

**CITY OF LINCOLN, NEBRASKA
COMMISSION ON HUMAN RIGHTS
MINUTES**

**Thursday, October 29, 2009
City Council Chambers**

CALL TO ORDER:

The October 29, 2009 meeting of the Commission on Human Rights was called to order at 4:05 P.M. by Chairperson Wendy Francis.

ROLL CALL:

The roll was called and documented as follows:

MEMBERS PRESENT:

Gene Crump, David Fikar, Dr. Sitaram Jaswal, Dick Noble, Jose Quintero, and Wendy Francis.

MEMBERS ABSENT:

Karla Cooper, Lori Lopez-Urdiales, and Hazell Rodriguez.

STAFF PRESENT:

Director Larry Williams, Senior Civil Rights Investigator Angela Wortman, Civil Rights Investigator Margie Nichols, Office Assistant Keri Anderson, and AmeriCorps Outreach Program Coordinator Lisa Bickert.

APPROVAL OF SEPTEMBER 17, 2009 MINUTES:

A motion was made by Commissioner Noble and seconded by Commissioner Fikar to approve the minutes of the September 17 meeting. Chairperson Francis then asked for the roll call.

Voting "aye": Commissioners Crump, Fikar, Jaswal, Noble, Quintero, and Francis.

Nays:

Abstain:

Motion carried 6-0.

APPROVAL OF OCTOBER 29, 2009 AGENDA:

Chairperson Francis states that there is an amendment to the agenda under Administrative Closures, with the addition of LCHR: 08-1231-076-E-R.

A motion was made by Commissioner Crump and seconded by Commissioner Jaswal to approve the October 29, 2009 meeting agenda as amended.

Ayes: Commissioners Crump, Fikar, Jaswal, Noble, Quintero and Francis.

Nays:

Abstaining:

Motion carried 6-0.

CASE DISPOSITIONS:

LCHR No.: 09-0219-007-E-R

Motion: A finding of **Reasonable Cause**

By: Commissioner Crump.

Second: Commissioner Fikar.

Chairperson Francis opened the discussion by stating that there seemed to be a lot of inconsistency with the Respondent's testimony. She asked that Wortman explain what workmen's compensation is, and how it works, or what the guidelines are. Investigator Wortman explained that when an employee sustains an injury while on the job the employee would complete an incident report. Then the employee would go to the doctor, and if the insurance company found that the injury was work related, then it's the insurance company's responsibility to pay for medical bills and any time off from work.

Chairperson Francis asked for clarification on the dates of the Complainant's injury and surgeries. Investigator Wortman stated that the Complainant had a couple of surgeries, with the first being in December 2004. He returned to work in early 2005 with restrictions, and was released with no restrictions in June 2005. The pain allegedly re-started in early December 2006, and another surgery occurred in February 2008.

Commissioner Fikar commented that the Respondent said that the position was eliminated. Investigator Wortman added that the response by the Respondent was that there was lack of work; and position elimination. Also undisputedly, another employee took over the Complainant's duties. Commissioner Noble stated that the Complainant alleged that the Respondent told him that the Lincoln operation was closed. Investigator Wortman commented that the Complainant was notified that he was terminated on February 9th, he then called the Respondent back on February 10th to find out why he was terminated. During this phone call, which was recorded by the Complainant, the Respondent stated that work was slowing down and they were finishing up the work in Lincoln. Commissioner Jaswal asked about the unemployment document. Investigator Wortman responded that the unemployment document stated that "you were disqualified from your position due to misconduct, we found you were disqualified due to

lack of work” and the Complainant was not disqualified from the benefits. Investigator Wortman continued that she asked the Respondent to provide documentation that the Respondent submitted to unemployment, and said that this document appeared to be altered.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: Commissioners Crump, Fikar, Jaswal, Noble, Quintero and Francis

Nays:

Abstain:

Motion: Finding of **Reasonable Cause** carried 6-0.

