

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
LACEY N. GREGORY,)	
)	
Complainant,)	CHARGE NO: 2007SF1055
)	EEOC NO: 21BA70186
and)	ALS NO: S08-083
)	
CATERPILLAR INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). On April 30, 2008, Respondent filed a motion for summary decision pursuant to section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1). Complainant has not filed a response, although the time for doing so has expired.

Contentions of the Parties

In the instant Complaint, Complainant alleges that she was the victim of sexual harassment and harassment based on her sexual orientation, and that she was discharged in retaliation for protesting what Complainant believed to be a sexually hostile work environment. In its motion for summary decision, Respondent, however, submits that the instant claims should be dismissed under the doctrine of *res judicata* since Complainant's harassment and retaliation claims against Respondent had been previously litigated and found to be without substance in a charge of discrimination filed by Complainant with the City of Decatur, Illinois Human Relations Commission.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. On August 17, 2005, Respondent hired Complainant as a supplemental employee.

2. On February 10, 2006, Respondent terminated Complainant's employment.

3. On March 16, 2006, Complainant filed a charge of discrimination with the City of Decatur, Illinois Human Relations Commission (Decatur Commission), alleging that she had been the victim of sexual harassment and harassment based on her sexual orientation by a co-worker named Brandon Alexander. She also alleged that she had repeatedly reported Alexander's conduct to her supervisor (David Faulk), who took no action on her complaints of harassment and instead retaliated against her by terminating her employment.

4. On July 21, 2006, the Decatur Commission filed a complaint on behalf of Complainant against Respondent and Falk, alleging that from January 2006 to February 10, 2006, Alexander had sexually harassed Complainant and harassed her based on her sexual orientation, and that Respondent terminated Complainant on February 10, 2006 in retaliation for her complaints of said harassment.

5. On August 2, 2006, Complainant filed a Charge of Discrimination with the Department of Human Rights alleging sexual harassment, harassment based on her sexual orientation and retaliation. In the Charge, Complainant alleged that: (1) in February of 2006, that Alexander made comments of a sexual nature about her body and would refer to Complainant as a "lesbo," "bitch," and/or "dyke" on a daily basis; (2) she reported Alexander's conduct to Falk; and (3) she was terminated on February 10, 2006 in retaliation for opposing sexual and sexual orientation harassment.

6. Beginning on September 20, 2006, the Decatur Commission held a public hearing to determine the merits of the complaint. The hearing lasted three days and concluded on November 6, 2006. At the time of the hearing, Complainant was

represented by attorney Mary Lee Leahy, who called seven witnesses on behalf of Complainant, including Complainant and her alleged harasser, Alexander. Each witness testified in public, was under oath, and was subject to cross-examination.

7. During the hearing before the Decatur Commission, Complainant testified that: (1) Alexander called her a "bitch" and "dyke," touched her twice, attempted to write on her back with a marker, and rubbed her shoulders; and (2) she complained to Falk and another supervisor about Alexander's conduct, but was terminated shortly after her complaints

8. During the public hearing, Falk testified that: (1) he made the decision to terminate Complainant based on her unsatisfactory work performance; (2) he was unaware that Complainant was a lesbian; and (3) Complainant had not complained to him about Alexander's conduct.

9. During the public hearing, a co-worker named Katrina Cox testified that Complainant and Alexander were friends outside of work.

10. In February of 2007, the hearing officer for the Decatur Commission issued his Report and Recommendation, finding that Complainant's claims of sexual/sexual orientation harassment and retaliation were without merit, and that Respondent's reasons for terminating Complainant were related solely to her inability to meet Respondent's job expectations.

11. On April 12, 2007, the Decatur Commission adopted the Report and Recommendation of the hearing officer and dismissed all charges against Respondent.

12. Complainant did not file a complaint in circuit court requesting review under the Administrative Review Act of the Decatur Commission's April 12, 2007 order.

13. On February 26, 2008, the Department of Human Rights filed the instant Complaint, alleging sexual and sexual orientation harassment and retaliation. Specifically, the Complaint alleged that from December of 2005 through February 10,

2006, Alexander harassed Complainant by making comments about her body, calling her names such as “bitch” and “dyke,” “walking behind her” and “rubbing her shoulders.” The Complaint also alleged that Complainant was terminated in retaliation for complaining to Falk about the Alexander’s alleged harassment.

13. At all times pertinent to the instant Complaint, Chapter 26, Section 6-1(E) of the Decatur City Code prohibited sexual harassment in the workplace and defined “sexual harassment” in terms that were identical to the sexual harassment phrase set forth in sections 2-101(E) and 2-102(D) of the Human Rights Act (775 ILCS 5/2-101(E), 5/2-102(D)).

Conclusions of Law

1. Complainant is an “employee” as that term is defined under the Human Rights Act.

2. Respondent is an “employer” as that term is defined under the Human Rights Act and was subject to the provisions of the Human Rights Act.

3. In order for the doctrine of *res judicata* to apply, three requirements must be met: (1) a “final” judgment on the merits in a prior action rendered by a court of competent jurisdiction; (2) an identity of causes of action; and (3) an identity of parties or their privies.

4. Complainant’s complaint before the Decatur Commission alleging that she was the victim of sexual and sexual orientation harassment and retaliation is an “identical cause of action” to the instant cause of action alleging sexual and sexual orientation harassment and retaliation for purposes of applying the doctrine of *res judicata* since both lawsuits contain similar allegations arising out of the same core of operative facts.

