



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

**YOLANDA TATE,
Complainant,**

and

**WALGREEN CO.,
Respondent.**

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) **CHARGE NO. 2001CF1763**
) **EEOC NO. 21BA11030**
) **ALS Nos. 11992**
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RECOMMENDED ORDER AND DECISION

This matter comes before me following a public hearing held on February 22, 2005 on the merits of the Complaint. Complainant appeared *pro se*; Respondent was represented by counsel. At the close of Complainant's case in chief on liability, Respondent made a motion for a directed finding, which I granted.

CONTENTIONS OF THE PARTIES

Complainant contends that Respondent subjected her to sexual harassment and retaliation in violation of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (Act). Respondent contends that Complainant cannot establish a *prima facie* case of sexual harassment or retaliation.

FINDINGS OF FACT

1. Complainant filed a Charge of Discrimination (Charge) with the Illinois Department of Human Rights (Department) on February 6, 2001, amended on April 12, 2001. The Department, on behalf of Complainant, filed a Complaint with the Illinois Human Rights Commission (Commission) alleging sexual harassment and retaliation discrimination on January 16, 2003.
2. Respondent is a national drug store retailer.

3. Complainant (female) was hired as a service clerk/ cashier for Respondent on June 17, 1999 to work at one of its stores located at 3646 N. Broadway in Chicago, Illinois (store). Complainant worked the afternoon shift, which began at 4:00 p.m. and ended at 11:00 p.m. Complainant's job duties included ringing customer sales on the cash register, keeping the counters clean and performing good customer service. At the beginning of her shift, Complainant would receive her bank drawer from a manager and allow a manager to count the money in her bank drawer. Complainant would then count the money in her own bank drawer herself and proceed to place her bank in a designated cash register to begin ringing customer sales. At the end of her shift, Complainant would add up the receipts in her bank drawer, count the cash, and take her bank to the office so that a manager could close out her bank. This procedure is called a checkout.
4. At the time Complainant was hired in June 1999, Andrew Pusey (Pusey), male, was the store manager. Tim Gorman (Gorman), male, replaced Pusey as store manager around January 2001.
5. Salvatore Divita (Divita)¹, male, was an assistant store manager at the store in 1999 and part of 2000, but was transferred from the store in June 2000.
6. All of Complainant's allegations of sexual harassment by Divita occurred in 1999.
7. Abboud Abraham (Abraham), male, was an assistant store manager at the store in 1999 and 2000.
8. From 1999 through 2001, Ernest Johnson (Johnson), male, was a service clerk at the store.
9. In 2001, Ken Amos (Amos) was a district manager for Respondent.
10. Allison Chattergi (Chattergi) was a female assistant store manager trainee at the store and came as a new employee at the store in March 2001.²

11. At the time Complainant worked at the store, Laura Panitch (Panitch) worked at the store as the loss prevention supervisor.
12. Sandra Garcia (Garcia) and Yasmine Figueroa (Figueroa), both female, were service clerks/cashiers who worked at the store with Complainant.
13. In December 2000, while Complainant was using the washroom facilities inside a stall with the stall door closed, Abraham entered the washroom and began changing the plastic and otherwise attending to the garbage cans in the washroom. While attending to the garbage cans, Abraham made a lot of noise clanging the garbage cans together. Although Complainant requested him to leave, Abraham gave no indication that he heard Complainant's request over the noise of the garbage cans and or that he was aware of Complainant's presence when he entered. Abraham made no attempt to contact Complainant verbally or physically and left the washroom while Complainant was still inside the stall.
14. During October, November and December, 2000, Johnson made a gesture with his mouth to Complainant, which Complainant understood to be a reference to oral sex. Complainant did not ask Johnson the meaning of his mouth gesture and did not ask Johnson to discontinue making the gesture. During this same time period, Complainant believed that Johnson put his head under her skirt while he collected the garbage at her register while she worked. In January 2001, Johnson entered the women's washroom, saw Complainant standing against a wall inside the washroom and immediately exited the washroom.
15. In December 2000, Complainant complained to Pusey that Johnson had attempted to collide with her and knock her down in the store. Pusey talked to Complainant and Johnson about Complainant's allegations and ordered Johnson

¹ Divita is spelled as such in the Complaint but spelled "Davita" in the transcript.

