

**CITY OF LINCOLN, NEBRASKA
COMMISSION ON HUMAN RIGHTS
MINUTES**

Thursday, September 29, 2016
555 S 10th Street, 1st Floor
City County Building, Council Chambers

CALL TO ORDER:

The September 29, 2016, meeting of the Commission on Human Rights was called to order at 4:01 p.m. by Bennie Shobe, Chair.

ROLL CALL:

The roll call was called and documented as follows.

MEMBERS PRESENT:

Commissioners: Bennie Shobe (Chair), Amanda Baron (Vice-Chair), Tom Beckius, Carlos Garcia, Jon Rehm, Micheal Q. Thompson and Melanie Ways. Quorum was present.

MEMBERS ABSENT:

Commissioners: Susan Oldfield was absent.

STAFF PRESENT:

LCHR: Kimberley Taylor-Riley, Margie Nichols, Abigail Littrell, Francisca Beltran, Jocelyn Golden and Peg Dillon.

APPROVAL OF AUGUST 25, 2016, MINUTES:

A motion was made by Thompson and seconded by Beckius to approve the minutes of the previous meeting.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Rehm, Thompson and Ways. Abstaining was Shobe. Motion carried.

APPROVAL OF SEPTEMBER 29, 2016, AGENDA:

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

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, Thompson and Ways. Motion carried.

CASE DISPOSITIONS:

LCHR #16-0223-006-E-R

A motion was made by Ways and seconded by Baron to recommend a finding of **no reasonable cause** on all allegations.

Thompson asked about the injury and the delay between the injury and the Complainant going to the doctor. Nichols said the neither Complainant nor Respondent explained why the Complainant waited several weeks before visiting the doctor. The Respondent gave the Complainant a brace to wear and the Complainant continued to work, until he decided it was not getting better and then he decided to see a doctor.

Ways asked about the Respondent's workplace injury policy and why they wait for the employee to request to see a doctor instead of sending them to the doctor for all injuries. Nichols said the Respondent reported there was no clear indication about the Complainant needing to see a doctor until he came in and reported he had gone to his own doctor.

Rehm asked whether the Respondent's obligation under Workers Compensation law is relevant in this case. Nichols replied it was not an issue in cases before the Commission because the Commission doesn't have jurisdiction to investigate Workers Compensation claims and should not be considered when making a determination.

Shobe asked if there was a language barrier between Respondent and Complainant. Nichols said there might be some language barrier. The Complainant understands some English but required an interpreter to fully communicate with an English speaker. Nichols suggested the Complainant may not have understood all communication with the Respondent, even with an interpreter present.

The Commission discussed Respondent's attendance policy change. Nichols said the Complainant believed Respondent instructed him not to report his absences ahead of time. Complainant's unexcused absences resulted in his discharge.

Garcia asked about the produce manager's report that the Complainant was taking excessive breaks. Nichols was unable to substantiate that allegation and the Manager denied receiving any complaints. Garcia also asked about Complainant's job description and if all of the employees were required to sort and discard old produce. Nichols reviewed the job description, which provided that employees were to remove and dispose of expired produce but were not to dispose of produce alone due to lifting the tote to empty it. Nichols said the Complainant complained about having to take out garbage by himself. The Manager said that he helped the Complainant several times when no one else was around to help and that he did not see Complainant performing the job by himself.

The Commission discussed if no one else was around to help and if the undesirable job was assigned to the Complainant because of his national origin. Nichols said every employee in Complainant's position performed the same tasks; however, Nichols was unable to speak with Complainant's coworkers to verify his allegations.

There was discussion about the Complainant's injury and if he was exceeding his doctor ordered work restrictions. Nichols said that again, there may have been a language barrier. She stated the Complainant was seen exceeding the restrictions and spoken to by management which reminded him on several occasions to not exceed his work restrictions.

Baron asked if the Complainant had eight absences total. Nichols said he had eight occurrences during the relevant period. There was discussion about Respondent's confusion over how long the Complainant had worked for Respondent. When they realized that he had not been at the company for six months, Respondent discharged Complainant, according to its policy, for excessive absences.

Thompson asked whether the Complainant was advised he could reapply with Respondent. Nichols said the Complainant did not want to reapply or work for Respondent because he felt he could not do the job due to his injury.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, and Ways. Voting no was Garcia, Rehm and Thompson. Motion carried.

LCHR #16-0427-019-E-R

A motion was made by Beckius and seconded by Shobe to recommend a finding of **reasonable cause** that the Complainant was discharged based on disability.

Shobe asked whether the Commission should distinguish between an injury that occurred at the workplace or outside of his workplace. Nichols said that is not applicable in this case, because the allegation was that he was regarded as being disabled.

The Commission discussed whether the Complainant required a reasonable accommodation and whether the Respondent was willing to make accommodations for Complainant's disability. The Respondent asserted it attempted to accommodate Complainant's request, but was unable find a device that acceptably accommodated the Complainant.

Shobe asked about Respondent's explanation Complainant was discharged for theft of time. Ways asked if it only occurred once. Nichols said Complainant provided evidence showing he acknowledged he had forgotten to clock out and that his hours were changed to include the hours he was gone.

