



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 1/25/02.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)	
)	
LAURA L. LUTKOWSKI,)	
)	
Complainant,)	
)	
and)	CHARGE NO: 1998SF0729
)	EEOC NO: 21B982163
)	ALS NO: S 10883
VAUGHN PROPERTIES and JOHN)	
ROBERT VAUGHN)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On April 29, 1998, Complainant Laura L. Lutkowski filed a charge of employment discrimination against her employer, John Robert Vaughn, and Vaughn Properties. On June 22, 1999, the Illinois Department of Human Rights filed a Complaint of Civil Rights Violation with the Illinois Human Rights Commission. The complaint alleged Respondent discriminated against Complainant on the basis of sexual harassment that created a hostile work environment at her place of employment by her employer John Vaughn. Further, Ms. Lutkowski claimed she was constructively discharged as a result of the hostile work environment.

On September 12, 2000, I conducted a hearing in this matter. Todd Strong represented Complainant and Alfred LaBarre represented Respondent. On December 12 and 14, 2000, the parties filed written closing arguments. This matter is now ripe for decision.

Complainant's case

Complainant testified on her own behalf and presented the testimony of four witnesses. According to Complainant, she had been employed by Vaughn Properties in

some capacity since June 1997, during which time John Vaughn made inappropriate comments about her breasts and touched her. However, on January 24, 1998, Ms. Lutkowski worked in the office collecting rent and performing general office duties when John Vaughn conditioned her future employment on having sexual intercourse with him.

Ms. Lutkowski testified that John Vaughn approached her at her desk and told her she appeared to be very stressed. He then told her to relieve her stress she needed to have intercourse. Ms. Lutkowski testified Mr. Vaughn told her she needed to relieve the stress so she could work and that "he really needed her to work." Mr. Vaughn then retrieved a condom and threw it on her desk in front of a coworker. Mr. Vaughn also retrieved a radio and asked Ms. Lutkowski to follow him to an unoccupied apartment across the hall from the office. Once in the apartment, Mr. Vaughn gave Ms. Lutkowski specific instructions for intercourse which she followed. Ms. Lutkowski further testified that after the two had sexual intercourse she became extremely upset and drove home in tears. Once she arrived home she locked herself in her bathroom in shame.

According to Ms. Lutkowski, in the months that followed it became increasingly difficult to work around Mr. Vaughn. Therefore, on advice of her priest she requested to be assigned to other duties outside of the office. When Mr. Vaughn did not comply with her request, Ms. Lutkowski's priest informed her she had no choice but to leave her job. Accordingly, Ms. Lutkowski resigned her position with Vaughn Properties on March 8, 1998.

Ms. Lutkowski also presented the testimony of her children's caregiver and another friend who testified to Ms. Lutkowski's state of mind when she arrived home from work on the day in question. Both testified she was very upset, and she disclosed to them the cause for her disquiet was that she had sexual intercourse with John Vaughn.

Respondent's case

John Robert Vaughn testified on his own behalf and presented the testimony of seven witnesses, including his wife. Mr. Vaughn denied that he conditioned Ms. Lutkowski's employment on submitting to sexual intercourse with him. He maintained that his relationship with Ms. Lutkowski was strictly professional and that he had never made inappropriate comments about Ms. Lutkowski's breasts or asked her for intercourse. In fact, Mr. Vaughn and his wife testified it would have been impossible for him to have intercourse during January 1998 because he was taking medicine that caused him to be temporarily impotent. However, no medical records were presented to substantiate this fact.

Mr. Vaughn further testified that in March 1998 Ms. Lutkowski called in sick two days in a row and could not keep up with her cleaning duties at the commercial property he owned. Therefore, he gave her cleaning job to someone else and restricted her duties to those needed in the office. Mr. Vaughn testified this act made Ms. Lutkowski angry and she resigned to accept a better paying position with a cleaning agency. Further, Mr. Vaughn testified Ms. Lutkowski never complained to him about any sort of discrimination in the workplace, but that she often complained about her low wages.

Most of Mr. Vaughn's witnesses were either employed by him or were residents in his apartment buildings. Each testified that they neither witnessed Mr. Vaughn act inappropriately toward Ms. Lutkowski, nor heard Mr. Vaughn make inappropriate comments in reference to Ms. Lutkowski or her body.

Findings of Fact

The following facts are those, after having considered all of the evidence in the record, I found were proved by a preponderance of the evidence. Assertions made in the record which are not addressed in this decision were determined to be unproven or immaterial to this determination:

1. Complainant, Laura L. Lutkowski, filed Charge No. 1998SF0729 with the Department of Human Rights on April 29, 1998, alleging to have been aggrieved by practices of sexual harassment prohibited by section 2-102(D) of the Act.
2. On June 22, 1999, the Department of Human Rights filed a Complaint of Civil Rights Violation on behalf of Laura L. Lutkowski. Vaughn Properties and John Robert Vaughn timely filed an Answer to the Complaint. As such, the parties are subject to the jurisdiction of the Illinois Human Rights Commission and this administrative law judge pursuant to the Human Rights Act, 775 ILCS 5/8-101 *et seq.*
3. Vaughn Properties is owned by John Robert Vaughn and consists of three hundred residential rental units and one commercial rental unit.
4. Laura Lutkowski was a resident and employee of Vaughn Properties. She worked as a painter, pool monitor, cleaning person, and office associate.
5. Laura Lutkowski began her employment with Vaughn Properties in June 1997. She resigned on March 8, 1998.
6. On January 24, 1998, John Vaughn told Ms. Lutkowski she appeared stressed and that she could relieve the stress by having sexual intercourse with him.
7. Laura Lutkowski accompanied John Vaughn to an unoccupied apartment and had consensual sexual intercourse with him.
8. Shortly after having intercourse with John Vaughn, Laura Lutkowski confessed to her priest that she had committed adultery. Her priest instructed her to have limited contact with John Vaughn or to resign her employment.
9. Ms. Lutkowski asked John Vaughn to relieve her of her office duties so that the two would not work together.
10. John Vaughn did not relieve Laura Lutkowski of the office duties so she sought additional counseling from her priest.

