

**CITY OF LINCOLN, NEBRASKA**  
**COMMISSION ON HUMAN RIGHTS MINUTES**  
October 31, 2013  
**CITY COUNCIL CHAMBERS, 555 S. 10<sup>TH</sup> STREET**

The October 31, 2013, meeting of the Commission on Human Rights was called to order at 4:01 p.m. by Gene Crump, Chair.

**ROLL CALL:**

The roll call was called and documented as follows:

**MEMBERS PRESENT:**

Commissioners: Gene Crump (Chair), Liz King, Sue Oldfield, Bennie Shobe, and Micheal Thompson. Quorum present.

**MEMBERS ABSENT:**

Hazell Rodriguez, Takako Olson, and Mary Reece.

**STAFF PRESENT:**

Angela Lemke, Margie Nichols, Loren Roberts, and Peg Dillon.

**APPROVAL OF SEPTEMBER 26, 2013 MINUTES:**

A motion was made by Oldfield and seconded by Thompson to approve the minutes of the September 26, 2013 meeting.

Crump asked for the roll call. Voting "aye" was: Oldfield, Shobe, Thompson and Crump. Abstaining was King. Motion carried.

**APPROVAL OF OCTOBER 31, 2013, AGENDA:**

A motion was made by Thompson and seconded by Shobe to approve the meeting agenda.

Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**CASE DISPOSITIONS:**

**LCHR #13-0227-005-E-R**

A motion was made by Shobe and seconded by Thompson to recommend a finding of **No Reasonable Cause** on all issues.

Shobe asked about the gap in employment and if the Complainant gave a reason for not being more proactive in maintaining contact with the Respondent. Lemke said the Complainant claims to have called the Respondent three times in August but the phone records show no proof of that. Lemke adds that she asked the Complainant why he did not go into the office and the response was that, because of the investigation, he was waiting for them to contact him.

Shobe asked whether the Complainant was receiving health insurance during the time he was not working, and asked about the Cobra notification. Lemke denies he was receiving health insurance and is unsure about Cobra requirements, but explains that Respondent's position is that Corporate noticed that he had not logged any hours in for several months so they determined his date of separation as January 23, 2013.

Oldfield asked if the Respondent had the Complainant's address. Lemke said yes the Respondent had his address, but there was no proof that a letter was sent asking that he contact them. The Respondent's stated reason for this is that the Human Resource person's time was consumed with the investigation so she failed to send out documentation.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**LCHR #13-0307-007-E**

A motion was made by Oldfield and seconded by King to recommend a finding of **No Reasonable Cause** on the first two issues of denial of a reasonable accommodation based on disability and termination based on disability.

Shobe asked about the Respondent allowing the Complainant to work that one day just because she wanted to. Lemke replied that it is not clear whether the Complainant was required to work or was allowed to work while on restrictions. Lemke explained the chronology of the doctor visits and the restrictions that were placed on the Complainant. Shobe asked if there was any evidence that the Respondent required the Complainant to lift heavy objects while working. Lemke said there was an allegation by the Complainant that on one occasion, when no other employees were working, a customer asked for assistance in lifting a bag of product and the Complainant assisted the customer.

Lemke denied there was evidence showing that Respondent required the Complainant to work outside of her restrictions.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

A motion was made by King and seconded by Thompson to recommend a finding of **Reasonable Cause** on the issue of termination in retaliation for brother's protected activity.

Shobe asked about the timing of the Respondent saying they wanted to go in a different direction. Lemke agreed the timing was suspicious between the settlement agreement and her termination. Lemke added that it was not clear how the hiring of another person affected the schedule for the Complainant. Thompson asked if it was normal for the Respondent to be this accommodating in scheduling part time workers. Lemke replied that yes the Respondent seemed to be flexible with scheduling.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**LCHR #13-0416-011-E-R**

A motion was made by Oldfield and seconded by King to recommend a finding of **Reasonable Cause** that the Complainant was terminated based on age.

