



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/10/01.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
PAMELA PETTIS,)	
)	
Complainant,)	
)	Charge No.: 1991CF2143
and)	EEOC No.: 21B911124
)	ALS No.: 10754
MCDONALD'S CORPORATION,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On March 1, 1999, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Pamela Pettis. That complaint alleged that Respondent, McDonald's Corporation, discriminated against Complainant on the basis of sex, related to pregnancy, when it subjected her to unequal terms and conditions of employment, harassed her, and discharged her.

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 uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility

determinations. All evidence was viewed in the light most favorable to Complainant.

1. Complainant, Pamela Pettis, was hired by Respondent, McDonald's Corporation, on or about November 17, 1983.

2. In December of 1987, Complainant was transferred from Administrative Secretary in the Facilities and Systems Department to Administrative Word Processing Technician in the National Operations Department. That move did not involve a change in salary.

3. In June of 1990, Complainant informed some of Respondent's employees that she was pregnant.

4. On September 11, 1990, Complainant met with her supervisor, Pam Ison, about Complainant's job performance. On September 27, Ison met with Complainant to discuss Complainant's attendance. The substance of those conversations was recorded in a memorandum prepared by Ison and dated September 28, 1990. According to Ison's memorandum, Complainant's performance, attitude, and attendance were not meeting Respondent's minimal requirements.

5. In a memorandum dated October 22, 1990, Ison placed Complainant on a thirty-day performance review program. Under the terms of that program, Complainant had to improve her performance to justify an overall "good" rating. If she failed to improve to that level, Complainant would be placed "on notice" for thirty days. If, at the end of the "on notice" period, her

performance had not improved to the "good" level, Complainant would be discharged. In addition, if Complainant failed to demonstrate a genuine effort to improve her performance during her performance improvement program, she could be discharged. The performance problems cited in the memo included tardiness, misrepresenting work hours, and wearing clothing which did not meet the standards of Respondent's dress code.

6. Complainant refused to meet with Ison on October 22, 1990, to discuss her performance. Even after Debbie Wayne from Respondent's Personnel department called Complainant to explain the importance of the meeting, Complainant refused to meet with Ison. Ison and Wayne then confronted Complainant, told her she was being placed on the performance improvement program, and then told her that she was being suspended immediately for insubordination. Ison told Complainant to call her the following day for further instructions. Complainant replied that she would not call Ison, but Ison would have to call her.

7. In a letter dated October 23, 1990, Ison told Complainant to call her by 4:00 p.m. on October 26 to discuss her performance. The letter stated that, if Complainant failed to call Ison or Wayne by the deadline, Respondent would conclude that Complainant had abandoned her employment.

8. In a memorandum dated November 9, 1990, Complainant asked Ison for clarification of the policy on time sheets.

9. Ison responded to Complainant's November 9 memorandum

with a memorandum of her own, dated November 12, 1990. In her November 12 memo, Ison explained that she wanted Complainant to list her time accurately and not work overtime without prior approval. The memo also listed five specific dates on which Complainant listed a start time, which was earlier than her actual start time.

10. On November 19, 1990, Respondent discharged Complainant. The discharge memorandum stated that Complainant had disregarded Ison's authority three times in one week by putting down extra hours for "working through lunch" without obtaining prior approval. The memorandum further stated that Complainant had been counseled, reprimanded, and suspended for other acts of insubordination.

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

3. Complainant cannot establish a *prima facie* case of unequal terms and conditions of employment or harassment on the basis of her sex.

4. Respondent can articulate a legitimate, non-discriminatory reason for Complainant's terms and conditions of

employment.

5. Complainant cannot establish a *prima facie* case of discrimination on the basis of her sex with regard to her discharge.

6. Respondent can articulate a legitimate, non-discriminatory reason for its decision to discharge Complainant.

7. There are no genuine issues of material fact on the issue of pretext, and Respondent is entitled to a recommended order in its favor as a matter of law on all of the claims raised in the complaint.

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

9. Complainant's attorney, Bruce Nash, should be required to pay \$300.00 to Respondent as a sanction for his failure to appear at a scheduled settlement conference or to inform opposing counsel or the Human Rights Commission that he would not appear. The order entered on October 18, 2000 is hereby incorporated by reference into this Recommended Order and Decision.

DISCUSSION

Complainant, Pamela Pettis, was hired by Respondent, McDonald's Corporation, on or about November 17, 1983. Complainant performed mostly secretarial and clerical duties. In December of 1987, she was transferred from Administrative Secretary in the Facilities and Systems Department to Administrative Word Processing Technician in the National

Operations Department. That move did not involve a change in salary.

In June of 1990, Complainant informed some of Respondent's employees that she was pregnant. Several months thereafter, on November 19, 1990, she was discharged.

Subsequently, Complainant filed a charge of discrimination against Respondent. That charge alleged that Respondent subjected her to unequal terms and conditions of employment, harassed her, and ultimately discharged her because of her pregnancy.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. 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). A motion for summary decision 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).

Before addressing the merits of Respondent's motion, there

is a procedural issue that must be addressed. Part of Complainant's claim is that she was disciplined for wearing shoes that did not meet Respondent's written dress code while others were allowed to wear similar shoes. Complainant no longer has the shoes she wore. Respondent argues that the case should be dismissed because Complainant's failure to retain the shoes in question effectively destroyed critical evidence.

Respondent's argument overstates the importance of the shoes. The issue is not whether the shoes met Respondent's dress code. Instead, the issue is whether Complainant's shoes were similar to a co-worker's shoes. Unless Respondent has those other shoes, no direct comparison is possible. Therefore, the evidentiary value of Complainant's shoes is somewhat limited. As a result, there is no sound reason to dismiss the case simply because of missing shoes. With that issue out of the way, the motion can be considered on the merits.

There are no indications of direct evidence in the record, so Complainant would have to prove her case through indirect means. The method of doing so is well established. First, Complainant must establish a *prima facie* showing of discrimination. If she does so, Respondent must articulate a legitimate, non-discriminatory reason for its actions. For Complainant to prevail, she must then prove that Respondent's articulated reason is pretextual. **Zaderaka v. Human Rights Commission**, 131 Ill. 2d 172, 545 N.E.2d 684 (1989). See also

Texas Dep't of Community Affairs v. Burdine, 450 U.S. 251 (1981).

Complainant's two claims require slightly different analyses. Her claim of unequal terms and conditions of employment will be considered first.

Complainant maintains that she was reprimanded and unfairly criticized by Respondent because of her pregnancy. Although the complaint sometimes characterizes the reprimands as harassment, it is clear that what Complainant really is alleging is a case of unequal terms and conditions of employment. To establish her *prima facie* of such discrimination, Complainant has to prove three elements. She must prove 1) that she is in a protected class, 2) that she was treated in a particular manner by Respondent, and 3) that similarly situated employees outside her protected class were treated more favorably. **Moore and Beatrice Food Co.**, 40 Ill. HRC Rep. 330 (1988).

Complainant would have no trouble establishing the first two elements. Her pregnancy placed her into a protected class, and there is written documentation of the way Respondent treated her. She has a major problem, though, with the third element. She has offered absolutely nothing on the treatment of similarly situated workers outside her protected class. Thus, it appears that she cannot establish a *prima facie* case.

Even if she could establish a *prima facie* case, there would be justification for dismissing her claim. Respondent has presented evidence that it had legitimate non-discriminatory

reasons for reprimanding Complainant, in that she was chronically tardy and she violated the company's dress code. To be able to prevail at a public hearing in this matter, Complainant would have to prove that Respondent's articulated reason is pretextual. To justify denial of the instant motion, Complainant would have to raise a genuine issue of material fact on the issue of pretext. However, she has offered nothing but the arguments of counsel.

