

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

TONY BRYANT,)
)
Petitioner.)

Charge No.: 2023CF1547
EEOC No.: 21BA30888
ALS No.: 24-0198

ORDER

This matter coming before the Commission on December 18, 2024, by a panel of three, Commissioners Jacqueline Y. Collins, Janice M. Glenn, and Howard A. Rosenblum presiding, upon the Request for Review (“Request”) of Tony Bryant (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2023CF1547, 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 of discrimination is **VACATED** and Counts A, B, and C are **REMANDED** to the Respondent for a **FINDING OF SUBSTANTIAL EVIDENCE** and proceedings that are consistent with this Order and the Illinois Human Rights Act (“Act”).²

DISCUSSION

On January 17, 2023, the Petitioner filed a charge of discrimination with the Respondent, perfected on June 6, 2023, alleging that Universal Protection Service, LLC d/b/a Allied Universal Security Service (“Employer”) subjected him to harassment because of his perceived sexual orientation, homosexual (Count A), constructively discharged him because of his perceived sexual orientation (Count B), and refused to rescind his resignation in retaliation for engaging in a protected activity, in violation of Sections 2-102(A) and 6-101(A) of the Act. On May 31, 2024, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Commission concludes that there is substantial evidence of discrimination in Counts A, B, and C. 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).

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 was hired on October 10, 2022, as an Account Manager for the Employer, a company that provided security services. The Petitioner stated that his duties included supervising 120 officers and four shift supervisors, and handling the day-to-day operations of the shift and disciplinary matters.

The Petitioner stated that he did not disclose or discuss his sexual orientation with anyone at the Employer. He stated that during his first week of training, he informed his supervisor, Client Portfolios Manager Deb Hindin, that he was married and had a son. The Petitioner stated that Hindin informed him that she was a lesbian and lived with her lover.

The Petitioner stated that on October 23, 2022, Hindin brought up Officer Eric McGee in a conversation and told the Petitioner to “go tell his boyfriend that he needs to be the flex supervisor for the day.” The Petitioner stated that he was in shock, did not respond, and was afraid that if he said anything he would lose his job because he was in his 90-day probationary period and could be fired without cause.

The Petitioner stated that on December 12, 2022, Hindin told him that when McGee called for help, “he runs to him.” The Petitioner stated that he “took this comment to mean something inappropriate and sounded sexual in nature.” The Petitioner stated that he did not respond to Hindin’s comment.

The Petitioner stated that on December 14, 2022, he went to Hindin’s office to discuss his job performance. He stated that Hindin repeated her comment that when McGee called him for help, “he runs to him.” The Petitioner stated that he told Hindin he was a married man and did not run to men. He told Hindin that she needed to stop making these types of remarks based on perceived sexual orientation. The Petitioner stated that the comments were unprofessional, and that they needed to stop because they made him feel uncomfortable. Hindin’s response to him was that she had the right to free speech. The Petitioner stated that he reiterated that she needed to stop and that he would report her to the human resources department if it continued. He stated that Hindin “just laughed at his comment,” and told him that “he was going to have a fucking problem if he continued to bring this to her attention.”

The Petitioner stated that on December 28, 2022, he asked Hindin to train him on the payroll system. The Petitioner stated that Hindin replied, “girl it would take time to learn how to do payroll and girl it would take her too long to train him.” The Petitioner responded that he was a married man. The Petitioner stated that Hindin laughed at his comment. The Petitioner stated that later that day, he told Hindin that he planned to report her comments to the human resources department after his probationary period was completed. Hindin laughed and took it as a joke. The Petitioner told her to stop making remarks based on his perceived sexual orientation. Hindin responded that she had the right to free speech. The Petitioner stated that he reiterated that she needed to stop and that he would report her to the human resources department. Hindin laughed.

The Petitioner stated that on December 29, 2022, while discussing an incident involving McGee, Hindin again said to him that “when your officer calls, you run to him.” The Petitioner stated that he told Hindin that there was no favoritism toward McGee. He stated that he took Hindin’s comment to be sexual in nature and “alluding that when a male officer calls him, that specific male officer gets special treatment.”

