



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
)
EDUARDO J. BARREZUETA,)
Complainant,)
)
and) Charge No: 1990 CF 2179
) EEOC No: 21 B 981517
) ALS No: 10990
)
NATIONAL CENTER FOR)
LATINOS WITH DISABILITTIES,)
Respondent.)

RECOMMENDED ORDER AND DECISION

On August 26, 1999, Complainant filed the instant Complaint alleging National Center for Latinos with Disabilities, discriminated against him on the basis of disability, retaliation and constructive discharge. A public hearing was held on July 24, 25, 26, and 29, 2002. This matter is ready for decision.

CONTENTIONS OF THE PARTIES

Complainant contends Respondent unlawfully discriminated against him on the basis of his disability (quadriplegia) when it refused to reasonably accommodate him by refusing him a personal care attendant, by issuing him an unwarranted written disciplinary warning, and by failing to improve accessibility and climate conditions in the workplace. Complainant also contends that, after he opposed this and other unlawful discrimination, Respondent retaliated against him by harassing him with unreasonable job assignments. Complainant further contends that Respondent constructively discharged him by making his work environment so intolerable that he was forced to resign.

Respondent denies that it failed to accommodate Complainant, denies that it retaliated against Complainant and further contends that Complainant voluntarily resigned his position.

FINDINGS OF FACT

Those facts marked with an asterisk are facts to which the parties stipulated or facts that were admitted in the pleadings. The remaining facts were determined to have been proven by a preponderance of the evidence. Assertions made at the public hearing which are not addressed herein were determined to be unproven or immaterial to this decision.

1. Complainant's handicap is quadriplegia.*
2. Complainant became disabled in 1983.
3. Respondent is National Center for Latinos with Disabilities (NCLD or agency).
4. NCLD's mission is to assist Latinos with disabilities to access available services and resources, to teach them about the services, to teach them how to advocate for those services, and to train Latino families about their rights.
5. Maria Elena Rodriguez-Sullivan (Rodriguez) was Executive Director for Respondent at all relevant times.
6. Rodriguez worked for the agency for over 13 years and resigned in September 1999.
7. Complainant earned a Bachelor of Arts and Sciences from Loyola University of Chicago in 1991; attended Kent College of Law in Chicago for two years in 1992-1994; and earned some graduate level credits from Northwestern University in Evanston, Illinois, from 1995 to the present.
8. Complainant is bilingual and computer literate.
9. Complainant's computer skills are excellent.
10. Although a quadriplegic, Complainant has limited use of his arms and hands.
11. Complainant can write, although he does not consider his writing "the most legible."
12. In order to write, Complainant wraps a rubber band around his palm and slips a pen between his middle finger and his little finger.
13. Rodriguez first met Complainant in mid-1990 under circumstances where Complainant's mother had been working for NCLD and would occasionally bring Complainant to the office.
14. Around March 1996, Complainant recognized and spoke with Rodriguez and Martha Hernandez-Sayed, a Board member for NCLD, while he was attending a disability caucus group meeting in Chicago at the Harold Washington Library. At that time, Complainant worked for the Democratic National Convention.
15. Sometime after the caucus group meeting at the library, Complainant received a call from Everardo Franco, Administrative Manager for NCLD, who informed Complainant about an open position as Advocacy Manager at NCLD and asked if Complainant was interested in the position.
16. Rodriguez interviewed Complainant in March 1997 for the position of Advocacy Manager.
17. Complainant came to the NCLD office for two separate interviews in March 1997.
18. The position of Advocacy Manager reports to the Executive Director.
19. During the interview, Rodriguez reviewed the position description with Complainant.
20. The position description described the "Duties and Responsibilities," "Qualifications and Requirements," and "Essential Function" for the position.
21. Number 4 of the "Duties and Responsibilities" is "Attend meetings at other agencies when appropriate."
22. Number 7 of the "Duties and Responsibilities" is "Performs other duties as assigned."
23. Number 2 of the "Essential Function" is "Supervises Advocacy program staff, program management, and some outside training and speaking work."
24. The advocacy unit of NCLD would provide advocacy to families and consumers on a one-to-one basis.
25. Attending meetings outside of the agency is important for the position of Advocacy Manager because governmental agencies sponsor meetings regarding how to better

serve the disabled and the Advocacy Manager needs to be informed of the available services.

26. During the interview, Rodriguez thought Complainant to be a very strong candidate for the position of Advocacy Manager because of his law background, his excellent communication skills, his eloquent speaking skills and his supervisory background.
27. Rodriguez was impressed with Complainant's experience and credentials during the interview and made the decision to hire him.
28. Complainant permanently uses a wheelchair.*
29. Rodriguez was aware of Complainant's handicap when she hired him.
30. During the interview, Rodriguez asked Complainant if he would need anything in terms of accommodations and Complainant told Rodriguez that the only accommodation he would need was a rubber band to assist him in holding his pencil or pen. Rodriguez was surprised at Complainant's answer.
31. Complainant told Rodriguez during the interview that his mother or brother would be able to drive him to attend outside meetings.
32. Complainant told Rodriguez during the interview that he intended to learn how to drive.
33. Rodriguez told Complainant during the interview that the yearly salary range was high \$20,000.00 to low \$30,000.00.
34. Rodriguez hired Complainant as Advocacy Manager on March 27, 1997 with a beginning date of March 31, 1997.
35. Complainant was hired at \$12.98/hour for a 40-hour week, or \$26,998.40 /year.
36. On May 30, 1997, after obtaining information that other NCLD management personnel were being paid more than he, Complainant wrote a memorandum to Rodriguez requesting a salary increase to \$14.20 per hour or \$29,536.00/year.
37. That same day, May 30, 1997, after receiving the memorandum, Rodriguez informed Complainant that she anticipated the next fiscal year budget beginning July 1, 1997, would allow for an increase in his salary.
38. On June 2, 1997, Rodriguez wrote Complainant a memorandum indicating that in response to his memorandum of May 30, 1997, she hoped to increase his salary to \$30,500.00 beginning July 1, 1997.
39. On July 1, 1997, Complainant received a raise to \$14.66 hour or \$30,500.00/year.
40. The NCLD office was located at 1921 Blue Island Ave in Chicago, Illinois.
41. Physically, the office was a typical Chicago area store front office.
42. NCLD leased the office space and did not own the building.
43. The sidewalk outside in front of the building was city owned property and was in disrepair.
44. Complainant's mother and/or his brother would drive him to work, and help him to enter the NCLD office and other employees would see them at the door and come and assist Complainant with entry.
45. NCLD did not have a van with a wheelchair lift.
46. Complainant, as the Advocacy Manager; Julianna Recio, Training Manager; and Everardo Franco, Administrative Manager; all reported directly to Rodriguez.
47. Complainant's body had trouble regulating internal temperature; therefore, being exposed to extreme temperatures could pose health risks for Complainant.

