

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

Doris ROBINSON, Complainant)	
)	
)	Case No. 2012E015
v.)	
)	Entered: July 25, 2014
COMMUNITY AND ECONOMIC)	
DEVELOPMENT ASSOCIATION OF)	
COOK COUNTY, INC., Respondent)	

ORDER

On April 9, 2012, Complainant Doris Robinson (“Robinson”) brought this action against her former employer, Respondent Community and Economic Development Association of Cook County (“CEDA”), for alleged violations of the Cook County Human Rights Ordinance (“Human Rights Ordinance”). *See* Cook County Code of Ordinances (“County Code”), §§ 42-35(b)(1), 42-41(a). Robinson was laid off along with scores of others during a major restructuring of her employer. Nonetheless, she claims that CEDA unlawfully terminated her from her position based on her race and age, and retaliated against her for filing a grievance during the course of her employment. Having completed its investigation into the charges, the Cook County Commission on Human Rights (“Commission”) now dismisses Robinson’s complaint for a lack of substantial evidence.

Background

CEDA is a non-profit, social service agency that provides a wide range of services and programs in the areas of education, employment and training, housing, health and nutrition, family services, community and economic development, and energy conservation to the residents of Cook County, Illinois.¹ CEDA receives a combination of private and public funding from various sources to provide these programs. Pos. Stmt. pp.1-2.

CEDA hired Robinson, an African American, on or about May 16, 1977. Compl. ¶ I; Questionnaire Resp. No. 2. Robinson’s job titles varied throughout the course of her long tenure, but her last job title was Community Development Area Director (“CDA”) for Summit, Illinois. Questionnaire Resp. No. 2; Compl. ¶ II. In this capacity, Robinson’s duty primarily included monitoring and overseeing Community Service Block Grant (“CSBG”) programs in Summit, Illinois. Pos. Stmt. p.2. On or about December 14, 2011, Robinson alleges that CEDA informed

¹ *See* Community and Economic Development Association of Cook County, “About Us,” online at www.cedaorg.net (visited July 15, 2014).

her that her position was being eliminated, along with the positions of at least five other CDAs. Compl. ¶¶ IV(C), V(F). Her last day of employment was December 31, 2011. Questionnaire Resp. No. 4. Robinson was 61 years old at the time. Compl. ¶ III.

Robinson claims that CEDA gave no explanation for the sudden termination, leading Robinson to presume racial and ageist motivations. *Id.* at ¶¶ IV(D), V(D). Robinson observes that some white CEDA employees outside of the CSBG-funded programs were not downsized and five other CSBG-funded CDAs who were also let go when she was, were over the age of 50. *Id.* at ¶¶ IV(E), V(F); Pos. Stmt. p.3.

In anticipation of this restructuring, CEDA's Vice President Patricia Wildner ("Wildner") conducted a series of performance reviews between January 1, 2010 and February 28, 2011. *See* Pos. Stmt., Exh. G. During a March 24, 2011 meeting with Wildner, Robinson alleges that Wildner asked how long she planned to stay at CEDA and whether she intended to retire at some point. Compl. ¶ V(E). Wildner, for her part, documented several deficiencies on Robinson's evaluation, including Robinson's poor leadership skills, cooperation, attendance, and job attitude.² *See* Pos. Stmt., Exh. G. Although, Robinson met with Wildner two more times before filing a grievance (see below), Robinson refused to sign the evaluation. *Id.*

Just under six months before receiving her pink slip – on or about June 28, 2011 – Robinson complained to CEDA President Robert Wharton ("Wharton") that she believed she was the victim of age- and race-based discrimination. Compl. VI(E); Pos. Stmt. p.4. Wharton denied the grievance on August 25, 2011. *See Id.* at 4, Exh. F. But due to scheduling conflicts, a face-to-face meeting between Wharton and Robinson to discuss the grievance was never held. *Id.* Robinson believes that this grievance also played a role in the decision to terminate her six months later. Compl., ¶ VI.

CEDA, for its part, claims that Robinson's termination had nothing to do with her age, race, complaints, or even her performance evaluations. Questionnaire Resp. No. 5. Instead CEDA states that on or about August 2011, the association began a restructuring. Pos. Stmt. pp.2-3. This restructuring included a \$3.6 million reduction in the annual CSBG budget and the permanent elimination of all CDA positions. *Id.* at 2. Instead of having individual CDAs heading each CSBG-funded program in each municipality, the new structure allowed for just three Regional Managers who would continuously rotate between multiple locations, supervising projects across several municipalities. *Id.*

All employees were informed of this restructuring plan and the consequences that it entailed at a November 9, 2011 meeting. *Id.* Additionally, CEDA asserts that each potentially terminable employee was sent an email informing them of the termination and how to reapply for one of the new Regional Manager positions. *See* Pos. Stmt., Exh. E; Questionnaire Resp. No.

² CEDA concedes that Robinson's attendance and disciplinary issues. Questionnaire Resp. No. 2.

14. It is uncontested that Robinson did not respond to the email or otherwise apply for a Regional Manager position. *Id.*; Questionnaire Resp. No. 3. She was terminated thereafter.

Discussion

The Human Rights Ordinance prohibits an employer from “directly or indirectly discriminat[ing] against any individual in hiring . . . discharge . . . or the term, privilege, or condition of employment on the basis of unlawful discrimination.” County Code, § 42-35(b)(1). Unlawful discrimination includes discrimination on the basis of an individual’s race and age. *See id.* at § 42-31. The Human Rights Ordinance further prohibits any person from “retaliat[ing] against any person because that person in good faith has opposed that which the person reasonably believed to be unlawful discrimination, sexual harassment, or other violation of this article or has made a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this article.” *Id.* at § 42-41(a).

I. Unlawful Discrimination

Robinson asserts both race and age discrimination. Compl. ¶¶ IV, V. That is to say that she alleges that CEDA terminated her because she is black and/or over the age of 40. *See id.*

The Human Rights Ordinance applies the same test to both race and age discrimination claims in the employment context. In order to proceed, an investigation of Robinson’s complaint must establish a *prima facie* case for discrimination consisting of evidence of the following: (1) that Robinson 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 performed in it to her employer’s satisfaction; and (4) that similarly situated individuals who were not members of the same protected class were treated more favorably. *See McCarroll v. Mulligan Management*, 2011E002, *5 (CCHRC Jan. 8, 2014); *Powell v. Northwestern University*, 2011E004, *3 n.2 (CCHRC Feb. 14, 2014). If during the course of the Commission’s investigation, the respondent can articulate a “legitimate, nondiscriminatory reason for the action,” then the burden shifts back to the complainant to demonstrate that proffered reason is pretextual or otherwise discriminatory in nature. *See Jiminez v. Consumers Insurance Service, Inc.*, 2006E039 (CCHRC Jun. 16, 2009). In other words, a *prima facie* showing is not relevant if the respondent has a legitimate, nondiscriminatory reason for the adverse employment action. *See Lalvani v. Illinois Human Rights Commission*, 324 Ill. App.3d 774, 791 (1st Dist. 2001) (“where the defendant has done everything that would be required of him if the plaintiff had properly made out a *prima facie* case, whether the plaintiff really did so is no longer relevant.”).

Robinson’s discrimination claims fail both because there is insufficient evidence to establish a *prima facie* case of employment discrimination and because there is insufficient evidence to demonstrate that CEDA’s proffered nondiscriminatory motivation for the mass layoff of its CDAs was motivated by race or age. The Commission’s investigation easily found the first three elements of a *prima facie* case of discrimination. Robinson’s race (African

American) and age (61) place her within two protected classes under the Human Rights Ordinance. Being terminated is, no doubt, an adverse employment action. And CEDA concedes that its termination of Robinson was not motivated by her documented performance issues. Questionnaire Resp. Nos. 4, 5.