² Chattergi is spelled as such in the Complaint but spelled "Chattergy" in the transcript.

to leave Complainant alone. Johnson told Pusey that he wasn't "going to be messing" with Complainant. Later that same day, Johnson and Complainant argued in the store concerning an incident that evolved when Johnson was mopping the aisle, requested Complainant to move and Complainant refused. Complainant reported this incident to Abraham. Complainant and Johnson also argued on or around January 29, 2001 during an incident when both parties were attempting to pass through a narrow hallway in the store stockroom and neither would allow the other to pass. Complainant complained about this incident to Gorman.

16. Subsequent to Complainant complaining about Johnson to Gorman, Respondent held at least one meeting concerning Complainant's allegations on January 31, 2001. Gorman, Panitch, Johnson and Complainant attended the meeting. Gorman gave Johnson and Complainant a verbal warning that they would both be discharged if they did not reconcile their differences and get along in the workplace.
17. Following this meeting, Complainant went on vacation from February 7, 2001 through February 11, 2001. Around February 13, 2001, Respondent changed Johnson's work shift to the day shift, which was from 8:00 a.m. until 4:30 p.m. After this shift change, Johnson had no more incidents with Complainant. When Complainant returned to work following her vacation, she complained to Gorman that Johnson's shift overlapped her shift for 30 minutes. In February or March, 2001 Gorman changed Complainant's start time so that Johnson's shift ended prior to Complainant's start time. Complainant remained on the afternoon shift.

18. From the beginning of her employment on June 17, 1999 through February 2001, Complainant retained her same job title and duties. On February 24, 2001, Complainant received two raises on her check.
19. Sandra Garcia (Garcia) and Yasmine Figueroa (Figueroa) were service clerks/cashiers whom Complainant did not get along with. Complainant complained to Respondent that Garcia and Figueroa bumped into her and talked to her in a "very bad tone" on March 14, 2001 and Foster told Complainant he would take care of it. Complainant was not engaged in any further incidents with Garcia and Figueroa.
20. Grace Mendez (Mendez) was a service clerk/cashier who worked at the store in March 2001.
21. On March 14, 2001, Chattergi sent Complainant home for insubordination because Chattergi was angry with Complainant because she felt Complainant had spoken to her inappropriately in front of customers. Chattergi was unaware at the time that Complainant had complained of discrimination or that Complainant had filed a discrimination Charge.
22. When Complainant arrived to work the next day, Foster ordered Complainant to leave the store before she began working. Complainant refused to leave and argued in front of the store while customers were present. A customer, who happened to be a police officer, intervened on her own discretion and advised Complainant to leave the store. Foster did not summon the police and Complainant was paid for the day even though she performed no work. At that time, Foster was unaware that Complainant had complained of discrimination or that Complainant had filed a discrimination Charge.
23. Complainant did not tell any assistant managers, including Abraham, Foster or Chattergi, that she had filed a Charge of Discrimination and Complainant was

angry with Gorman for not having informed any of the assistant managers that she had filed a Charge of Discrimination.

CONCLUSIONS OF LAW

1. Complainant is an “employee” and Respondent is an “employer” in accordance with the Act at Section 5/2-101.
2. The Commission has jurisdiction over the parties and subject matter in this cause.
3. Complainant failed to demonstrate a *prima facie* case of sexual harassment or retaliation during her case in chief.
4. Respondent is entitled to a directed finding in its favor.

DETERMINATION

Respondent’s motion for a directed finding must be granted due to Complainant’s failure to demonstrate a *prima facie* case of sexual harassment or retaliation.

DISCUSSION

Complainant was hired as a service clerk/cashier for Respondent’s store located at 3646 N. Broadway in Chicago, Illinois on June 17, 1999. Complainant’s job duties included ringing customer sales on the cash register, keeping the counters clean, straightening out the shelves and performing good customer service. Complainant worked the afternoon shift, which began at 4:00 p.m.

Complainant’s four-count Complaint makes several allegations of unlawful discriminatory conduct against various management staff and co-workers. I will address the allegations against each individual separately.

Sexual Harassment

Count One alleges that from 1999 through December 2000, Divita, Abraham and Johnson subjected Complainant to sexual harassment by engaging in conduct that created a hostile, intimidating and offensive work environment; that she complained to

management about the conduct; and that management took no action to alleviate the harassment.

Salvatore Divita

The Complaint alleges that, on multiple occasions from October 2000 until January 2001, Assistant Store Manager Divita put his head and hands under Complainant's skirt while she worked at the cash register (Complaint, Count One, para. eight) and that during 1999 Complainant complained to Store Manager Pusey that Divita had sexually harassed her (Complaint, Count One, para. ten).

At the public hearing, Complainant testified that, on several occasions during the winter of 1999, Divita put his head and hands under her skirt while he was in the process of picking up grocery items from the floor that lay in close proximity to her foot while she worked at the register. Complainant also testified that Divita put his tongue in her ear³. Complainant recalled that this conduct occurred in 1999; however Complainant could not recall any specific dates when Divita engaged in this conduct. Complainant admitted that Divita was transferred from the store in June 2000.

If Complainant's testimony that Divita, a company assistant manager, put his hand and head under Complainant's skirt on multiple separate occasions while she worked at the cash register is credible, this conduct can be seen as conduct of a sexual nature. However, I find Complainant's recitation of these alleged incidents vague and sufficiently lacking in detail to be convincing. Although prompted several times during her testimony to recall one specific date when Divita engaged in this conduct toward her, Complainant could not point to one specific date. Complainant testified that Divita repeated this conduct so often that she was prompted to remove the grocery items from the floor to prevent Divita from having to retrieve the items in order to eliminate

³ Complainant's Complaint does not allege any incidents where Divita put his tongue in Complainant's ear; therefore, I am not considering any testimony on this particular allegation.

opportunities for him to put his head and hands under her skirt. What is glaringly lacking from Complainant's testimony is her immediate reaction to this alleged conduct that took place while Complainant was at the register presumably waiting on customers. If Complainant believed that Divita was deliberately putting his head and hands under her skirt, the absence in Complainant's testimony of her immediate outrage to any of these alleged several incidents serves to render her testimony incredible. In coming to this conclusion, I considered other testimony by Complainant in this record. Complainant testified that she engaged in verbal altercations with Johnson during hours when the store was open, that she engaged in a verbal altercation with Chattergi in front of customers in the store, and that she argued with Foster in front of customers in the store. Complainant's willingness to engage in verbal altercations with co-workers and management in front of customers supports that she would not hesitate to demonstrate similar verbal outrage when a manager — under the pretense of picking up groceries from the floor — put his head and hands under her skirt.

Despite the incredibility of Complainant's allegations against Divita, Complainant's allegations cannot stand for a separate reason. Respondent objected to Complainant's testimony as to any conduct by Divita alleged to have occurred in 1999. Respondent's objection is valid. Complainant's Charge is dated February 6, 2001, amended April 12, 2001, and states that Complainant complained about sexual harassment by Divita in 1999. The Complaint (Complaint, Count 1, para. 10) further alleges that during 1999 Complainant complained to Pusey that Divita had sexually harassed her. Moreover, Complainant testified that Divita was transferred from the store in June 2000 and that all of her allegations of sexual harassment by Divita occurred in 1999 (Tr. p. 168, lines 14-15):

Q. Now, the allegations against Mr. Davita involve events that occurred in 1999; isn't that true?

A. Yes.

Q. And there were no allegations of sexual harassment against Mr. Davita that went into the year 2000, isn't that true?

A. Right

Q: In fact, Mr. Davita transferred out of the Broadway store in June of 2000; isn't that true?

A: Yes.

Due to the February 2001 filing of the Charge, any alleged sexually harassing conduct that occurred prior to 180 days before the Charge filing — which calculates to be August 2000 — would be time- barred pursuant to section 7A-102(A) of the Act. Because Complainant testified that Divita engaged in no sexually harassing conduct in the year 2000 and that all of her allegations of such conduct by Divita occurred in 1999, the Commission lacks jurisdiction to consider these allegations against Divita.

Abboud Abraham

Complainant testified to one incident alleged to have happened in July 2000 concerning Abraham (Tr. pg 67, 21-24; pg.68, 1-2, 21-22).⁴ Complainant testified that she was in a washroom stall with the door closed, sitting on the toilet with her clothes down, when Abraham entered the women's washroom without knocking. Complainant could hear Abraham changing the plastic in the washroom garbage cans and clanging the garbage cans together. She began screaming, "telling him to get up out of here, get out of here." Complainant said, "So I'm hearing him. He's changing—I'm thinking in my mind before the living God—I'm telling you before God I'm gonna kill him, I'm gonna kill him, if he put his hands on me, I'm gonna kill him." (Tr. pg. 69, 20-24). It then got really quiet and Abraham left the washroom. Complainant then exited the washroom and asked Abraham what had he seen and Abraham answered that he had seen Complainant's feet.

⁴ This same incident is alleged in the Complaint to have occurred around December 2000 (Complaint, Count One, para. eight (d)).

Complainant's recitation of this event presents no evidence from which to reasonably infer that Abraham was aware Complainant was in the washroom when he entered or that he was able to hear her demands to him to leave over the clanging noise of the garbage cans. On cross examination, Complainant admitted that Abraham was clanging the garbage cans loudly when he entered the washroom, that he did not respond when she ordered him to get out, that he did not attempt to open the door of the washroom stall she was in, that he made no attempt to physically contact her and that he had left the washroom before she exited the bathroom stall. (Tr. pgs. 157-159).

Because Abraham created a boisterous condition upon entering the washroom while handling the garbage cans, it cannot be said that he entered the washroom with the intent to surreptitiously observe or to otherwise accost Complainant by surprise. Moreover, there is nothing in Complainant's own recount of Abraham's conduct upon his entry into the washroom from which to create an inference that Abraham engaged in any sexual conduct toward Complainant. The only reasonable inference from Complainant's own testimony is that Abraham entered the women's washroom to attend to the garbage cans—to empty them, to change the liners or to remove them for emptying later—and that he had no knowledge of Complainant's presence when he entered.

Ernest Johnson

Complainant alleges that from 1999 through December 2000, Johnson, a service clerk, subjected her to sexual harassment by engaging in conduct that created a hostile, intimidating and offensive work environment; that she complained to management about the conduct and that management took no action to alleviate the harassment.

The Complaint alleges that: (1) around December 2000, Johnson made gestures with his mouth, which Complainant understood as a reference to oral sex; (2) on multiple occasions, in or around December 2000, Johnson put his head and hands under Complainant's skirt while she worked at the cash register; and (3) around January, 2001,

Johnson entered the women's washroom without knocking while Complainant was using the facilities. Complainant further alleges that Johnson's conduct continued despite her complaints to management.

