



STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
SHEILA BUCKNER,)	
)	
Complainant,)	
)	Charge No.: 1998CF0287
and)	EEOC No.: 21B973360
)	ALS No.: 10623
CARLTON JACKSON and ILLINOIS)	
DEPARTMENT OF CHILDREN AND)	
FAMILY SERVICES,)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

On October 8, 1998, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Sheila Buckner. That complaint alleged that Respondents, Carlton Jackson and Illinois Department of Children and Family Services, sexually harassed Complainant.

A public hearing on the allegations of the complaint was held on August 28, 2000. Subsequently, the parties filed posthearing and reply briefs. The matter is now ready for decision.

FINDINGS OF FACT

Those facts marked with asterisks are facts to which the parties stipulated. The remaining facts are those which were determined to have been proven by a preponderance of the evidence at the public hearing on this matter. Assertions made at the

public hearing which are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

1. Complainant, Sheila Buckner, began working for Respondent Illinois Department of Children and Family Services on January 10, 1995. Complainant's position was Child Welfare Specialist II.*

2. Complainant is female.*

3. Respondent Carlton Jackson became Complainant's supervisor in April of 1996.

4. Complainant was one of eight caseworkers, six of them female, who reported to Jackson.

5. During the time she reported to Jackson, Complainant wrote several memos regarding her problems with Jackson. Those memos were sent to Jackson and to his supervisor, Bobbi Evans. Those memos sometimes were sent to other members of management, as well as to union representatives.

6. Complainant never reported any allegation of sexual harassment to Jackson's supervisors, either orally or in writing.

7. Complainant never reported any allegation of sexual harassment to anyone until she filed her initial charge with the Illinois Department of Human Rights on July 31, 1997.

8. Complainant worked in a cubicle, as did the other caseworkers in her unit. The caseworkers' cubicles were close to one another.

9. Jackson invited all his caseworkers, including

Complainant, to his home to watch a Chicago Bulls game and to attend his birthday party. Complainant did not go to watch the game, but she did attend the birthday party.

10. Although there may have been some unintentional physical contact between Complainant and Jackson, Jackson never intentionally touched Complainant's breast or threw a piece of paper at her breast.

11. For a period of time Jackson sometimes called Complainant "baby," but he stopped when she complained to him about that term.

12. On one occasion, during a work-related dispute with Complainant, Jackson yelled for her to "shut the fuck up" and told her, "you get on my god damn nerves." Complainant wrote a memo to Jackson's superior about that incident. That memo did not characterize Jackson's actions as sexual harassment.

13. The remaining allegations made by Complainant were substantially exaggerated.

14. Complainant and Jackson had disagreements about Complainant's job performance before the alleged sexual harassment began.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section 1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent Illinois Department of Children and Family

Services is an "employer" as defined by section 2-101(B)(1)(c) of the Act and is subject to the provisions of the Act.

3. Respondent Carlton Jackson is an "employee" as defined by section 2-101(A)(1) of the Act, is subject to the provisions of the Act, and is a proper party respondent in this action.

4. Complainant failed to prove that Respondents sexually harassed her.

DISCUSSION

Complainant, Sheila Buckner, began working for Respondent Illinois Department of Children and Family Services (DCFS) on January 10, 1995. Complainant's position was Child Welfare Specialist II.

Respondent Carlton Jackson became Complainant's supervisor in April of 1996. Complainant is female. She was one of eight caseworkers, six of them female, who reported to Jackson.

In July of 1997, Complainant filed a charge against Respondents with the Illinois Department of Human Rights. That charge alleged that Complainant was sexually harassed by Jackson while employed by DCFS.

Before analyzing the merits of Complainant's claim, there is a jurisdictional issue that should be addressed. Relying upon federal case law, Respondents argue in their briefs that Jackson cannot be held liable for sexual harassment because he is an individual and not Complainant's employer. Because the federal and state statutes differ in their wording, Respondents' position

on that issue is dead wrong. Section 5/2-102(D) of the Act specifically states that it is a civil rights violation for "any . . . employee" to engage in sexual harassment. Since it is clear that Jackson qualifies as an "employee," he is subject to the Act's ban on sexual harassment and is a proper respondent in this action. With that issue resolved, the discussion can proceed to the merits of Complainant's claim.

Section 2-101(E) of the Act defines "sexual harassment" as follows:

any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) 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.

At the public hearing, Complainant testified to a lengthy list of actions by Jackson. If taken at face value, that testimony would certainly be sufficient to establish the existence of a hostile environment. However, it would be a mistake to take Complainant's testimony at face value.

During the time she reported to Jackson, Complainant wrote several memos regarding her problems with Jackson. Those memos were sent to Jackson and to his supervisor, Bobbi Evans. The memos sometimes were sent to other members of management, as well as union representatives. Despite that history of written

complaints, Complainant never reported any allegation of sexual harassment to Jackson's supervisors, either orally or in writing. That uncharacteristic silence is highly suspicious.

Even more suspicious is the fact that one of the instances of alleged harassment was reported to management but the report contained no reference to harassment. On one occasion, during a work-related dispute with Complainant, Jackson yelled for her to "shut the fuck up" and told her, "you get on my god damn nerves." Complainant wrote a memo to Jackson's superior about that incident. That memo did not characterize Jackson's actions as sexual harassment. Instead, the memo criticized the lack of professionalism in Jackson's remarks.

It was clear from Complainant's demeanor at the public hearing that she is not afraid to speak her mind. That demeanor, coupled with her history of written complaints about Jackson's management techniques, makes it inconceivable that Jackson could have sexually harassed Complainant over the course of several months without her complaining loud and clear to his superiors. Moreover, Complainant worked in a cubicle, as did the other caseworkers in her unit. The caseworkers' cubicles were close to one another. Despite the proximity of her co-workers, Complainant produced no witnesses to corroborate her testimony.¹ The logical conclusion to draw is that Complainant's testimony at

¹ That omission is particularly troubling in that Complainant testified that Jackson made profane comments to her in front of her co-workers and that she felt embarrassed when those co-workers looked over to her.

the hearing was somewhat exaggerated.

Certainly, some of the claimed incidents did take place. For example, Jackson conceded that, for a period of time he sometimes called Complainant "baby." He stopped that when she complained to him about that term. Jackson also conceded that he yelled at her to "shut the fuck up." In addition, Jackson twice invited Complainant to come to his home. In those situations, though, Jackson had invited all his caseworkers, including Complainant, to his home. One such invitation was to watch a Chicago Bulls game. The other invitation was to attend Jackson's birthday party. Complainant did not go to watch the game, but she did attend the birthday party.

In addition, although there may have been some unintentional physical contact between Complainant and Jackson, Jackson never intentionally touched Complainant's breast or threw a piece of paper at her breast. It is inconceivable that Complainant would have failed to report such an incident to Jackson's superiors.

When evaluating a sexual harassment claim, 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).

Those incidents that were proven are nothing more than the type of isolated incidents discussed in **Klein**. In fact, other than the incidents in which Jackson called Complainant "baby," there none of the proven incidents can reasonably be characterized as sexual in nature. As a matter of law, the incidents are insufficient to establish a hostile environment. As a result, Complainant did not prove a case of sexual harassment and her complaint should be dismissed.

RECOMMENDATION

Based upon the foregoing, Complainant failed to prove a case of sexual harassment. 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: January 3, 2002