

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

Thursday, September 30, 2021
555 S 10th Street, 1st Floor
City County Building, Council Chambers

CALL TO ORDER:

The September 30, 2021, meeting of the Lincoln Commission on Human Rights (LCHR) was called to order at 3:02 p.m. by Carlos Garcia, Chair.

ROLL CALL:

The roll was called.

MEMBERS PRESENT:

Commissioners: Carlos Garcia (Chair), Rose Godinez*, Emira Ibrahimasic, Jolene McCulley, Kevin Abourezk** and Alyssa Martin***.

MEMBERS ABSENT:

Commissioners: Terry Werner.

STAFF PRESENT:

Abigail Littrell, Marna Munn, Mindy Rush Chipman, Rob Rowan, Chassidy Jackson-Goodwin, Haefaa Hasan, Shanna Eckman and Thuyhong Le.

APPROVAL OF July 29, 2021, MINUTES:

A motion was made by Abourezk and seconded by Garcia to approve the minutes of the previous meeting. Hearing no discussion, Garcia asked for the roll call. Voting "aye" were Garcia, McCulley and Abourezk. Abstaining were Blok and Ibrahimasic. Not present for the vote were Godinez and Martin. Motion carried.

APPROVAL OF September 30, 2021, AGENDA:

A motion was made by Ibrahimasic and seconded by McCulley to approve the meeting agenda. Hearing no discussion, Garcia asked for the roll call. Voting "aye" were Garcia, Blok, Godinez, Ibrahimasic, McCulley and Abourezk. Martin was not present for the vote. Motion carried.

*Commissioner Godinez arrived at 3:05 p.m.

**Commissioner Abourezk left at 4:10 p.m.

***Commissioner Martin arrived at 3:11 p.m.

CASE DISPOSITIONS:

LCHR #20-0324-004-E-R

A motion was made by Garcia and seconded by Ibrahimasic to recommend a finding of **reasonable cause** on all allegations.

Ibrahimasic asked for the results of the police report; Investigator Rowan stated that the Respondent was convicted in the criminal case. Littrell clarified that even though the Respondent went through the criminal process, the civil discrimination case was a separate process.

Hearing no further discussion, Garcia asked for the roll call. Voting "aye" were Garcia, Blok, Godinez, Ibrahimasic, McCulley and Abourezk. Martin was not present for the vote. Motion carried.

LCHR #20-0909-016-E-R

A motion was made by Garcia and seconded by Ibrahimasic to recommend a finding of **reasonable cause** on all allegations.

Abourezk expressed his concerns that the Respondent claimed the Complainant was 'mistaken' about what they saw, and that any employer would not be careful about their appearance in such away to make someone else confuse a belt for genitalia. In Abourezk's opinion, the Respondent's claim either means that they are unsensitive about how a male's appearance can make other employees uncomfortable or scared, or their claim is an unlikely explanation of what actually occurred.

Ibrahimasic asked if the offer of settlement was to retain the Complainant's employment or conditioned on Complainant resigning. Garcia questioned if the initial action and the Respondent's follow up actions of offering a settlement could be viewed at parts of a constructive discharge, because the Respondent could have reasonably foreseen the Complainant quitting as a result of its actions. Littrell noted that the case was a little unusual because the Respondent's offer of settlement happened before the case was opened with LCHR, which was why the information was included in the analysis, where as typically it would not have been and suggested that the determination be made as a result of the whole view of the case instead of focusing singularly on the Respondent's attempt to settle the matter.

Abourezk questioned the analysis of whether a single incident was enough to create a hostile work environment and if it was a requirement for constructive discharge based on sex; Littrell noted that a hostile work environment is often tied to constructive discharge

and that it was up to the Commission to decide if the incident was severe enough to make a reasonable person find their work environment intolerable. Blok pointed out that while it all occurred in the same evening, there were three separate occasions where the indecent exposure happened, and that on previous occasions the Respondent had also had his pants unzipped multiple times.

Ibrahimasic questioned if there had been any other allegations brought up by other employees; Investigator Rowan stated that to his knowledge, there were not.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley, Abourezk and Martin. Motion carried.

LCHR #20-0929-021-E-R

A motion was made by Ibrahimasic and seconded by Blok to recommend a finding of **no reasonable cause** on all allegations.

Ibrahimasic questioned how the Complainant was notified of the new position; Investigator Jackson-Goodwin clarified that the Complainant had been working in the new position for a while before the incident in which she alleged discrimination.

McCulley pointed out that there were some inconsistencies in the Complainant’s claim of discrimination because the person whom Complainant stated made fun of her accent was not there during the meeting with her supervisors. This was confirmed by both Respondent and the witness.

Godinez had questions about the alleged harassment based upon Complainant’s language; Investigator Jackson Goodwin reiterated that the witness corroborated the Respondent’s response that no harassment occurred. Abourezk questioned if there were similar allegations brought against the Respondent by other employees but there were not similar situations discovered in the investigation.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley, Abourezk and Martin. Motion carried.

LCHR #20-1020-022-E-R

A motion was made by McCulley and seconded by Abourezk to recommend a finding of **no reasonable cause** that the Complainant was denied a reasonable accommodation based on disability.

McCulley noted that the Respondent tried multiple times to offer various accommodations for the Complainant. Both Garcia and Ibrahimasic concurred. Martin requested clarification on the different grades of working and the fitness test requirements. Investigator Rowan provided the information, clarifying that the position Complainant was in was a temporary position to accommodate her disability, hence why the fitness test was necessary.

Godinez wondered if the doctor's note covered the period of the fitness test; Investigator Jackson-Goodwin clarified that there were several different doctor's notes during the time period, that the Complainant would provide a doctor's note each time the exam date had arrived, resulting in it being postponed into the future. After the final fitness test request, the Complainant never returned to work.

Hearing no further discussion, Garcia asked for the roll call. Voting "yes" were Garcia, Blok, Ibrahimasic, McCulley, Abourezk and Martin. Voting no was Godinez. Motion carried.

A motion was made by McCulley and seconded by Ibrahimasic to recommend a finding of **reasonable cause** for discharge based on disability.

McCulley commented that it seemed like Respondent put the Complainant in a position to make her quit with the continuing fitness test requests, based on the fact that she had a disability and was unable to do the job functions. Martin disagreed, noting that they repeatedly provided Complainant with reasonable accommodations. Ibrahimasic pointed out that the reasonable accommodations would end once Complainant passed the fitness test. Garcia agreed that it seemed as if Respondent was terminating Complainant based on disability.

Littrell noted that an employer is not required to keep an employee if they cannot perform the essential functions of the job with or without reasonable accommodations, even if they have a disability.

Godinez questioned why the Complainant could not remain on the "light duty work" and retain their reasonable accommodation, but Ibrahimasic pointed out that the Complainant never returned for the final fitness test to retain the reasonable accommodation. Abourezk noted that it seemed like the Respondent kept delaying the fitness test in order to give the Complainant the opportunity to get well enough to pass it.

Hearing no further discussion, Garcia asked for the roll call. Voting “no” were Garcia, Blok, Godinez, Ibrahimasic, McCulley, Abourezk and Martin. Motion failed.

A motion was made by Ibrahimasic and seconded by Abourezk to recommend a finding of **no reasonable cause** for discharge based on disability.

Hearing no discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley, Abourezk and Martin. Motion carried.

LCHR #20-1105-023-E-R

A motion was made by Garcia and seconded by Ibrahimasic to recommend a finding of **no reasonable cause** on all allegations.

Ibrahimasic stated that it seemed clear as the physician’s note did not indicate the Complainant needed a reasonable accommodation. Abourezk referred to the second doctor’s note that seemed to suggest if it fell within company policy, Complainant should have the opportunity to work from home when appropriate.

Ibrahimasic noted that the Respondent said the Complainant’s job position did not necessarily allow for continued remote work, and that the Respondent’s reason for terminating Complainant was due to attendance issues. Blok pointed out that the attendance issues mostly happened when the Complainant was working remotely.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley, Abourezk and Martin. Motion carried.

Abourezk left after this vote.

LCHR #21-0325-003-E-R

A motion was made by Godinez and seconded by Ibrahimasic to recommend a finding of **reasonable cause** on discriminatory language restriction policy.