48. Complainant had used “special services” public transportation previously and believed it to be unreliable.
49. Complainant was late for work several times and told Rodriguez that his tardiness was due to his mother having to first take his brother to a location or because he had to wait for a bus to pick up his brother.
50. Complainant was never disciplined for being late to work.
51. After he was hired, Complainant expressed to Rodriguez an interest in learning how to write grant proposals.
52. As part of Complainant’s training for the position, Rodriguez sent Complainant to supervisors’ training, donor’s training for grant proposal writing and training on labor relations and personnel issues with the United Way organization.
53. After Complainant complained to Rodriguez in September 1997, that the space between the lines on some supervisory forms were too narrow, Rodriguez suggested Complainant may benefit from voice- activated software to use on some of the supervision forms that had narrow line space. Rodriguez suggested Complainant speak with a friend of his who worked at the Illinois Center for Rehabilitation and Education and report back to Franco and herself as to the cost so that NCLD could purchase the software to assist him.
54. Complainant did not report to Rodriguez about the cost of the voice-activated software until sometime after he had submitted his resignation on January 21, 1998.
55. When Complainant had to attend meetings for NCLD, Complainant’s family members would drive him in the family van, which was specially outfitted to accommodate Complainant and his wheelchair.
56. Initially, Complainant’s family members were not paid by Complainant or Respondent to drive Complainant to meetings.
57. In late Spring, 1997, Rodriguez requested Complainant to attend an overnight meeting in Springfield, Illinois.
58. Complainant protested going on the trip because he anticipated mobility problems and requested that Rodriguez order someone else to go.
59. Rodriguez refused to order someone else to go and ordered Complainant to take the trip.
60. Complainant’s brother attended the Spring 1997 trip to Springfield as Complainant’s personal assistant without pay.
61. Complainant did not request the agency to pay his brother for acting as his personal assistant for the Spring 1997 Springfield trip.
62. The sidewalk in front of the entry door to the NCLD office was broken and inclined toward the street. There is a double wrought iron gate that did not stay open and had a tendency to close back while one is entering the gate. After entering the gate, there was a very heavy glass door and an elevated threshold.
63. Between May and June 1997, Rodriguez assigned Complainant a task to write a small grant application to the City of Chicago.
64. Complainant did not write the grant before the deadline for application. As a result of this missed deadline, Rodriguez wrote a memorandum to Complainant on June 26, 1997, reminding him to pay close attention to deadlines.
65. Shortly after August 12, 1997, Rodriguez gave Complainant a memorandum indicating that he had not provided her with his staff report.

66. On August 28, 1997 Rodriguez presented Complainant with written goals and objectives. According to these objectives, Complainant was to write one grant proposal.
67. Around September, 1997, Rodriguez wanted Complainant to attend the Washington D.C. training on the Individuals with Disabilities Education Act. Complainant requested the agency to pay for a personal assistant to attend this trip with him. Rodriguez requested Complainant to contact the training sponsors to determine if they would provide funds for a personal assistant to accompany him to Washington D.C.; however, prior to Complainant reporting back to Rodriguez on the sponsors' response, NCLD hired a training manager, so Rodriguez thought it was better to send the new training manager to the Washington D.C. training and allow her to train the other staff when she returned.
68. Complainant did not report back to Rodriguez as to whether the training sponsors would have provided funds for a personal assistant to accompany him to Washington D.C.
69. NCLD had two air conditioners – one above the door in the front and one in the back room. Having two air conditioners sometimes drained the electrical supply and caused it to short out.
70. During the summer of 1997, the electrical fuse at the office would overload and turn off, causing the air conditioners to stop running. When this would happen, Rodriguez would order someone to go downstairs in the basement and re-set the fuse.
71. When the fuse would overload, and the air conditioners would stop running, everyone in the office would be uncomfortable.
72. In August 1997, Rodriguez assigned Complainant written employment objectives, one of which was to learn how to drive by the end of 1997.
73. Rodriguez reviewed the driving objective with Complainant and Complainant expressed no disagreement with this objective.
74. On December 5, 1997, Rodriguez made a written referral to Complainant, referring him to Tom Duncan, President of the Paralyzed Veterans of Illinois, for assistance in meeting his goal of learning how to drive by the end of the year.
75. Complainant did not attempt to contact Tom Duncan and did not inform Rodriguez that he had no intention of calling Tom Duncan.
76. Although Complainant had previously been medically and physically diagnosed with an inability to learn how to drive, Complainant did not inform Rodriguez of this diagnosis.
77. Rodriguez had no knowledge that Complainant did not have the physical capabilities to learn how to drive.
78. In September 1997, Complainant told Rodriguez that another co-worker, Anna Ruiz, who worked in a separate office building in Waukegan, Illinois, had difficulty getting around the office in her wheelchair when she visited the Chicago office for staff meetings, forcing Ruiz to use her crutches when she visited the office.
79. Rodriguez responded that she would look into finding storage space for the furniture or moving some of the items to the back of the office.
80. Around November 1997, Complainant complained to Rodriguez about Sonia Hernandez' treatment of Edwin Gonzales, a co-worker who had epilepsy.

