

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington Street, Suite 3040
Chicago, Illinois 60602

Roberto CUEVAS, Complainant)	
)	
v.)	Case No. 2006E054
)	
COTY, INC., Respondent)	Entered: May 20, 2014
)	

ORDER

On or about June 22, 2006, Complainant Roberto Cuevas (“Cuevas”) was terminated from his job as a material handler by his former employer, Respondent Coty, Inc. (“Coty”). Cuevas filed this action with the Cook County Commission on Human Rights (“Commission”) on November 7, 2006, alleging that he was discharged because of his race, national origin and sex. Coty asserts that the decision to fire Cuevas was unrelated to him being Hispanic, Mexican or a man. Having completed its investigation, the Commission now determines that there is not substantial evidence that Coty terminated Cuevas in violation the Cook County Human Rights Ordinance (“Human Rights Ordinance”) and dismisses Cuevas’s complaint.

Background

Coty is a global beauty products manufacturer, best known for its many fragrance lines. Cuevas worked for Coty, most recently as a material handler at a warehouse/retail space located in Elk Grove Village. Cuevas began his employment at Coty on May 17, 2004, but spent the last six months of his tenure on leave from work, prior to being discharged on June 22, 2006.

Cuevas, who is a Hispanic male and a Mexican citizen, believes that Coty based its decision to terminate him on his race, national origin and sex. As evidence of this, Cuevas told Commission staff that the Coty store manager at the Elk Grove Village location where Cuevas worked, Jacqueline Marchionna (“Marchionna”), treated Hispanic-appearing customers differently than phenotypically non-Hispanic customers. According to Cuevas, Marchionna would not accept passports or matricular consular cards as identification from Hispanic-looking customers, but would accept the same identification from non-Hispanic customers. Further, Cuevas alleges that Marchionna told him not to speak Spanish on July 17, 2005 because only English could be spoken in the United States. Marchionna also allegedly advised Cuevas that he should become a United States citizen on November 10, 2005. On two dates that Cuevas could not recall, he claims that Marchionna yelled at him for speaking Spanish and, during a disagreement about the propriety of the Iraq War, told him to go back to Mexico if he would not defend the United States. Cuevas also complained that he appeared to be singled out for unfavorable treatment such as a shorter lunch, restricted use of his cellphone at work and undesirable tasks such as taking out the garbage and cleaning the bathrooms.

Marchionna denied these allegations during her interview with Commission staff and attempted to explain Coty's policies regarding the rotation of various cleanup duties, the assignment of breaks, the use of cellphones at work and the need for customers to identify themselves when making particular types of purchases. The Commission cannot, in this procedural posture, make a dispositive finding as to which of these two conflicting versions of the interactions between Cuevas and Marchionna is accurate.

As discussed below, however, this factual dispute about Cuevas's treatment while he was working at Coty is not actually relevant to his underlying legal claim about his termination from employment. There is really very little dispute about the facts relevant to that inquiry, beginning with Cuevas going on leave from Coty. The parties agree that beginning in December 2005, Cuevas started to experience severe pain in his lower right abdomen. Cuevas took an unpaid leave of absence and applied for short-term disability.

At the time of the facts giving rise to Cuevas's claim, Coty used a third-party provider named Work & Well ("W&W") to review and process the necessary paperwork to validate disability leave requests. In January 2006, W&W recommended that Coty deny Cuevas's short-term disability request, citing Cuevas's failure to provide requested medical documentation. On March 2, 2006, Coty's Human Resources Manager, Lea Del Rosario ("Del Rosario"), sent Cuevas a letter indicating that he must provide W&W with the proper documentation to approve his continued disability leave or contact his supervisor to arrange a return to work. The letter states that W&W must receive this documentation by March 6, 2006, or Cuevas's non-compliance will be interpreted as a resignation from Coty. Cuevas told the Commission staff that he followed up with W&W on March 31, 2006, only to be advised that he needed to provide W&W with additional documentation.