11. Laura Lutkowski's priest counseled her that she had no option but to resign her employment so that she would not be forced to work in the same office as John Vaughn.

12. Laura Lutkowski resigned her employment with Vaughn Properties on March 8, 1998.

Conclusions of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.

2. Complainant is an "employee" within the meaning of section 2-101(A)(1) of the Illinois Human Rights Act.

3. At the time of the alleged incidents, Respondent was an "employer" within the meaning of section 2-101(B)(1)(b) of the Illinois Human Rights Act and was subject to the provisions of the Act.

4. Complainant failed to establish a prima facie case of sexual harassment in that complainant failed to prove by a preponderance of the evidence that Respondent conditioned or made a term of her employment the submission to sexual intercourse with him which had the purpose and effect of creating an intimidating, hostile or offensive work environment.

5. Complainant voluntarily left her job for reasons unrelated to allegations of sexual harassment.

Determination

Complainant failed to establish a prima facie case of sexual harassment and constructive discharge under section 2-102(D) of the Illinois Human Rights Act.

Discussion

The Illinois Human Rights Act, section 1-102 was enacted in part to ensure that citizens of the State of Illinois are protected from sexual harassment in employment.

775 ILCS 5/1-102(B). Under the Human Rights Act sexual harassment is defined as follows:

“Sexual harassment” means 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 interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment. 775 ILCS 5/2-101(E).

By definition, liability in this case only attaches where 1) submission to sexual intercourse is made either explicitly or implicitly a term or condition of employment and 2) the submission to intercourse created a hostile or offensive work environment.

This is not a case of sexual harassment as defined above. This is a case of regret. The credible evidence in this case reveals that John Vaughn asked Laura Lutkowski for sexual intercourse to "relieve her stress." Ms. Lutkowski did not decline or protest. After Mr. Vaughn retrieved a condom and a radio from the office, she followed him across the hall into an empty apartment with the intent to have intercourse. When the two entered the apartment, Mr. Vaughn instructed Ms. Lutkowski to "get undressed." *Tr. p. 26*. She did so without hesitation. He instructed her to then "place the condom on him" and she did so again without hesitation. *Id at 26*. Finally, he asked her to "get on top of him." *Id at 26*. This too she did without hesitation. All of these factors indicate that the two engaged in consensual sexual intercourse. Ms. Lutkowski did testify that Mr. Vaughn made comments during intercourse to make her believe she had no choice but to submit to him to keep her job. However, those alleged comments are not logical. Mr. Vaughn would have no need to condition her employment on sexual intercourse while the two were engaging in the act. Ms. Lutkowski had already acquiesced to intercourse without it being a term of employment.

On the drive home from the apartment that evening, Ms. Lutkowski began to regret her actions and by the time she arrived home, she presented herself to her children's babysitter extremely upset and crying uncontrollably, stating "I can't believe what I have done." She sought consolation from a friend and told him about the incident. She did not tell the friend that she had no choice but to submit to Mr. Vaughn's request to keep her job. She merely told her friend that she "had intercourse" with John Vaughn, and regretfully "wished it didn't happen." *Tr. p. 61.*

The record in this case is replete with Ms. Lutkowski's strong religious beliefs. Those beliefs would explain her acute sense of regret for engaging in sexual intercourse with John Vaughn, who is married. She even confided in her priest that she committed the act of "adultery," not that she was forced into intercourse with her boss to save her job. Black's Law Dictionary defines adultery as, "voluntary sexual intercourse between a married person and a person other than the offender's spouse." *Black's Law Dictionary 53 (7th ed. 1999).* This *voluntary* act of intercourse can never be seen as unwelcome. It also cannot be interpreted as the submission to sexual intercourse as a term or condition of employment, which is required under the act to prove sexual harassment in this case.

In this case, Ms. Lutkowski also claimed comments John Vaughn made about her after she submitted to unwelcome sexual intercourse created a hostile work environment and as such she had no choice but to resign, creating a constructive discharge. However, a closer look at the record in this case revealed that Ms. Lutkowski was not constructively discharged. Instead, Ms. Lutkowski spoke with her priest a second time and he informed her that if Mr. Vaughn would not rearrange her duties so that she would have no future contact with him, then she was left with no choice other than to resign. Therefore, the evidence is clear that Ms. Lutkowski resigned her employment on the advice of her priest and not as a result of an intolerable working

environment. Accordingly, for all of the reasons above, Laura L. Lutkowski's claim of sexual harassment against Vaughn Properties and John Robert Vaughn must fail.

Recommendation

Based on the above findings of fact and conclusion of law, I recommend that that the Illinois Human Rights Commission dismiss with prejudice the complaint, together with underlying Charge Number 1998SF0729 against Respondent Vaughn Properties and John Robert Vaughn.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THIS 18th DAY OF DECEMBER, 2001.