

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2008CF2814
	)	EEOC NO.:	21BA81662
<b>QUINGHUI GUO,</b>	)	ALS NO.:	09-0562
	)		
Petitioner.	)		

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Gregory Simoncini and Diane Viverito presiding, upon Quinghui Guo'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. 2008CF2814; 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:

- (1) The Respondent's dismissal of Count A of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**; and,
- (2) The Respondent's dismissal of Count B of the Petitioner's charge is **VACATED**, and Count B is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

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

1. On March 4, 2008, the Petitioner filed a two-count (Counts A & B) charge of discrimination with the Respondent. In Count A, the Petitioner alleged her employer, Northwestern University ("Employer") subjected her to harassment from September 1, 2007, through March 18, 2008. In Count B, the Petitioner alleged she was issued a Final Written Warning on February 28, 2008, in retaliation for having opposed unlawful discrimination by the Employer. On September 4, 2009, the Respondent dismissed the charge for lack of substantial evidence. On October 8, 2009, the Petitioner filed a timely Request.

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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."

2. The undisputed evidence in the investigation file shows the Petitioner worked for the Employer as an Academic Technology Support Specialist. She was hired by the Employer on December 1, 1992.
3. In May of 2006, the Petitioner's former supervisor, Justin Bondi, submitted his resignation. The Petitioner applied to be promoted to Bondi's position. The Petitioner was not selected for promotion.
4. In June of 2006, the Petitioner filed a complaint with the Employer's internal Office of Equal Opportunity, Affirmative Action and Disability Services ("EEO") because she believed she was denied the promotion because of her race, Asian.
5. In September 2006, the Employer hired Don Kenyon for the vacant position. Kenyon replaced Bondi as the Petitioner's new supervisor.
6. On December 14, 2007, the Petitioner filed a charge of discrimination with the Respondent against the Employer.
7. On February 6, 2008, the Petitioner filed an additional charge of discrimination with the Respondent against the Employer.
8. On February 28, 2008, Kenyon issued the Petitioner a Final Written Warning. Kenyon stated he issued the Petitioner the Final Written Warning because the Petitioner ignored prior instruction from him on how to improve her job performance, and also because he believed she was engaging in poor communication with him and with her other colleagues.
9. The Employer admitted it had knowledge of the Petitioner's protected activities of December 14, 2007, and February 6, 2008, prior to the issuance of Kenyon's February 28, 2008, Final Written Warning. Kenyon admitted that sometime between January 10, 2008, and February 28, 2008, the Employer's Human Resources department had informed him of the Petitioner's discrimination complaint. He claimed, however, he did not know the "specifics" of the complaint.
10. In her charge, the Petitioner alleged in Count A that Kenyon and Kenyon's direct supervisor, Bob Davis, harassed her in retaliation for having engaged in protected activity by treating her rudely and requiring her to produce medical documentation when she used sick days.
11. In Count B, the Petitioner alleged the February 28, 2008, Final Written Warning was actually issued in retaliation for her having engaged in protected activity. She argues that prior to having engaged in the protected activity, and prior to Kenyon's hire, she had received generally positive performance reviews. However, her performance evaluation from Kenyon in August of 2007 was the first somewhat negative evaluation in her career with the Employer. In support of this contention, the Petitioner attaches to her Request performance evaluations dated June 5, 1998 through August 3, 2007.

12. In the last evaluation she received from her former supervisor Bondi, dated August 31, 2006, the Petitioner received ratings ranging from 3 to 4.5 on a scale of 1 to 5. In the August 3, 2007, evaluation given by Kenyon, the Petitioner received ratings ranging from 2 to 5 on a scale of 1 to 7. Kenyon gave the Petitioner an overall year-end rating of 3 on a scale of 1-7, which equated to her being rated a “moderately effective” employee.
13. The Petitioner states after engaging in the protected activity, she received a succession of negative evaluations and reprimands from Kenyon, leading to the February 28, 2008, Final Written Warning.
14. The Petitioner argues the Respondent erroneously overlooked her prior work history and evaluations when determining the Employer had fairly applied its Correcting Performance Policy to her, via Kenyon.
15. Perhaps the most troubling allegation references the Petitioner’s claim that the Respondent’s investigator originally assigned to investigate the charge of retaliation was at the same time seeking employment with the Employer in its EEO office. On October 29, 2008, the former investigator informed the Petitioner via e-mail he was leaving the Respondent’s employ in order to take a new position. However, in that e-mail, he did not disclose that he was taking a position with the Employer. Further, the Employer did not disclose to the Petitioner that this investigator had been seeking a position with it during this investigation.
16. The Respondent does not address this apparent conflict in its response. Rather, it simply argues there is no substantial evidence to support the charge and asks the Commission to sustain its dismissal of the charge.

## **Conclusion**

### *Count A: Retaliatory Harassment*

The Commission’s review of the Respondent’s investigation file leads it to conclude the Respondent properly dismissed Count A of the Petitioner’s charge for lack of substantial evidence. The allegations do not rise to the level of actionable harassment.

Actionable harassments occurs... “[w]hen the workplace is permeated with ‘discriminatory intimidation, ridicule, and insult...sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.’” See Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed2d 295 (1993)(*internal citation omitted*).

The Petitioner’s allegation that her supervisor and other management did not speak to her in a more considerate manner does not rise to the level of actionable harassment under the Act. Also, there is no evidence in the file the Petitioner was ever required to submit medical documentation when she used sick days. Therefore, there is no substantial evidence to support the allegations of Count A, and the dismissal of Count A is sustained.

Count B: Retaliatory Reprimand of February 28, 2008

However, the Commission's review of the Respondent's investigation file leads it to conclude that the Respondent's dismissal of Counts B of the charge must be vacated and remanded for further investigation.

First, the Petitioner has raised issues concerning the timing and extent of Kenyon's personal knowledge of her protected activity. In the course of the investigation, Kenyon acknowledged some awareness of the Petitioner's protected activity as of February 28, 2008, but contended he was not aware of any specifics. However, the Commission is not convinced that the Respondent has thoroughly investigated this issue. The Commission therefore, instructs the Respondent to conduct further investigation into the timing and extent of Kenyon's knowledge of the Petitioner's protected activity.

Second, the Commission orders the Respondent to investigate the Employer's protocol regarding employee complaints of discrimination. Specifically, the Respondent is to determine the Employer's practice and policy with respect to revealing such information to a complainant's direct superior, and how that protocol, if in place, was applied relative to Kenyon and the Petitioner. Investigate and determine what, according to the protocol, Kenyon would have been told about the nature of the Petitioner's complaints.

Finally, the Commission orders the Respondent to directly address the apparent conflict created by the fact the investigator originally assigned to this matter was seeking employment with the Employer while simultaneously investigating alleged discrimination by the Employer. The Respondent shall provide information regarding when it discovered the potential conflict, and what measures it took to ensure that its findings and final determination were not compromised by this conflict.

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

- (1) The Respondent's dismissal of Count A of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.
- (2) The Respondent's dismissal of Count B of the Petitioner's charge is **VACATED**, and Count B of the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**, as herein instructed.

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 Northwestern University, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS**            )  
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**HUMAN RIGHTS COMMISSION**  )

**Entered this 8<sup>th</sup> day of March 2010.**

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito