast Cable Communications Management, LLC ("Employer"), subjected her to harassment (Count A) and discharged her (Count B) in retaliation for engaging in a protected activity, in violation of Section 6-101(A) of the Act. On April 24, 2024, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner was hired in September 2018 and worked most recently as a Customer Experience Representative for the Employer's communications services company. The Petitioner reported to Supervisor Aaron Levy, who in turn reported to Manager Dania Rodriguez.

The Petitioner stated that she engaged in a protected activity in March 2023 when she filed a complaint with the Respondent, and in April 2023 when she filed two complaints with the Respondent.

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 Petitioner stated that she emailed Senior Human Resources Manager Nancy Silva about the complaints right away.

The Petitioner stated that from April 11, 2023, through April 25, 2023, she was subjected to a hostile work environment when Levy and Rodriguez informed other employees that she filed several complaints against the Employer, listened to every phone call she made, and remotely viewed her computer screen while she worked. The Petitioner stated that Rodriguez admitted to listening to the phone calls of all employees in an April 25, 2023, meeting. The Petitioner stated that she could hear when someone was listening to her phone calls. Rodriguez would also send side chats in Microsoft Teams while the Petitioner was on a customer phone call. The Petitioner stated that on June 8 or 9, 2023, another employee told her that Rodriguez and Levy were talking about the Petitioner's complaint filed with the Respondent before going into mediation. The Petitioner stated that she thought managers were not allowed to remote view employees' screens without their permission. The Petitioner stated that she told Levy and Rodriguez that she felt harassed by their behavior, and complained to the Employer through multiple channels.

The Petitioner stated that she met her job requirements and had good job performance. She stated that she did have an issue making sales numbers because the Employer wanted her to push Xfinity mobile service. The Petitioner stated that on March 15, 2023, she received discipline about a "write up" that was issued one month after the customer call date of February 7, 2023, and supposed to be removed from her employee file. The Petitioner stated that the Employer subjected her to retaliation when it discharged her on July 18, 2023.

Silva stated that on February 7, 2023, the Petitioner filed an internal complaint about misconduct by a supervisor who refused to take a customer call. Silva stated that Rodriguez, Levy, and human resources investigated the matter and determined that the Petitioner had violated the Employer's customer interaction/interface policy by failing to assist the customer, making inappropriate remarks about a supervisor to the customer, and treating the supervisor in an unprofessional and rude manner. Assistant Deputy General Counsel Lauren Buechner stated that, because the Petitioner filed a complaint about the February 7 incident, the Employer had to resolve the complaint before moving forward with corrective action against the Petitioner in March 2023.

Rodriguez stated that she did not listen to every one of the Petitioner's phone calls. Rodriguez stated that she had to listen to the Petitioner's calls after a February 2023 investigation because she had performance gaps; Rodriguez then listened to her calls to provide support. Rodriguez stated that it was common for calls to be escalated to managers and common for managers to listen to employee calls to gauge performance or provide support. Rodriguez denied informing other employees that the Petitioner filed several complaints against the Employer.

Levy stated that he communicated with the Petitioner every morning through instant message and once per week for coaching, which was a weekly outline to show where the employee was performing well and to show if there were opportunities for improvement. Levy stated that, as the

Petitioner's supervisor, he was required to listen to two calls of hers per month to determine if there were opportunities for improvement. He stated that, when reviewing a call, it showed the employee's computer screen also. Levy denied informing other employees that the Petitioner filed several complaints against the Employer.

Levy stated that the "write up" that the Petitioner received in March 2023, stemming from the February 7, 2023, customer call, placed the Petitioner on a final written warning for six months. The Petitioner incurred another "write up" for failing to meet scorecard performance in April 2023 and May 2023. Levy stated that the Petitioner was discharged for receiving another "write up" within six months of the final written warning.

The Commission concludes that the Respondent properly dismissed Count A of the Petitioner's charge for lack of substantial evidence, but that there is substantial evidence of retaliation in Count B. 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).

Count A

The Petitioner argues that she was subjected to harassment from April 11, 2023, through April 25, 2023, in retaliation for engaging in a protected activity. A *prima facie* case of retaliation requires evidence that 1) the petitioner engaged in a protected activity, 2) he 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). Under the Act, harassment is misconduct that is "sufficiently severe or pervasive 'to alter the conditions of [the petitioner's] employment and create an abusive work environment.'" *Motley v. Ill. Human Rights Comm'n*, 263 Ill. App. 3d 367, 374 (4th Dist. 1994). 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).

Here, the Petitioner's claim fails because she was not subjected to severe or pervasive misconduct. The Petitioner maintains that Levy and Rodriguez told other employees that she had filed complaints against the Employer, listened to every phone call she made, and remotely viewed her computer screen. Especially in light of the fact that the Petitioner's supervisors were required to listen in on the Petitioner's calls by the Employer, which was viewable on her computer screen, the Petitioner's claim that she was subjected to a hostile work environment is without merit. Because she did not suffer an adverse action, the Petitioner's retaliation claim in Count A was properly dismissed.

Count B

The Petitioner next argues that she was discharged in retaliation for engaging in a protected activity. Under the *Welch* standard, the Petitioner has established a *prima facie* case: she engaged in a protected activity in March 2023 when she filed a complaint with the Respondent against the Employer; was discharged by the Employer on July 18, 2023; and the two events were close enough in time to infer causality. See *Hoffelt v. Ill. Dep't of Human Rights*, 367 Ill. App. 3d 628, 638-39 (1st Dist. 2006) (finding that five months between retaliation and protected activity was a short enough time span to establish causality).

The Respondent agrees that there is a *prima facie* case of retaliation, but argues that the Commission should sustain the dismissal because the Employer articulated a legitimate, nondiscriminatory reason for its action and the Petitioner did not establish that the reason was pretext for discrimination. See *Zaderaka v. Ill. Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989) (adopting the three-part, analytical framework in which, if the complainant establishes a *prima facie* case, the employer may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and then the complainant must prove to the trier of fact that the articulated reason was a pretext for discrimination). However, at this investigatory stage of the proceedings, the inquiry is "whether there is substantial evidence that the alleged civil rights violation has been committed," 775 ILCS 5/7A-102(D)(2), and not whether the Petitioner can ultimately prove her case. That is a decision for a trier of fact. See 775 ILCS 5/8A-102(I)(1) ("When all the testimony has been taken, the hearing officer shall determine whether the respondent has engaged in or is engaging in the civil rights violation with respect to the person aggrieved as charged in the complaint. A determination sustaining a complaint shall be based upon a preponderance of the evidence."). The Commission vacates the dismissal of Count B and remands for a finding of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Count A of the Petitioner's charge for lack of substantial evidence is hereby **SUSTAINED**.

2. The dismissal of Count B of the Petitioner's charge is **VACATED** and Count B is **REMANDED** for a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and the Act.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 4th day of SEPTEMBER 2024.

Chair Selma D'Souza

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn