

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2008CF2990
)	EEOC NO.:	21BA81813
QUINGHUI GUO,)	ALS NO.:	09-0569
)		
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")¹ of Charge No. 2008CF2990; 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 the Petitioner's charge is **VACATED**, and the charge 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 April 23, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged her former employer, Northwestern University ("Employer"), had constructively discharged her on March 27, 2008, in retaliation for having opposed unlawful discrimination by the Employer. Specifically, the Petitioner alleged she was retaliated against for having filed charges of discrimination with the Respondent in December 2007 and February 2008. The Employer contended the Petitioner had resigned of her own volition. On September 4, 2009, the Respondent dismissed the charge for lack of substantial evidence. On October 8, 2009, the Petitioner filed a timely Request.
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.

¹ 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. 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 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 became the Petitioner's new supervisor.
6. On November 8, 2007, Kenyon issued the Petitioner a written warning for poor performance.
7. On December 14, 2007, the Petitioner filed a charge of discrimination with the Respondent against the Employer.
8. On January 10, 2008, Kenyon issued the Petitioner a second written warning, again citing poor work performance.
9. On February 6, 2008, the Petitioner filed a second charge of discrimination with the Respondent against the Employer.
10. 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, in violation of the Employer's Civility Policy. The Final Written Warning required the Petitioner to attend a meeting with management on March 28, 2008, to discuss these matters.
11. On March 6, 2008, the Petitioner met with Gail Higgins, the Employer's Human Resources Consultant. The Petitioner contended the Final Written Warning contained "falsehoods," and she expressed her belief that Kenyon intended to discharge her on March 28, 2008.
12. On March 24, 2008, the Petitioner asked Higgins for permission to take a leave of absence for one year. Higgins stated she needed to discuss the Petitioner's request with management.
13. On March 26, 2008, the Petitioner met with Higgins and Pamela Pirtle, the Director of the Employer's Office of Equal Opportunity and Access ("EEO") in order to discuss her request. Higgins and Pirtle stated the Employer would offer her three-months salary and a six-month leave of absence in exchange for the Petitioner's agreement to withdraw all pending

discrimination charges against the Employer. The Petitioner was informed that if she declined this offer, she would be discharged on March 28, 2008. The Petitioner requested one day to consider the offer.

14. On March 27, 2008, the Petitioner rejected the Employer's offer, and counteroffered to withdraw the charges if the Employer removed any negative statements from her personnel file, issued her an apology, and relocated her to a different department where she would not be supervised by Kenyon, or by his direct supervisor, Bob Davis. The Employer rejected this counteroffer. Higgins informed the Petitioner that on March 28, 2008, she must either resign or she would be discharged.
15. On March 27, 2008, the Petitioner submitted a letter of resignation, effective April 11, 2008.
16. The Petitioner alleged she was constructively discharged on March 27, 2008, in retaliation for having engaged in protected activity. In her Request, the Petitioner argues that following her protected activity, her supervisor, Kenyon, engaged in harassing and retaliatory conduct towards her, including giving her undeservedly poor performance evaluations and written warnings. The Petitioner argues Kenyon's alleged retaliatory conduct, and the Employer's unwillingness to remedy this alleged conduct, is what ultimately caused her to submit her resignation on March 27, 2008.
17. The Petitioner argues the Respondent continues to ignore the evidence that her negative evaluations and reprimands did not commence until after she had complained of race discrimination. In support of this contention, the Petitioner attaches to her Request performance evaluations dated June 5, 1998 through August 3, 2007.
18. In former supervisor Bondi's last evaluation of the Petitioner, dated August 31, 2006, she 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.
19. The Employer admitted it had knowledge of the Petitioner's protected activities prior to February 28, 2008. Kenyon admitted that sometime between January 10, 2008, and February 28, 2008, he was advised by Human Resources of the Petitioner's discrimination complaint against the Employer. Kenyon denied having had knowledge of her protected activity prior to January 10, 2008, and further claimed he did not know the specifics of the Petitioner's complaint.
20. Perhaps the most troubling allegation references the Petitioner's claim that the Respondent's investigator originally assigned to investigate this 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.

21. In its response, the Respondent does not address this apparent conflict. 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

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

First, the Petitioner has raised issues concerning the timing and extent of Kenyon's personal knowledge of her protected activity. The Commission is not convinced the Respondent has thoroughly investigated this issue. The Commission therefore, orders 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 conduct an investigation into the Employer's protocol regarding complaints of discrimination. Specifically, the Respondent is to investigate and determine the Employer's practice and policy concerning the revelation of 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, pursuant to the protocol, if in place, Kenyon would have been told regarding 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 the Petitioner's charge is **VACATED** and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**, as herein instructed.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 8th day of March 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito