



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No. EMra11060288  
[REDACTED]

[REDACTED],  
Complainant,

vs.

KROGER,  
Respondent.

### **NOTICE OF FINDING**

The Deputy Director of the Indiana Civil Rights Commission (“Commission”), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b)

On June 7, 2011, [REDACTED] (“Complainant”) filed a complaint with the Commission against Kroger (“Respondent”) alleging discrimination on the basis of race in violation of the Indiana Civil Rights Law (IC 22-9, et seq) [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated due to her race. In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondent’s legitimate business expectations; or (4) similarly-situated employees of a different race were treated more favorably.

It is evident that Complainant falls within a protected class by virtue of her race and it is undisputed that she suffered an adverse employment action when Respondent discharged her on January 21, 2011. The only remaining questions are whether Complainant was meeting her employer’s expectations or, if not, whether Respondent treated similarly-situated employees of a different race more favorably.

Respondent terminated Complainant for falsifying documents when she submitted a report that showed a meeting had taken place when the meeting did not occur. Complainant denies that she ever stated that a council meeting was held. Complainant had not received any other disciplinary action in her 20+ years of employment with Respondent. The evidence, therefore, is inconclusive as to whether Complainant was meeting Respondent’s expectations. Nevertheless, further evidence shows that Respondent treated Complainant less favorably than a similarly-situated Caucasian employee who also falsified documents. The evidence shows that a Caucasian employee under the same supervision as Complainant stated on a report that all work permits



were on file when a work permit was, in fact, missing from a minor's employee file. Respondent placed this employee on a Performance Improvement Plan and suspended her, as opposed to terminating her employment. Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

January 11, 2012  
Date

---

Joshua S. Brewster, Esq.,  
Deputy Director  
Indiana Civil Rights Commission

**SERVICE LIST**