Robinson's *prima facie* case stumbles, however, in identifying similarly situated non-black or younger employees who received better treatment. With respect to her race claim, Robinson identifies two white CEDA employees who were not terminated. Compl. ¶ IV(E). Yet the Commission's investigation finds that these employees were not similarly situated because their responsibilities extended to CEDA projects outside of the CSBG program and funding. *See* Pos. Stmt. p.3. Similarly, it is true that all of the CDAs who were let go were over the age of 50, but this evidence does not lead the Commission to infer ageism as Robinson suggests. Instead, the Commission cannot infer any discriminatory intent because every CDA was over the age of 50. Questionnaire Resp., Exh. A. If every CDA was terminated, there would be no younger CDA outside of the protected class to receive more favorable treatment. In fact, not every CEDA was terminated. During the course of this investigation, CEDA provided evidence that one of the African American CDAs, who like Robinson was over the age of 50, applied for and received a promotion to Regional Manager during the restructuring. Pos. Stmt. p.3.

In addition, Robinson is unable to prevail in this case because of the lack of substantial evidence that CEDA's nondiscriminatory reason for Robinson's termination (*i.e.* an association-wide restructuring that resulted in a mass layoff) is pretextual. CEDA's restructuring resulted in the elimination of the CDA position (among others) without regard to the age or race of the employees holding those positions. The Commission examined the race and age of the various employees affected by the restructuring. While the terminated CDAs are homogenous when considering only age, they are a racially diverse group. Questionnaire Resp., Exh. C. When considering the full range of the more than one hundred CEDA employees terminated, the broader group is a diverse lot by race and age. *Id.*

In other words, CEDA is able to articulate a legitimate, nondiscriminatory reason for Robinson's termination through convincing and ample evidence. Robinson has nothing with which to demonstrate that this reason is pretextual. A single conversation inquiring into the retirement plans of an employee of an organization that is undergoing a major restructuring is not sufficient to convince the Commission that CEDA's major reorganization was a sham perpetrated to give cover for the employer's animus towards the black or older employees.

II. Unlawful Retaliation

Separately Robinson asserts that a complaint she made to the President of CEDA six months prior to the restructuring caused her to be included in the mass layoff. In order to establish a claim for unlawful retaliation, Robinson must show (1) that she sought to exercise a right protected by the Human Rights Ordinance; (2) that she suffered adverse treatment that is

reasonably likely to deter the complainant or others from engaging in protected activity; and (3) that there is a *causal connection* between the protected activity and the adverse employment action. *See Washington v. Cook County*, *4 (CCHRC Sept. 26, 2013) (emphasis supplied).

Robinson exercised a protected right when she filed a grievance alleging discrimination, and (as noted above) her termination constituted adverse treatment. However, Robinson has failed to establish a retaliation claim because the Commission's investigation has found no evidence *connecting* her termination and her exercise of her protected right.

CEDA has provided ample evidence to illustrate the restructuring that occurred and the new programs being adopted at the time of these allegations. Pos. Stmt. p.2. CEDA thoroughly described the measures they took to ensure a smooth transition with regards to their employees. *See id.* According to CEDA, all CDA positions were to be eliminated without regard to the performance of, or complaints filed by, the employees in those positions. *Id.* CEDA's motivation for the restructuring was to realize sizable operational savings by consolidating the functions of the many, geographically-specific CDAs into just three Regional Managers who rotated between project locations. *Id.* It is simply implausible on the facts made available to the Commission during this investigation that CEDA trumped up a mass layoff to retaliate against Robinson for her complaint six months earlier.

Notably the only CDAs that could have possibly retained employment at CEDA were those who applied for the new Regional Manager position. *Id.* The Commission finds that the fact that Robinson failed to even reply to the email offering Regional Manager interviews is the cause of her termination better supported by the evidence; not any protected activity she engaged in six months prior. All affected staff members were informed of the CEDA restructuring during a meeting on or about November 9, 2011, and again via email. *See id* at p.3. Robinson's illness and vacation time kept her from attending that meeting; however, Robinson was reminded of this upcoming change via email on or around December 14, 2011. Compl. ¶ V. It was at that time that Robinson had the opportunity to submit her interest in the position that would allow her to stay employed by CEDA. By failing to do so, Robinson effectively elected to be discharged.

Conclusion

For the foregoing reasons, the Commission orders that complaint 2012E015 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.

July 25, 2014

By delegation:

A handwritten signature in black ink, appearing to read 'Ranjit Hakim', is written over a horizontal line.

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