▶	This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 06/16/06

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF	)	
	)	
TITI JOHNSON,	)	
	)	
COMPLAINANT,	)	
	)	
and	)	CHARGE NO. 2004SF2322
	)	EEOC NO.: 21BA41206
MIDWEST CARE CENTER IV, INC.,	)	ALS NO.: S05-179
d/b/a EL PASO HEALTH CARE CENTER,	)	
	)	
RESPONDENT.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission on public hearing dates of March 27 and 28, 2006, held at the Illinois Human Rights Commission (Commission), Springfield office. Complainant appeared pro se and Respondent appeared through counsel. Both parties had a full and complete opportunity to present their respective positions. This matter is ripe for a decision.

Contention of the Parties

Complainant contends that from the period of December 8, 2003, through and including December 11, 2003, while employed at Respondent's facility, she was harassed by certain of her supervisors. The harassment consisted of inappropriate references to minorities, false allegations of Complainant's work performance, screaming, yelling, and failure to allow Complainant to complete her necessary job duties.

Complainant further contends that the harassment created a hostile, intimidating and offensive work environment which substantially interfered with her job performance.

Respondent denies the substantive allegations of the Complaint and further presents the affirmative defense that the matter before the Commission is subject to binding arbitration pursuant to an Employee Arbitration Agreement executed by Complainant on August 4, 2003.

Findings of Fact

Based upon the testimony at the public hearing in this matter, I make the following findings of fact:

1. Complainant was hired by Respondent on August 3, 2003.

2. That at all relevant times Complainant was a member of a protected class (black).

3. That Respondent was the only black nurse at Respondent's facility.

4. Complainant was a charge nurse at Respondent's facility, working primarily the second shift.

5. The charge nurse has the responsibility of writing up subordinates for work infractions.

6. Ken Wolfe (Wolfe) was a certified nursing assistant (CNA), working with Complainant on the second shift.

7. Complainant was a direct supervisor of Wolfe.

8. On December 11, 2005, Complainant prepared a resignation letter.

9. Karen Leighty, f/n/a Karen Oatman (Leighty) was director of nursing (DON) at Respondent's facility.

10. Respondent's facility is responsible for the care of residents who have mental health illnesses.

11. Respondent disciplines employees though the use of verbal warnings, written warnings and termination. The form of discipline is based upon the severity of the offense.

12. On December 11, 2005, as a result of Complainant's actions, she was escorted by the police from Respondent's facility.

13. Georgia Dalrymple (Dalrymple) worked for Respondent's facility as a floor nurse.

14. Dalrymple's responsibilities included passing medications, treatments and supervising aids on the floor.

15. Dalrymple felt that Complainant would be better off at a different facility.

Conclusions of Law

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

2. Respondent is an "employer" as that term is defined under the Human Rights Act.

3. Complainant has failed to establish by a preponderance of evidence that she was a victim of racial discrimination as a result of

Respondent's actions.

Determination

Complainant has failed to prove by a preponderance of the evidence that Respondent's actions were the basis of discrimination on account of her race affording the protection of the Illinois Human Rights Act.

Discussion

The instant case rests upon Complainant's citing incidents of alleged racial discrimination through certain statements and actions of employees of Respondent, who were Complainant's supervisors. Complainant alleges in her complaint that she was harassed by certain of her supervisors through inappropriate remarks against her minority status, false allegations of work performance, yelling and screaming at her and not allowing her to complete her assigned functions.

To explain why Complainant is not successful on her complaint, it is necessary to review all appropriate elements and arguments regarding her complaint of racial discrimination.

Elements of a Prima Facie Case of Discrimination Based on Race

Although the elements of a *prima facie* case of racial discrimination will vary based upon the specific allegations, typically Complainant meets the burden of a *prima facie* case when he/she is able to show that he/she: (1) was a member of a protected group; (2) was a recipient of an adverse employment decision; and (3) was replaced by an individual outside of the protected classification. See **In the Matter of Sweetin and Williamson County, ____** HRC Rep. ____ (1995SF0779, March 24, 1999). In **Sweetin,** supra, the Commission noted and considered the years of experience of Complainant in his position in Respondent's highway department.

See also **In the Matter of Rickey Lee Jones and Sears, Roebuck and Company, ____** HRC Rep. ____ (1990CF3542, June 29, 1995). In which Complainant, rather than allege that he was replaced by an individual outside of the protected class, focused on proof that Respondent treated similarly situated individuals in a different manner than he was treated.

Complainant has met the first element in that she is a member of a protected class (black). Complainant has not met the second element in that she has not proven, through competent testimony or other evidence, that she was the recipient of an adverse employment decision. Even viewing Complainant's testimony under the **Jones,** supra, theory of "similarly situated" individuals, Complainant fails in her burden of proof. Complainant has failed to provide any support for the contention that she was treated differently than other charge nurses. Complainant's testimony consists of nothing more than her statement that she was yelled at by a resident of Respondent's facility. Complainant, further, offers no support for her contentions that Leighty made

false allegations of her work performance. Complainant's testimony lacked credibility and had no substance to bolster her racial discrimination claim.

To the contrary, Complainant's testimony rested heavily on three (3) factors: (1) that residents were allowed to leave the facility without proper permission, in violation of residential protocol and she was admonished when she advised her superior of violations of the protocol (See generally, T. p. 35, *et seq);* (2) she was not permitted to give "milk shakes" to residents, the "milk shakes" facilitating the residents taking of certain medication; (See generally, T. p. 18 *et seq.;* and (3) Respondent had hired blacks to avoid a discrimination lawsuit (See complaint, p. 6 and T. p. 74). Not only was Complainant's testimony unsupported but she further was unable to bring forth evidence of any racial bias which would bolster her racial discrimination claim.

Racial Motivation For Respondent's Actions

Complainant has failed to show that, as a result of her race, she was denied the ability to fully perform her function of providing full care for her patients, including but not limited to, the ability to give "milk shakes" to residents to facilitate the taking of residents medication.

Complainant has failed to show that, as a result of her race, she was forced to endure racially derogatory comments by Respondent's employees.

Complainant has failed to show, that as a result of her race, she was adversely affected in her employment.

Hostile Work Environment Argument

Complainant has failed to show that, as a result of the actions of Respondent's employees, a hostile, intimidating and offensive work environment was created which substantially interfered with her job performance. A hostile work environment is created "when the workplace is permeated with discretionary intimidation, ridicule and insult that is sufficiently severe or pervasive to alter the condition of the victim's employment and create an abusive working environment." See **Duvall and Maxwell Instruments and Scott McDaniel, ____** HRC Rep. ____ (2001CE1943, August 26, 2004). See also **Kauling-Schoen v. Silhouette American Health Spa, ____** HRC Rep. ____ (1986SF0177, February 8, 1993).

Complainant has presented no evidence to support, or even suggest, any element of that portion of her complaint. The credible evidence established that Complainant was escorted from Respondent's facility by the police on December 11, 2003, as a result of her disruptive and bazaar behavior. Therefore, Complainant was not forced out as a result of a hostile or intimidating workplace environment.

As a result of Complainant's failure to prove racial discrimination requiring the protection of the Act, I find for Respondent.

Recommendation

For the foregoing reasons, it is recommended that the underlying charge of discrimination and the instant complaint be dismissed, with prejudice.

HUMAN RIGHTS COMMISSION

BY_____
GERTRUDE L. MCCARTHY
Administrative Law Judge
Administrative Law Section

ENTERED: _____