



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 3/29/01.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)		
)		
KIMBERLY A. CAMIRE,)		
)		
Complainant,)		
)	Charge No.:	1997CF2338
and)	EEOC No.:	21B971855
)	ALS No.:	10367
CLARK REFINING AND)		
MARKETING, INC.,)		
)		
Respondent.)		

RECOMMENDED ORDER AND DECISION

On February 20, 1998, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Kimberly A. Camire. That complaint alleged that Respondent, Clark Refining and Marketing, Inc., sexually harassed Complainant.

This matter now comes on to be heard on Respondent's Motion for Summary Decision. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The matter is ready for decision.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from documentation submitted for purposes of the instant motion. The findings did not require, and are not the result of, credibility findings. All evidence was viewed in the light most favorable to Complainant.

1. Respondent, Clark Refining and Marketing, Inc., hired Complainant, Kimberly A. Camire, as a store manager in or about March, 1996.

2. On approximately October 31, 1996, Mark Stanis told Complainant that "she got a nice set of boobs."

3. On approximately November 1, 1996, Stanis sent Complainant an e-mail, which stated "we have many brands and sizes of batteries in stock for your needs (just kidding) give me a call sometime."

4. Like Complainant, Stanis was a store manager for Respondent.

5. Complainant reported Stanis's actions to Respondent's Human Resources Manager.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact regarding the events of October 31 and November 1, 1996.

2. The events alleged by Complainant were insufficient to create a hostile working environment.

3. Respondent is entitled to a recommended order in its favor as a matter of law.

4. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

Respondent, Clark Refining and Marketing, Inc., hired Complainant, Kimberly A. Camire, in or about March, 1996.

Complainant's position was store manager. On October 31, 1996, Complainant met Mark Stanis. Like Complainant, Stanis was a store manager for Respondent.

On that first day Complainant met Mark Stanis, he told her that "she got a nice set of boobs." The next day, November 1, 1996, Stanis sent Complainant an e-mail, which stated "we have many brands and sizes of batteries in stock for your needs (just kidding) give me a call sometime." Complainant reported Stanis's actions to Respondent's Human Resources Manager.

Subsequently, Complainant filed a charge of discrimination against Respondent. That charge alleged that Respondent sexually harassed Complainant.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. According to Respondent, even if Complainant's allegations are taken at face value, they do not add up to a case of sexual harassment.

A summary decision is analogous to a summary judgment in the Circuit Court. ***Cano v. Village of Dolton***, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). Such a motion should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. ***Strunin and Marshall Field & Co.***, 8 Ill. HRC Rep. 199 (1983). The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. ***Kolakowski v. Voris***, 76 Ill. App. 3d 453, 395

N.E.2d 6 (1st Dist. 1979). The movant's right to a summary decision must be clear and free from doubt. **Bennett v. Raag**, 103 Ill. App. 3d 321, 431 N.E.2d 48 (2d Dist. 1982).

In her response to Respondent's motion, Complainant argues that Stanis's actions created a hostile working environment. However, even if her factual allegations are taken as true, they fail to establish such an 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 allegations in the instant case are nothing more than isolated instances. Stanis made one inappropriate remark in Complainant's presence and sent her one inappropriate e-mail message. There is no allegation of any further contact between them, on any level. Stanis and Complainant were on the same level of the corporate structure, so he had nothing to do with

supervising her. They worked at separate locations, so there was no need for personal contact.

Complainant argues that, because the two incidents happened on consecutive days, that they cannot be "isolated." That argument is without merit. This is not a situation in which incidents occurred on a regular basis, or over an extended length of time. These two incidents occurred within two days, and there was no further contact of any kind. Certainly, the incidents are "isolated" within the meaning of the *Klein* decision.

Complainant also argues that it is clear that she perceived that the incidents were serious because of her reactions to them. According to her brief on this motion, she made repeated requests to transfer stores and eventually resigned when those requests were rejected. There are two problems with that argument. First, as noted above, whether a hostile environment existed is an objective question, not a subjective one. Therefore, Complainant's perception of the problem is not an issue at this point. Second, even if her reactions were relevant, there is nothing in the existing record to establish what those reactions were. Complainant did not submit any affidavits or other evidence in support of her position, and the record is devoid of proper evidence that she tried to transfer positions or that she resigned as a result of being denied such a transfer.

Finally, Complainant argues that it is unimportant that she did not work in close proximity with Stanis because e-mail allowed him to harass her without being physically present. The short answer to that argument is that, despite the presence of e-mail, there is no allegation that Stanis had any contact whatsoever with Complainant after November 1, 1996. There simply was no continuing problem. Thus, as discussed above, the incidents were isolated and ultimately insufficient to create a hostile environment. As a result, Respondent's motion should be granted.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that Respondent's Motion for Summary Decision be granted and 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: February 6, 2001