



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 – 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

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Tuesday, October 27, 2020

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Lillian M. Thornton
48 Heritage Lane
New Orleans, LA 70114

Re: **Robert Noland VS.
Mosquito Control Board
Docket Number: 8705**

Dear Ms. Thornton:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 10/27/2020 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

Doddie K. Smith
Chief, Management Services Division

cc: Claudia Riegel
William R. H. Goforth
Ramona D. Washington
Robert Noland
file

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

ROBERT NOLAND

v.

DOCKET NO. 8705

MOSQUITO CONTROL BOARD

ORDER

This matter concerns the termination of a probationary male African-American employee who claims he was discriminated against on the basis of sex and race and suffered retaliation after complaining of discrimination. For the reasons set forth below, Mr. Noland's appeal is denied.

FACTUAL BACKGROUND

The Mosquito Control Board hired Robert Noland in August of 2016 as a Pest Control Inspector II. (Tr. at 21). Mr. Noland's direct supervisor was Princeton King. (Tr. at 21) Mr. Noland testified he complained to Mr. King about the music his co-workers played in the office. (Tr. at 27-28). Mr. Noland testified that the rap music included the n-word, and that he heard the rap music about three or four times. (Tr. at 27, 59). Mr. Noland never complained to his co-workers about the music. (Tr. at 59). Mr. Noland also testified he complained to Mr. King about his co-workers mocking "urban youth." (Tr. at 27-28). Mr. Noland also testified that his co-workers made jokes with racial overtones, and that he was subjected to offensive signs, including signs about Obama, Trump, and a swastika. (Tr. at 25, 28, 146). Mr. Noland did not complain to anyone about the swastika. (Tr. at 66). Mr. Noland stopped going to the office in about November 2016. (Tr. at 65, 115). Instead, Mr. Noland studied for a pest inspector test in Mr. King's office. (Tr. at 147). According to Mr. King, Mr. Noland used King's office because it was noisy in the back. (Tr. at 147). Mr. Noland never complained to Cynthia Riegel, the Director of the Mosquito Control Board. To Mr. Noland's knowledge, Riegel was not aware of his complaints of racially offensive

instances in his working environment. (Tr. at 126). Dr. Riegel testified she was not aware of Mr. Noland's complaints of discrimination at the time of his termination. (Tr. at 284). Mr. Noland also did not voice his complaints of race or sex discrimination to Dr. Sarah Michaels, Mr. King's supervisor. (Tr. at 240).

Mr. Noland also felt that he suffered sex discrimination because he was not invited to a baby shower during work hours, which occurred on July 18, 2017, and because the female pest inspectors were allowed to work in the air-conditioned office while Mr. Noland worked in the field. (Tr. at 33, 37-38). Firmin Maurice, a Mechanic III, complained to Dr. Riegel about the all-female gathering, and Maurice is currently employed by the Mosquito Control Board. (Tr. at 100, 193).

Sarah Michaels, Ph.D., an entomologist who served as the Mosquito Control Supervisor, supervised Princeton King. (Tr. at 205-06). Mr. Noland's job duties included assembling traps and placing the traps in the field. During a time period when the Mosquito Control Board had lost a number of inspectors, Mr. Noland text messaged or talked to Dr. Michaels on several occasions in August 2017 about his frustration with his assembled traps being used for other purposes and about traps not being run. (Tr. at 211, 216). In one text message on August 7, 2017, Mr. Noland informed Dr. Michaels that the traps were not where Mr. Noland left the traps previously, and Mr. Noland was not going to deploy traps that day. (Tr. at 216). Dr. Michaels' understanding was that Mr. Noland "was unhappy that [the assembled traps] were used and didn't contain all components and therefore wasn't going to run them." (Tr. at 224). In this situation, Dr. Michaels expected Mr. Noland to ask for Mr. King's assistance in locating lures that were missing from Mr. Noland's traps. (Tr. at 220-21). The Director, Claudia Riegel, Ph.D., testified that she expected Mr. Noland to "figure it out." (Tr. at 267-68). Dr. Riegel testified that the Mosquito Control Board had the

items available: “And I got to the warehouse and we had more than enough light traps, we have more than enough lures.” (Tr. at 267). On August 14, 2017, Mr. Noland sent Dr. Michaels another text message refusing to run traps because the materials Noland had prepared were not as Noland left them. (Tr. at 227). Dr. Michaels conducted an aerial trial on August 15, 2017, on Bayou St. John to test effectiveness of spray for the Zika virus. (Tr. at 211-14). Out-of-town collaborators from Manatee County, Florida, representatives from the Centers for Disease Control, and representatives from AMVAC, the manufacturer of an insecticide, were involved in this aerial trial. (Tr. at 212, 277). Ms. Michaels assigned Noland to a group whose job was to put cages of mosquitos and spinners to collect pesticide in a designated area on Bayou St. John on the evening of August 15. (Tr. at 211). This aerial trial was a “large effort” and “a lot of people were involved and assigned to a team to cover one section of that area.” (Tr. at 212). Because it was raining on the evening of August 15, 2017, some of the other people assigned to the aerial trial did not attend. (Tr. at 213). The Mosquito Control Board was uncertain about whether the aerial trial would go forward on August 15 because of the weather, so a number people were waiting to whether the trial would occur on August 15. (Tr. at 213). Mr. Noland became “frustrated and upset that no one else had come and that [the Mosquito Control Board] was “sort of being unclear on expectations.” (Tr. at 214). Mr. Noland expressed his frustration verbally, and said he was going to leave, using profanity. (Tr. at 214). Noland said the situation was a “cluster eff.” (Tr. at 280). Dr. Michaels reported Mr. Noland’s behavior to Dr. Riegel.” (Tr. at 215). Dr. Michaels believed Mr. Noland was exhibiting “growing frustration and disinterest in the job.” (Tr. at 236).

Dr. Riegel decided to terminate Mr. Noland’s employment after Dr. Michaels reported Mr. Noland’s behavior to Dr. Riegel. (Tr. at 293-94). Dr. Riegel had already had a conference with Mr. Noland on August 2, 2017, and Mr. Noland’s behavior and willingness to work with other

employees had not improved. (Tr. at 325-27). Dr. Riegel terminated Mr. Noland's employment on August 17, 2017. (Ex. HE-1).

LEGAL ANALYSIS

The Louisiana Constitution grants permanent classified employees the right to appeal disciplinary actions to the Civil Service Commission. La. Const., art. X, section 8(a). The Commission's Rules provide that "[r]egular employees in the classified service" may appeal disciplinary actions to the Commission under Rule 4.1. Rules of the Civil Service Commission, City of New Orleans, Rule II, section 4.1 (hereinafter "Rule __, section __"). The Commission's Rules define "regular employee" as "an employee who has been appointed to a position in the classified service in accordance with the Law and these Rules and who has completed the working test period. Rule I, section 1(64).

In contrast, all classified employees, including classified employees who have not attained permanent status, may bring discrimination appeals to the Commission. La. Const., art. X, section 8(b); Rule II, section 4.5. The employee has the burden of proof when appealing based on discrimination. La. Const., art. X, section 8(b); Rule II, section 4.8. The standard of proof is preponderance of the evidence. *Hargrove v. New Orleans Police Dept.*, No. 2001-0659 (La. App. 4 Cir. 5/22/02), 822 So. 2d 629, 640. To the extent that Mr. Noland alleges that his termination was based on discrimination, Mr. Noland has failed to offer any evidence that Dr. Riegel and/or Dr. Michaels' decisions were tainted with discriminatory animus. *Hargrove*, 822 So. 2d at 641 ("Plaintiff had the burden of proving that he was discriminated against because of his race by Captain Ursin. In his testimony, plaintiff focuses almost exclusively on the alleged actions and motivations of Lt. Howard."). *See also Manning v. Chevron Chemical Co., LLC*, 332 F.3d 874, 882 (5th Cir. 2003) ("in order for comments in the workplace to provide sufficient evidence of

discrimination, they must be . . . (3) made by an individual with authority over the employment decision at issue; and (4) related to the employment decision at issue”). Under a Title VII analysis, Mr. Noland has failed to rebut the Mosquito Control Board’s legitimate non-discriminatory reason for his termination, namely, his poor attitude, including cursing in the presence of Centers for Disease Control representatives and outside collaborators. *Manning*, 332 F.3d at 882 (“Because Chevron provided a legitimate non-discriminatory justification, the burden shifted back to Manning to show that Chevron’s asserted reason was a pretext for discrimination”).