5. Respondent has met all of the prerequisites for applying the doctrine of *res judicata*.

Determination

The instant Complaint alleging sexual and sexual orientation harassment and retaliation should be dismissed with prejudice under the doctrine of *res judicata* in that Respondent has established with respect to the decision by the Decatur Commission and the instant Human Rights Act claim an identity of parties, an identity of a cause of action and a prior decision “on the merits” by a court of competent jurisdiction.

Discussion

As with all motions for summary decision pending before the Commission, a motion for summary decision shall be granted if the record indicates that there is no genuine issue as to any material fact, and the moving party is entitled to a recommended order as a matter of law. (See, section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1), and *Bolias and Millard Maintenance Service Company*, 41 Ill HRC Rep 3 (1988).) Inasmuch as a summary order is a drastic method for disposing of cases, it should only be allowed when the right of the moving party is clear and free from doubt. (See, *Susmano v Associated Internists of Chicago*, 97 IllApp3d 215, 422 NE2d 879, 52 IllDec 670 (1st Dist 1981).) Furthermore, although there is no requirement that a complainant establish her case to overcome a motion for summary decision, a complainant is still required to present some basis, either factual or legal, that would arguably entitle her to a judgment under the applicable law. (See, *Schoondyke v Heil, Heil, Smart & Golee, Inc.*, 89 IllApp3d 640, 411 NE2d 1168, 44 IllDec 802 (1st Dist, 2nd Div 1980).) Admittedly, this is difficult for Complainant to do in this case since she has failed to file any response to the instant motion.

In its motion for summary decision, Respondent argues that the instant complaint is barred by the doctrine of *res judicata* since the Decatur Commission found in Respondent’s favor in a prior complaint alleging essentially an identical cause of action arising out of a common core of operative facts. Under the doctrine of *res judicata*, a

final judgment on the merits is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. (See, for example, *Rein v David A Noyes & Co*, 172 Ill2d 325, 665 NE2d 1199, 216 IllDec 642 (1996), and *Zabel v Cohn*, 283 IllApp3d 1043, 670 NE2d 877, 880, 219 IllDec 199, 202 (1st Dist, 1st Div 1996).) The policy behind such a doctrine is the well-worn notion that litigation should have an end, and that no person should be unnecessarily harassed with a multiplicity of lawsuits. (*Rein*, 665 NE2d at 1205, 216 IllDec at 648.) Thus, it is sufficient to say that under the doctrine of *res judicata* an employee generally cannot split a cause of action and use different theories of recovery as separate bases for multiple lawsuits. See, for example, *Button v Harden*, 814 F2d 382 (7th Cir 1987).

However, in order for *res judicata* to apply, a party seeking its invocation must establish three separate elements: (1) a final judgment “on the merits” rendered by a court of competent jurisdiction; (2) an identity of causes of action; and (3) an identity of parties or their privies. (See, for example, *Leow v A & B Freight Line, Inc.*, 175 Ill2d 176, 676 NE2d 1284, 1285-86, 222 IllDec 80, 81-82 (1997).) In this respect, Respondent’s invocation of *res judicata* appears to be meritorious where: (1) the parties are identical; (2) there was a final judgment in Respondent’s favor in the prior action¹; and (3) respective claims alleging sexual and sexual orientation harassment and retaliation arose from the same core of operative facts. Indeed, Respondent went one measure better by showing that the Decatur City Code and the Human Rights Act contained similar provisions with respect to claims of sexual harassment, and that the hearing officer (from my reading of his decision) considered similar legal standards when

¹ Complainant has not challenged Respondent’s contention that the Decatur Commission qualified as a “court” for purposes of applying *res judicata*, and I note that decisions made by administrative agencies have qualified for *res judicata* treatment, where, as here, the agency proceedings were quasi-judicial in nature. See, for example, *Marco v Doherty*, 276 IllApp3d 121, 657 NE2d 1165, 212 IllDec 820 (5th Dist, 1995).

concluding that Complainant failed to establish either sexual or sexual orientation harassment, or that Respondent terminated her in retaliation for having complained about her co-worker's conduct. See, also *Books and Town of Normal, et al*, IHRC, S8915, August 27, 1999, slip op at 18, for the proposition that *res judicata* appropriately applies where a complainant had an opportunity to present an analogous Human Rights Act claim in a different forum.

True enough, the Commission has recognized certain exceptions to the doctrine of *res judicata*, especially where the initial forum did not have the power to award the full measure of relief sought in the subsequently filed Human Rights Act claim. (See, for example, *Snider and Consolidation Coal Co.*, IHRC, S2816, November 24, 1998.) But the instant record does not indicate that there was any difference in potential remedies between what was offered under the Decatur City Code and the Human Rights Act, and of course, Complainant has not provided any response to the instant motion that would provide the Commission with any basis, either factual or legal, to support any exception to the doctrine of *res judicata*. Indeed, in view of Complainant's lack of a response to the instant motion, I can only conclude that she too believes that the motion for summary decision is meritorious.

Recommendation

For all of the above reasons, it is recommended that the motion for summary decision be granted, and that the instant Complaint and the underlying Charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 3RD DAY OF OCTOBER, 2008