

COOK COUNTY COMMISSION ON HUMAN RIGHTS

69 West Washington, Suite 3040
Chicago, Illinois 60602

Josephine LOPEZ, Complainant)	Case No. 2012E022
)	
v.)	Entered: February 3, 2014
)	
COOK COUNTY HEALTH & HOSPITALS SYSTEM, ¹ Respondent)	
)	

ORDER

Complainant Josphine Lopez (“Lopez”) brought this action on June 18, 2012, against her former employer, Respondent Cook County Health & Hospitals System (“CCHHS”), for unlawful employment discrimination on the basis of her Hispanic origin in violation of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). Lopez was discharged after a March 12, 2012 incident at the Dr. Jorge Prieto Health Center (“Prieto Clinic”) where she allegedly had a verbal altercation with a coworker, followed by a physical confrontation with a supervisor and eventually had to be escorted off of the premises by the police. CCHHS terminated Lopez after a pre-disciplinary hearing substantiated these allegations and recommended discharge. Nonetheless, Lopez believes that the charges against her were fabricated. The Cook County Commission on Human Rights (“Commission”) investigates and adjudicates complaints of discrimination on the basis of membership in traditionally protected classes, not whether a pre-discipline hearing officer (for whom there is no evidence, substantial or otherwise of racial bias) reviewing the ample documentation of Lopez’s discipline problems at CCHHS reached the correct factual conclusion in recommending that she be terminated. Nonetheless, having completed its investigation, the Commission finds a lack of substantial evidence to support Lopez’s complaint.

Background

Lopez worked for CCHHS at Prieto Clinic where she held the title of Clerk V. Compl. ¶ 1; Resp. ¶ 1. Lopez is Hispanic.

In her complaint to the Commission, Lopez recounts that on March 12, 2012, she was working at Prieto Clinic with a coworker. Compl. ¶ 3.B. Lopez states that she asked this coworker for information regarding a patient and was told by the coworker, in essence, to find the information herself. *Id.* at ¶ 3.C. According to Lopez, a supervisor named Maria Vazquez

¹ The named Respondents, as filed, also included “Cook County Health Systems, Department of Public Health Prieto Clinic.” For the purpose of a complaint to the Commission, an individual unit within the Cook County Health & Hospitals Systems (“CCHHS”) does not need to be named separately from CCHHS.

Smith (“Smith”) then accused Lopez of being loud and disruptive, fighting, abusing another employee and gross insubordination. *Id.* at ¶¶ 3.D, E. Although Lopez asserts that Smith’s charges were fabricated, CCHHS held a pre-disciplinary hearing regarding the March 12, 2012 incident, and the hearing officer recommended that Lopez be terminated. *See id.* at ¶¶ 3.F, G.

Lopez was terminated thereafter² and brought a complaint for race-based employment discrimination to the Commission on June 18, 2012. The Commission’s investigation fills in a few details that Lopez omitted from her initial complaint.

The Commission found documentation of extensive discipline problems pre-dating the March 12, 2012 incident, beginning almost immediately after Lopez transferred to Prieto Clinic on December 30, 2011. Investigation Report, Exh. B (documenting complaints against Lopez on January 3, 2012; January 19, 2012; February 21, 2012; February 24, 2012 and February 28, 2012). Although each complaint against Lopez was filed by a different coworker at Prieto Clinic and the specific details varied, the common theme was an unprofessional attitude towards patients and coworkers alike. *See id.* The Commission also found documentation indicating that Lopez had received performance counseling on January 20, 2012, by Smith, in relation to these early complaints. *Id.* at Exh. C. After complaints against Lopez about rude behavior continued unabated, the Commission found documentation of a February 26, 2012 written reprimand of Lopez for patient and coworker abuse. *Id.* at Exh. E. This written reprimand led to a pre-disciplinary hearing on March 1, 2012, at which the hearing officer substantiated the allegations of patient and coworker abuse and recommended a three-day suspension. *Id.* at Exh. F.

Contemporaneous with the March 12, 2012 incident that forms the basis of Lopez’s complaint to the Commission, Smith, two additional coworkers and a Prieto Clinic security officer submitted documentation of their recollection of the event. Smith recounts that a staff member at Prieto Clinic advised her that Lopez was involved in a verbal altercation with a coworker in the registration area, in the presence of Prieto Clinic patients. *Id.* at Exh. G (March 15, 2012 memorandum). Smith indicates that she went to the registration area where she witnessed Lopez’s conduct firsthand. *Id.* Smith’s assessment that Lopez was being loud and disruptive is corroborated by documentation submitted by the coworker with whom Lopez was allegedly fighting at the time. *See id.* at Exh. I.

Continuing with Smith’s account, Smith claims that she asked Lopez to come talk to her and then advised Lopez to leave the clinic for the day. *Id.* at Exh. G. Lopez refused, citing her union membership. *Id.* In response, Smith obtained the phone number for Lopez’s union representative and called to advise him of the situation. *Id.* At this point, Lopez grabbed the phone away from Smith and, in process, struck Smith in the face. *Id.* Once again, Smith’s account of Lopez striking her in the face is corroborated by another coworker who witnessed the incident and submitted a written account. *Id.* at Exh. H (March 19, 2012 letter).