Godinez stated that the requirement of not using Spanish was not necessarily promoting efficiency or for safety reasons. Ibrahimasic noted that it seemed discriminatory because Respondent stated there were times when they wanted Spanish spoken to children so Respondent was okay with it as long as they had deemed it educational-- but if it were for practical use, they were against it. Martin agreed that it should be reasonable cause because there was not enough information provided from Respondent that would make speaking English only a business necessity.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley and Martin. Motion carried.

A motion was made by Ibrahimasic and seconded by McCulley to recommend a finding of **reasonable cause** on denial of a reasonable accommodation based on disability.

Ibrahimasic commented that sitting on the floor was not listed as an essential job description and it seemed like there would be no reason for the Respondent to not provide an accommodation. Martin questioned if the Complainant’s injury would qualify as a disability.

McCulley noted that what seemed odd was that Respondent did accommodate the Complainant initially, but then took the accommodation away, claiming that it inhibited their job. Investigator Rowan clarified that the Complainant was off of work for the time duration that the doctor said Complainant was supposed to remain off her feet, and that the problems with the accommodation came afterwards.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” was Godinez. Voting “no” were Garcia, Blok, Ibrahimasic, McCulley and Martin. Motion failed.

A motion was made by Ibrahimasic and seconded by Blok to recommend a finding of **no reasonable cause** on the remaining three allegations.

Godinez argued that discrimination for language could be connected to their National Origin. Martin countered that Complainant was not disciplined for the use of Spanish but was written up for other reasons.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Ibrahimasic, McCulley and Martin. Voting “no” was Godinez. Motion carried.

LCHR #21-0330-005-E-R

A motion was made by Godinez and seconded by Ibrahimasic to recommend a finding of **no reasonable cause** on all allegations.

Martin requested clarification of the analysis and why it was necessary for Complainant to reapply. Investigator Jackson-Goodwin clarified that there were to be two separate surgeries, each with a recovery time of six weeks, so the Complainant would be unavailable to work for an extended period.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley and Martin. Motion carried.

LCHR #21-0330-005-E-R

A motion was made by Ibrahimasic and seconded by Martin to recommend a finding of **no reasonable cause** on all allegations.

McCulley commented that her decision was based on comparing the Complainant to other employees. Ibrahimasic and Martin agreed that the comparator evidence was strong for the Respondent.

Ibrahimasic noted that the Complainant had not been entered into the Respondent’s system as she had not worked their long enough. Garcia pointed out that there was never any evidence provided that proved the Respondent had made any comments about the Complainant’s age.

Hearing no further discussion, Garcia asked for the roll call. Voting “aye” were Garcia, Blok, Godinez, Ibrahimasic, McCulley and Martin. Motion carried.

OLD BUSINESS:

Outreach

- LCHR participated in the Latino Festival, the Harvest Moon Festival, and Streets Alive. The LCHR team saw over a hundred individuals stop by the booth for each event.
- LCHR was awarded the HUD FHIP grant again.
- MyCity Academy’s second cohort, it lasts for eight weeks and there are ten participants.
- LCHR is back within all Lincoln Public School high schools, presenting at the Take Charge classes on anti-discrimination issues.
- While the in person Civil Rights Conference was postponed until April 20, 2022, a Social Justice virtual event will be held in place of CRC2021 on October 21, 2021and will feature both Lincoln and Omaha students and have presentations regarding hot topics in employment discrimination, including English-only rules, accent discrimination, and and LGBTQ+ discrimination.
- October 24, 2021, LCHR will participate in the Day of the Dead and Malone Fall Festival events.

NEW BUSINESS:

Director Report

Marna Munn has joined as an Assistant City Attorney and will transition into being the advising attorney for the Commission.

Commissioner Precious Loving-Afuh has resigned from the Commission, as she moved outside of city limits and will be replaced by Davetta Nelson, who will be sworn in during the October meeting.

PUBLIC COMMENT:

There was no public comment.

The meeting was adjourned at 4:47 p.m.

Next Meeting:

Thursday, October 28, 2021, at 4:00 p.m.
555 S. 10th Street, 1st Floor, Council Chambers