LCHR No.: 09-0406-013-E-R

Motion: A finding of **No Reasonable Cause**

By: Commissioner Noble

Second: Commissioner Fikar

Commissioner Jaswal opened the discussion by asking what documentation needed to be completed. Investigator Wortman responded that criminal history and drug screening paperwork needed to be completed. Investigator Wortman did not know how often the Complainant was reminded that paperwork needed to be completed, but Wortman acknowledged that the supervisor was sent emails from Human Resources that the Complainant and another employee needed to fill out paperwork, and that the supervisor mentioned it to the Complainant, but didn't know if there was any miscommunication.

Chairperson Francis asked about the sexual harassment that the Complaint received, also if the sexual harasser was terminated. Investigator Wortman responded yes.

Chairperson Francis asked if they took the proper procedures to terminate the employee for the sexual harassment. Investigator Wortman responded yes, that they followed procedures, but stated that the Complainant felt that the employee who harassed the Complainant had a relationship with the Director of Human Resources.

Commissioner Quintero asked if there had been anymore complaints of sexual harassment by the Complainant. Investigator Wortman responded no, that there were no more complaints.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: Commissioners Crump, Fikar, Jaswal, Noble, Quintero and Francis.

Nays:

Abstain:

Motion: Finding of **No Reasonable Cause** carried 6-0.

LCHR No.: 09-0415-015-E-R

Motion: A finding of **No Reasonable Cause**

By: Commissioner Francis

Second: Commissioner Fikar

Commissioner Fikar opened the discussion by asking if the Complainant had an active worker's compensation claim. Investigator Wortman responded by stating yes, and that there were other employees terminated after filing worker's compensation claims. Investigator Wortman stated that she is seeing more disability cases being filed based on retaliation for filing a claim for injuries. Chairperson Francis commented that Respondent did accommodate the Complainant for lighter work load and scheduling.

Chairperson Francis asked if the evidence showed if the Complainant would stop working a half-hour to his prior schedule end time. Investigator Wortman responded at times the Complainant would leave due to his back pain; and had four to five hour work restrictions. Investigator Wortman stated the Respondent felt differently about the work restrictions, and thought it was because the Complainant just wanted to go home and have lunch and help with the grandchildren. Investigator Wortman continued that the Respondent had some documentation that the Complainant would not do the things that were asked. Investigator Wortman said that the Complainant admitted to some of the allegations.

Commissioner Jaswal asked if another employee was not terminated after being a 'no-show no-call.' Investigator Wortman responded by stating that this employee also had a back injury and a worker's compensation claim. Commissioner Jaswal asked if this particular employee could show discrimination. Investigator Wortman responded by stating that she thought that this could be used as a comparable as you have an employee with two 'no calls- no shows' and is not terminated; however he is in the same protected class as the Complainant. Investigator Wortman stated that another comparable was a male employee in his probationary period that did the same exact thing as the Complainant and was not terminated for it. Wortman added that the Respondent tried to explain the Complainant couldn't be similarly situated as a new employee on probation since the Complaint had already worked there for a number of years, and definitely knew the policies.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: Commissioners Crump, Fikar, Jaswal, Noble, Quintero and Francis.

Nays:

Abstain:

Motion: Finding of **No Reasonable Cause** carried 6-0.

LCHR No.: 09-0521-001-PA

Motion: A finding of **No Reasonable Cause**

By: Commission Crump

Second: Commissioner Noble

Commissioner Jaswal opened the discussion by asking Investigator Wortman if a third party donor inside the Respondent's establishment told an employee something about the Complainant. Investigator Wortman responded that a third party told the Respondent the Complainant was a homosexual. Commissioner Fikar asked if the third party donor said if they, 'believed he was a homosexual,' or 'he is homosexual.' Investigator Wortman responded that she wasn't sure what was said. Commissioner Jaswal asked Investigator Wortman if the third party donor who reported this to the establishment if he was a homosexual. Wortman was not aware of this person's sexual orientation.