During Complainant's direct examination, she testified that, in October or November, 2000, Johnson came behind her while she was straightening the aisle and rolled his tongue around in his mouth three times. Complainant believed this gesture to be a reference to oral sex. Complainant further testified that, during this same time period, Johnson would collect trash while Complainant was working at the register and, while doing so, he would put his face under her skirt. Complainant reported Johnson's conduct to Pusey, who spoke to Johnson about the conduct. After that, Johnson engaged in the same type of conduct two more times, including once in November 2000. Also in November 2000, Complainant said that Johnson approached her while she was at the register and stuck a hard object under her skirt, which sparked a verbal argument between her and Johnson.⁵ Johnson also attempted to collide into her and knock her down, forcing her to jump out of the way. Complainant reported this conduct to Pusey, who talked to her and Johnson and ordered Johnson to leave Complainant alone. Johnson promised that he would not "be messing with [Complainant]." However, Complainant states that when Pusey left work for the day, Johnson began mopping around an area where Complainant was standing and asked Complainant to excuse him. Complainant refused to move and she and Johnson began arguing in the store. Finally, Complainant walked around Johnson and Johnson dropped the mop on her foot. Complainant reported this incident to Abraham. In response to Complainant's complaints about Johnson, Respondent convened a loss prevention meeting with Complainant, Gorman, Panitch and Johnson in attendance on January 31, 2001.

⁵ This allegation is not a part of the Complaint and I did not consider it.

Complainant further testified that, subsequent to that meeting, on February 2001, she was in the washroom standing near the wall, just prior to going into a stall, when Johnson began knocking on the door while entering the washroom. When Johnson saw Complainant, he exited the washroom.

Under cross examination, Complainant admitted that, following the loss prevention meeting on January 31, 2001, Gorman, who replaced Pusey as store manager, transferred Johnson to the day shift, which ended at 4:30 p.m.; Complainant remained on the afternoon shift, which started at 4:00 p.m. Complainant said that, although she and Johnson were on different shifts, there was a half hour overlap in the shifts. Although Complainant testified that there were no additional incidents with Johnson following his shift transfer, Complainant complained to management about this half- hour overlap and refused to begin her work day at her normal scheduled time of 4:00 p.m. until Johnson had left the store at the end of his shift at 4:30 p.m. In response to Complainant's complaint, in February or March 2001, Gorman changed Complainant's start time so that there was a gap between the time Johnson finished his day shift and Complainant began her afternoon shift.

Although I find Complainant's testimony about Johnson's conduct toward her credible, for the following reasons I find there is no basis for employer liability under these facts. The Act requires Respondent to take reasonable steps to alleviate any co-worker sexual harassment. Here, following Complainant's complaints about Johnson, Pusey spoke to Johnson and ordered him to leave Complainant alone. Johnson promised Pusey and Complainant that he would not bother her anymore. After further complaints about Johnson's conduct, Gorman held a loss prevention meeting with Complainant and Johnson, after which Gorman changed Johnson's shift. After Complainant objected that the shift change still required her to share a one-half hour

time period at work with Johnson, Gorman altered Complainant's start time to ensure that Complainant would not come into contact with Johnson.

As noted by the Commission in **Fritz and State of Illinois, Dept. of Corrections**, __ Ill HRC Rep __ (1987SF0543, October 17, 1995) at p. 7, an employer can be found guilty of sexual harassment by a co-worker only if the employer becomes aware of the conduct and fails to take reasonable corrective measures. See also, **Bundy and Illinois Dept. of Human Rights**, __ Ill HRC Rep.__(1995SF0310, June 27, 1997). The record supports that Respondent took reasonable efforts to investigate and alleviate any harassment by Johnson directed toward Complainant and that these efforts were prompt, appropriate and effective, resulting in an elimination of any further harassment by Johnson. Thus, there is no basis for liability against Respondent. **Foster v. Township of Hillside**, 780 F.Supp 1026 (DCNJ 1992), cited by the Commission in **Fritz, supra**.

Retaliation

Tim Gorman

In Count Three,⁶ Complainant alleges that, around January 2001, Respondent retaliated against her when it issued her a final verbal warning for engaging in a workplace altercation. In the Complaint, Complainant denies that she engaged in a workplace altercation.

⁶ In Count Two, Complainant alleges that Abraham closely monitored her work performance, followed her around the store, laughed at mean spirited statements by other employees about her and was biased against her in favor of other employees when making employment-related decisions concerning her; and that Johnson attempted to bump into her in an attempt to provoke a fight. Complainant alleges that this conduct by Abraham and Johnson was a form of harassment in that it created a hostile, intimidating and offensive work environment and that Respondent subjected her to this conduct and took no action to alleviate this conduct in retaliation for Complainant having opposed unlawful discrimination. Except as to the allegation that Johnson attempted to bump into her (which I have previously addressed), Complainant put forth no evidence as to any of the allegations in Count Two, thus, those allegations are deemed waived or otherwise unproven.

To establish a *prima facie* case of retaliation, Complainant must demonstrate that (1) she engaged in a protected activity that was known by the respondent; (2) the respondent subsequently took some adverse action against the complainant; and (3) there is a causal connection between the protected activity and the disadvantageous employment action. **Pace and State Of Illinois, Dept. of Transportation**, __Ill HRC Rep. __ (1989SF0588, February 27, 1995).

Complainant's *prima facie* case fails as to the second and third elements. There is nothing in this record to support that Respondent subjected Complainant to an adverse employment action. The Commission in **Campion and Blue Cross and Blue Shield Assoc.** __Ill HRC Rep.__ (1988CF0062, June 27, 1997) at p.9 stated that not every slight, perceived or real, gives rise to a cause of action. Although Complainant testified credibly that she was verbally warned that she and Johnson must get along together or face termination, there is no evidence that this verbal warning was memorialized in any way or placed in Complainant's employment file or that any other progressive discipline arose from it. Further, Complainant admitted that her employment status was not altered in any way — she received wage raises following her sexual harassment complaints, she remained working on her current afternoon shift and her job title and duties remained the same. Thus, the fact that Complainant received what turns out to be a meaningless verbal warning was not severe or pervasive enough to constitute a term or condition of employment to give rise to a cause of action under the Act.

As to the third element, Complainant fails to show a causal connection between her sexual harassment complaints and the verbal warning she received. Although Complainant denies in the Complaint that she engaged in a workplace altercation, Complainant testified that she and Johnson argued on at least two occasions in the workplace — once when Johnson dropped a mop on her foot in December 2000, and

again approximately on January 29, 2001 during an incident when both parties were attempting to pass through a narrow hallway in the store stockroom and neither would allow the other to pass.

The record shows that Complainant was not singled out for the warning since Complainant and Johnson were both verbally warned that their failure to get along might result in their respective dismissals. Complainant's own testimony supports that Respondent had a legitimate non-retaliatory business reason to issue such a warning that was specifically conditioned on both co-workers' ability to reconcile their differences. For these reasons, Complainant fails to show a causal connection between the warning and her complaints of discrimination.

Sandra Garcia and Yasmin Figueroa

In Count Four, Complainant alleges that, on or around March 14, 2001, two service clerks/cashiers, Garcia and Figueroa, harassed her by engaging in the following conduct: Garcia shut the cash register drawer on Complainant's finger, told Complainant to "back off" in a "very bad tone," and attempted to provoke a fight by deliberately bumping into Complainant. Complainant alleges that Figueroa asked Foster to move her away from her assigned work location and attempted to provoke a fight by deliberately bumping into Complainant. Complainant alleges that she informed Respondent of Garcia's and Figueroa's conduct and Respondent took no action.

Accepting Complainant's testimony as to the conduct of Garcia and Figueroa as credible, there is nothing sexual in this conduct with which to support a sexual harassment claim. To the extent Complainant is alleging that management took an adverse action against her by allowing Garcia and Figueroa to engage in this type of conduct toward her in retaliation for Complainant having opposed discrimination, Complainant's evidence belies this allegation. On cross-examination, Complainant said that during this one-time altercation with Garcia and Figueroa, Figueroa left the customer

area and went to get Foster. Foster came to the area and told Complainant to calm down and that he would take care of the situation. Complainant submits no evidence that any other altercations between her and Garcia and Figueroa took place. The only reasonable inference is that Foster took steps to prevent any further unpleasant conduct toward Complainant by Garcia and Figueroa. Moreover, Complainant admits that she was not disciplined in any manner for this altercation with Garcia and Figueroa. Complainant fails to demonstrate that Respondent took any adverse action against her, thus her *prima facie* case fails.