The failure to offer any evidence is fatal to Complainant's claim of unequal terms and conditions of employment. Although Complainant need not prove her case at this juncture, she must provide some factual basis that would entitle her to prevail. ***Schoondyke v. Heil, Heil, Smart & Golee, Inc.***, 89 Ill. App. 3d 640, 411 N.E.2d 1168 (1st Dist. 1980). Moreover, because Complainant failed to provide evidence to contest Respondent's submissions, those submissions stand unrebutted and must be accepted as true. ***Koukoulomatis v. Disco Wheels***, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist. 1984). Thus, Complainant has failed to raise a genuine issue of material fact on the issue of pretext, and Respondent's motion should be granted on the claim of unequal terms and conditions of employment.

Complainant fares no better on her discharge claim. To establish a *prima facie* case of sex discrimination in a discharge case, she would have to prove four elements. She would have to prove 1) that she was in a protected group, 2) that she was

meeting Respondent's reasonable performance expectations, 3) that she was discharged, and 4) that similarly situated workers outside her protected group were not discharged. **Yarbrough and Ryder Distribution Resources, D.P.D.**, ___ Ill. HRC Rep. ___, (1988CF2549, October 5, 1992). Everyone agrees on the first and third elements, but Complainant failed to make any showing that she conceivably could prove the remaining two elements.

Furthermore, even if it is assumed that Complainant could establish a *prima facie* case, that would not be enough to deny the instant motion. As with Complainant's other claim, Respondent can articulate a legitimate, non-discriminatory reason for its actions surrounding the discharge.

Respondent's articulated reason is simple. According to the company's evidence, Complainant was discharged for insubordination coupled with a recent history of counseling and discipline.

Respondent provided numerous examples of Complainant's behavior and the company's attempts to address that behavior. For example, on September 11, 1990, Complainant met with her supervisor, Pam Ison, about her job performance. Ison and Complainant met again on September 27, and they again discussed Complainant's attendance. The substance of those conversations was recorded in a memorandum prepared by Ison and dated September 28, 1990. According to Ison's memorandum, Complainant's performance, attitude, and attendance were not meeting

Respondent's minimal requirements.

In another example of problems with Complainant, effective October 22, 1990, Ison placed Complainant on a thirty-day performance review program. Complainant refused to meet with Ison at that point. Even after Debbie Wayne from Respondent's Personnel department called Complainant to explain the importance of the meeting, Complainant refused to meet with Ison. Ison and Wayne then confronted Complainant, told her she was being placed on the performance improvement program, and then told her that she was being suspended immediately for insubordination.

There were other examples provided, as well. Some of them are mentioned in the findings of fact. Repeating all those allegations would unduly lengthen this discussion and serve no useful purpose. The point is that the documentation provided by Respondent clearly articulates a non-discriminatory reason for its actions.

Unfortunately for Complainant, she offered no evidence to cast doubt on the documentation offered by Respondent. As discussed above, in the absence of evidence from Complainant, Respondent's evidence stands unrebutted and must be accepted. *Koukoulomatis, supra*. As a result, there is no genuine issue of material fact on the matter of pretext, and Respondent is entitled to a recommended order in its favor as a matter of law. As a result, a summary decision in Respondent's favor is appropriate on both of the claims raised in the complaint in this

matter.

One more matter remains. On October 18, 2000, an order was entered in response to a motion for sanctions filed by Respondent. Complainant's attorney, Bruce Nash, failed to appear for a scheduled settlement conference. In addition, Mr. Nash failed to contact either Respondent's attorneys or the staff of the Human Rights Commission to inform them that he would not be appearing. Two attorneys, one in-house and one outside counsel, appeared for the scheduled conference. Thus, Respondent incurred unnecessary attorney's fees. The October 18, 2000 order recommended that Mr. Nash personally pay \$300.00 to Respondent to compensate the company for some of those unnecessary fees. It is recommended that Mr. Nash be ordered to pay that sanction.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact regarding pretext and Respondent is entitled to a recommended order in its favor as a matter of law. However, Complainant's attorney should pay for some unnecessary attorney's fees incurred by Respondent due to his personal negligence. 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. It is further recommended that an order be entered upholding the October 18, 2000 order on Respondent's Motion for Sanctions and requiring attorney Bruce Nash to pay the sum of \$300.00 to Respondent as

compensation for incurred attorney's fees.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: April 9, 2001