



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
LATOYA HILL,)	
)	
Complainant,)	
)	Charge No.: 2001CF1968
and)	EEOC No.: 21BA11382
)	ALS No.: 11707
LOOP LAB SCHOOL and)	
TYRONE JOHNSON,)	
)	
Respondents.)	

RECOMMENDED ORDER AND DECISION

On January 29, 2002, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, LaToya Hill. That complaint alleged that Respondents, Loop Lab School and Tyrone Johnson, sexually harassed Complainant. Pursuant to Complainant's motion, the complaint was later amended to add allegations of retaliation and constructive discharge.

When Respondents failed to respond fully to discovery, Complainant brought a motion to compel. That motion was granted, but Respondents did not supplement their discovery responses. As a result, on April 21, 2005, an order was entered that found Respondents to be in default. The matter was then set for a hearing on Complainant's damages.

The hearing on damages was held on June 6, 2005. Despite being notified of that hearing, Respondents failed to appear or to file any motion to explain their absence. Subsequent to the hearing, Complainant filed a posthearing brief and petition for fees. Respondents did not respond to the brief or to Complainant's request for fees, and the time for response has passed. The matter is ready for decision.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. They are therefore named herein as an additional party of record.

FINDINGS OF FACT

The following findings of fact were derived from the record file in this case and from the evidence presented at the damages hearing.

1. On or about September 1, 2000, Respondent Loop Lab School hired Complainant, LaToya Hill, as a kindergarten teacher.

2. During Complainant's tenure at Loop Lab School, Respondent Tyrone Johnson was the school's personnel manager and administrator.

3. Beginning in approximately October of 2000 and continuing until the end of her tenure with Loop Lab School, Complainant was subjected to physical and verbal harassment from Tyrone Johnson.

4. In November of 2000, Johnson grabbed Complainant and pulled her toward him while tugging on her pants.

5. In February of 2001, Johnson shoved a candy bar between Complainant's legs. That same month, there was an incident in which Johnson touched a zipper on Complainant's pants and touched her buttocks and another incident in which Johnson grabbed Complainant's arm and neck.

6. On or about February 23, 2001, Johnson twice put his hand inside the back of Complainant's shirt. Then, before leaving Complainant, Johnson kissed her on the ear.

7. When Johnson touched her, or when he made inappropriate verbal comments to her, Complainant informed him that she wanted him to stop such behavior.

8. On approximately February 15, 2001, Complainant complained about Johnson's actions to Ms. Gill, Loop Lab School's business manager. Gill is Johnson's cousin.

9. On or about February 2, 2001, Complainant complained to Gill again about Johnson's behavior. After that second complaint, Gill accompanied Complainant to see Ms. Mayes, Loop Lab School's director. After Complainant explained Johnson's behavior to her, Mayes told Complainant that she would talk to Johnson and get back to her. Mayes did not

follow up with Complainant.

10. Johnson became more hostile toward Complainant after she spoke with Mayes.

11. After Complainant spoke with Mayes about Johnson's behavior, Loop Lab School's management began retaliating against Complainant. Mayes suggested that perhaps the school needed only one kindergarten teacher. Gill accused Complainant of theft and spread false allegations about Complainant being guilty of theft.

12. On March 16, 2001, because of the effects of Respondents' behavior, Complainant resigned her employment with Loop Lab School.

13. Complainant suffered considerable emotional distress as a result of Respondents' actions. She felt embarrassed and degraded. She had trouble sleeping. She testified to feelings of depression.

14. The effects of Respondents' behavior have made it difficult for Complainant to work for a male supervisor, thus adversely affecting her current job.

15. To address her emotional difficulties, Complainant sought counseling from her female minister.

16. Johnson's actions caused the majority of Complainant's emotional distress.

17. At the time of her constructive discharge, Complainant was earning \$16.50 per hour and was working 40 to 45 hours per week.

18. After her discharge, Complainant was out of work for approximately four weeks.

19. Complainant worked briefly during April and May of 2001 and earned approximately \$2,550.00. She lost that job through no fault of her own.

20. Complainant was unemployed from June 1, 2001 until November of that year.

21. During her period of unemployment, Complainant received \$4,200.00 in unemployment compensation.

22. Complainant found a job in November of 2001 at \$14.00 per hour for 40 hours per week.

23. In April of 2002, Complainant's pay became roughly equivalent to the pay she had received while working for Respondent.

24. Complainant should be compensated in the amount of \$15,000.00 for the emotional distress caused by Respondents' actions. \$12,000.00 of that total should be allocated to Johnson, while the remaining \$3,000.00 should be allocated to Loop Lab School.

25. Complainant is seeking compensation for the work of attorney Patricia Motto at the rate of \$205.00 per hour for 31.31 hours, minus \$200.00 already paid as a sanction.

26. Both the requested hourly rate and the number of hours are reasonable and should be accepted.

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 Loop Lab School is an "employer" as defined by section 2-101(B)(1)(b) of the Act and a "person" as defined by section 1-103(L) of the Act.