Allison Chattergi

Also in Count Four, Complainant alleges that on or about March 14, 2001, Assistant Store Manager Chattergi sent Complainant home for insubordination in retaliation for Complainant having filed a discrimination Charge. Although Complainant denies she engaged in any insubordinate conduct toward Chattergi in the Complaint, Complainant's own testimony belies her denial. Complainant testified that she had arrived to work, punched the time clock and received her bank from Chattergi. After she counted her bank, she informed Chattergi that her bank was short. Chattergi counted the bank and told her that it was ten dollars over. Complainant then took the bank to Mendez, who counted the bank and told Complainant the bank was even. Complainant took the bank and put it inside the cash register. Chattergi then approached Complainant and ordered her to take the bank out of the register. Complainant told Chattergi "you take it out." Chattergi attempted to take the bank out, but failed. Complainant then told Chattergi "it says read." Chattergi then unlocked the register, and ordered Complainant to take her bank out and follow her to the office. Once she and Chattergi were in the office, Complainant described Chattergi as being so angry that her teeth were chattering as she pointed her finger at Complainant and told her "don't

you ever talk to me again like that in front of a customer like that". Chattergi then told her to punch out and go home and wrote a disciplinary report for insubordination.

Under cross examination, Complainant admitted that Mendez was not a manager — that she was a service clerk/cashier— and that, prior to ordering her to take her bank out of the cash register, Chattergi had informed Complainant that she was not to begin ringing the register until a manager had counted her bank.

Complainant's own recitation of this incident with Chattergi supports that Chattergi's disciplinary actions were motivated by Complainant's conduct in talking to Chattergi in a manner Chattergi deemed inappropriate in front of customers. Complainant submitted no evidence that Chattergi was even aware at that time that she had complained about discrimination or that she had filed a discrimination Charge. During cross examination, Complainant admitted that she had been angry at Gorman for failing to inform Foster and the other assistant managers that she had filed a discrimination Charge.

Moreover, there is nothing in this record in the form of comparables or other evidence to support that Chattergi's disciplinary action was motivated by other than non-discriminatory business-related reasons.

Because Complainant fails to demonstrate that Chattergi was aware that she had opposed discrimination or that there was a causal connection between Chattergi's disciplinary action and her opposition, Complainant's *prima facie* case fails.

Dave Foster

Another Count Four allegation alleges that Foster had Complainant escorted from the store by a police officer prior to the end of her work shift. Complainant testified that Foster called the police and had her removed from the store in retaliation for Complainant having filed a discrimination Charge. Complainant said that when she arrived to work on March 16, 2001 — the following day after Chattergi had sent her

home for insubordination — Foster advised her that she needed to leave the store. She walked from the break room in the back of the store into the store and refused to leave. Complainant argued with Foster as she walked toward the cash registers to a telephone to call District Manager Ken Amos. Foster then told her he was going to call the police. A customer — who happened to be in the store— intervened, identified herself as a Chicago police officer and advised Complainant to leave the store. Complainant returned home and contacted Amos, who advised her that she would be paid for that day and Complainant was subsequently paid for that day.

On cross examination, Complainant admitted that she had never complained to Foster about sexual harassment and that she had no indication that Foster was aware on March 16, 2001, that she had filed a discrimination action against Respondent. As discussed earlier in this decision, Complainant admitted that, in fact, she had been angry with Gorman for failing to inform Foster and the other assistant managers that she had filed a discrimination Charge. Therefore, Complainant presents no evidence of a causal connection between Foster's action in ordering her out of the store and the filing of her discrimination Charge.

Further, because Complainant was paid for that day even though she performed no work, there is little evidence from which to conclude that Complainant was subject to any adverse action. To the extent that Complainant's brief encounter with a police officer can be considered an adverse act (and I do not conclude under these facts that it can), Complainant admitted that the police intervention was happenstance and was not caused by any act of Respondent. Moreover, the record shows that the police officer only exercised her discretionary police authority and intervened after Complainant had argued in front of the store in the presence of customers by refusing to obey Foster's order to leave the store.