Following this physical altercation, a Prieto Clinic security guard insisted that Lopez leave

² The parties disagree as to the date of that discharge. Lopez believes that she was terminated on April 6, 2012. Compl. ¶ 2. CCHHS documentation shows the date to be July 23, 2012. Investigation Report, Exhs. A, L.

the clinic. *Id.* at Exh. G. Once again, Lopez refused. *Id.* At this point, Smith called the Chicago Police Department. *Id.* Responding officers eventually convinced Lopez to leave the premises. *Id.* The Prieto Clinic security guard corroborates Smith's assessment of Lopez's unwillingness to leave the clinic and the need to involve professional law enforcement. *Id.* at Exh. J.

Fighting or disruptive behavior, employee abuse and gross insubordination are all major cause infractions that according to the CCHHS Personnel Rules can result in an employee's termination. CCHHS Personnel Rule 8.03(c)(3), (4), (7). Lopez was the subject of a March 19, 2012 pre-disciplinary hearing at which Smith presented, what the hearing officer characterized as "detailed documentation and testimony" relating to, *inter alia*, Lopez's loud and disruptive conduct towards patients and coworkers on March 12, 2012; Lopez striking Smith in the face; and Lopez's repeated refusal to abide by requests of management and security to punch out for the day, necessitating a call to the Chicago Police Department. *See id.* at Exh. K (letter and recommendations from hearing officer regarding March 19, 2012 pre-disciplinary hearing). Lopez, who had union representation, argued that she was not being loud and disruptive in a patient area; that she snatched the phone from Smith's hand, but did not hit her face; and that she was advised not to leave her work area by the union. *See id.* Lopez also alleged that she was the victim of unspecified harassment and discrimination. *See id.*

Despite this, the hearing officer found that:

After hearing both parties and reviewing witness statements . . . it is my finding that management's charges are valid.

Ms. Lopez, your behavior was disruptive and you acknowledge your refusal to follow management's direction. I also believe that testimony presented clearly shows that the manager was physically assaulted by you.

Ms. Lopez, during your four (4) years of employment with Cook County Health and Hospital Systems, you have been disciplined at various level multiple times at different facilities of CCHHS for the same kind of behavior. Unfortunately, to date, there has been no change in your behavior.

As a customer service organization, this type of behavior cannot be tolerated.

[***]

It is my decision that the charges of ***Major Cause Infraction*** are found to have merit and therefore are upheld. For the safety of patients, visitors and employees, it is my recommendation that your employment with Cook County Health & Hospitals System be terminated immediately.

Id.

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” means discrimination against a person on the basis of “race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, gender identity or housing status[.]” *Id.* at § 42-31.

Lopez does not allege that CCHHS said it was terminating her because of her Hispanic origin. Instead, the only basis that Lopez articulates for her belief that racial animus motivated her former employer’s adverse employment action is that “my direct supervisor, Maria Vazquez Smith is aware that my race is Hispanic.” Compl. ¶ 3.A. The mere awareness of a complainant’s race or national origin does not render all subsequent actions by an employer discriminatory. As this Commission has previously opined:

Every at-will employee, even one who is meeting all of her employer’s expectations and is a member of a protected class, may nonetheless suffer an adverse employment action without recourse to this Commission. The sole exception to this rule is for an employer who is trying to give preferential treatment to persons outside of a protected class at the expense of members of that class.

Grigsby v. Office of the Cook County Public Defender, 2010E020, *2 (CCHRC Oct. 28, 2013) (finding that the general averment that an unnamed and unspecified class of non-minority employees is being treated better than the complainant is insufficient to establish a *prima facie* case of race discrimination under the Human Rights Ordinance).

This is especially true here, where even if Lopez had attempted to support a *prima facie* case of discrimination, CCHHS has already produced ample evidence of its serious, non-discriminatory reasons for terminating Lopez. The Commission’s investigation has found substantial evidence to support CCHHS’s claim that it terminated Lopez for committing a number of major cause infractions on March 12, 2012, including fighting with coworkers, physically assaulting a supervisor and refusing numerous management directives. Despite this, Smith did not unilaterally terminate Lopez. Instead, CCHHS followed its internal procedural rules with regard to Lopez’s discipline for the March 12, 2012 incident at Prieto Clinic and only terminated Lopez after a pre-disciplinary hearing on the allegations resulted in a recommendation of termination by a hearing officer.

Lopez clearly believes that the hearing officer’s decision was incorrect. She continues to assert to this Commission, as she did to the pre-disciplinary hearing officer at her March 19, 2012

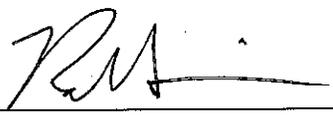
hearing, that Smith fabricated the initial argument between Lopez and her coworker in the patient area of Prieto Clinic. *Compare* Compl. ¶ 3.G with Investigation Report, Exh. K. That may be so, but in the absence of substantial evidence that the pre-disciplinary hearing process itself was racially biased, the Commission is not the appropriate forum to appeal a supposedly erroneous factual finding. *See Evans v. Cook County*, 2013E008, *4 (CCHRC Oct. 25, 2013) (“The Commission, however, is not an appropriate forum for hashing out an employer-employee dispute, unless that conflict alleges a violation of the Human Rights Ordinance.”). In any case, the Commission reviewed many of the same documents available to the hearing officer as part of its investigation and arrived at the same conclusion.

Conclusion

For the foregoing reasons, the Commission orders that complaint 2012E022 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.

February 3, 2014

By delegation:



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