Complainant told Rodriguez that Hernandez was yelling at Gonzales and verbally abusing him, which caused him to have seizures.

81. Rodriguez told Complainant she would speak to Hernandez and look into the matter.
82. In late Fall or early Winter 1997, NCLD received donated furniture from the Social Security Administration, including desks, file cabinets and boxes of supplies.
83. The furniture crowded the workplace and made it difficult for Complainant to move around.
84. Complainant wrote a letter to Rodriguez November 4, 1997 indicating his concern with the air quality, the entry door, the office clutter and the lack of aesthetic value in the office.
85. Rodriguez responded in a letter dated November 5, 1997 indicating that she would like for the staff to brainstorm ideas to address these concerns, that she would look into purchasing a ventilation system, that she would speak to the lessors about installing an automatic door opener, that she would explore having another clean-up day to rid the office of clutter, and that she wanted staff members to assist with the logistics of finding new office space for the agency to move into.
86. Following Complainant's November 4, 1997 memorandum, Rodriguez assigned Everardo Franco to assist Complainant with the entry door.
87. NCLD had previously installed a ramp at the entryway and a mechanism on the entry door to make it close more slowly to give the wheelchair-bound more time to enter.
88. In October 1997, Rodriguez and Complainant had discussed possibly obtaining low cost space to move the agency into an expansion project at the University of Illinois at Chicago. Rodriguez assigned Complainant the responsibility to contact a representative from the University of Illinois at Chicago and arrange a meeting with the representative and NCLD management to explore whether office space for the agency would be an option.
89. Complainant did not arrange a meeting with the University of Illinois at Chicago representative.
90. After November 1997, the agency purchased an air purifier that was placed in the center of the office and left on all day to assist with ventilation.
91. The agency paid hundreds of dollars for the air purifier and it was a quiet unit.
92. In December 1997 or January 1998, Complainant complained to Rodriguez that he objected that she imposed a typing requirement on Gonzalez, when other non-disabled co-workers did not have a typing requirement.
93. Rodriguez responded orally to Complainant that she thought Gonzalez needed to improve his typing skills.
94. Rene Luna was a quadriplegic who had previously been on the board of directors for NCLD and currently worked at Access Living. Rodriguez considered Luna very knowledgeable on advocacy and disability issues.
95. On December 19, 1997, Rodriguez wrote a memorandum to Complainant indicating that she had spoken with Rene Luna from Access Living regarding questions from Complainant inquiring of the procedure to hire a personal assistant to travel with him and attend to him on trips to outside meetings. Rodriguez informed Complainant in this memorandum that Luna had advised that the employee should make arrangements for special transportation to meetings; and that personal care attendants are paid from \$5.15-\$15.00 [hour].

96. Complainant wrote a memorandum dated December 11, 1997 to Rodriguez that complained about the ventilation in the office and that characterized the office as “while functional, really holds little aesthetic value.”
97. Around December 1997, Rodriguez ordered Complainant to attend a meeting in Springfield, Illinois on January 9, 1998.
98. Complainant hired his brother as a personal attendant for \$14.00/hour to attend him to the January 9, 1998 Springfield meeting.
99. Around 10:00 p.m. on January 8, 1998, Complainant telephoned Rodriguez at her home and informed her that he had attempted to secure a personal assistant to attend the meeting with him and that he could only attend the next day’s meeting in Springfield if the agency would agree to pay his brother \$14.00/hour as his personal attendant.
100. Rodriguez informed Complainant that the agency would pay the fee; however, she did not want to set a precedent that future personal assistants would be paid that high of an hourly rate. She further informed Complainant that he should have informed her sooner so that his brother was charging so much so that she would have had time to explore finding a less expensive personal assistant.
101. Complainant attended the January Springfield meeting with his brother accompanying him as his personal assistant.
102. NCLD paid Complainant’s brother \$14.00 hour for acting as a personal assistant for Complainant on his January trip to Springfield.
103. Rodriguez spoke to Complainant by telephone on January 21, 1998, where Complainant again voiced his concern about the lines being too narrow on some of the agency forms.
104. At that time, Complainant indicated that “Voice Activator” was the name of a voice-activated software that would be helpful for him to fill out the lines of the forms.
105. As a result of that conversation, Rodriguez ordered Franco to install template forms on Complainant’s computer to increase the space between the lines on the forms and to be used with the voice-activated software.
106. Rodriguez gave Complainant a written warning for carelessness and insubordination on January 30, 1998.
107. The warning indicated “It was careless of you to inform me the day before you were to attend a m[ee]t[ing] in Springfield on behalf of the agency, that you could not go unless we p[ai]d your brother the high end of the range to pay P[ersonal] A[ssistants].”
108. After receiving the written warning on January 30, 1998, Complainant wrote and submitted to Rodriguez a notice of his intent to resign in two weeks, which would be on February 13, 1998.
109. In January 1998, a time clock was brought in to be used by employees to punch in and out.
110. The time clock sat on a piece of furniture that was too high for Complainant to reach.
111. Complainant complained to Rodriguez that he could not reach the time clock.
112. Rodriguez told him that she would assign the finance employee, who sat behind the time clock, to assist Complainant with using the time clock.

113. Around February 3, 1998, Rodriguez had a meeting in her office with Complainant and reviewed various duties she expected him to complete prior to his last day of work. Complainant thought the list of duties Rodriguez presented to him was impossible for him to complete.
114. Complainant wrote a letter of resignation that night of February 3, 1998, submitted it to Rodriguez and resigned the next day, February 4, 1998.
115. Complainant's last day of work was February 4, 1998.
116. As early as November 1997, Respondent had recognized the inadequacy of the current office space and had begun searching for bigger, more accessible office space.
117. Prior to Rodriguez' resignation in September 1999, the agency had found more adequate and accessible office space and had moved the agency into the new quarters.
118. Rodriguez did not threaten Complainant that if he was not happy working at NCLD, he should leave.

CONCLUSIONS OF LAW

1. Complainant is an "employee" as defined by the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (Act).
2. Respondent is an "employer" as defined by Act.
3. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this action.
4. Complainant has not established a prima facie case of handicap, retaliatory or constructive discharge discrimination.

DETERMINATION

Complainant has not established, by a preponderance of the evidence, that Respondent unlawfully discriminated against him on the basis of handicap, that Respondent retaliated against him for opposing unlawful discrimination, or that Respondent constructively discharged him.

DISCUSSION

A Complainant bears the burden of proving discrimination by a preponderance of the evidence, in accordance with the Act at 775 ILCS 8A-102(I). Typically, the Complainant may prove discrimination through indirect means by establishing a prima facie case of unlawful discrimination pursuant to the three part analysis set out in **McDonnell Douglas Corp. v. Green**, 411 U.S. 793, 93 S.Ct. 1817 (1973) and **Texas Dept. of Community Affairs v. Burdine**, 450 U.S. 248, 101 S. Ct. 1089 (1981), adopted by the Illinois Supreme Court in **Zaderaka v. Illinois Human Rights Commission**, 131 Ill.2d 172, 545 N.E.2d 674 (1989).

Once the Complainant has demonstrated a prima facie case, the employer then has the burden of articulating a legitimate, non-discriminatory reason for the adverse employment action. If the employer carries its burden of production, the presumption of discrimination drops and the Complainant is required to meet her continuing burden of proving by a preponderance of the evidence that the employer's articulated reason was not its true reason, but rather, merely a pretext for discrimination. **St. Mary's Honor**

Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742 (1993). The burden of proving that the employer engaged in discrimination remains at all times with the Complainant. **Burdine**, *supra*.

I. Prima Facie Case of Handicap Discrimination

To establish a prima facie case of handicap discrimination, Complainant must prove 1) that he is handicapped within the meaning of the Act ; 2) that his handicap is unrelated to his ability to perform the functions of his job, or after his request, the employer failed to make a reasonable accommodation, which is necessary for his performance and 3) that an adverse job action was taken against him. **Whipple v. Illinois Department of Rehabilitation Services, et. al.**, 131 Ill.App.3d 221, 646 N.E. 2d 275 (4th Dist. 1995), **Louis Henderson and Illinois Department of Corrections**, __ Ill. HRC Rep. __, (1994CF1363, June 14, 2000).

Under the Joint Rules at Section 2500.40, an employer is required to make reasonable accommodation of the known physical or mental limitations of otherwise qualified handicapped employees, unless the employer can demonstrate that such accommodation would be prohibitively expensive or unduly disruptive to the ordinary conduct of business.

A. Is Complainant handicapped?

There is no dispute as to whether Complainant is handicapped since Complainant is a quadriplegic.

B. Is Complainant's handicap unrelated to his ability to perform the job duties?

Under the first part of the second element, the evidence supports that Complainant's handicap was unrelated to his ability to perform the functions of his job. Respondent hired Complainant with full knowledge of his quadriplegic condition. Complainant had become a quadriplegic and was confined to a wheelchair since 1983. Rodriguez had previously observed Complainant several times in mid 1990 when he had visited the agency with his mother, who was working for Respondent at the time. Rodriguez again saw Complainant around March 1997 at a meeting at the Harold Washington Library in downtown Chicago. Complainant was working for the Democratic National Convention at the time and was attending a caucus at the library designed to allow people with disabilities to have access to politicians in order to voice their concerns and impact future legislation.

Shortly after the meeting at the Harold Washington Library, Rodriguez recruited and interviewed Complainant for the Advocacy Manager position in March 1997. Rodriguez was impressed with his education and related experience at the interview and decided to hire him. During the interview, Rodriguez shared the written position description with Complainant, asked Complainant if he would need any special accommodations and Complainant responded that all he would need would be a rubber band to assist him with holding a pencil or pen.

Therefore, the record supports that Rodriguez was aware of Complainant's quadriplegic condition and perceived that condition to be inconsequential to his ability to perform the job duties.

C. Did Complainant request a reasonable accommodation and did the employer fail to make a reasonable accommodation, which was necessary for his performance?

The question next proceeds to whether a reasonable accommodation was requested and was necessary for Complainant to perform his job duties and whether Respondent failed to provide the necessary reasonable accommodation. Complainant contends that he encountered obstacles to performing his job duties almost immediately after being hired by Respondent and he requested accommodations for these obstacles; however, Respondent failed to provide the necessary accommodations.

1. Accessibility of Entry Doorway

Complainant contends the entry doorway was heavy and difficult to hold open and the threshold was elevated so that he would have to pop up his wheelchair to get over the threshold. Complainant further contends the gates near the sidewalk were opened inward and were difficult to keep open because the sidewalk inclined. Complainant maintains he relayed this difficulty to Rodriguez in the Spring of 1997 and requested that the agency install an assisted device to make the door easier to open.

I find Complainant's contention of his difficulty with and inability to access the entry door disingenuous. Complainant testified that he first notified Rodriguez in the Spring of 1997 that he had difficulty accessing the front entranceway and entering through the front door. This testimony is inconsistent with other factors relating to the actions of Complainant. Complainant testified that he was interviewed at the NCLD office twice prior to being hired; however, there was no testimony that he found the door or the sidewalk difficult to maneuver or that he relayed this difficulty to Rodriguez or anyone else during the interviews. There was also no testimony that the condition of the entranceway was any different during the time of the interview than it was at the time Complainant began working there. Further, Rodriguez credibly testified that she asked Complainant during the interview if he required any special accommodations and the only response was that he needed a rubber band in order to hold a writing instrument.

The first credible evidence presented that Complainant had any genuine concern about the door was in his memorandum letter of November 4, 1997 to Rodriguez. Rodriguez quickly responded to this concern in her November 5, 1997 memorandum to Complainant and offered that she would speak to the landlord about installing an automatic door opener and that, in the meantime, she would assign someone to assist Complainant to enter the door when he arrived. Further undermining Complainant's contention that he was having extreme difficulty with the entry door is Complainant's testimony that his brother and mother would drive him to work and assist him to enter the door. Further, Rodriguez testified credibly that other wheelchair-bound people would visit the NCLD office regularly without any problems, including Mr. Lopez -- Chairman

of the Board of NCLD, Rene Luna, and outside clients who sought the services of the agency.

The record does not support that the doorway was inaccessible for the wheelchair-bound, and that -- even if it was -- Rodriguez offered a reasonable accommodation in that she assigned Everardo Franco to assist Complainant with the door when he would arrive. The record further supports that Complainant's family would assist him with the door and other co-workers would assist Complainant with the door when he arrived for work.

For this reason, Complainant's prima facie case based on Respondent's failure to make a reasonable accommodation regarding accessibility with the entry door fails.

2. Office clutter; poor ventilation; voice activated software; and time clock

It is undisputed that the NCLD office was cluttered with boxes and excessive furniture -- mostly from donations -- which made it difficult for Complainant to move around in a wheelchair. Complainant had his desk moved so that the crowded condition around his desk eased somewhat, but other areas of the office that he had to visit remained cluttered. Complainant complained about the condition to Rodriguez and Rodriguez immediately agreed to seek out some storage space and arrange a clean-up day to purge unnecessary clutter. Later, NCLD also gave away some of the furniture and was in the process of seeking out new office space that would accommodate the agency better.

Complainant had been coming to work regularly since March 1997. The inference is that, although maneuvering around the extra furniture and boxes took more effort, there is nothing in the record to demonstrate that this maneuvering difficulty interfered with Complainant's ability to access the office place and perform his job duties. Further, there was no evidence that the performance of any of Complainant's job duties was negatively affected by his difficulty in maneuvering around the office furniture. Moreover, Complainant's own December 11, 1997 memorandum to Rodriguez -- referring to the cluttered condition of the office -- characterized the office as "while functional, really holds little aesthetic value."

Based on the record, Complainant's prima facie case based on Respondent's failure to make a reasonable accommodation regarding maneuverability around the office place fails.

Complainant also complained to Rodriguez that the ventilation in the building was inadequate. This made Complainant extremely uncomfortable and caused him to experience respiratory difficulties. Rodriguez credibly testified that the agency purchased an air purifier for the office to assist with the ventilation, which was placed in the center of the office and turned on all day.

Complainant contends the air conditioner would stop running and remain inoperable for long periods of time. Rodriguez agreed that the air conditioner would sometimes be inoperable. However, Rodriguez credibly testified that the air conditioner would only

remain off temporarily during times when the power drain of two air conditioners would cause the fuse to get overloaded and disrupt the electricity. When this happened, everyone in the office would be uncomfortable and Rodriguez would order someone to go into the basement and re-set the fuse so that the air conditioning would resume.

Respondent purchased an air ventilation unit in response to Complainant's concerns about the air quality and further ensured that the air conditioning fuse would be re-set when it would overload. Although Complainant testified that the air purifier was off much of the time because it was noisy and the air conditioner, too, was off much of the time, I am not persuaded this was the case. Rodriguez credibly testified that the agency paid hundreds of dollars for the air purifier, it was a quiet unit, and that it remained on all day. I am not convinced that the agency would allocate this much money to purchase an air purifier and then not use it. Further, Rodriguez credibly testified that the agency had two air conditioners which would run simultaneously, causing the fuse to overload, and that all workers would be affected when the air conditioner would stop running. Again, I am not convinced that Rodriguez would subject herself, the other workers and agency clients to extreme heat conditions, when all she had to do was order someone to go in the basement and re-set the fuse.

Respondent took reasonable action to accommodate Complainant as to the air quality and air temperature; therefore, Complainant's prima facie case based on Respondent's failure to make a reasonable accommodation regarding the office climate fails.

Complainant contends that he asked Rodriguez to order voice-activated software for him in the summer of 1997 and provided her with information about the software and its costs; however, Rodriguez did not purchase it. Again, I find Rodriguez' testimony on this issue more credible. Rodriguez credibly testified that she, herself, suggested the idea of voice-activated software in response to Complainant's report to her that he had difficulty writing between the narrow lines of some of the supervisor forms. Rodriguez ordered Complainant to gather pricing information on the software and report back to her; however, the evidence shows that Complainant did not give this information to Rodriguez until January 21, 1998.

There is no dispute to Complainant's contention that the time clock was placed on a credenza that was too high for him to reach. Rodriguez credibly testified that, after Complainant complained he could not reach the time clock, she assigned the financial manager, who sat behind the time clock, to assist Complainant with punching his time card.

As to the voice-activated software, Rodriguez credibly expressed her intent to purchase the software following her receipt of information on cost from Complainant; however, Complainant did not provide her with this information in a timely manner. Further, there is nothing to suggest that failure to provide the software prevented Complainant from performing his job duties. The record indicates that Complainant had excellent computer skills and the ability to write. Also, as an interim measure, Rodriguez had the lines on the

forms enlarged on the computer template so that Complainant had more room to write on the forms until the voice-activated software could be ordered.

There is nothing in the record to support that this arrangement was inadequate or insufficient to assist Complainant with the performance of his job duties. Likewise, as to the arrangement for the financial manager to assist Complainant with punching his time card, there is nothing in the record to suggest that this arrangement was inadequate or insufficient or that it failed to assist Complainant with the performance of his job duties.

Therefore, Complainant's prima facie case based on Respondent's failure to make a reasonable accommodation regarding the placement of the time clock or the purchase of voice-activated software fails.

3. Failure to provide a personal assistant for the Washington D.C. training

Complainant contends that Respondent failed to accommodate him in September 1997 by refusing to pay for a personal care attendant to attend a meeting with him in Washington D.C. Complainant testified credibly that he had a strong desire to attend the conference because it offered training on amendments to the Individuals with Disabilities Educational Act, that he believed he had not received sufficient training up to that point in time and that this was an opportunity for him to receive some training.

Rodriguez testified credibly that she initially wanted Complainant to attend the Washington D.C. training and requested Complainant to contact the training sponsors to determine if they would provide funds for a personal assistant to accompany him to Washington; however, prior to Complainant reporting back to her on the sponsors' response, NCLD had hired a training manager, so Rodriguez decided to send the new training manager to the training and allow her to train the other staff when she returned. Complainant admitted that he did not report back to Rodriguez as to whether the training sponsors would provide funds for a personal assistant.

The record supports that Respondent made a business decision to send the newly hired training manager, rather than Complainant. Even if the employer made this decision based on its need to save funds, the Commission does not sit as a superpersonnel agency dictating how employers must spend their limited funds. **Fitzgerald and State of Illinois Department of Public Aid**, __ Ill HRC Rep. __, (1993SA0460, July 8, 1997); see also, **Tebrugge and City of Springfield**, (1191 SF0062, October 3, 1995). There is nothing in the record to support that Rodriguez' decision to send the training manager to the seminar, instead of Complainant, constitutes a failure to accommodate Complainant in performing his job duties.

Therefore, Complainant's prima facie case based on Respondent's failure to allow Complainant to attend the Washington D.C. training fails.

4. Written warning for carelessness

On December 19, 1997, Rodriguez gave a memorandum to Complainant indicating she had spoken with Rene Luna from Access Living regarding rates for personal assistants and regarding the question of who would be responsible for requesting transportation from Special Transportation Services. The memorandum indicated Luna stated the rates for personal assistants to be \$5.15 - \$15.00 hour.

In early January 1998, Rodriguez asked Complainant to attend a one-day meeting in Springfield, Illinois on January 9, 1998. Complainant hired his brother at the rate of \$14.00 hour to attend him to this meeting as his personal assistant. Complainant telephoned Rodriguez the night before the meeting to remind her that he would not be in the office the following day because he would be attending the meeting. Rodriguez asked if he had been able to secure a personal assistant to attend the meeting with him and Complainant told her that he had hired his brother for \$14.00/ hour. Rodriguez informed Complainant that, although the agency would pay the brother the \$14.00/ hour rate, she thought the hourly rate too high, she did not want him to consider her agreement to pay this rate as precedent that the agency would regularly pay this rate and she was disappointed Complainant had not informed her earlier that the brother would charge such a high rate.

Complainant received a written warning around January 30, 1998 from Rodriguez for insubordination and carelessness for informing her the night before that he could not attend the meeting in Springfield unless the agency agreed to pay his brother the higher end of the allowable range for personal assistants.

Rodriguez submitted credible testimony that the warning was motivated by Complainant's failure to inform her of the cost of the personal assistant in a timely manner. Rodriguez was concerned that Complainant's brother was charging the high end of the hourly range and thought that she would have been able to obtain a lower cost personal assistant had she had time in which to do so.

There is nothing in this fact scenario that supports a failure to accommodate. Complainant's brother attended the Springfield trip with Complainant and was paid his requested hourly rate by the agency. Further, Rodriguez made it clear that the issue concerning her was that the agency was not amenable to paying the higher end of the pay scale range for a personal assistant. Rodriguez had agreed that the agency should, indeed, pay for a personal assistant to attend Complainant to overnight meetings. Rodriguez had conferred with other colleagues to ascertain what the appropriate pay range would be and had shared this information with Complainant. That the agency preferred not to pay the higher end of the range and wanted to be timely notified if it was to be obligated to do so, does not make for a case of failure to accommodate. For this reason, Complainant's prima facie showing of failure to accommodate based on the issuance of the written warning fails.

II. Prima Facie Case of Retaliation for Opposing Unlawful Discrimination

The burden shifting format set forth in **McDonnell Douglas Corp. v. Green**, 411 U.S. 792, 93 S. CT. 1817 (1973) is applicable to the analysis of claims of unlawful retaliation, **Ellis and Brunswick Corp.**, 31 Ill. HRC Rep. 325 (1987). A Complainant may establish a prima facie case of unlawful retaliation by showing that: (1) he engaged in a protected activity that was known by the alleged retaliator; (2) the respondent subsequently took some adverse action against the complainant; and (3) there is a causal connection between the protected activity and the disadvantageous employment action. **Pace and State of Illinois, Department of Transportation**, __ Ill. HRC Rep. __ (1989SF0588, February 27, 1995).

A. Did Complainant engage in protected activity?

In September 1997, Complainant complained to Rodriguez that a co-worker, Anna Ruiz, an employee from the NCLD Waukegan office, had difficulty moving around the office in her wheelchair and was forced to use her crutches when she visited the office. In November 1997, Complainant complained to Rodriguez that the training manager, Sonia Hernandez, had a habit of yelling at and verbally abusing Edwin Gonzales, a subordinate, which caused him to have seizures. In December 1997, Complainant complained to Rodriguez that she had unfairly imposed a typing requirement on Gonzales, when other non-disabled co-workers did not have such a typing requirement imposed.

Complainant has demonstrated that he opposed what he believed to be discriminatory conduct on the part of Respondent.

Complainant contends that, after he spoke to Respondent about what he reasonably believed to be discriminatory treatment of other employees and accessibility issues, he was subject to adverse actions in that Rodriguez assigned him unreasonable tasks, requested Complainant to abandon his job, and made conditions so intolerable that he was forced to resign.

B. Did Respondent take adverse actions against Complainant?

1. Assigned Complainant to write a grant proposal

Complainant contends that, after he complained on behalf of other workers and himself about accessibility issues and unfair treatment, Rodriguez assigned him the task of writing three grant proposals in December 1997, a task he could not possibly complete and that was outside of his job description. The record does not support this contention. Although “grant writing” is not specifically listed as one of Complainant’s job duties, Complainant’s job description provides for performance of “other duties as assigned.” Further, Complainant testified that he was positive about the idea of his being involved in grant writing and was interested in learning how to write grants. The agency sent and paid for Complainant to attend training for grant writing. Rodriguez had included the goal of writing one grant proposal within the next year in Complainant’s “Goals and

Objectives” document for 1997/1998 and Complainant signed the document on August 28, 1997. Rodriguez credibly testified that she reviewed the grant writing objective in August 1997 with Complainant and Complainant voiced no objection.