3. Respondent Tyrone Johnson is an "employee" as defined by section 2-101(1)(a) of the Act and is subject to the provisions of the Act.

4. As a result of the default entered against Respondents, there are no liability issues to address.

5. Because of their failure to file an objection to Complainant's request for attorney's fees, Respondents have waived the right to object to such fees.

DISCUSSION

On April 21, 2005, a default order was entered against Respondents as a result of their failure to comply fully with discovery orders in this matter. As a result of that default order, Respondents are deemed to have admitted the allegations of the complaint. ***Bielecki and Illinois Family Planning*** Council, 40 Ill. HRC Rep. 109 (1988). Therefore, there are no liability issues to address. Only damages issues remain to be determined.

Although liability is not an issue, a basic overview of the facts is needed to allow a meaningful discussion of the appropriate damages. On or about September 1, 2000, Respondent Loop Lab School hired Complainant, LaToya Hill, as a kindergarten teacher. During Complainant's tenure at Loop Lab School, Respondent Tyrone Johnson was the school's personnel manager and administrator.

Beginning in approximately October of 2000 and continuing until the end of her tenure with Loop Lab School, Complainant was subjected to physical and verbal harassment from Tyrone Johnson. For example, in November of 2000, Johnson grabbed Complainant and pulled her toward him while tugging on her pants. In February of 2001, Johnson shoved a candy bar between Complainant's legs. That same month, there was an incident in which Johnson touched a zipper on Complainant's pants and touched her buttocks and another incident in which Johnson grabbed Complainant's arm and neck. On or about February 23, 2001, Johnson twice put his hand inside the back of Complainant's shirt. Then, before leaving Complainant, Johnson kissed her on the ear.

When Johnson touched her, or when he made inappropriate verbal comments to her, Complainant informed him that she wanted him to stop such behavior. Johnson was not deterred by Complainant's statements.

On approximately February 15, 2001, Complainant complained about Johnson's actions to Ms. Gill, Loop Lab School's business manager. Gill is Johnson's cousin.

On or about February 2, 2001, Complainant complained to Gill again about Johnson's behavior. After that second complaint, Gill accompanied Complainant to see Ms. Mayes, Loop Lab School's director. After Complainant explained Johnson's behavior to her, Mayes told Complainant that she would talk to Johnson and get back to her about the problem.

Mayes, however, did not follow up with Complainant. In fact, after Complainant spoke with Mayes about Johnson's behavior, Loop Lab School's management began retaliating against Complainant. Mayes indirectly threatened Complainant's employment when she

suggested that perhaps the school needed only one kindergarten teacher. Gill accused Complainant of theft and spread false allegations about Complainant being guilty of theft. Furthermore, Johnson became more hostile toward Complainant after she spoke with Mayes.

Faced with continued hostility, Complainant felt she had no choice but to resign. She did so on March 16, 2001. That resignation was a constructive discharge. With those facts in place, it is possible to discuss the damages that Complainant should be awarded.

A prevailing complainant is presumptively entitled to reinstatement to the job lost because of a human rights violation. However, in this case, Complainant did not request such relief and she has found a permanent full-time job that pays her at least as much as her job at Loop Lab School. As a result, reinstatement is not recommended.

On the other hand, Complainant is entitled to an award of backpay from Loop Lab School. At the time of her constructive discharge, Complainant was earning \$16.50 per hour and was working 40 to 45 hours per week. Assuming that she worked an average of 42.5 hours per week, her weekly earnings should have been \$701.25.

After her discharge, Complainant was out of work for approximately four weeks. During that four-week period, she would have earned \$2,805.00.

Complainant worked briefly during April and May of 2001 and earned approximately \$2,550.00. She lost that job through no fault of her own. Complainant then was unemployed from June 1, 2001 until November of that year. In addition, during her period of unemployment, Complainant received \$4,200.00 in unemployment compensation.

From mid-April to early November was about 30 weeks. Had she been working for Loop Lab School during that period, Complainant would have earned \$21,037.50. Her actual earnings during that period, including unemployment compensation, were \$6,750.00. Thus, during the period from mid-April through early November, Complainant lost \$14,287.50.

In November, when Complainant actually got another full-time job, her hourly pay was only \$14.00 per hour, \$2.50 per hour less than she had earned with Loop Lab School. Thus,

over the course of a forty-hour workweek, she continued to lose \$100.00 per week. That situation continued for approximately twenty-one weeks, until April of 2002, when Complainant's pay became comparable to her pay with Loop Lab School. At that point, backpay liability ceased. See *Martin and Sangamon State University*, 48 Ill. HRC Rep. 59 (1989), *rev'd on other grounds sub nom Board of Regents for Regency Universities v. Illinois Human Rights Commission*, 196 Ill. App. 3d 187, 552 N.E.2d 1373 (4th Dist. 1990). The total lost backpay during that time equals \$2,100.00.