Shobe asked if the evidence showed the Complainant was a model employee. Lemke said that the evidence did not support many of the reasons provided for her termination. Lemke said that the evidence did confirm that the Complainant almost exclusively used a tool on patients that may have contributed to her being the least requested hygienist, and may have used this tool on patients even when they asked that she not.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**LCHR #13-0418-012-E-R**

A motion was made by Crump and seconded by Thompson to recommend a finding of **No Reasonable Cause**.

King questioned why the disability was not known by the Respondent. Nichols said evidence did not show that the Complainant ever told the Respondent he was disabled. She added that the Complainant also did not ask for a reasonable accommodation from the Respondent.

Shobe asked what the Complainant had claimed when filing a complaint. Nichols said the Complainant had told her that his treatment by the Respondent was wrong, so he believed it had to be discrimination. Discussion continued regarding how the Respondent would know there is a disability if the Complainant does not request an accommodation stating the need being based on a disability.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**LCHR #13-0509-015-E-R**

A motion was made by King and seconded by Thompson to recommend a finding of **No Reasonable Cause** on all issues.

Thompson asked for confirmation about the age issue. The act protects those age 40 or older. Nichols clarified that a replacement for an employee could be enough younger than the terminated employee, yet be over 40, and it could still qualify as age discrimination.

Hearing no further discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**PRE-DETERMINATION SETTLEMENT AGREEMENTS:**

**LCHR #13-0723-025-E-R**

A motion was made by Oldfield and seconded by King to accept the settlement agreement as presented. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**LCHR #13-0809-007-H**

A motion was made by Thompson and seconded by King to accept the settlement agreement as presented. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**SUCCESSFUL CONCILIATION:**

**LCHR #12-0904-041-E-R**

A motion was made by King and seconded by Shobe to accept the agreement as presented. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**ADMINISTRATIVE CLOSURES:**

**LCHR #13-0910-009-H**

A motion was made by Shobe and seconded by Thompson to accept the Administrative Closure of Withdrawal with Benefits as presented. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**LCHR #13-0924-010-H**

A motion was made by Thompson and seconded by King to accept the Administrative Closure of Withdrawal with Benefits as presented. Hearing no discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**ADMINISTRATIVE ACTIONS:**

**LCHR #13-0612-003-H**

A motion was made by Thompson and seconded by Oldfield to accept the Administrative Action with an order to public hearing as presented.

Hearing no discussion, Crump asked for the roll call. Voting "aye" was: King, Oldfield, Shobe, Thompson and Crump. Motion carried.

**OLD BUSINESS:**

Commissioners asked for clarification about the public hearings and what their responsibilities would be. Lemke said they will get the case again after the December 4<sup>th</sup>, 2013, public hearing and it would not be appropriate for Commissioners to attend since they will be reviewing the hearing officer's recommended order. Lemke said she will email Commissioners more detailed information about the rules for public hearings and the time frame they could expect.

**NEW BUSINESS:**

Lemke discussed the terms of service for the Commissioners on the Human Rights Commission. Next month will be the last meeting for Rodriguez after completing two full terms with the Commission. Crump and Thompson have agreed to begin a second 3-year term with the Commission ending in December 2016. Elections for Chair and Vice-Chair will take place at the December 2013 meeting. A new roster will be sent in the December Commissioner's packet.

Commission on Human Rights  
October 31, 2013  
Page 6

The Commissioners thanked the investigators and staff for all the hard work to investigate and present the cases each month.

Shobe reminded everyone about the NAACP Freedom Fund Banquet at the Cornhusker Marriott, November 9<sup>th</sup>, 2013.

**Next Meeting:**

The next meeting will be Thursday, December 12, 2013, at 4:00 p.m. in the City Council Chambers at the County City Building at 555 S. 10<sup>th</sup> Street.

The meeting was adjourned at 4:38 p.m.