

INVESTIGATIVE DISPOSITION

Case Name: Patricia Hackett v. Planned Parenthood League of
Massachusetts
MCAD Docket No.: 18BEM00735
EEOC Docket No.: 16C-2018-01153
No. of Employees: 25+
Investigator: Eric Allbright, Compliance Officer
Recommendation: **Lack of Probable Cause**

Introduction

On March 27, 2018, Complainant filed this complaint against Respondent alleging discrimination based on race/color (Black) in violation of M.G.L. c. 151B, § 4 (1), and the Title VII of the Civil Rights Act, as amended.

Complainant's Allegations

Complainant alleges the following. Complainant identifies her race/color as Black. On October 29, 2017, Complainant began working for Respondent as a Finance Clerk in its Finance Department. Complainant was the only Black individual in the department and she believes that she was a diversity hire. Complainant was primarily supervised by Director of Finance Orit Geva (White). Complainant also reported to Accounting Associate Mary McRae (White).

Respondent only gave Complainant one day of training on the new finance systems and did not provide her with additional resources. Complainant would ask Geva and McRae questions about processes for handling accounts. Geva and McRae would tell her that she didn't need the level of detail that she was asking for, which had been common in her previous finance jobs. Other times, Complainant would not be provided incoming information for bank deposits.

Complainant completed her 90 day probationary period in February 2018. Also in February 2018, Complainant was given a performance warning stating that she had problems with performing multiple tasks. No one raised any issues with Complainant's performance during her probationary period. Complainant believes that Geva did not like Complainant's personality, intelligence, and the way she asked questions. On February 8, 2018, Respondent terminated Complainant even though she had improved on the issues raised in the performance warning. Complainant believes that McRae had similar problems but wasn't disciplined or terminated.

Respondent's Position

Respondent denies discriminating against Complainant and in its position statement asserts the following. Respondent is a non-profit organization which delivers reproductive health care, sex education, and clinical services.

Respondent's Finance Department is responsible for the management of Respondent's cash flow, including bookkeeping, accounting, payroll, and accounts receivable. Respondent's Chief Financial Officer is Jason Levy (White). Orit Geva (White) is the Director of Finance, manages the Finance Department, and reports to Levy. Respondent's Finance Department is small and comprises, Geva, an Accounting Associate, a Controller, a Payroll & Accounting Associate, and a Finance Clerk.

On October 10, 2017, Complainant applied for a 20 hours per week Finance Clerk position. Complainant was the only candidate interviewed by Geva. Geva was generally impressed with Complainant's work history and, after the interview, made the decision to hire Complainant. Geva contacted Complainant's reference who stated that overall they would give Complainant a positive reference but noted that Complainant was often less than cordial with the department head. Notwithstanding the mixed feedback, Geva offered Complainant the position which she accepted. Complainant was hired on a 90-day probationary period which began on October 30, 2017.

Geva tasked Accounting Associate Mary McRae (White) with training Complainant on creating vouchers and requisitions in Respondent's software systems. Vouchering is one of the essential functions of the Finance Clerk's position. McRae sat with Complainant to train her on the process of using the software systems. McRae also provided her with written reference material for the work flow of vouchering; these materials included an eight page step by step guide, complete with screenshots, for the process. McRae reviewed Complainant's entire work product for the first month of her employment and met with her every Thursday to check her progress on learning the responsibilities of her role. After that, McRae spot checked her work and continued to meet with her to offer support. Given Complainant's background, Geva expected Complainant to be facile in vouchering in a couple of weeks, so that she could expand Complainant's work to the other areas of the Finance Clerk position. Complainant was slow with learning the procedures, and without McRae reviewing Complainant's entire work product, Complainant was making a large number of errors mainly because she lacked attention to detail. On December 20, 2017, Geva met with Complainant to verbally counsel her on the number of errors. At this meeting Geva was surprised to hear that Complainant was not double checking her work before submitting. Geva requested McRae create additional workflow documents on how to voucher, for Complainant to review as she worked. Geva also requested McRae make herself available for meetings with Complainant and asked Respondent's Controller, Christa Chandler (White) be available as an additional resource.

