

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**  
69 West Washington, Suite 3040  
Chicago, Illinois 60602

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Cheryl BLACKMOND, Complainant	)	
	)	
	)	Case No. 2010E026
v.	)	
	)	
COOK COUNTY ASSESSOR’S OFFICE,	)	Entered: August 26, 2014
Respondent	)	
	)	

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**ORDER**

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On June 14, 2010, Complainant Cheryl Blackmond (“Blackmond”) filed a complaint against her former employer, the Cook County Assessor’s Office (“Respondent” or “Cook County”), for race- and age-based employment discrimination in violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). Blackmond alleges that her two younger, non-black managers unfairly scrutinized and disciplined her for more than three-and-a-half years. In addition, Blackmond alleges that the discrimination she experienced was part of a pattern and practice of discrimination against black and older employees. Having completed its investigation, the Cook County Commission on Human Rights (“Commission”) now dismisses Blackmond’s complaint for a lack of substantial evidence of any violation of the Human Rights Ordinance.

**Background**

Blackmond is black and, at the time she filed her complaint with the Commission, was 45 years old. Compl. ¶ II. Cook County hired Blackmond, on March 6, 1997, to work in the Assessor’s Office, and by 2007, she had worked herself up to the rank of residential junior analyst. *Id.* at ¶ I; Cp. Interview (June 6, 2013); Supp. Resp. (Dec. 5, 2011).

From 2007 until June 11, 2010, Blackmond was managed at the County by Mark Crotty (“Crotty”) and his assistant Hector Grisalez (“Grisalez”). Crotty is white and, at the time of Blackmond’s complaint, was 33 years old. Grisalez was, at the time, similarly young – just 31 years old – and Hispanic. Compl. ¶ II.C. Blackmond alleges that Crotty and Grisalez unfairly disciplined her and criticized and scrutinized her work, attendance and break times. *Id.* Blackmond could not produce any specific evidence to the Commission about how frequently she was disciplined by Crotty and Grisalez, on which dates and for what supposed infractions. Cp. Interview (June 6, 2013). Blackmond guessed that she was disciplined on a near weekly basis. *Id.* She further alleged that she was never disciplined at work prior to coming under Crotty’s supervision in 2007. Compl. ¶ II.D.

The Commission's investigation into Blackmond's charges found documentary evidence indicating that Blackmond was disciplined at work sixteen times between January 2007 and June 2010. Investig. Rep., Exh. A. Six of these incidents involved neither Crotty nor Grisalez, with those managers issuing documented discipline to Blackmond only nine times and once, respectively, over the three-and-a-half year period. *Id.* Primarily, Blackmond received repeated verbal and written warnings regarding time management and tardiness from Crotty, Grisalez and other Cook County managers over the course of three years, culminating in a suspension for tardiness and misuse of timekeeping in June 2010 by Crotty.<sup>1</sup> *Id.*

The Commission's investigation also contradicted Blackmond's assertion that she performed satisfactorily in the workplace prior to 2007. Blackmond, for example, received a verbal warning on December 11, 2002, stating that she had been late to work four times in the quarter. In 2005 and early 2006, under the supervision of a black manager over the age of 40, Blackmond was disciplined at least three times for being tardy and missing production goals.<sup>2</sup>

Blackmond's job evaluation for the period covering January 2, 2006 to December 31, 2006 indicates an overall rating of just 2.2 (on a scale of 5). Investig. Rep., Exh. D. This document indicates that Blackmond was late 70 times during 2006 and docked for unexcused absences on 10 occasions. *Id.* Although Blackmond refused to sign this evaluation, her contemporaneous written rebuttal does not contest the evaluation with respect to her habitual tardiness. *Id.*

Crotty performed the 2006 evaluation, but Blackmond received exactly the same score (again 2.2 out of 5) on annual performance evaluations for the periods of January 1, 2007 to December 31, 2007, and January 1, 2008 to December 31, 2008 when evaluated by another manager. *Id.* Blackmond's 2007 evaluation notes that she was late 26 days and requests improvements in both the "quantity and quality" of her work to meet minimum production quotas. *Id.* Her 2008 evaluation shows a slight improvement to just 24 tardies, while outlining numerous verbal and written warnings for the same. *Id.* The 2008 evaluation again notes continued failure to meet daily and weekly production targets. *Id.*

Crotty left Cook County in mid-2010, but Blackmond continued to receive unwanted discipline. Blackmond received a 1-day suspension on December 13, 2010, and a 3-day suspension on January 21, 2011, from her subsequent managers.

Nonetheless, Blackmond asserts to the Commission that the discipline she received from Crotty and Grisalez was motivated by racial and ageist animus towards her and other black and older employees. In support of this charge, Blackmond claims that three other black County employees over the age of 40 were subject to the same unfair discipline, while noting that

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<sup>1</sup> Crotty also issued a verbal warning for low production (*i.e.* poor job performance) in February 2008. Investig. Rep., Exh. A.

<sup>2</sup> Blackmond was the object of discipline for low docket counts on July 21, 2005; being late on nine occasions on August 16, 2005; and low production numbers on February 1, 2006.

supposedly similarly situated non-black employees were not punished for tardies, leaving their desk and low production.

At Blackmond's suggestion, the Commission interviewed a 55-year-old, black residential analyst ("Cp Witness 1"), a 72-year-old, black residential analyst ("Cp Witness 2") and a 49-year-old, black residential analyst ("Cp Witness 3"), each of whom was supervised by Crotty and Grisalez during the same time period that Blackmond was and each of whom Blackmond said was similarly discriminated against by these young, white managers.

Cp Witness 1 corroborated Blackmond's allegation that Crotty and Grisalez watched Blackmond's "every move." Cp Witness 1 Interview (Sept. 16, 2013). But Cp Witness 1 credited Blackmond's outspoken nature, and not her age or race for the additional scrutiny. *Id.* Moreover, to the extent that Cp Witness 1 stated that she received worse reviews or was watched more closely by Crotty and Grisalez herself, Cp Witness 1 blamed her failure to socialize with Crotty or Grisalez or to join their "clique" of friends, not racism or ageism by Blackmond's then-managers. *Id.* Cp Witness 1 noted that Crotty's and Grisalez's friends, a group of Cook County employees that included at least one employee over the age of 40 and one black employee, took longer lunches and breaks than others without apparent consequence. *Id.*

Cp Witness 2 informed the Commission that she had never witnessed Crotty discipline or scrutinize Blackmond. Cp Witness 2 Interview (Sept. 5, 2013). To the extent that Crotty ever disciplined Cp Witness 2, she never felt that race or age played into Crotty's motivations. *Id.* Instead Cp Witness 2 (like Cp Witness 1) indicated that Crotty was afraid of her for being outspoken. *Id.* Cp Witness 2 informed the Commission that at the time relevant to Blackmond's complaint, management was making a systematic effort to write up everyone who left their desk for extended breaks without regards to age or race. *Id.*

Finally, the only criticism Cp Witness 3 witnessed with respect to Blackmond during the relevant time period was that Crotty would tell Blackmond to stop talking to her coworker, but Cp Witness 3 noted that the coworker in question was white and under 40. Cp Witness 3 Interview (Oct. 30, 2013) Cp Witness 3 indicated that Crotty and Grisalez asked him three times in three years to pick up the pace. *Id.* Cp Witness 3 did not like this criticism, but admitted to the Commission investigator that he was slow because he often had more difficult cases. *Id.* Cp Witness 3 identified that some of Crotty's and Grisalez's friends (some of the same individuals identified by Cp Witness 1) were not disciplined for being late to work, but Cp Witness 3 also noted that these employees were high performers. *Id.* Cp Witness 3 noted that Crotty and Grisalez tended to joke around at work with younger employees. *Id.* Cp Witness 3 further theorized that the way for blacks to get ahead in the office was to join the Cook County softball team and build relationships with the managers outside of work. *Id.*

Cp Witness 3 stated that he was frequently so tardy that he was not in a good position to observe when Blackmond came into work. *Id.* Cp Witness 1 and 2, on the other hand, confirmed that Blackmond was routinely late to work and would frequently "disappear" from her desk. Cp Witness 1 Interview (Sept. 16, 2013); Cp Witness 2 Interview (Sept. 5, 2013).

As to the three non-black employees that Blackmond alleges were treated more favorably than her for similar tardiness and performance issues, the Commission's investigation found that each was a residential group leader, and not a junior analyst like Blackmond.<sup>3</sup> Investig. Rep., Exh. G. Moreover, the Commission found that while one of these three employees did not have a disciplinary record, the remaining two did. Investig. Rep., Exh. H.

The Commission further analyzed the disciplinary records of 26 junior residential analysts supervised by Crotty and Grisalez. The group includes eleven employees under the age of 40 (*i.e.* fifteen employees over the age of 40) and thirteen non-blacks (*i.e.* thirteen blacks). Investig. Rep., Exh. B. Of this group of 26 analysts, Crotty and/or Grislaez disciplined the same percentage of employees over the age of 40 as under. *Id.* Further, Crotty and Grisalez did not single out black residential analysts alone for discipline. *Id.* Non-black analysts were also subject to discipline. *Id.* Notably, no analyst – black or white, older or younger – had nearly as many incidents of discipline over the relevant period as Blackmond's sixteen. *Id.* The overwhelming majority of employees only received one or two written or verbal warnings over the three-and-a-half year time period with the next closest (interestingly Cp Witness 1) having received only eight. *Id.*

According to Cook County's employee handbook:

Habitual unexcused absences/tardies will result in disciplinary action. . . . Employees who display habitual tardiness will be disciplined. If an employee continues to be tardy after a written warning has been issued, continued accumulation of tardies could lead to suspension and termination.

Investig. Rep., Exh. K. Blackmond, however, was not terminated. Crotty and Grisalez no longer manage Blackmond; they have since left the Assessor's Office.

