

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2009SF0373
)	EEOC NO.: 21BA82774
<b>VICCI L. KINNEY</b> )	ALS NO.: 09-0487
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane Viverito and Gregory Simoncini presiding, upon Vicci L. Kinney'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. 2009SF0373; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; 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 August 5, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that her employer Lake Land College ("Employer") suspended her on June 13, 2008, in retaliation for having previously opposed unlawful discrimination, in violation of Sections 6-101(A) of the Illinois Human Rights Act ("Act"). On August 13, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On September 2, 2009, the Petitioner timely filed her Request.
2. The Employer is a community college which employs the Petitioner as a Constructions Occupations Instructor. The Employer has a contract with the Illinois Department of Corrections ("DOC") to provide training for DOC inmates throughout Illinois. Pursuant to this contract, the Petitioner was assigned to teach inmates at the DOC Danville Correctional Center ("Danville") during the time in question.
3. The evidence in the investigation file shows that on March 1, 2008, Tom Kerkhoff, the Executive Dean, notified the Petitioner that she was being placed on paid administrative leave pending investigation into an allegation that she was insubordinate to her supervisor, Mary

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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."

Nichols, on February 28, 2008. Kerkhoff informed the Petitioner that there would be a pre-investigation hearing regarding the matter on March 14, 2008.

4. The Employer held the pre-investigation hearing on March 14, 2008. Present at the meeting were the Petitioner and her attorney; Dawn Schlechte, the Director of Human Services; Kerkhoff; Linda VonBehren, the Associate Vice President of Workplace Development, and the Employer's attorney.
5. During the March 14<sup>th</sup> hearing, the Petitioner stated that she was being sexually harassed by a co-worker, who was a Danville correctional officer. Thereafter, Schlechte commenced an investigation into the Petitioner's sexual harassment allegations.<sup>2</sup>
6. Following the March 14<sup>th</sup> hearing, on or before June 10, 2008, the Employer determined the Petitioner had engaged in insubordination. As a result of this determination, the Petitioner was suspended from work from June 11, 2008 through June 13, 2008.
7. The Petitioner filed discrimination Charge No. 2008SF3568 with the Respondent on June 10, 2008. Charge No. 2008SF3568 was served on the Employer on June 17, 2008.
8. On January 26, 2009, the Petitioner filed a grievance with the Employer regarding the three-day suspension. Per a settlement agreement signed April 29, 2009, all records regarding the three-day suspension were removed from the Petitioner's personnel file. The Petitioner was reimbursed an amount equivalent to three-days lost wages.
9. In her current charge of discrimination, the Petitioner alleges that she opposed unlawful discrimination on at least three occasions: (1) From November 2004, through February, 2008, the Petitioner verbally reported the alleged sexual harassment to Nichols; (2) On March 14, 2008, she complained to Kerkhoff during the pre-investigation hearing, and (3) On June 10, 2008, she filed Charge No. 2008SF3568 against the Employer with the Respondent. The Petitioner argues in her charge and in her Request that she was issued the three-day suspension in June 2008 in retaliation for her prior opposition to discrimination. The Petitioner argues in her Request that the Employer's subsequent agreement to settle her grievance is substantial evidence that the Employer's stated reason for suspending her had been a pretext for retaliation.

## **Conclusion**

The Commission's review of the Respondent's investigation file leads it to conclude 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).

In order to establish a *prima facie* case of retaliation, the Petitioner must show that: (1) she engaged in a protected activity; (2) the Employer committed an adverse action against the Petitioner, and (3) a casual connection existed between the protected activity and the adverse action by the Employer. Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3<sup>rd</sup> Dist. 2000). The

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<sup>2</sup> In a related case, Charge No. 208SF3568, the Commission found that following the Petitioner's March 14, 2008 sexual harassment allegation at the pre-investigation hearing, Schlechte initiated an investigation into the Petitioner's sexual harassment allegations.

Petitioner must also establish that the protected activity occurred before the adverse action. Pace and State of Illinois, Department of Transportation, \_\_\_Ill. HRC Rep. \_\_\_, (1989SF0588, February 27, 1995) (Slip op. at p. 13); Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004 WL 3312882 at 6(Ill. HRC.Apr 2, 2004).

In this case, there is no substantial evidence of a causal connection between the protected activities and the three-day suspension.

Regarding the June 10, 2008 Charge of discrimination, the evidence in the file shows the Employer was not aware of this protected activity until June 17, 2008, which was after the adverse action had occurred.

Regarding the March 14, 2008 protected activity, assuming *arguendo* the Petitioner has established a *prima facie* case, there is no substantial evidence the Employer's stated reason for issuing the three-day suspension was a pretext for retaliation. First, there is evidence that following the Petitioner's complaint on March 14, 2008, the Employer actually commenced an investigation into her allegations. Second, the evidence in the file shows that the three-day suspension was actually the culmination of events that had commenced prior to March 14, 2008.

Contrary to the Petitioner's claim, her successful challenge of the three-day suspension and subsequent settlement did not equate to substantial evidence the Employer's stated reason for issuing the three-day suspension was a pretext for retaliation. If the Commission were to adopt the Petitioner's position, then in every instance in which a litigant attempted to settle a dispute, the very settlement could be used against the litigant as proof of wrong-doing. This untenable position would subvert the very nature and intent of settlement agreements, which is to provide a final resolution to contested matters.

The Employer is entitled to make employment decisions based on its reasonable belief of facts surrounding a situation. The correctness of the reason is not important as long as there was a good faith belief by the Employer in its decision. See Carlin v. Edsal Manufacturing Co., Charge No. 1992CN3428 ALA No. 7321 (May 6, 1996), citing to, Homes and Board of County Commissioners, Morgan County, 26 Ill. HRC Rep. 63 (1986).

Finally, as to the Petitioner's allegations regarding her periodic complaints of sexual harassment between November 2005 through February 8, 2008, there is no substantial evidence of a causal connection between those complaints and her three-day suspension in June 2008 because there is no evidence that it was Nichols who made the final determination to issue the Petitioner the three-day suspension.

The Respondent's file indicates Linda Von Behren, the Associate Vice President of Workforce Development, Kerkhoff, and Schlechte each provided input concerning the Petitioner's discipline. The final decision was made by Joe Handley, the Vice President of Academic Services. While Nichols certainly testified at the March 14<sup>th</sup> hearing concerning the events that led to the charge of insubordination, there is no evidence the Petitioner's verbal complaints to Nichols led these four decision-makers to suspend the Petitioner.

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 the 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 Lake Land College 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 17<sup>th</sup> day of February 2010.**

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito