



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/01/01.

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
TRICIA A. BROCK,	)	
	)	
Complainant,	)	
	)	Charge No.: 1999CF1300
and	)	EEOC No.: 21B990589
	)	ALS No.: 11077
FOX VALLEY SYSTEMS, INC. and	)	
THOMAS SMRT,	)	
	)	
Respondents.	)	

**RECOMMENDED ORDER AND DECISION**

On October 25, 1999, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Tricia A. Brock. That complaint alleged that Respondents, Fox Valley Systems, Inc. and Thomas Smrt, sexually harassed and constructively discharged Complainant.

This matter now comes on to be heard on Respondents' Motion to Dismiss. Complainant has filed a written response to the motion and Respondents have filed a written reply to that response. The matter is ready for decision.

**FINDINGS OF FACT**

The following findings are based upon the record file in this matter. For purposes of Respondents' motion to dismiss, all well-pleaded facts were taken as true.

1. Respondent Fox Valley Systems, Inc., hired Complainant,

Tricia A. Brock, on March 14, 1997. Complainant's position was telephone salesperson.

2. Respondent Thomas Smrt was the manager of Fox Valley Systems, Inc.

3. On June 5, 1998, Smrt asked Complainant if he could squeeze the lump in her breast.

4. Complainant found Smrt's request unwelcome and she informed him of that fact.

5. On July 16, 1998, Complainant left the employ of Fox Valley Systems, Inc.

#### CONCLUSIONS OF LAW

1. The statement made to Complainant was insufficient to create a hostile working environment.

2. The statement made to Complainant was insufficient to create a situation in which a reasonable person would have felt compelled to resign.

3. The complaint does not state a claim on which relief can be granted.

4. Respondents are entitled to a recommended order in their favor as a matter of law.

5. The complaint in this matter should be dismissed with prejudice.

#### DISCUSSION

Respondent Fox Valley Systems, Inc., hired Complainant, Tricia A. Brock, on March 14, 1997. Complainant's position was

telephone salesperson. Respondent Thomas Smrt was the manager of Fox Valley Systems, Inc.

According to Complainant, on June 5, 1998, Smrt asked her if he could squeeze the lump in her breast. She found Smrt's request unwelcome and she informed him of that fact.

Apparently as a result of that incident, Complainant filed a charge against Respondents with the Illinois Department of Human Rights (IDHR). That charge alleged that Respondents sexually harassed Complainant and that her subsequent departure from Fox Valley Systems, Inc. was a constructive discharge.

This matter is being considered pursuant to Respondents' Motion to Dismiss. According to Respondents, even if Complainant's allegations are taken at face value, they do not state a claim under the Human Rights Act.

The complaint states two separate claims: sexual harassment and constructive discharge. The sexual harassment claim will be considered first.

According to section 5/2-101(E) of the Human Rights Act (775 ILCS 5/1-101 *et seq.*), sexual harassment is defined in relevant part as "any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when . . . such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." Respondents argue that, as a matter of law, the single statement alleged by

Complainant was insufficient to create an intimidating, hostile or offensive working environment.

The existence of a hostile environment is measured against an objective standard. **Kauling-Schoen and Silhouette American Health Spas**, \_\_\_ Ill. HRC Rep. \_\_\_, (1986SF0177, February 8, 1993). A minor incident does not become sexual harassment because of the sensitivity of the complainant. **Wade and Illinois Dep't of Human Rights**, \_\_\_ Ill. HRC Rep. \_\_\_, (1996CF0324, December 17, 1998). Isolated incidents generally do not generate a hostile environment unless they are quite severe, and unwelcome conduct which is not more than a few isolated instances will not create liability. **Klein and Jack Schmitt Ford, Ltd.**, \_\_\_ Ill. HRC Rep. \_\_\_, (1990SF0162, January 17, 1997).

The allegation in the instant case is a single isolated instance. There is no allegation that Smrt made any other inappropriate remark or that he tried to follow up his remark with any inappropriate action. There were additional allegations raised in Complainant's initial charge with the IDHR, but some of those allegations were dismissed by the Department for lack of substantial evidence. Under the standard used in **Klein**, the remaining allegation simply does not state a viable claim for sexual harassment. As a result, the sexual harassment claim should be dismissed.

Complainant fares no better on her constructive discharge claim. To prove a constructive discharge, Complainant must prove

that Respondents made her working conditions so difficult or unpleasant that a reasonable person in her position would have felt compelled to resign. **Brewington v. Dep't of Corrections**, 161 Ill. App. 3d 54, 513 N.E.2d 1056 (1st Dist. 1987).

The facts alleged in the complaint in this matter do not even approach the **Brewington** standard. The only incident that could have triggered a resignation was the statement from Smrt. That single statement, though, was not enough to create a hostile environment. It certainly was insufficient to make an employee feel compelled to resign. Therefore, the constructive discharge claim should be dismissed.

RECOMMENDATION

Based upon the foregoing, even assuming all its factual allegations to be true, the complaint in this matter does not state a claim upon which relief can be granted. Accordingly, it is recommended that the complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL J. EVANS  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: August 20, 2001