The Petitioner stated that on December 30, 2022, when he went to Hindin’s office to say “good morning,” Hindin asked him if his butt was hurting. The Petitioner stated that he took this comment to be sexual in nature, and that he thought he would eventually make a report about the harassment he had endured once his probationary period was completed. The Petitioner also stated that Hindin frequently yelled during basic conversations, raising her voice at least once per week.

The Petitioner stated that on January 12, 2023, he emailed Regional Human Resource Manager Anna Soja complaining of harassment that he experienced between October 23, 2022, through December 30, 2022. At the same time, the Petitioner emailed Soja that he felt that he had no other choice but to resign because of the harassment he endured.

The Petitioner stated that he spoke with Vice President JP Dries, and then sent Dries an email making it clear that he liked working for the Employer and that if the Employer resolved the issue of harassment, he would rescind his resignation. The Petitioner stated that his resignation was rescinded by Dries and that he was an employee of the Employer until the investigation concluded.

The Petitioner stated that on January 30, 2023, he was discharged, and was not given a reason why.

According to Soja, the Employer was not aware of the Petitioner’s sexual orientation. Hindin stated that the Petitioner informed her that he was married. She stated that she assumed that he was heterosexual. Hindin stated that during that conversation, she told the Petitioner that she had a partner who was African-American.

Hindin stated that between November 10, 2022, and December 9, 2022, a lot of supervisors were falling ill and had to use Security Officer Gerald Owens as a flex supervisor. Hindin stated that she told the Petitioner he had to go to his boyfriend, that he would probably be a shift supervisor. Hindin stated that the Petitioner laughed the comment off. Hindin stated that the following day, every time the Petitioner mentioned a female officer, he would say, “your girlfriend.”

Hindin stated that on December 9, 2022, she informed the Petitioner that it appeared that every time McGee called for a supervisor over the radio, the Petitioner would go to McGee and not let the supervisor respond.

Hindin stated that on December 14, 2022, the Petitioner asked to come to the office on his day off. She stated that he told her that as a supervisor she needed to learn how to talk to men. Hindin

stated that the Petitioner mentioned the comment that she had made about McGee and running to him. Hindin stated that she attempted to explain to the Petitioner that “the word run was a verb and was not meant any other way.” Hindin stated that the Petitioner brought up the incident with Owens. She told him that she was aware of his manhood and that he needed to stop talking about the blood of Christ during roll call. Hindin stated that they eventually calmed down and started talking about staffing. The Petitioner told her that as a Christian he needed to ask for forgiveness if he had offended her. Hindin stated that she did not respond to this comment.

Hindin stated that on December 28, 2022, she did not remember making the comments “girl it would take her too long to train him,” or “girl it would take time to learn how to do payroll.” She did not remember the Petitioner telling her on that day that he planned on reporting her comments once the probationary period was over.

Hindin stated that on December 29, 2022, she did not make the comment that when McGee called, the Petitioner ran to him. Hindin stated that McGee had not been assigned at their client site since December 13, 2022. Hindin denied asking the Petitioner on December 30, 2022, if his butt was hurting.

Hindin stated that she did not frequently yell at the Petitioner or give instructions in a loud voice. She stated that she used profanity in the workplace in general.

Soja stated that on January 12, 2023, the Petitioner emailed her and multiple, other individuals an outlined statement with bullet points reporting sexual harassment, and his resignation due to harassment effective immediately. Later on that same date, the Petitioner emailed Soja and multiple, other individuals 1) stating that he was instructed by Dries to give detailed information on his reasons, 2) explaining five scenarios, and 3) reiterating a question he posed to Dries that, although he had announced his official resignation, if the opportunity yet existed for him to continue employment to feel free to reach out to him. Soja stated that the Employer investigated the matter and determined that there was no harassment or discrimination directed toward the Petitioner, and disciplined Hindin for inappropriate comments.

The Employer’s records indicated that on January 13, 2023, the Petitioner emailed multiple individuals that he wanted to file a formal sexual harassment/verbal harassment complaint to their office and that he had contacted the chain of command at the Art Institute Museum for further review and investigation into the matter. Soja stated that the Employer’s response was to accept the Petitioner’s resignation.

Soja stated that Dries told the Petitioner not to contact the client site. The client site contacted the Employer stating that the Petitioner continued to attempt to communicate with them and asking it to stop inappropriate communications. The Employer’s records indicated that on February 5, 2023, Dries emailed the Petitioner, informing him that he had been advised twice not to reach out or

communicate with AIC staff or the client while the investigation was being completed, and asking him to direct all communication through the Employer.