### **Discussion**

The Human Rights Ordinance prohibits an employer from directly or indirectly discriminating “against any individual in hiring, classification, grading, recruitment, discharge, discipline, compensation, selection for training and apprenticeship, or other term, privilege, or condition of employment *on the basis of unlawful discrimination.*” Cook County Code of Ordinances (“County Code”), § 42-35(b)(1) (emphasis supplied). As used in the Human Rights Ordinance, “unlawful discrimination” includes discrimination against a person on the basis of race or age (“not less than 40 years”). *Id.* at § 42-31.

Because the Commission's investigation found no direct evidence of race or age discrimination by Crotty and Grisalez, the Commission analyzes Blackmond's complaint using the burden-shifting method provided in *McDonnell Douglas v. Green*, 411 U.S. 792, 802-04 (1973); *Jimenez v. Consumer Insurance Serv., Inc., d/b/a Seguros Monterrey*, 2006E039 (CCHRC June 19, 2009). The first step towards demonstrating substantial evidence to support

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<sup>3</sup> Moreover, the Commission notes that all three are over the age of 40.

her claims is that Blackmond has to establish a *prima facie* case of discrimination. This *prima facie* case consists of evidence found during the course of the investigation that shows (1) that she is a member of a protected class (or classes) under the Human Rights Ordinance, (2) that she suffered an adverse employment action; (3) that she was qualified for the position she held and performing to her employer's satisfaction; and (4) that similarly situated individuals who were not members of the same protected class (or classes) were treated more favorably. See *Alvarado v. Holum & Sons, Co.*, 2012E016, \*3 (Jan. 9, 2014); *McCarroll v. Mulligan Management, et. al.*, 2011E002, \*5 (CCHRC Jan. 8, 2014); *Grigsby v. Office of the Cook County Public Defender*, 2010E020, \*2 (CCHRC Oct. 28, 2013); *Cuevas v. Coty, Inc.*, 2006E054, \*3 (CCHRC May 20, 2014).

For the purpose of rendering this decision, the Commission presumes that there is sufficient evidence to establish the first three elements of a *prima facie* case of race- and/or age-based employment discrimination.<sup>4</sup> Blackmond's claim fails, however, because the Commission's investigation has not uncovered any significantly different treatment between herself and similarly situated employees. The Commission's investigation found that Crotty and Grisalez did routinely discipline similarly situated, non-black and younger residential analysts.

The three non-black Cook County employees that Blackmond suggests to the Commission were treated more favorably than her are, by contrast, not similarly situated. These "favored" employees were in fact residential group leaders and not junior analysts like Blackmond. Nonetheless, the Commission discovered that Crotty and Grisalez also disciplined two out of these three more senior employees.

As far as the Commission can determine based on the facts before it, Blackmond was disciplined for well documented low productivity and tardiness before working with Crotty and Grisalez. Blackmond continued to be disciplined for low productivity and tardiness by other managers both during Crotty and Grisalez's tenure and after each supervisor had moved on. Blackmond has not alleged that every manager at Cook County is a racist and an ageist and yet her treatment by these supervisors is no different than Crotty or Grisalez with respect to the issuance of discipline. According to the documents reviewed by the Commission, Blackmond's repeated tardiness was so unique among her coworkers that there is no employee who is truly similarly situated.

Similarly, there is no substantial evidence to support Blackmond's pattern and practice of discrimination claim. Being an outlier, especially with respect to lateness, more so than her race or age was the primary driver of the discipline she experienced at Cook County. The Commission's investigation did not uncover substantial evidence of widespread discrimination against other black and/or older residential analysts. Each of the three black employees over 40

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<sup>4</sup> This assumption is in and of itself generous to Blackmond. It is certainly not a given that an employee who is tardy 120 times over the course of a three year period is meeting his or her employer's reasonable expectations of performance and professionalism. Moreover, while discipline, up to and including termination, for such persistent infractions might be an adverse employment action in most contexts, that Cook County gave so many verbal and written warnings without apparent consequence is also unusual.

identified by Blackmond as similarly situated victims of discrimination pointed to Crotty and Grisalez's preferences for their friends – not necessarily the managers' preference for their own race or age – as the source of the disparate treatment.

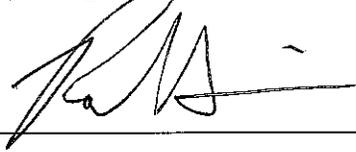
A supervisor's giving special treatment to his or her friends (or even, as Cp Witness 3 suggested, high performers or extracurricular teammates) is unprofessional and can be a source of unnecessary interpersonal conflict in the workplace. The Human Rights Ordinance, however, does not render unprofessional or incompetent management unlawful. A preference for one's friends, in the absence of the intent to disadvantage individuals on the basis of race or age is, while not advisable, also not illegal under the Human Rights Ordinance.

### **Conclusion**

For the foregoing reasons, the Commission orders that complaint 2010E026 be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), either party may file a request for reconsideration with the Commission within 30 days of the date of this order.

August 26, 2014

By delegation:



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Ranjit Hakim  
Executive Director of the Cook County  
Commission on Human Rights