This pattern repeated itself throughout the spring with W&W denying short-term disability benefits for a given month based on Cuevas's alleged failure to provide requested medical documentation. The impression Del Rosario gave during her interview with Commission staff was that Cuevas often provided only partial medical documentation and frequently this documentation came long after W&W had requested it. Although Cuevas alleges that he always submitted his medical documentation in a timely manner, the documentation the Commission examined demonstrates that this is untrue. Cuevas did not submit required documentation during his leave in a timely manner. Instead, Cuevas was routinely late and Coty would extend deadlines for him.

Short-term disability for Coty employees lasts only for six months, and Del Rosario told Cuevas that he should apply for long-term disability before then to protect himself. Del Rosario even went so far as to provide him with the necessary forms on May 9, 2006. On June 15, 2006, Del Rosario advised Cuevas that if she did not receive his long-term disability paperwork and supporting medical documentation by June 21, 2006, Coty would have to terminate him. Del Rosario explained that an employee cannot be absent from the workplace for a sustained duration without documented medical authorization.

The Commission's investigation shows that Cuevas waited until the last possible moment to submit his paperwork. According to his interview with Commission staff, Cuevas asserts that

he submitted the requested documentation to Del Rosario by fax and certified letter on June 20, 2006. The Commission, however, found no evidence that Del Rosario received this paperwork. Cuevas, for example, could not produce a delivery receipt nor did a search of Del Rosario's or W&W's records reveal that either actually received Cuevas's paperwork before the expiration of his six-month short-term disability period.

Discussion

The Human Rights Ordinance prohibits any employer from "directly or indirectly discriminat[ing] 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). Discrimination on the basis of an individual's race, national origin or sex is unlawful. *Id.* at § 42-31 (defining "unlawful discrimination"). Cuevas alleges that Coty unlawfully discriminated against him when it terminated his employment on June 22, 2006. Compl. ¶¶ I, III.

In order to show substantial evidence to support this claim, Cuevas has to establish a *prima facie* case of discrimination consisting of evidence (1) that he is a member of a protected class (or classes) under the Human Rights Ordinance, (2) that he suffered an adverse employment action; (3) that he was qualified for the position he held and performing to his 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). As noted above, there are a number of factual disputes in this matter. Cuevas's version of his treatment prior to going out on leave is very different from that of the various Coty witnesses. At the investigations phase, the Commission is inclined to give the benefit of the doubt to the complainant on disputed issues of fact because a respondent can dispositively prove its innocence at a hearing on the merits. For this reason, the Commission presumes at this point in the proceedings that Cuevas could prove a *prima facie* case of discrimination. There is sufficient evidence to show, for example, that Cuevas can claim membership in a number of classes protected by the Human Rights Ordinance and, in being fired, suffered a sufficiently adverse employment action to form the basis of a claim for discrimination.

The Commission's investigative inquiry, however, does not end with the *prima facie* case. As the Commission explained in *Alvarado*:

Establishing a *prima facie* case of discrimination raises the rebuttable presumption of a violation of the Human Rights Ordinance. . . . But the Commission will only hold a hearing on such a claim if during the course of the Commission's investigation the respondent cannot articulate a legitimate, non-discriminatory reason for the adverse employment action or the complainant can point to substantial evidence that the respondent's

proffered explanations are pretextual.

2012E016 at *5 (internal citations omitted).

Like the respondent in *Alvarado*, Coty has articulated a legitimate, non-discriminatory reason for firing Cuevas on June 22, 2006: his failure to submit long-term disability paperwork after more than six months of being out of the workplace on leave. Cuevas may believe that this reason is pretextual because he asserts that he sent Del Rosario the requested paperwork on June 20, 2006, however, this belief alone is not evidence. Cuevas has not produced any evidence that Del Rosario received the requested paperwork before Coty's deadline, and the Commission's own investigation has not uncovered such evidence. Without evidence to the contrary, Coty's articulated reason that an employee cannot be on short-term disability for some indefinite period of time without either returning to work or submitting the necessary documentation to go on long-term disability stands un rebutted, and Cuevas's pending claim can proceed no further.

Conclusion

For the foregoing reasons, the Commission orders that complaint 2006E054 be **DISMISSED** for **LACK OF SUBSTANTIAL EVIDENCE** of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(A), any party may file a request for reconsideration with the Commission within 30 days of the date of this order.

May 20, 2014

By delegation:



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