

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009CF1851
MOHAMED-KARIM JOUINI )	EEOC NO.: 21BA90694
)	ALS NO.: 09-0676
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Mohamed-Karim Jouini's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF1851; 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 is **SUSTAINED** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

In support of which determination the Commission states the following findings of fact and reasons:

1. On December 15 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged his employer, ACH Food Companies ("Employer") harassed him from June 19, 2008, through December 12, 2008, (Count A) and issued him a written disciplinary warning on June 20, 2008, (Count B) because of his national origin, Tunisia, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On October 20, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On November 23, 2009, the Petitioner filed a timely Request. The Respondent thereafter filed its Response, and on January 11, 2010, the Petitioner filed a Reply to the Response.
2. The Employer is in the business of processing and packaging edible oils, syrups, and cornstarch products. During the time alleged in the charge, the Petitioner was a Depal/Unscrambler Operator, and he was on a production assembly line.
3. There was a ceiling fan in the Petitioner's work area. On June 17, 2008, the safety cover fell off of the ceiling fan. The Petitioner informed a production manager that the safety cover had fallen off the fan, and the Petitioner asked to have the fan repaired. The production manager

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

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(hereinafter referred to as "Manager 1") instructed the Petitioner not to use the fan until the safety cover had been replaced by the Employer's maintenance personnel. A second production manager (hereinafter referred to as "Manager 2") also instructed the Petitioner not to use the fan until the safety cover had been replaced.

4. On June 19, 2008, maintenance had not yet repaired the ceiling fan and a co-worker of non-Tunisian descent assisted the Petitioner in the Petitioner's attempt to place the safety cover back on the ceiling fan.
5. Manager 1 witnessed the Petitioner and his co-worker attempting to place the safety cover back on the ceiling fan.
6. On June 20, 2008, Manager 1 gave the Petitioner a verbal warning for violating prior instructions from two managers not to use the fan without its cover and for creating a safety hazard. The verbal warning was also documented in writing by the Employer on June 20<sup>th</sup>. The Petitioner was advised that any similar incidents in the future would result in additional progressive discipline.
7. The non-Tunisian co-worker did not receive a verbal warning for assisting the Petitioner.
8. The Employer stated that the Petitioner had received a verbal warning on June 20<sup>th</sup> because, unlike the non-Tunisian co-worker, the Petitioner had been previously instructed not to touch the fan by both Manager 1 and Manager 2. The Employer states the Petitioner deliberately disregarded those instructions.
9. The Petitioner admits he was instructed not to use the ceiling fan while the safety cover was off. However, the Petitioner denies he was told not to touch the fan.
10. The Petitioner alleged in Count A of the charge that the Employer, via Manager 1, harassed him from June 19 through December 12, 2008. In support of this claim, the Petitioner cited to various work-related incidents between himself and Manager 1. For example, on September 17, 2008, the Depal machine broke down and bottles fell to the ground. Manager 1 accused the Petitioner of breaking the Depal machine. Also on September 17<sup>th</sup>, the Petitioner stated that Manager 1 came very close to his face and told the Petitioner that he "needed to keep the line running," or else the Petitioner would be disqualified from retaining his present position. In addition, sometime between September 17 and September 19, 2008, Manager 1 became irritated with the Petitioner when the Petitioner left the production line and came to his office with a question regarding warped boxes. Manager 1 told the Petitioner not to waste time, that the Petitioner should have just gotten a new pallet of boxes instead of leaving the production line, and told the Petitioner to hurry up and not keep the production line down.

