



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMra12111568
[REDACTED]

RICHARD MIMS,
Complainant,

v.

[REDACTED]
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 occurred in this instance. 910 IAC 1-3-2(b).

On November 16, 2012, [REDACTED] (“Complainant”) filed a Complaint with the Commission against LH Medical (“Respondent”) alleging discrimination on the basis of race in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

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 forced to constructively discharge his employment as a result of being subjected to a racially hostile work environment. In order to prevail, Complainant must show that: (1) Complainant was subjected to offensive or unwelcome comments that were racial in nature; (2) the comments were severe or pervasive; (3) Complainant made it known that the comments were unwelcome; (4) Respondent failed to take corrective action to address the hostile work environment; and (5) the environment was so hostile as to lead a reasonable person to resign his employment.

By way of background, Complainant was hired as a Quality Inspector on or about July 12, 2010. In October 2010, Complainant alleges and several other witnesses have substantiated that a Caucasian co-worker named Schoeff began making racially derogatory comments such “blacks were lazy,” “the KKK was alive and well,” slavery was a good thing, and the economy was bad



because blacks were on “the system.” Witness testimony also substantiates Complainant’s claims that Schoeff stated “they should go back to the old days and hang Obama on an oak tree,” that he was proud of his daughter for calling another child a “nigger” in school, and that Schoeff wore a KKK uniform to his daughter’s school. Moreover, witness testimony supports Complainant’s allegations that Schoeff, in reference to President Obama, stated, “if that nigger came in here I would shoot him.” Witness testimony corroborates that Schoeff made these comments on at least a weekly basis throughout the duration of Complainant’s employment and one of Complainant’s co-workers ultimately reported the comments about President Obama to the secret service in April or May 2012. Schoeff admitted to the Commission that the Secret Service questioned him at his home and that he admitted to making the comment about the oak tree. However, Schoeff indicated that the Secret Service did not press charges.

While Respondent contends that Human Resources department was unaware of Schoeff’s behavior until Complainant wrote about it in his resignation letter, Respondent admits that Complainant told his supervisor (Ripple) that he did not get along with Schoeff because he was a racist. Respondent also alleges Complainant told Ripple that he did not want him to say anything about the allegations. Witness testimony corroborates that Complainant informed Ripple about the behavior; further, witness testimony substantiates Complainant’s claim that he reported the behavior to the Director of Operations but nothing was done. During the course of the investigation, a former co-worker (Caucasian male) revealed that Schoeff called him a “Wigga” on two occasions in January 2012, but did not report the comments to supervision. However, the witness reported the comments about President Obama in July 2012 to Ripple but nothing was done. The same co-worker alleges he observed Complainant telling another supervisor (Nine) about the behavior but was told “he thought he had a thicker skin.” Although Respondent alleges it investigated the allegations about Schoeff after Complainant tendered his resignation letter, Respondent has failed to produce any evidence showing that it documented Complainant’s or the former co-workers complaints, the discussions with Schoeff, or the results of the investigation. Further, Complainant’s supervisor failed to follow its own harassment policy when he declined to report the alleged harassment to Human Resources or Upper Management.

Additionally, Complainant alleges he was treated less favorably than a Caucasian employee who was granted a transfer to another department after reporting Schoeff’s harassment. While Respondent denies that Complainant requested to be transferred, witness testimony indicates that Respondent offered to transfer the Caucasian employee after he expressed the desire to resign because of Schoeff’s offensive behavior. Further, there is sufficient evidence that Schoeff’s racially derogatory comments and threats toward an African-American political candidate are sufficiently severe or pervasive as to lead a reasonable individual to resign his employment. Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 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. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

November 26, 2013
Date

Akia A. Haynes
Akia A. Haynes, Esq.
Deputy Director
Indiana Civil Rights Commission