

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2008CF3901
)	HUD NO..: N/A
<b>COURTNEY ARMSTRONG</b> )	EEOC NO..: 21BA82732
)	ALS NO.: 09-0552
Petitioner. )	
)	

**ORDER**

This matter coming before the Commission by a panel of two, Commissioners Munir Muhammad and Nabi Fakroddin presiding, upon Courtney Armstrong’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. 2008CF3901; 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 April 15, 2008, the Petitioner filed a charge of discrimination with the Respondent, which was perfected on August 29, 2008. The Petitioner alleged in her charge that her former employer Devry Online University (“Employer”) subjected her to harassment because of her sex, female (Count A) and race, Black (Count B); and that the Employer forced her to resign in retaliation for having opposed unlawful race and sex discrimination (Count C), and for having opposed unlawful sex discrimination (Count D), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On March 30, 2009, the Respondent administratively closed Count D pursuant to the Petitioner’s request. On August 19, 2009, the Respondent dismissed the remaining Counts A-C of the Petitioner’s charge for Lack of Substantial Evidence. On September 21, 2009, the Petitioner timely filed her Request.
2. On November 26, 2006, the Employer’s Director of Finance (the “Director”) (male and non-Black) interviewed and subsequently hired the Petitioner for the position of Finance Coordinator.

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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.”

3. The Petitioner's direct supervisor was the Employer's Student Finance Trainer (female and non-Black), who will be referred to herein as "the Supervisor." The Supervisor reported to the Director.
4. From October 2007, through April 14, 2008, the Petitioner alleged the Director had engaged in the following conduct because of the Petitioner's race and sex: **(1)** The Director would constantly call the Petitioner into his office and tell her to smile more; **(2)** The Director would criticize the Petitioner's job performance; **(3)** The Director complained that the Petitioner was applying for other jobs during work hours; **(4)** The Director changed the Petitioner's work schedule to include mandatory Saturdays and a night shift; **(5)** The Director asked the Petitioner why she had three (3) Cadillac cars and what her husband did for a living; **(6)** The Director commented that women spent a lot of money on their hair, and finally **(7)** The Director instructed the Petitioner to e-mail him when she arrived at work, when she went to lunch, and when she left work for the day.
5. On February 26, 2008, the Petitioner opposed unlawful discrimination when she complained to the Employer's Human Resources Department that the Director was treating her differently because of her sex and race.
6. On March 3, 2008, the Supervisor had sent an e-mail to numerous employees, including the Petitioner, which instructed the employees to e-mail the Director upon their arrival to work, when taking lunch breaks, and upon leaving work for the day. This March 3<sup>rd</sup> e-mail also advised the employees, including the Petitioner, that they would have to work one (1) night per week and Saturdays.
7. On April 6-13, 2008, the Petitioner took a week's paid vacation.
8. On April 14, 2008, the Petitioner resigned.
9. In her charge, the Petitioner alleged the Director's conduct, as summarized above, was harassment motivated by the Petitioner's sex and race. Further, the Petitioner alleged that the Employer forced her to resign because she had opposed unlawful discrimination on February 26, 2008. The Petitioner contended that following her February 26<sup>th</sup> complaint to the Human Resources Department, the Employer did nothing to stop the Director's harassment. This led the Petitioner to conclude the Employer no longer wanted her to work for it.
10. In her Request, the Petitioner argues the Director had a pattern of discriminating against Black employees, that he routinely harassed other female employees, and that other employees could attest to these facts. The Petitioner also states the Respondent's investigation was unfair and that there were additional witnesses the Respondent should have interviewed who could have attested to the Director's conduct both toward her and other female and Black employees.

11. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence. As to Counts A and B, the Respondent argues the Director's conduct did not rise to the level of actionable harassment, nor was there substantial evidence the Director's conduct was motivated by the Petitioner's race or sex. As to Count C, the Respondent argues there was no evidence that the Petitioner's working conditions were made so intolerable by the Employer that she had no alternative but to resign.

## **CONCLUSION**

The Commission concludes that the Respondent properly dismissed all counts of 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, \* 2 ( March 7, 1995)(1995 WL 793258).

A *prima facie* case of racial harassment requires evidence that the Petitioner was subjected to unwelcome harassment that was based on her race, and further that the harassment was sufficiently severe and pervasive so as to have created a hostile and abusive working environment. See Gina M. Robinson and Greyhound Lines, IHRC, ALS No. 07-032, December 30, 2008 (2008 WL 5622595, \*5).

Similarly, a *prima facie* case of harassment based on sex requires evidence that the petitioner...."was subjected to harassment which was severe enough to constitute a term or condition of employment; and ... the harassment would not have occurred but for his or her gender." See Jerry Lever and Wal-Mart Stores, Inc., IHRC, ALS No. S-10697, January 2, 2001 ( 2001 WL 474082, \* 5).

Whether or not the alleged discriminatory conduct rose to the level of actionable harassment based on race or sex is determined by an objective standard. See Woollen and Perkins Family Restaurant, \_\_\_ Ill. HRC Rep. \_\_\_ (1997SF0451, March 24, 1999). Occasional, isolated, casual or trivial remarks of a racial nature or gender-related nature are insufficient to constitute racial harassment under the Act. See Helm and Busing's McDonald's, \_\_\_ Ill. HRC Rep. \_\_\_ (1988SF0339, November 18, 1992); see *also* Mark Pierre Williams and Zale Corporation, IHRC, ALS No. 10511, June 12, 2000 (2000 WL 33270355, \* 4).

As to Count A and B, the Commission finds no substantial evidence of actionable harassment based on either race or sex. Taking as true the Petitioner's allegations, the Commission finds the comments were isolated and trivial in nature, and therefore not severe enough to have constituted a term or condition of employment, or to have created a hostile and abusive working environment. Further, many of the alleged objectionable conduct concerned work-related issues. For example, the Petitioner complained the Director required her to report when she left and returned to work, and that the Director changed her work schedule. However, the Petitioner was not the only employee who had

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to report to the Director when she left and returned to work, nor was she only the employee whose work schedule was changed. The Commission finds no substantial evidence the Petitioner was being subjected to differential treatment or harassment either because of her race or her sex.

As to Count C, constructive discharge occurs when an employer deliberately makes working conditions so intolerable that a reasonable person in the petitioner's position is compelled to resign. See Steele v. Illinois Human Rights Commission, 160 Ill.App.3d 577, 513 N.E.2d 1177 (3<sup>rd</sup> Dist. 1987). In this case, the Employer is alleged to have forced the Petitioner to resign in retaliation for having opposed unlawful discrimination, in that the Employer did not put an end to the alleged harassing conduct. Therefore, the Petitioner's constructive discharge/retaliation claim fails because, as discussed previously, the alleged conduct did not rise to the level of actionable harassment.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Devry Online University, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

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Entered this 14<sup>th</sup> day of April 2010.

Commissioner Munir Muhammad

Commissioner Nabi Fakroddin