



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/15/04.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)
)
 CYNTHIA K. DUVALL,)
)
 Complainant,)
)
 and)
)
 MAXWELL INSTRUMENTS and SCOTT)
 McDANIEL,)
)
 Respondents.)

CHARGE NO: 2001CE1943
EEOC NO: 21BA11241
ALS NO: S-11826

RECOMMENDED ORDER AND DECISION

This matter is ready for a Recommended Order and Decision pursuant to the Illinois Human Rights Act (775 ILCS 5/1-101 et seq.). A public hearing was held before me in Taylorville, Illinois on October 8, 2003. Complainant appeared and represented herself at the hearing. Respondent Maxwell Industries, which had previously filed a Chapter 7 Bankruptcy petition naming Complainant as an unsecured creditor, did not appear at the public hearing. Respondent McDaniel also did not appear at the public hearing, although he had filed a verified answer denying the allegations of the Complaint and had participated in the prehearing phase of the proceedings.

Contentions of the Parties

In the instant Complaint, Complainant contended that she was the victim of sexual harassment when Respondent McDaniel lured her into his office, attempted to pull down her pants, and then ultimately placed her hand on his exposed penis. In his verified answer, Respondent McDaniel denied ever touching Complainant in any manner and maintained that Complainant was the source of any hostile work environment.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. At some point prior to July 2000, Complainant was an employee of Weststaff Temporary Service, a temporary agency that provided workers for various clients.

2. In July of 2000, Complainant began working on behalf of Weststaff at Respondent Maxwell Instruments, one of Weststaff's clients. In her position at Maxwell Industries, Complainant repaired and cleaned gas meters and was supervised by a Maxwell Instruments employee.

3. From July 2000 to October 21, 2000, Complainant generally worked a 40-hour workweek, although her status as a Weststaff employee did not guarantee her any set number of hours. However, Complainant was aware that Maxwell industries had a history of hiring Weststaff employees as its own employees after a three-month period, and Complainant was harboring a hope that Maxwell Industries would hire her as a full-time employee.

4. On October 21, 2000, Complainant and some of her co-workers were finishing up their job duties and were set to leave to go home. At this time, Respondent Scott McDaniel, a supervisor at Maxwell Industries but not Complainant's supervisor, approached Complainant and asked to see her tattoo. Complainant understood McDaniel's request as a continuation of a conversation she and others had with McDaniel approximately two weeks earlier about her five tattoos. During the prior conversation, Complainant told the group about the location and subject matter of four of her tattoos, but explained that she would leave it to their imaginations as to the subject matter of the fifth tattoo because it was located in a private part of her body.

5. After Complainant refused several of McDaniel's requests to see her "private" tattoo, McDaniel asked Complainant to tour his office in a different part of the building. Complainant agreed to go with McDaniel and eventually saw McDaniel's office.

As Complainant began to leave, McDaniel again made several requests to see Complainant's private tattoo, and Complainant refused each request.

6. At some point during his requests to see Complainant's private tattoo, McDaniel began to pull down Complainant's pants. While Complainant was able to pull her pants up, McDaniel then placed Complainant's hand on his exposed penis. Complainant, in an attempt to extricate herself from the situation, then told McDaniel that the workplace is not the right place for having a sexual encounter, that he should not do anything to jeopardize his criminal probationary status, but that she was willing to talk about having a sexual relationship with him once his criminal obligations were over. Shortly thereafter, McDaniel apologized for his conduct and reminded Complainant not to tell anyone about the incident since her husband also worked at the plant. Complainant then left the office without further incident.

7. Shortly after the October 21, 2000 incident, Complainant temporarily separated from her current husband because the incident reinforced Complainant's negative attitude towards men, and because the incident reminded Complainant of a negative experience she had with a former husband who had cheated on her.

8. On October 23, 2000, Complainant went to work at Maxwell Industries and told two female co-workers about the incident. Throughout the rest of the week, McDaniel generally kept away from Complainant, and Complainant was upset that McDaniel ignored her because she was hopeful that they could talk about the incident.

9. By November 1, 2000, Complainant became so upset about the incident that she went to the hospital and received medication. At that time Complainant's current husband informed Westaff about Complainant's claims of being sexually assaulted at Maxwell Industries. A member of Westaff's staff informed someone in management at Maxwell Industries about Complainant's complaints of sexual

harassment, and then made arrangements with Maxwell Industries' management for an informal meeting with Complainant and McDaniel about the matter.

10. On November 2, 2000, Complainant and her husband attended a meeting with a representative of Westaff, the owner of Maxwell Industries, McDaniel, and an unnamed female who indicated that she was with McDaniel at the time that Complainant claimed the incident occurred. After hearing the story of the unnamed female, the owner of Maxwell Industries indicated that he did not know whom to believe, but that he no longer wanted Complainant working in the plant.

11. At the time of the October 21, 2000 incident, Complainant had been taking a medication since April of 2000 to treat her anxiety stemming from her ex-husband's infidelity. Complainant's anxiety medication was increased after she began seeing a psychiatrist after the October 21, 2000 incident.

12. At some point in February or March of 2001, Maxwell Industries ceased doing business and filed a Chapter 7 bankruptcy petition. Complainant's Human Rights Act claim was listed in Maxwell Industries' bankruptcy petition, and Complainant was listed as an unsecured creditor. On November 27, 2001, the Bankruptcy Court entered an order that discharged all debts of Maxwell Industries.

13. Complainant orally moved to withdraw her claim against Maxwell Industries at the public hearing.

14. Complainant suffered \$20,000 in emotional damages as a result of McDaniel's conduct in the workplace.

Conclusions of Law

1. Complainant is an "employee" as that term is defined under the Human Rights Act.

2. Respondent Scott McDaniel is an "employee" as that term is defined under the Human Rights Act.

3. Complainant established a *prima facie* case of sexual harassment against Respondent McDaniel in that Complainant showed that McDaniel's conduct in attempting to pull down her pants and in placing her hand on her exposed penis created an intimidating, hostile or offensive working environment based on her gender.

Determination

The instant Complaint should be sustained since Complainant established a *prima facie* case of sexual harassment.

Discussion

Under section 2-102(D) of the Human Rights Act (775 ILCS 5/2-102(D)), it is a civil rights violation “[f]or any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment...” The Act further defines sexual harassment as “any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when:...(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.” (775 ILCS 5/2-101(E).) The Commission, however, has declared that there is no “bright line” test for determining what behavior will lead to liability under a sexual harassment theory and has charged the administrative law judge to assess not only what was done, but how it was done in relationship to the total working environment. (See, **Robinson v. Jewel Food Stores**, 29 Ill. HRC rep. 198, 204 (1986).) According to the United States Supreme Court in **Harris v. Forklift Systems, Inc.**, a hostile environment arises “when the workplace is permeated with discretionary intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” (**Harris**, 114 S.Ct. 367, 370 (1993).) The Commission has used a similar standard for evaluating sexual harassment claims under the Human Rights Act. See,

Kauling-Schoen v. Silhouette American Health Spa, ___ Ill. HRC Rep. ___ (1986SF0177, February 8, 1993), slip op. at p. 13.

Here, Complainant's testimony at the public hearing more than establishes that she suffered through a hostile work environment as a result of McDaniel's sexually related conduct in the workplace. Indeed, the record shows that McDaniel invited Complainant to view his office at the close of the business day, repeatedly requested that she show him a tattoo that was located in a private area of her body, attempted to pull down her pants after she had repeatedly refused his requests, and ultimately placed her hand on his exposed penis. Moreover, while McDaniel denies all of Complainant's allegations with respect to the subject incident in his written answer, McDaniel failed to appear at the public hearing to provide his version of the facts. Thus, I can only accept Complainant's version of the incident and note that her testimony is sufficient to establish a *prima facie* case of sexual harassment. See, **Fritz and State of Illinois, Department of Corrections**, ___ Ill. HRC Rep. ___ (1987SF0543, October 17, 1995), slip op. at p. 17, where the Commission similarly recognized that one incident, if sufficiently severe, can create a sufficiently hostile environment.

In his written answer, McDaniel suggests that Complainant cannot establish a *prima facie* case of sexual harassment because she was an active participant in the shenanigans taking place within the workplace as evidenced by her talking about her hidden tattoos approximately two weeks before the October 21, 2000 incident. Perhaps, as the Commission observed in **Gehlbach and State of Illinois, Department of Corrections**, ___ Ill. HRC Rep. ___ (1995SF0694, April 23, 1999), Complainant should not have initiated the topic of her hidden tattoos if she did not welcome follow-up inquiries about them from her co-workers. However, as the Commission found in **Cunningham and Wal-Mart Stores, Inc.**, ___ Ill. HRC Rep. ___ (1992CF0496, April 16, 1998), a complainant's participation in sexual horseplay in the workplace does not

necessarily disqualify her from establishing a sexual harassment claim where the complainant repeatedly made clear to the harasser that she did not welcome the subject conduct. In this regard, the record amply demonstrates that Complainant repeatedly refused McDaniel's request to show him one of her hidden tattoos, and that McDaniel took matters into his own hands by physically assaulting Complainant after she had refused his requests.

As to Complainant's damages claim, I note that Complainant testified that she was devastated by McDaniel's conduct and took out her frustration on her new husband. She also maintained that she developed a thorough dislike for men because of what McDaniel and a former husband had done to her and began taking additional medication as a result of the incident. In terms of her future employment, Complainant indicated that she now wants only to stay at home, that she has worked only sporadically since November of 2000, and that she had to quit her last job because of high blood pressure.

While Complainant testified as to her lost wages that she experienced when she left Maxwell Industries, I doubt whether Complainant could collect from McDaniel any damages measured by her lost wages since the instant Complaint does not assert any claim for lost wages or allege any discriminatory discharge as a result of McDaniel's conduct. Indeed, the Department of Human Rights found a lack of substantial evidence on the portion of Complainant's charge against Maxwell Industries alleging discharge in retaliation for opposing sexual harassment, and Complainant testified that the only reason she did not continue her work at Maxwell Industries was because the owner indicated that he did not want her working there. Thus, given the state of the record, Complainant's damage award is necessarily limited to an award for emotional distress caused by McDaniel's conduct in the workplace.

As to Complainant's emotional distress claim, the record reflects that Complainant was already seeing a medical professional as of April of 2000 due to her

anxiety and anti-male mind-set that was caused by her former husband's infidelity. This is not to say, though, that McDaniel did not exacerbate Complainant's mental condition via the sexual assault that occurred on October 21, 2000. And this is so, even though Complainant was distressed by the fact that McDaniel ignored her in the week following the October 21, 2000 incident. Thus, after considering Complainant's pre-existing condition, the nature of the incident itself, and the circumstances both before and after the incident, I find that Complainant has suffered \$20,000 in emotional distress damages. Inasmuch as Complainant represented herself, I will make no award for attorney fees.

Recommendation

In view of the foregoing, it is recommended that the Commission enter an Order that:

1. Sustains the instant Complaint of unlawful discrimination against Respondent McDaniel.
2. Dismisses the instant Complaint of unlawful discrimination against Respondent Maxwell Industries as requested by Complainant.
3. Requires Respondent McDaniel to pay Complainant the sum of \$20,000 as emotional distress damages.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 26TH DAY OF AUGUST, 2004