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OCT 10 2014

LAW OFFICES OF
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NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

JANET KRONENBERG,

Complainant,

v.

WINTHROP UNIVERSITY HOSPITAL,

Respondent.

DETERMINATION AFTER
INVESTIGATION

Case No.
10168286

On 4/15/2014, Janet Kronenberg filed a verified complaint with the New York State Division of Human Rights ("Division"), charging the above-named Respondent with an unlawful discriminatory practice relating to employment because of opposed discrimination/retaliation in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law").


After investigation, the Division has determined that it has jurisdiction in this matter and that PROBABLE CAUSE exists to believe that the Respondent has engaged in or is engaging in the unlawful discriminatory practice complained of.

Pursuant to the Human Rights Law, this matter is recommended for public hearing. The parties will be advised of further proceedings.

Dated: October 9, 2014
Hempstead, New York

STATE DIVISION OF HUMAN RIGHTS

By:


Ronald B. Brinn
Regional Director

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

TO: Files

REGION: Long Island

FROM: Ronald B. Brinn
Regional Director

DATE: October 7, 2014

SDHR CASE NO: 10168286-14-E-O-

SUBJECT: Janet Kronenberg v. Winthrop University Hospital

FINAL INVESTIGATION REPORT AND BASIS OF DETERMINATION

I. CASE SUMMARY

This is a verified complaint, filed by Complainant, Janet Kronenberg, on Tue 4/15/2014. The Complainant charges the Respondent with unlawful discriminatory practices in relation to employment because of opposed discrimination/retaliation.

II. SUMMARY OF INVESTIGATION

Complainant's Position:

The Complainant previously filed a complaint with the Division on June 6, 2012. The Complainant reports that since then, she has been retaliated against in the form of negative performance evaluations leading to her termination of employment on March 11, 2014. She states that she has been employed by the Respondent as a Registered Vascular Technologist for approximately eighteen years, and that she had not experienced any discriminatory treatment until Ms. Patrice Villa became her Supervisor in February 2011. The Complainant asserts that she felt discriminated against by Ms. Villa because of her race/color and age, and that she filed a complaint with the Division based on those protected classes. There was no probable cause for discrimination found in the case; however, the Complainant reports that Ms. Villa created a hostile work environment for her, and that Ms. Villa continuously wrote her up for minor infractions in what she believed to be an effort to terminate her employment in retaliation to the original complaint being filed. The Complainant lists certain events that have led her to this conclusion. The Complainant reports: 1) The Respondent required the Complainant to retake a credentialing exam through an alternate credentialing institution, and the Complainant had no knowledge that the credentialing institution she utilized was inadequate and no other employees had to retake their exam (see C. Ex. A). When she refused to re-take the exam, she was suspended from March 1, 2013 until March 31, 2013. 2) The Complainant continued to be written up for what she stated to be "minor infractions" including computer input errors, and in February 2014, she received another "negative and disparaging" evaluation, which she refused to sign. She reports that Ms. Villa advised that she was being suspended without pay because of her

refusal to sign the evaluation and that Ms. Villa then took her badge, which the Complainant reports is a breach of the Respondent's obligations. The Complainant reports that this did not happen when she refused to sign a similar evaluation the year prior to filing a complaint with the Division previously.

Respondent's Position:

The Respondent denies each of the Complainant's allegations, including opposed discrimination/retaliation. The Respondent reports that it did not discriminate or retaliate against the Complainant at any time in her employment. The Respondent states that the Complainant began her employment with the Respondent on June 3, 1996 as a Vascular Technologist and was employed by the Vascular Lab until January 2011, when the lab was acquired by the Radiology Department. The Respondent states that the Complainant began to experience problems in the performance of her job requirements because she allegedly refused to comply with the policies and practices of the Radiology Department and was insubordinate to her Supervisor, Ms. Villa. The Respondent details several instances of the Complainant's failure to perform up to the Department's policies and standards from February 2011 until January 2014 through Employee Evaluations, Employee Warnings, and Performance Improvement Reevaluations (**See R. Ex. C, D, E, H, K, L, M, O, and Q**). The Respondent reports that some instances include the Complainant's failure to follow proper procedure when handling incorrect test results, recording patient exams with errors in calculations and names, and refusal to sign a second Performance Improvement Plan outlined by Ms. Villa and Ms. Driscoll, acknowledging that she needed to make a change in her work performance. The Respondent reports that Dr. Cunningham, a vascular surgeon, specifically asked that the Complainant would not be assigned to the outpatient Vascular Laboratory because she was unable to handle tasks that were assigned to her. The Respondent asserts that the Complainant was given consistent and repeated counseling to assist her in her job performance, but her performance had not improved. The Respondent states that the Complainant has been treated fairly at all times during her employment, and that any discipline imposed upon her was as a result of the Complainant's inability to perform the responsibilities of her position to the standards that were required.

Investigator's Observations:

The Division has reviewed all of the documents provided by the parties in regards to the complaint.

After review, the Division has determined that the Respondent's documents support its allegations. The Reports on Performance and Competency in Exhibit D (March 1, 2012), Exhibit H (February 27, 2013), and Exhibit O (February 11, 2014) reveal that the Complainant had consistent difficulties with following the Respondent's protocol, as documented in the comments sections. Employee Warnings documented in Exhibits C (October 17, 2011), K (September 6, 2013), L (September 17, 2013), and M (October 10, 2013) show that the Respondent has informed the Complainant that her failure to follow protocol has the potential to directly affect patient safety and cause patient harm.

The Respondent also submitted a record of employees who served in the capacity of Vascular Technologist between January 1, 2011 and June 23, 2014 identified by name, race/color, and

age, date of hire, date terminated and reason for termination. An investigation of this record revealed that of the 21 technicians listed, 14 are White, 3 are Asian/Pacific Islander, 2 are Black, 1 is Hispanic, and 2 do not have their race/color specified. The record also revealed that two White employees were terminated as a result of failure to obtain RVT and RDMS credentials, while the Complainant was given additional time to receive the required credentials.

In addition, the Respondent submitted a record of the Complainant's performance evaluations and employee warnings. The record indicated that the Complainant has had critiques prior to Ms. Villa becoming her Supervisor in 2011. The Respondent reports that in 1997, the Complainant was counseled on needing to improve her responses to criticism by the Technical Director. In a 2003 Performance Evaluation, the Respondent reported that the Complainant needed to work on her listening skills. In 2007, the Respondent indicated that the Complainant needed to work on conforming to time schedules. The Respondent also included a detailed record of the credentials each employee needed to obtain, when they obtained them, and the race of each employee. The Complainant was the only employee who had difficulties obtaining the proper credentials, yet, she was still granted an extension. The information also included accounts of employees who have been counseled by the Respondent on infractions similar to those of the Complainant. The Respondent reports that it has applied its disciplinary policy equally to everyone.

Furthermore, the Complainant's Employee Warning Report (See R. Ex. C), Performance Improvement Reevaluation (See R. Exh. E) and the instances of verbal coaching detailed by the Respondent illustrate that the Complainant has been written up and received similar evaluations prior to the filing of her original complaint in June 2012.

On June 2, 2014, the Division contacted the Complainant's witness, Ms. Tea Khaduri, a Vascular Technician employed by the Respondent. Ms. Khaduri reported that Ms. Villa disciplined everyone who made mistakes and has counseled other technologists in the past. While Ms. Khaduri felt that she "picked on the Complainant more", she also reported that the Complainant did take a little longer to acclimate to the new policies and procedures of the lab than some of the other technicians. In general Ms. Khaduri reported that the Complainant was a good technician who was sometimes singled out by Ms. Villa.

On July 7, 2014, the Division contacted the Complainant's witness, Dr. George Hines, the Respondent's Chief of Vascular Surgery. Dr. Hines has known the Complainant for fifteen years and expressed that he knows her fairly well. He explained that he had never experienced any issues with the Complainant's tests. Dr. Hines has not observed the Complainant's relationship with her current supervisor. He did note that though the Complainant was not perfect, she was a good vascular technologist and did her job well.

Furthermore, the Respondent informed all RVTs to take and pass the Registry Diagnostic Medical Sonographers exam. Respondent did not specify through which institution the credentials had to be acquired (R exhibit f). Complainant took and pass the exam well before the dead line but the Respondent refused to except the Complainant's credentials because she did not received her credentials form ARDMS but from CCI both CCI and ARDMS offered the same credentialing and Respondent failed to initially specify which institute was the required

institution. The Complainant was forced to take the exam over. . The record also revealed that two White employees were terminated as a result of failure to obtain RVT and RDMS credentials, while the Complainant was given additional time to receive the required credentials. Nevertheless, this is not a comparison to the Complainant because the Complainant obtained her RVT and RDMS credentials long before the deadline. However, the Complainant's credentials were not accepted by the Respondent for unknown reasons.

Submitted by: _____


Betty Russell

Human Rights Specialist II

III. BASIS FOR DETERMINATION

A review of the record reveals that there are material issues of fact and credibility involved which are best resolved at a public hearing before an administrative law judge, where testimony is taken under oath, witnesses are subject to cross-examination and a full record is made.

Issues include but are not limited to:

1. Whether the Complainant received a negative evaluation after filing a complaint with the N.Y.S Division of Human Rights.
2. Whether the Complainant's Suspension, due to her refusal to sign her performance evaluation , was an act of retaliation for her having filed a previous complaint with the Division.
3. Whether the Complainant's registry exam acquired by Cardiovascular Credentialing International was unacceptable by the Respondent was an act of retaliation.
4. Whether the Complainant was being subjected to differential treatment by Ms Villa as an act of retaliation.
5. Whether the Complainant's employment termination was an act of retaliation as a result of Complainant's previously filed complaint with N.Y.S. Division of Human Rights.

The Respondent also submitted a record of employees who served in the capacity of Vascular Technologist between January 1, 2011 and June 23, 2014 identified by name, race/color, and age, date of hire, date terminated and reason for termination. An investigation of this record revealed that of the 21 technicians listed, 14 are White, 3 are Asian/Pacific Islander, 2 are Black, 1 is Hispanic, and 2 do not have their race/color specified

Respondent records failed to show that through out Complainant's 18 years of employment that Complainant had a pattern of poor performance. Nevertheless, once Complainant was assigned a

new Supervisor in 2011 the Complainant began receiving negative comments about her performance. Complainant reported that she was being single out and treated different but the Respondent failed to show that the Complainant's allegations were investigated by Human Resource.

IV. DETERMINATION

Based on the foregoing, I find **PROBABLE CAUSE** to support the allegations of the complaint.

A handwritten signature in black ink, appearing to read 'Ronald B. Brinn', written over a horizontal line.

Ronald B. Brinn
Regional Director