11. Further, in the course of its investigation, the Respondent determined that on September 22, 2008, Manager 1 had issued the Petitioner a written warning for poor performance because the Petitioner caused the Employer to lose 20 minutes of production time, and the Petitioner caused equipment to jam. On October 23, 2008, Manager 1 sent the Human Resources Manager an e-mail concerning the Petitioner's lack of attention to details. On October 24, 2008, Manager 1 sent the Human Resources Manager another e-mail about the Petitioner's lack of attention to details and the Petitioner's unwillingness to immediately address issues.
12. In Count B, the Petitioner alleged the Employer issued him the June 20<sup>th</sup> disciplinary warning regarding the Petitioner's attempt to repair the ceiling fan because of his national origin.
13. In his Request and in his Reply, the Petitioner argues the Respondent erred in its determination that he was not harassed due to his national origin. The Petitioner contends that in order to establish harassment based on national origin, it was not necessary that the alleged conduct be overtly discriminatory. The Petitioner states that the Respondent erred in finding the non-Tunisian co-worker was not similarly situated to the Petitioner because they were both production workers; therefore, both the Petitioner and his co-worker should have been held to the same standard by the Employer. The Petitioner also argues that the Respondent's investigation was incomplete because the Respondent did not determine whether there was evidence that other non-Tunisian co-workers were treated more favorably than the Petitioner under similar circumstances.
14. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge. As to the harassment claim, the Respondent argues the actions of Manager 1 did not rise to the level of actionable harassment based on national origin. The Respondent argues all the Petitioner's allegations in fact related to the performance of the Petitioner's job duties, and that requiring the Petitioner to perform his job duties and reprimanding him for his failure to do so did not constitute actionable harassment. As to the Petitioner's claim that the June 20<sup>th</sup> written disciplinary warning was motivated by national origin discrimination, the Respondent argues the Petitioner did not make out a *prima facie* case because the non-Tunisian co-worker who was helping the Petitioner repair the ceiling fan cover was not similarly situated to the Petitioner, in that the non-Tunisian co-worker had not been previously warned not to touch the ceiling fan.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

As to Count A, the Commission finds there is no substantial evidence that the Employer subjected the Petitioner to harassment based on his national origin. Actionable harassment occurs when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295.

Furthermore, substantial evidence of national origin harassment requires evidence that (1) the Petitioner was harassed on the basis of his national origin, and (2) the harassment was so severe and pervasive as to alter the conditions of his employment and create an abusive environment. See Luisa Tapia, Barbara Skiles, and Rose Weber, 2002 WL 32828305 (December 16, 2002). Infrequent slurs are not sufficient to create actionable harassment under the Act. See Hill and Peabody Coal Co., \_\_\_ Ill HRC Rep. \_\_\_ (1991SF0123, June 26, 1996). Having to contend with a heavy-handed manager, or being subjected to a manager with a poor demeanor or poor ability to deal with subordinates does not constitute actionable harassment. See Motley v. HRC, 263 Ill. App. 3d 367, 374-75, 636 N.E.2d 100 (4<sup>th</sup> Dist. 1994).

The evidence the Petitioner presents in support of his national origin harassment claim all relates to the manner in which Manager 1 critiqued the Petitioner's work performance. There is no substantial evidence that Manager 1 criticized the Petitioner's work performance because of his national origin.

The Petitioner does not dispute that these various work-related incidents all occurred. The Petitioner also clearly disagreed with Manager 1's belief that the Petitioner was at fault in causing certain problems with the equipment or with slowing down production. However, harsh criticism of the Petitioner's work performance does not rise to the level of actionable harassment. Therefore, because there is no substantial evidence Manager 1's criticism of the Petitioner's work performance created a workplace that was permeated with discriminatory intimidation, ridicule, and insult, there is no substantial evidence the Employer subjected the Petitioner to actionable national origin harassment.

As to Count B, the Commission finds there is no substantial evidence the Employer gave the Petitioner a verbal warning, documented in writing, on June 20, 2008, because of his national origin. Assuming *arguendo* there is evidence sufficient to establish a *prima facie* case of national origin discrimination, the Employer articulated a non-discriminatory reason for verbally disciplining the Petitioner. Thus, the Commission looks to see if there is substantial evidence this reason was a mere pretext for national origin discrimination. In this case, the Commission finds no such evidence.

The Petitioner admits he was attempting to fix the fan. It is undisputed that the Petitioner was instructed to wait for the Employer's maintenance staff to repair the fan. The Petitioner ignored this directive from both Manager 1 and Manager 2.