To the extent Mr. Noland alleges his termination was based on retaliation for complaints of race or sex discrimination, Mr. Noland has failed to show that the decisionmakers had knowledge of his complaints. “If an employer is unaware of an employee’s protected conduct at the time of the adverse employment action, the employer plainly could not have retaliated against the employee based on that conduct.” *Bailey v. Dolgencorp, LLC*, 445 Fed. Appx. 730, 732-33 (5th Cir. 2011) (quoting *Manning v. Chevron Chem. Co.*, 332 F.3d 874, 881 (5th Cir. 2003)).

To the extent Mr. Noland alleges a hostile work environment based on race, Mr. Noland has failed to offer evidence that the incidents described created a hostile working environment. The most egregious incident is the swastika Mr. Noland observed at the workplace, but Mr. Noland failed to complain about this incident. Exposure to rap music on three to four occasions, and co-workers mocking “urban youth” do not give rise to intolerable working conditions, especially when Mr. Noland testified that he removed himself from the situation and was granted permission by his supervisor to study in the supervisor’s office. Isolated incidents of racial enmity are insufficient to create a hostile or abusive work environment:

For racist comments, slurs, and jokes to constitute a hostile environment, there must be more than a few isolated incidents of racial enmity. *Hicks v. Central Louisiana*

Electric Company, Inc., [1997-1232 (La. App. 1st Cir. 5/15/98), 712 So. 2d 656]. See also *Powell v. Missouri State Highway and Transportation Department*, 822 F.2d 798 (8th Cir.1987), wherein a maintenance crew member was subjected to isolated instances of racially derogatory language; however, he also participated in what was described as “racial joking” himself. To constitute actionable harassment, the conduct must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. *Bolden v. PRC Inc.*, 43 F.3d 545 (10th Cir.1994), *cert. denied*, 516 U.S. 826, 116 S.Ct. 92, 133 L.Ed.2d 48 (1995). Instead of sporadic racial slurs, there must be a steady barrage of opprobrious racial comments. *Bolden, supra*.

The evidence in the record before us does not support the inference of pervasive racial harassment as to Lacoure. Instead it demonstrated isolated incidents of racial comments, slurs and jokes. Some of the racial comments described by Lacoure in his deposition appear to be banter in which he participated with a white firefighter whom he described as a friend. Consequently, summary judgment in the defendant's favor is appropriate on the issue of hostile work environment..

Berry v. City of Bossier City, 40,063 (La. App. 2 Cir. 9/8/05), 911 So. 2d 333, 343–44. Further, because Mr. Noland was not exposed to any racially offensive items or conduct after November 2016, a hostile working environment claim is untimely. “Persons alleging discrimination under Sections 4.5 and 4.6 of this Rule shall file an appeal with the Civil Service Commission within thirty (30) calendar days of the alleged discriminatory act.” Rule II, section 4.7. Even if these incidents were to give rise to a hostile working environment, the Commission lacks the power to grant Mr. Noland relief under these circumstances. The Commission is unable to award money damages for emotional distress. *Akins v. Housing Authority of New Orleans*, No. 2003-1086 (La. App. 4 Cir. 9/10/03), 856 So. 2d 1220, 1222, *writ denied*, 861 So. 2d 574 (La. 12/19/03) (“the Civil Service Commission has no subject matter jurisdiction to award monetary judgments (such as in a tort action)”). Because Mr. Noland is no longer employed by the Mosquito Control Board, the Commission would be unable to provide any type of non-monetary relief to Mr. Noland.

For the same reason that the claims of racially offense conduct are time-barred, the claim of sex discrimination because of the lack of an invitation to the baby shower is time-barred. Rule II, section 4.7. Mr. Noland's complaint of sex discrimination based on female pest inspectors working in the temperature-controlled office while male pest inspectors worked in the field is more problematic. Under these circumstances, the Commission lacks the power to provide relief for the more onerous working conditions suffered by Mr. Noland.

For all of the above-stated reasons, Mr. Noland's appeal is denied.

New Orleans, Louisiana, October 27, 2020 .

WRITER:



John H Korn (Sep 1, 2020 15:36 CDT)

JOHN KORN, COMMISSIONER

CONCUR:



Mark C. Surprenant (Oct 16, 2020 17:45 EDT)

MARK SURPRENANT, COMMISSIONER



Michelle Craig (Oct 16, 2020 16:29 CDT)

MICHELLE CRAIG, CHAIRWOMAN