Commissioner Fikar asked if the Respondent ever established if the Complainant was a homosexual; and if the Complainant denies being a homosexual. Investigator Wortman responded that the Complainant denied he was a homosexual. Commissioner Noble stated there were Federal Guidelines that every donor must review. Investigator Wortman concurred that the guidelines talk about third party information; however, the examples that the policy give are more verifiable than this discussion.

Chairperson Francis asked Investigator Wortman if the Respondent tests the plasma (i.e. disease testing). Investigator Wortman responded yes they conduct tests. Chairperson Francis asked if the Respondents did any testing on the Complainant's donations. Investigator Wortman responded that they did not do any testing of the plasma that day since he was not allowed to donate. Commissioner Fikar stated that Complainant had donated blood years ago and was aware that donation establishments would ask if he had ANY homosexual relationships within the past years. He asked if the Complainant was aware of the question. Investigator Wortman responded yes, that the Complainant was aware of the questions and said 'no' to the questions. Fikar stated that with the information that was given, there was nothing that indicated that this was based on race. Investigator Wortman agreed. Commissioner Noble stated that the Respondent had no option once the information was known. Investigator Wortman agreed, and stated that the Respondent could have ignored it and taken a risk with the plasma donation.

Commissioner Jaswal asked if the Respondent had been accepting donations from the Complainant the last several years. Investigator Wortman said yes, the past five years. Commissioner Crump asked if the donations received from the Complaint were tested. Investigator Wortman responded yes, they do test the donations. She continued that

she asked the Respondent why they thought the third party donor was credible; the Respondent indicated they already had their suspicions from prior donation visits. Chairperson Francis stated that based on his race the Complainant was not discriminated against; he is not part of a protected class because he was accused of being a homosexual.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: Commissioners Crump, Fikar, Noble, Quintero and Francis.

Nays:

Abstain: Jaswal

Motion: Finding of **No Reasonable Cause** carried 5-0-1.

LCHR No.: 09-0605-023-E-R

Motion: A finding of **No Reasonable Cause**

By: Commissioner Jaswal

Second: Commissioner Fikar

Hearing no discussion, Chairperson Francis then asked for the roll call.

Ayes: Commissioners Crump, Fikar, Jaswal, Noble, Quintero and Francis

Nays:

Abstain:

Motion: Finding of **No Reasonable Cause** carried 6-0.

LCHR No.: 09-0608-024-E-R

Motion: A finding of **No Reasonable Cause**

By: Commissioner Fikar

Second: Commissioner Crump

Commissioner Jaswal opened the discussion by asking Investigator Nichols what 'coaching' was. Investigator Nichols responded that 'coaching' was 'talking to a person/employee,' but is not considered a formal, written disciplinary action. Commissioner Jaswal stated that the Complainant was wrongly penalized with a three day suspension because he under-performed according to the supervisor. Investigator Nichols responded that was correct. Commissioner Jaswal asked what the complaint was about. Investigator Nichols stated that when the Complainant initially came in, he believed that the reasons the actions taken against him were based on his race, and it was his impression that during the training all the other employees had passed, but he had not.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: Commissioners Crump, Fikar, Noble, Quintero and Francis

Nays:

Abstain: Jaswal

Motion: Finding of **No Reasonable Cause** carried 5-0-1.

LCHR No.: 09-0806-008-H

Motion: A finding of **No Reasonable Cause**

By: Commissioner Jaswal

Second: Commissioner Fikar

Chairperson Francis opened the discussion by asking if it was a non-smoking apartment complex. Investigator Nichols stated it was not. She added that she reviewed the previous lease used by the former owner, and there was nothing in it stating that smoking was not allowed. In addition, the Complainant acknowledged that not smoking was not part of the lease, but that the former owner had strongly emphasized they prefer tenants not smoke in their apartments.

Chairperson Francis asked how the Respondents typically handled noise complaints. Investigator Nichols responded that the property manager stated that tenants were to contact her or leave a message if she wasn't immediately available. She also said that she would rather tenants contact her and not the police, unless it was an emergency. Chairperson Francis asked if the Respondent followed up on complaints and Investigator Nichols responded that it appeared she did.

Commissioner Fikar asked if the Complainant gave a written 30-day notice. Investigator Nichols responded no, that the Complainant did not, and the Complainant alleged that she never said to the property manager that she was going to move, or that she was giving notice. Investigator Nichols stated that in an email provided by the Respondent, the property manager wrote to the management company that the Complainant told her she was going to give her a 30-day notice.

Chairperson Francis asked how tenants typically give notice to this particular management company. Investigator Nichols stated that according to the lease they are to give a 30-day written notice to the property manager. Investigator Nichols also stated that the Respondent had just taken over the property and had only managed it for four months. Chairperson Francis asked, in this four month time frame, had any other tenant given written notice to the property manager. Investigator Nichols responded no. Chairperson Francis also asked if this was their first written notice since they took over the property. Investigator Nichols verified that yes, it was. Chairperson Francis asked if there appeared to be any misunderstanding between the Complainant and the

Respondent when the Complainant stated: "That's it, I'm out of here." Investigator Nichols answered no, that the Respondent had called the Complainant later that day, and the Complainant stated that she was giving her a 30-day notice.

Chairperson Francis asked if the Complainant denies ever verbalizing that to the Respondent. Investigator Nichols said that was correct, and also the Complainant alleged that she never received the notice from the Respondent, and the Complainant believes that the reason that they were doing this to her was because of her race. Chairperson Francis asked where the Respondent left or gave the notice to the Complainant. Investigator Nichols stated that the Respondent gave notice on the 30th and taped it onto the Complainants door in the morning. The Respondent went back later that day and the notice had been removed.

Hearing no further discussion, Chairperson Francis then asked for the roll call.

Ayes: Crump, Fikar, Jaswal, Noble, Quintero and Francis

Nays:

Abstain:

Motion: Finding of **No Reasonable Cause** carried 6-0.

Unsuccessful Conciliation/Order to Public Hearing

By: Commissioner Jaswal

Second: Commissioner Fikar

1. LCHR: 08-0408-023-E-R
2. LCHR: 08-0409-025-E-R

Hearing no discussion, Chairperson Francis then asked for the roll call.

Ayes: Crump, Fikar, Jaswal, Noble, Quintero and Francis

Motion to send both cases to Public Hearing. 6-0.

PRE-DETERMINATION SETTLEMENT AGREEMENTS

1. LCHR No.: 09-0706-006-H

Motion: To accept the Pre-Determination Settlement Agreement

By: Commissioner Nobel

Second: Commissioner Fikar

Hearing no discussion, Chairperson Francis then asked for the roll call.

Ayes: Crump, Fikar, Jaswal, Noble, Quintero and Francis.

Nays:

Abstain:
Motion carried 6-0.

ADMINISTRATIVE CLOSURES:

Notice of Right to Sue:

2. LCHR.: 08-1229-075-E-R
3. LCHR.: 08-1231-076-E-R

Motion: To accept the Notice of Right to Sue.
By: Commissioner Fikar
Second: Commissioner Jaswal

Hearing no discussion, Chairperson Francis then asked for the roll call.
Ayes: Crump, Fikar, Jaswal, Noble, Quintero and Francis.
Nays:
Abstain:
Motion carried 6-0.

NEW BUSINESS:

Nomination of new 2010 officers for Chair and Vice Chair.
Nominated were Wendy Francis for Chair, and Karla Cooper for Vice Chair.

PUBLIC COMMENTS:

None

ADJOURNMENT:

The meeting was adjourned at 4:55 p.m.

NEXT MEETING:

The next meeting will be held Thursday December 10th in the City Council Chambers at 4:00 P.M.