

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JUAN VARGAS,)	
)	
Complainant,)	
)	
and)	Charge No.: 2003CF3385
)	EEOC No.: 21BA32206
)	ALS No.: 05-107
A.W. WINDOW MANUFACTURING,)	
)	
Respondent.)	Judge Lester G. Bovia, Jr.

RECOMMENDED ORDER AND DECISION

This matter has come to be heard on Respondent’s Motion for Summary Decision (“Motion”). Complainant filed a response to the Motion, and Respondent filed a reply. Accordingly, this matter is now ready for disposition.

The Illinois Department of Human Rights (“Department”) is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings, affidavits, and other documents submitted by the parties. The findings did not require, and were not the result of, credibility determinations. Moreover, all evidence was viewed in the light most favorable to Complainant. Facts not discussed were deemed immaterial.

1. Complainant was hired by Respondent in 1996 as a general laborer.
2. Complainant is of Mexican origin.
3. Respondent is a manufacturer and seller of windows and glass blocks. It has been in business since 1994.

4. In 2003, Respondent initiated a significant equipment replacement and improvement plan. During the first half of 2003, Respondent bought three different manufacturing machines. Putting each new machine into service required significant coordination among installers, Respondent's staff, electrical contractors, and out-of-town manufacturer representatives. The entire process, from delivery to training, took as long as three days.

5. The first machine, a Prestik Glass Washer, was to be installed in January 2003. Respondent explained to Complainant that the manufacturer's representatives were coming from Canada to Respondent's Chicago facility to conduct the training, and that Complainant was expected to attend.

6. Complainant was absent from the Prestik training. When he returned to work, Complainant told Respondent that he missed work because he was sick.

7. Respondent advised Complainant that he would be trained on the next machine to be installed, a Proline Four Point Welder/Cleaner to be installed in early May 2003, and that he must attend that training.

8. Complainant was absent from the Proline training. Complainant stated that he was sick again.

9. Respondent warned Complainant that he would be discharged if he did not attend the training for the final machine, a Machine Technologies Glass Table machine.

10. The Machine Technologies training was scheduled for May 14, 2003. Respondent repeated its warning to Complainant while the machine was being installed, but before the training had started.

11. Complainant came to work the morning of May 14, 2003, but punched out and left at 9:00 a.m. Thus, Complainant missed the Machine Technologies training as well.

12. When Complainant reported for work on May 16, 2003, Respondent discharged him.

13. On May 19, 2003, Complainant filed a charge with the Department alleging that Respondent discharged him due to his national origin. Respondent denies Complainant's allegations.

14. After investigating Complainant's charge, the Department filed a complaint on Complainant's behalf on March 25, 2005.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and subject matter in this case.

3. Complainant's national origin discrimination claim must be dismissed because he has failed to establish a *prima facie* case of national origin discrimination.

4. Complainant's national origin discrimination claim also must be dismissed because Respondent has articulated a legitimate, nondiscriminatory reason for the adverse action it took against Complainant, and Complainant has offered no evidence that Respondent's reason was pretextual.

5. There is no genuine issue of material fact regarding Complainant's claim.

6. Respondent is entitled to a recommended order in its favor as a matter of law.

DISCUSSION

I. SUMMARY DECISION STANDARD

Under section 8-106.1 of the Act, either party to a complaint may move for summary decision. 775 ILCS 5/8-106.1. A summary decision is analogous to a summary judgment in the Circuit Courts. Cano v. Village of Dolton, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200, 1206 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill. App. 3d 386, 391, 642 N.E.2d 486, 490 (4th

Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill. App. 3d 453, 456-57, 395 N.E.2d 6, 9 (1st Dist. 1979). Although not required to prove his case as if at a hearing, the non-moving party must provide *some* factual basis for denying the motion. Birck v. City of Quincy, 241 Ill. App. 3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. Chevrie v. Gruesen, 208 Ill. App. 3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontroverted, warrant judgment in its favor as a matter of law, a complainant may not rest on his pleadings to create a genuine issue of material fact. Fitzpatrick, 267 Ill. App. 3d at 392, 642 N.E.2d at 490. Where the movant's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a complainant's failure to file counter-affidavits in response is frequently fatal to his case. Rotzoll v. Overhead Door Corp., 289 Ill. App. 3d 410, 418, 681 N.E.2d 156, 161 (4th Dist. 1997). Inasmuch as summary decision is a drastic means for resolving litigation, the movant's right to a summary decision must be clear and free from doubt. Purtill v. Hess, 111 Ill.2d 229, 240 (1986).