To reach the appropriate backpay total, it is necessary to add together the sums lost during three distinct periods: the initial period of unemployment, the period from Complainant's first interim job until her acquisition of permanent full-time employment, and the period during which her new job still paid less than her job with Loop Lab School. The total from those three periods is \$19,192.50. That is the recommended backpay award.

Because of the delay in her receipt of the money owed to her, Complainant should be awarded prejudgment interest to make her whole. Such interest is recommended.

The next topic of discussion is the matter of emotional distress damages. Complainant argues that Respondents' treatment of her resulted in severe emotional distress and that a significant award is appropriate. The record supports Complainant's argument.

This discussion began with a recitation of facts arising out of Complainant's work for and with Respondents. Those facts clearly establish that Johnson sexually harassed Complainant. They also make clear that Loop Lab School did nothing to stop the harassment and that school officials actually made matters worse by threatening Complainant's job security and falsely accusing her of theft.

In light of those facts, a significant award of damages is justified. The only question is the appropriate size of the award.

There is no doubt that the Respondents' behavior left emotional scars on Complainant. She testified that she felt embarrassed, had problems sleeping, and went to work in a state of

agitation because she did not know what to expect at work. Her problems continued after she left Loop Lab School. Complainant still has anxiety when it comes to dealing with a male supervisor, even though her current supervisor has done nothing wrong. Complainant has never sought medical help for her problems, but she has sought regular counseling from her female minister.

Complainant has requested an award of \$15,000.00 to compensate her for her emotional distress and that request seems reasonable in light of existing Commission precedent. The Commission awarded that amount in the case of ***Hernandez and MTS & Associates, Inc.***, ___ Ill. HRC Rep. ___, (2002CN2642, July 8, 2004). The complainant in ***Hernandez***, like Complainant in this case, was constructively discharged as a result of sexual harassment. She had sleeping troubles and grew to fear working in an office environment with male co-workers. The similarities in psychological effect justify comparable awards. Therefore, it is recommended that Complainant be awarded \$15,000.00 in emotional distress damages.

Complainant requested that the emotional distress award be allocated among Respondents so that Loop Lab School would be liable for \$9,000.00 in such damages while Johnson would be liable for \$6,000.00. That proposed allocation, though, fails to take into account Johnson's greater role in the infliction of emotional distress. Because Johnson was far more responsible for the adverse effects on Complainant, it is recommended that he be responsible for \$12,00.00 of the \$15,000.00 award.

Next is the matter of Complainant's attorney's fees. The starting point for analysis of a motion for attorney's fees is the case of ***Clark and Champaign National Bank***, 4 Ill. HRC Rep. 193 (1982). Under ***Clark***, Complainant must first establish that the hourly rate she seeks is appropriate. Then, she must establish the number of hours reasonably expended on the case.

Complainant filed a written motion for fees and that motion was served on Respondents. Despite that service, Respondents failed to file any response to the motion. As a result, Respondents have waived the issue of attorney's fees. ***Mazzamuro and Titan Security, Ltd.***,

___ Ill. HRC Rep. ___, (1989CN3464, October 21, 1991).

Even without that waiver, though, it would be recommended that Complainant's fee request be granted in its entirety. Complainant is seeking compensation for the work of attorney Patricia Motto at the rate of \$205.00 per hour for 31.31 hours, minus \$200.00 already paid as a sanction. Ms. Motto is a skilled and experienced attorney whose requested hourly rate is probably well below what she could command in the Chicago legal market. Moreover, the requested number of hours is quite reasonable given the length of the case and the course of the litigation. Both the requested hourly rate and the number of hours are reasonable and should be accepted. The recommended fee award is \$6,218.55.

There are two other matters that should be addressed. Loop Lab School should be ordered to purge its files of all references to this litigation and to the underlying charge of discrimination. Finally, both Respondents should be ordered to cease and desist from further sexual harassment and Loop Lab School should be ordered to cease and desist from further acts of unlawful retaliation.

RECOMMENDATION

Based upon the foregoing, it is recommended that the amended complaint in this matter be sustained in its entirety and that an order be entered awarding Complainant the following relief:

A. That Respondent Loop Lab School pay to Complainant the sum of \$19,192.50 for lost backpay;

B. That Respondent Loop Lab School pay to Complainant prejudgment interest on the backpay award such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

C. That Respondent Loop Lab School pay to Complainant the sum of \$3,000.00 as compensation for the emotional distress suffered by Complainant as a result of that Respondent's actions;

D. That Respondent Tyrone Johnson pay to Complainant the sum of \$12,000.00 as compensation for the emotional distress suffered by Complainant as a result of his actions;

E. That Respondents pay to Complainant the sum of \$6,218.55 for attorney's fees reasonably incurred in the prosecution of this matter, and that Respondents be jointly and severally liable for such payment;

F. That Respondent Loop Lab School clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

G. That Respondents cease and desist from further acts of sexual harassment;

H. That Respondent Loop Lab School cease and desist from further acts of unlawful retaliation.

HUMAN RIGHTS COMMISSION

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

ENTERED: July 21, 2006