For these reasons, Complainant's *prima facie* case of retaliation as to Foster fails.

Standard for Granting Directed Finding

At the close of Complainant's case-in-chief, Respondent moved for a directed finding. The Commission has the authority to consider and grant motions for directed finding where appropriate. **Sharon Castle and Illinois Veterans' Home at Manteno**, __ Ill. HRC Rep. __ (1989CF1805, June 29, 1995); **Anderson v. Human Rights Commission**, 314 Ill.App.3d 35, 731 N.E.2d 371, 246 Ill. Dec. 843, (2000).

Following such a motion, a two-step analysis must be applied. **Happel v. Mecklenburger**, 101 Ill. App. 3d 107, 427 N.E.2d 974, 56 Ill Dec. 569 (1st Dist. 1981). First, a determination must be made as a matter of law whether the Complainant has made out a *prima facie* case by having presented some evidence, more than a scintilla, on every essential element of her cause of action. If the fact finder cannot make a finding that Complainant was a victim of discrimination after Complainant has put on her case-in-chief, there is no reason to force respondent to put on a defense. Thus, the motion should be granted if the *prima facie* case has not been established. **Hernandez and City of Chicago**, 30 Ill HRC Rep. 163 (1987).

However, if Complainant has presented some evidence, the evidence must be weighed, including anything favorable to the Respondent, credibility must be weighed, reasonable inferences must be drawn, and the weight and quality of the evidence must be considered. If this weighing process results in the negation of evidence necessary to Complainant's *prima facie* case, Respondent is entitled to a judgment in its favor. **Kokinis v. Kotrich**, 81 Ill 2d 151, 407 N.E. 2d 43 (1980).

Thus, the initial inquiry here concerns the demonstration or lack thereof of a *prima facie* case. A *prima facie* case based on sexual harassment must establish that Complainant was subject to 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).

The Commission has held that there is no "bright line" test to determine what type of behavior establishes liability for sexual harassment. What must be considered is not only the respondent's actions in the workplace, but also those actions in relation to the specific behavior on the individuals within the workplace, **Robinson v. Jewel Food Stores**, 29 Ill HRC Rep. 198, 204 (1986). Initially though, Complainant must first establish the threshold element of her *prima facie* case: was Respondent's behavior toward her "conduct of a sexual nature"?

I have already disposed of the allegations of sexual harassment as to Divita. As to Abraham, a one-time entry into the women's washroom to attend to garbage cans, where no verbal or physical contact was made with Complainant, and where no credible evidence is presented that Abraham was even aware Complainant was present, is hardly conduct of a sexual nature. Therefore, Complainant's *prima facie* case fails as to Abraham.

The allegations against Johnson and Gorman have been previously discussed: Respondent took prompt, corrective action once it became aware of Complainant's complaints against Johnson, thus, there is no basis for employer liability as to Johnson; Complainant's *prima facie* case of retaliation fails as to Gorman because said warning was not sufficiently severe to qualify as an adverse action and because Complainant did not prove she was singled out for the warning.

Complainant presented no evidence of sexual conduct as to Garcia and Figueroa, thus there is no basis for a sexual harassment claim; further, Complainant failed to prove that Respondent took any adverse action against her by ignoring or by not responding to the conduct of Garcia and Figueroa. Consequently, Complainant's *prima facie* cases of sexual harassment and retaliation fail.

Complainant further fails to demonstrate a *prima facie* case of retaliation against Chattergi by failing to prove that Chattergi was aware Complainant had complained of discrimination or that Complainant had filed a discrimination Charge and also because Complainant's own testimony weighs in support of the inference that Chattergi's action was motivated by legitimate business reasons.

RECOMMENDATION

For the foregoing reasons, it is recommended that the Complaint and the underlying Charge of Discrimination be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

May 20, 2005

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section