II. COMPLAINANT'S NATIONAL ORIGIN DISCRIMINATION CLAIM MUST BE DISMISSED

A. Standard for Proving National Origin Discrimination Under the Act

Complainant alleges that Respondent discharged him due to his Mexican national origin. There are two methods for proving employment discrimination, direct and indirect. Sola v. Human Rights Comm'n, 316 Ill. App. 3d 528, 536, 736 N.E.2d 1150, 1157 (1st Dist. 2000). Because there is no direct evidence of employment discrimination in this case (*e.g.*, a statement by Respondent that Complainant was being disciplined because of his national origin), the indirect analysis is appropriate here.

The analysis for proving a charge of employment discrimination through indirect means was described in the U.S. Supreme Court case of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and is well established. First, Complainant must make a *prima facie* showing of discrimination by Respondent. Texas Dep't. of Cmty. Affairs v. Burdine, 450 U.S. 248, 254-55 (1981). If he does, then Respondent must articulate a legitimate, nondiscriminatory reason for its actions. Id. If Respondent does so, then Complainant must prove by a preponderance of evidence that Respondent's articulated reason is merely a pretext for unlawful discrimination. Id. This analysis has been adopted by the Commission and approved by the Illinois Supreme Court. See Zaderaka v. Human Rights Comm'n, 131 Ill.2d 172, 178-79 (1989).

To establish a *prima facie* case of national origin discrimination, Complainant must prove: 1) he is in a protected class; 2) he was meeting Respondent's legitimate performance expectations; 3) Respondent took an adverse action against him; and 4) similarly situated employees outside Complainant's protected class were treated more favorably. Aldape and Chicago Transit Auth., IHRC, ALS No. 12182, April 19, 2006. As discussed below, Complainant cannot establish a *prima facie* case of national origin discrimination as a matter of law.

B. Complainant Cannot Establish a *Prima Facie* Case of National Origin Discrimination

Clearly, Complainant, a Hispanic male of Mexican origin, is protected from discrimination under the law. Also, Complainant's discharge was an adverse action. However, Respondent denies that Complainant was meeting Respondent's legitimate performance expectations, and that similarly situated employees outside Complainant's protected class received more favorable treatment.

In his affidavit, Complainant states that Respondent was always pleased with his work. (Complainant's affidavit at 2.) According to Complainant, Respondent even promoted Complainant to a supervisory position. (Id. at 1.) Complainant further states that Respondent's only problem with Complainant was that he does not speak English. (Id. at 1-2.) Disagreeing

with Complainant, Respondent cites Complainant's poor attendance at the three training sessions in 2003 as evidence that Complainant did not perform to Respondent's legitimate expectations. (J. Wendling affidavit at 1-5.)

In connection with a motion for summary decision, conflicting statements in competing affidavits must be reconciled in the non-moving party's favor. Curtis Collum and Pony Express Courier Corp., IHRC, ALS No. 3883, April 5, 1994. When viewed in the light most favorable to Complainant, the evidence supports Complainant's claim that he was meeting Respondent's legitimate performance expectations.

However, as to *prima facie* element four, Complainant offers no evidence whatsoever that similarly situated, non-Mexican employees were treated more favorably than he was. Thus, Complainant's *prima facie* proof of national origin discrimination fails here.

Moreover, assuming *arguendo* that Complainant could establish a *prima facie* case of national origin discrimination, Respondent has articulated a legitimate, nondiscriminatory reason for Complainant's discharge: Complainant's failure to attend the training sessions. Respondent asserts, and Complainant does not deny, that each of the three machines purchased throughout 2003 required sophisticated set-up, installation, and training. (J. Wendling affidavit at 1-5.) Each training session was to be conducted by representatives from the manufacturers of the machines, and each installation required significant coordination among installers, Respondent's staff, electrical contractors, and out-of-town manufacturer representatives. (Id.) Due to the difficulty of coordinating the installation and training process, Respondent stressed to Complainant how important it was for him to attend. (Id.) Nevertheless, Complainant missed the training sessions for all three machines. (Id.) Respondent discharged Complainant after he missed the final training session. (Id.) Clearly, Respondent's reason for discharging Complainant is legitimate and nondiscriminatory.

In addition, there is no evidence that Respondent's reason for discharging Complainant is merely pretextual. To prove pretext, Complainant must show: 1) the proffered reason has no

basis in fact; 2) the proffered reason did not actually motivate the decision; or 3) the proffered reason is insufficient to motivate the decision. Grohs v. Gold Bond Bldg. Prods., 859 F.2d 1283, 1286 (7th Cir. 1988). Complainant offers no evidence whatsoever that Respondent's articulated reason for discharging Complainant (*i.e.*, Complainant's failure to attend the training sessions) is a pretext for unlawful discrimination.

As a result, Complainant's national origin discrimination claim fails as a matter of law.

RECOMMENDATION

Based on the foregoing, there is no genuine issue of material fact regarding Complainant's claim of national origin discrimination, and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that: 1) Respondent's Motion for Summary Decision be granted; and 2) the complaint and underlying charge be dismissed in their entirety with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____

**LESTER G. BOVIA, JR.
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION**

ENTERED: November 9, 2009