Soja stated that a few days after the Employer's investigation had concluded, the Petitioner sent an email requesting to rescind his resignation, stating that he had changed his mind and that he would be willing to return to work if his concerns were addressed. Soja stated that she informed the Petitioner that his request to withdraw his resignation would not be accepted and his resignation stood.

Count A

The Petitioner argues that the Employer subjected him to harassment based on his perceived sexual orientation. In order to establish a *prima facie* case of harassment, the misconduct must be "sufficiently severe or pervasive 'to alter the conditions of [his] 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).

The Petitioner argues that the harassment consisted of the following: Hindin, his supervisor, referring to a security guard as the Petitioner's boyfriend; stating repeatedly that when the security guard called for help, the Petitioner would run to him; telling him that she had a right to free speech when he told her her comments made him feel uncomfortable; referring to him as "girl"; and asking him if his butt was hurting. The Commission concludes that there is more than a mere scintilla of evidence that the Petitioner was subjected to harassment based on his perceived sexual orientation. While the Employer has a different account of the events, at this stage of the proceedings, the Commission views the facts in the light most favorable to the Petitioner. *See In re Request for Review by: Caroline Curley*, IHRC, ALS No. 23-0255, 2024 ILHUM LEXIS 40, *8 (March 5, 2024). The Commission vacates the dismissal of Count A and remands for a finding of substantial evidence.

Count B

The Petitioner argues that the Employer constructively discharged him due to his perceived sexual orientation. A *prima facie* case of discrimination requires that 1) the petitioner is a member of a protected class, 2) he was performing his job satisfactorily, 3) he was subjected to an adverse action, and 4) the employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. *Marinelli v. Ill. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (2d Dist. 1994). Constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced to resign involuntarily. *Steele v. Ill. Human Rights Comm'n*, 160 Ill. App. 3d 577, 581 (3d Dist. 1987).

The Commission concludes that there is more than a mere scintilla of evidence that the Petitioner was subjected to harassment based on perceived sexual orientation by his supervisor throughout the 90-day probation period which made him feel uncomfortable. The Petitioner stated that when he objected to Hindin's comments towards him and told her he would report her to the human resources department, it did not stop the behavior – she laughed and continued to make comments suggesting that he had a sexual relationship with a male coworker. Viewing the evidence in the light most favorable to the Petitioner, the Commission determines that the Petitioner's statement that he felt that he had no choice but to resign is supported by the evidence. The Commission vacates the dismissal of Count B and remands for a finding of substantial evidence.

Count C

The Petitioner argues that the Employer refused to rescind his resignation 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). Protected activity includes opposing unlawful discrimination, filing a charge or otherwise participating in a matter under the Act, and requesting a reasonable accommodation. 775 ILCS 5/6-101(A).

The Respondent recommends that the Commission remand this count back for further investigation because it analyzed the adverse action incorrectly as constructive discharge rather than refusal to rescind the resignation. The Commission concludes, however, that there is no need to remand for further investigation because the evidence already establishes a *prima facie* case of retaliation.

Here, the Petitioner stated that on January 12, 2023, he complained of harassment based on his perceived sexual orientation to the Employer and resigned. He later told Dries that he liked working for the Employer and if the harassment stopped, he would rescind his resignation. The Petitioner stated that Dries rescinded his resignation, but then on January 30, 2023, the Employer discharged him without giving him a reason.

Under the *Welch* standard, the Petitioner has asserted a *prima facie* case of retaliation because he complained about unlawful discrimination, suffered an adverse action, and the events were close enough in time to create the inference of causation. See *Hoffelt v. Ill. Dep't of Human Rights*, 367 Ill. App. 3d 628, 638 (1st Dist. 2006) (finding that three months between protected activity and alleged retaliation established causation for *prima facie* case of retaliation). While the Employer asserted that it did not base its decision not to rescind the resignation on his complaint of harassment, at this stage of the proceedings, the Commission is limited to reviewing whether there is substantial evidence of discrimination. See 775 ILCS 5/7A-102(D)(2). The Commission vacates the dismissal of Count C and remands for a finding of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