It was obvious during the public hearing that Complainant articulates himself very well. Complainant has impressive educational credentials from prestigious Chicagoland schools of higher learning, including a BA degree in Political Science, Sociology and Anthropology from Loyola University of Chicago; two years of law studies from Chicago-Kent College of Law; and at least two years of graduate studies at Northwestern University. Complainant also has an impressive work history, including Deputy Director of Headquarters for the Democratic National Convention Committee; Supervisor of Technology America Corp; Staff Assistant for U.S. Senator Alan J. Dixon; and Area Coordinator of Misericordia, Special Olympics.

Considering that Complainant welcomed an opportunity to learn grant writing skills and that the agency sent Complainant to grant writing training, nothing in Complainant’s background suggests that he would have any difficulty writing a grant proposal or that this assignment exceeded Complainant’s disability capabilities. Complainant argues that the assignment to complete three grant proposals in a short amount of time is an adverse action because it was impossible for him to complete; however, Complainant admits that he did not complete even one grant proposal, which shows a lack of initiative on the part of Complainant to make any move toward the goal. Therefore, Complainant fails to prove that this assignment was an adverse action.

2. Assigned Complainant the responsibility to learn how to drive

Complainant contends he was continually harassed by Rodriguez to learn how to drive. Complainant contends he had trouble attending outside meetings because he had trouble with mobility and transportation. Complainant testified credibly that he had an evaluation performed in the late 1980’s or early 1990’s at the Rehabilitation Institute of Chicago that determined he was not physically strong enough to hold the levers down or work any of the adaptive equipment for driving a vehicle. Complainant maintains that, although he verbally relayed this information to Rodriguez, she continually assigned Complainant an employment objective to learn how to drive.

Rodriguez contradicts Complainant’s testimony, maintaining Complainant never informed her that he had a diagnosed physical impediment to learning how to drive. As to credibility, I give Rodriguez’ testimony on this issue more weight. In August 1997, Rodriguez assigned Complainant written employment objectives, one of which was to learn how to drive by the end of 1997. Rodriguez reviewed the driving objective with Complainant and Complainant expressed no disagreement with this objective and signed his acknowledgment of the objective on the form.

Further, Rodriguez followed up with a written note to Complainant on December 5, 1997, referring him to Tom Duncan, President of Paralyzed Veterans of War, to assist Complainant in obtaining information to complete his employment goal of learning how

to drive. Complainant testified that he never contacted Duncan and never informed Rodriguez that he had no intention of contacting Duncan. Despite the obvious showing in the record that Complainant has good writing skills and was not shy about voicing his concerns about issues at the agency in written memoranda, not one of Complainant's written memoranda to Rodriguez indicates that he did not have the ability to complete the goal of learning how to drive. What is of particular note is that Complainant submitted a letter to Rodriguez from Greg Brisson, M.D., of the Rehabilitation Institute of Chicago, dated July 16, 1997, explaining that Complainant is subject to potential health risks when he is exposed to extreme temperatures. Complainant offers no explanation why he could not have caused this same institution to write a similar letter indicating its own diagnosis of Complainant's driving limitation, so that he could submit it to Rodriguez to prompt her to reevaluate the driving objective.

The record does not support and it is difficult for me to believe that Rodriguez would persist in pushing Complainant to learn how to drive if Complainant had made it clear to her that he had been tested and was physically unable to learn this task. Rodriguez credibly testified that she and Complainant had been speaking about his learning how to drive since the time he had been hired; that she had previously dated a paraplegic friend who was a wonderful driver; that there was no reason for her to believe Complainant could not learn to drive, just as her friend had; and that she thought her friend could assist Complainant in learning how to drive or that he could refer Complainant to someone who could help him learn how to drive.

The evidence supports that Complainant did not inform Rodriguez and that Rodriguez had no knowledge that Complainant did not possess the capabilities to learn how to drive. Therefore, Complainant fails to prove that this assignment was an adverse action.

3. Was Complainant constructively discharged?

Complainant further contends that he suffered an adverse job action in the form of a constructive discharge. Constructive discharge occurs when an employer makes working conditions so intolerable, difficult or unpleasant that a reasonable person in Complainant's position would have felt compelled to resign. **Steel v. Illinois Human Rights Commission**, 160 Ill. App.3d 577, 513 N.E.2d 1177 (3rd Dist. 1987); **Brewington v. Department of Corrections**, 161 Ill.App.3d 54, 513 N.E.2d 1056 (1st Dist. 1987); **Board of Directors, Green Hills County Club v. Illinois Human Rights Commission**, 162 Ill.App.3d 216, 514 N.E.2d 1227 (5th Dist. 1987). The test has two prongs: first, the working conditions must be intolerable or hostile; second, a reasonable person in those same circumstances must have been compelled to resign. **Brewington, supra**. An employer cannot use a resignation submitted by Complainant as a legitimate non-discriminatory reason for terminating an employment relationship if the resignation was obtained as a result of intolerable working conditions which were in turn the result of Complainant's physical handicap. **Firer and Denny's, Inc**, 47 Ill.HRC Rep, 160 (1989). **Brewington, supra**; **Steel, supra**.

Complainant maintains that Respondent denied him reasonable accommodations and harassed him because of his disability and that this conduct made his environment so intolerable that no reasonable person could continue working there.

Complainant contends various conduct of Respondent contributed to an intolerable environment, including the following:

a) Rodriguez had told him on three occasions that, if he wasn't happy working at NCLD he could leave. Complainant testified that the first time Rodriguez told him that statement was in late summer 1997 in response to his complaint about the air conditioning malfunctioning; the second time was in response to his concern about not being allowed to attend the September 1997 Washington D.C. seminar; the third time was around mid -December and was related to the issue concerning personal assistants.

b) The entry door was heavy and difficult to open; the sidewalk in front of the office was crumpled and uneven ; the office was cluttered with boxes and file cabinets situated so that it was difficult for Complainant to move around in a wheelchair; the ventilation in the building was inadequate; the air conditioner would constantly break making the air temperature uncomfortable; the time clock was placed on a credenza that was too high for Complainant to reach; Complainant was assigned a grant writing responsibility, which was outside of his job description; Rodriguez failed to order voice activated software for Complainant to use to complete supervisory forms; Rodriguez did not allow Complainant to attend the Washington D.C meeting; Rodriguez insisted Complainant learn how to drive when she was aware he was physically unable to do so; Rodriguez reprimanded Complainant for hiring his brother as a personal assistant to attend an out of town meeting.

Most of these allegations have been analyzed above and those analyses apply here. Based on those analyses, I find that, although Complainant had legitimate concerns, which precipitated his numerous complaints about the work environment, these concerns were quickly and adequately addressed, and so, did not create an environment that was intolerable. Complainant's own December 11, 1997 memorandum to Rodriguez -- written less than two months prior to Complainant's resignation on February 4, 1998 -- characterized the office as "while functional, really holds little aesthetic value."

Further, the evidence is weak on Complainant's allegation that Rodriguez requested Complainant to abandon his job. Rodriguez' written memoranda to Complainant do not have a tone from which one could infer Rodriguez wanted Complainant to leave his job position. On the contrary, the tone of all of Rodriguez' memoranda to Complainant indicates that her intent was to remind, coach, direct and provide resources for Complainant in order to assist him with his job performance and to further his professional development. Rodriguez' memoranda to Complainant suggest she was rather patient with Complainant's blunders and missteps and that she sought to assist him and address all of his concerns in an expedient and meaningful manner.

The record shows that Rodriguez immediately addressed all of Complainant's concerns, including assigning co-workers to assist Complainant with the entry door and the time-clock; installing a ramp and a mechanism to slow the closing of the entry door; offering to find outside storage space for the extra furniture; purchasing an air purifier; ordering someone to go to the basement and re-set the fuse when the electrical circuits to the air conditioner would overload; researching information on the procedure for hiring personal assistants; agreeing to pay a personal assistant for overnight meetings; and searching for new quarters to better accommodate the agency. Respondent instituted reasonable accommodations that adequately addressed all of Complainant's concerns and that allowed Complainant to perform his job duties.

Complainant gave notice of his resignation January 30, 1998, following a "oral" warning notice from Rodriguez for carelessness and insubordination. Complainant's notice indicates that he was not pleased that he was being given an oral warning. Complainant interpreted the warning to be motivated by Rodriguez' ire that Complainant agreed to pay his brother to attend the Springfield meeting with him as his personal assistant. However, Rodriguez' warning and her credible testimony support that the warning was prompted by her frustration that Complainant did not inform her of his arrangements for a personal assistant until late the night before the meeting because she believed she may have been able to seek out a personal assistant for a lower hourly rate if she had been notified earlier.

Extra furniture and boxes would make it more difficult for all employees in the office to maneuver around -- disabled or not -- just as the air conditioning going out would make everyone uncomfortable; however, it is not to be taken lightly that these conditions would cause Complainant, a paraplegic, much more discomfort than it would cause others. Nevertheless, Complainant had been coming to work regularly since March 1997. The inference is that, although maneuvering around the extra furniture and boxes took more effort, there is nothing in the record to demonstrate that this maneuvering difficulty interfered with Complainant's ability to access the office place and perform his job duties. Further, there was no evidence that the performance of any of Complainant's specific job duties was adversely affected by his difficulty in maneuvering around the office. Rodriguez wrote several memoranda to Complainant concerning tasks he had not performed in a timely manner and none of these tasks can objectively be linked to lack of accessibility or maneuverability around the office. Also, since Complainant submitted his resignation in the month of February, the inference is that insufficient air conditioning in Chicago in February would not have contributed to a compelling need to resign at that time.

Rodriguez testified credibly that the agency had recognized the inadequacy of the office space and was diligently searching for more appropriate office space. Rodriguez had requested Complainant to speak with an official at the University of Illinois at Chicago (UIC) in order to set up a meeting with him and NCLD managers to discuss whether there would be available office space for the agency to move into. Complainant reported

to Rodriguez around February 3, 1998 that he had not secured a meeting with the official at UIC.

I am persuaded that Complainant was more annoyed at Rodriguez for reprimanding him for not informing her that he had agreed to pay his brother the high end of the pay range than he was for any of the conditions at the office. Receipt of this reprimand does not rise to the level of creating an intolerable condition that would compel a reasonable person to resign. That Rodriguez legitimately thought Complainant should have been able to talk his brother into taking a lower fee does not constitute harassment nor does it make Complainant's working conditions intolerable.

The record before me supports that Complainant resigned for reasons other than the physical conditions at the office, the alleged unfair work assignments, or the alleged refusal to allow him to hire a personal assistant. Although Complainant had not received any disciplinary action (other than the January 30, 1998 oral warning), the record shows that Complainant had been issued written memoranda by Rodriguez reminding him that he had not been completing assignments on time, had failed to attend assigned outside meetings, had not been making progress toward his employment objectives, and had not been following through on special assignments. The evidence strongly suggests that the position of Advocacy Manager required more concentration from Complainant than he was willing to give and that the job duties were demanding and did not comport with the level of effort Complainant was prepared to put forth.

Based on the foregoing analyses, Complainant has failed to demonstrate he suffered any adverse actions from Respondent, and has further failed to establish that the conditions in the workplace were intolerable. Therefore, Complainant fails to put forth a prima facie case of retaliatory discrimination or constructive discharge.

RECOMMENDATION

Complainant failed to prove by a preponderance that he was denied reasonable accommodations, or that he was retaliated against for opposing what he reasonably believed to be unlawful discrimination or that he was constructively discharged. Accordingly, it is recommended that the Complaint in this matter and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: April 21, 2003