Complainant's work product continued to be riddled with errors, some stemming from her misunderstanding of the work flow. More concerning were errors stemming from her continued lack of attention to detail, including coding invoices to the wrong department, using codes staff had specifically instructed her not to use, failing to check that an invoice match the requisition she created, incorrectly entering dollar figures, and entering erroneous vendor IDs. In many cases, Complainant would repeat the same mistake even after correction. On January 18, 2018, Geva again met with Complainant to verbally counsel her on her mistakes. On February 5, 2018, at the end of Complainant's probationary period Geva met with Complainant to discuss her employment. Geva decided to approve Complainant's employment and place her on a Performance Improvement Plan ("PIP"). The PIP contained five specific examples of her failures to voucher accurately, citing the training materials that were provided to her. Although the PIP set a February 8, 2018 follow-up date, Geva wanted to give Complainant additional time to improve. On February 16, 2018, Chief Operating Officer Jordina Shanks (Black) received a requisition for approval from Complainant. On February 20, 2018, Shanks asked Complainant to double check the requisition because the coding was inconsistent and forwarded the requisition to Levy and Geva. Upon review, this was an inconsistency that Levy and Geva had both addressed with Complainant on that same requisition.

On February 21, 2018, Geva met with Complainant to inform her that Respondent was terminating her employment based on her inability to improve. After her termination, Complainant texted a number of staff members rude and derogatory messages. Complainant also emailed Shanks stating "diversity should be revisited." Shanks replied and directed Complainant to Respondent's Human Resources, but Complainant never contacted them.

Summary of Investigation and Analysis

Termination – Race/Color

To establish a prima facie case of discriminatory termination based on race/color, Complainant must show that (1) she is a member of the protected class, (2) she was adequately performing the duties of her job, (3) her employment was terminated, and (4) she was replaced by someone not of her protected class or her employment was terminated under circumstances that give rise to a reasonable inference of discrimination based on race/color. If Complainant establishes the prima facie case, Respondent may show that legitimate, nondiscriminatory reasons exist for the termination. If Respondent succeeds in offering such reasons, Complainant must then show that Respondent's reasons are pretextual.

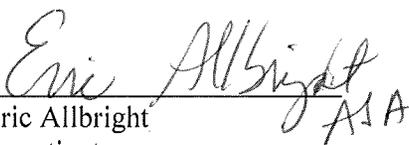
It is undisputed that Complainant is a member of the protected class, based on her race/color. On February 21, 2016, Complainant was terminated for poor performance. Respondent did not replace her and does not intend to fill her position.

Respondent asserts a legitimate, nondiscriminatory reason for Complainant's termination: poor performance. Respondent provides evidence, in the form of emails throughout her employment, showing that Complainant needed frequent correction regarding her vouchering and requisitions. Many of these emails reference specific examples and include errors that Complainant had been previously counseled on. Respondent provides specific examples where McRae or Geva answered Complainant's questions in detail. Respondent provides a copy of Complainant's PIP which stated that Complainant was expected to improve on independent and accurate vouchering and listed specific examples. Contrary to Complainant's allegations that she only received one day of training, Respondent provided multiple training documents given to Complainant including charts personally made by McRae for Complainant and meeting requests sent from McRae to Complainant. Respondent provided demographic information indicating that they have terminated others outside her protected class for same or similar reasons.

Complainant was given the opportunity to attend an investigatory conference to clarify her allegations; Complainant did not attend. Witnesses identified by Complainant were unable to corroborate her allegations of race discrimination. Regarding Complainant's specific allegation that she was a diversity hire, Complainant was unable to provide evidence to support that allegation. Respondent provided Complainant's personnel file including her hiring documents. Investigation reveals insufficient evidence that Complainant's hiring was based on her protected class. Investigation reveals insufficient evidence to infer that Respondent's asserted legitimate nondiscriminatory reason is mere pretext for discrimination. For the following reasons, a finding of Lack of Probable Cause is recommended.

Conclusion

A finding of Lack of Probable Cause is recommended for Complainant's claim of discrimination based on race/color against Planned Parenthood League of Massachusetts.


Eric Allbright
Investigator


Karen Erickson
Supervisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.


Sheila A. Hubbard
Investigating Commissioner

August 31, 2018
Date