Garcia asked about Respondent's assertion it was an undue burden to accommodate the Complainant. Nichols said since one of the essential functions was painting and the Complainant continued to paint without the reasonable accommodation, Respondent's contention it was an undue burden to accommodate Complainant was unverifiable. There was further discussion about the paint roller extension and why the small cost of \$3 to \$7 was beyond Respondent's budget. Nichols said she could not answer that; however, the Complainant and another worker made an extension to use with the paint roller.

Thompson asked whether the Complainant was given access to keys that were required for his work. Nichols said there was no evidence, beyond the Respondent's statement, that Respondent supplied Complainant with the master keys.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Baron, Beckius, Garcia, Rehm, and Ways. Voting no was Shobe and Thompson. Motion carried for **reasonable cause**.

A motion was made by Ways and seconded by Baron to recommend a finding of **reasonable cause** that the Complainant was denied a reasonable accommodation based on disability.

Beckius asked about the cost of accommodation to the Respondent. Nichols explained the reasonable accommodation issues in this case and said the Respondent refused to buy an adaptor to attach an extension tool to Complainant's paint roller.

Respondent asserted it was an undue burden to allow Complainant time off to attend physical therapy. Nichols read to the Commissioners from the Respondent's response: 'eventually Complainant began missing a considerable amount of work due to these appointments and this placed an undue burden and hardship on Respondent's other employees'. However, she added, Complainant only attended a few appointments before he was terminated and Respondent could not show Complainant was behind in any of his work.

Rehm asked if the Complainant had a job where he was required to work certain hours. Nichols said yes he did have set hours. The Complainant was losing hours and money by not being at work.

There was discussion about the implication of the employees fashioning their own adaptor for the paint brush. Baron questioned if Respondent budgeted reasonable accommodation costs from personnel or supply areas. She wanted to know why it could not fall under personnel budget instead of maintenance. Nichols said she did not have budget conversations with Respondent.

Garcia asked how many absences the Complainant had. Nichols said he had two absences.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Baron, Garcia, Rehm, and Ways. Voting no was Shobe, Beckius and Thompson. Motion carried for **reasonable cause**.

LCHR #16-0427-004-H

A motion was made by Ways and seconded by Rehm to recommend a finding of **reasonable cause** that the Complainant was subjected to different terms and conditions of rental based on disability.

Shobe questioned the connection between employment and housing claims on this case. Nichols said it was a direct correlation because Complainant would not have lost his housing if he had not been terminated from his employment.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, and Ways. Voting no was Thompson. Motion carried for **reasonable cause**.

LCHR #16-0510-023-E

A motion was made by Baron and seconded by Thompson to recommend a finding of **no reasonable cause** on all allegations.

Thompson asked about the Complainant's current employment status. Nichols said the Complainant was removed from one position but continued working for Respondent in another capacity. Later, the Respondent lost the grant funding for Complainant's position.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, Thompson and Ways. Motion carried.

LCHR #16-0628-008-H

A motion was made by Thompson and seconded by Ways to recommend a finding of **no reasonable cause**.

Ways asked if this owner was consistent in requiring all tenants to have a regular income from employment. Littrell said all the tenants she interviewed reported that the Respondent required that they be employed for one year. When asked about retirement income, the Respondent said he had not had to consider that yet, but might treat that type of income differently. Ways asked why social security isn't considered regular income. Littrell said it was not regular income from employment according to this Respondent's policy.

Thompson asked about the Respondent's co-signer policy. Littrell said Respondent would allow a co-signer if the tenant did not meet Respondent's employment requirement. The Complainant believed that because she was using a section 8 voucher, that she could not use a co-signer. Littrell said Complainant misunderstood the voucher rules.

Beckius asked about the other properties Respondent owns and how long Respondent has been a landlord. Littrell said it is mostly single family or duplex properties and this landlord has been in business for at least 10 years.

Ways asked again if it is legal to have a policy that requires certain types of income. Littrell said there is no protection for source of income discrimination under Title 11 of the Lincoln Municipal Code.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, Thompson and Ways. Motion carried.

PRE-DETERMINATION SETTLEMENTS:

LCHR #16-0504-005-H

A motion was made by Baron and seconded by Thompson to recommend approval of the Pre-determination Settlement.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, Thompson and Ways. Motion carried.

LCHR #16-0707-030-E-R

A motion was made by Baron and seconded by Ways to recommend approval of the Pre-determination Settlement.

Rehm said it was good that this case was resolved. Littrell thanked Taylor-Riley for helping to mediate this case and reach a resolution.

Hearing no further discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, Thompson and Ways. Motion carried.

ADMINISTRATIVE CLOSURES:

LCHR #15-1231-047-E-R

A motion was made by Thompson and seconded by Shobe to recommend approval of the Administrative Closure due to a Private Settlement.

Hearing no discussion, Chairperson Shobe, asked for the roll call. Voting "aye" was: Shobe, Baron, Beckius, Garcia, Rehm, Thompson and Ways. Motion carried.

OLD BUSINESS:

Outreach

Beltran updated the Commission on outreach activities: Walt Library and Spanish Heritage Month, Baron read a book to the kids at this event, there are more events planned for the rest of the month and this schedule was emailed to the Commissioners, Harvest Moon at Asian Center, Streets Alive, Center for People in Need, and Garcia shared about a job retraining program. Beltran attended training with Jane Blum who works in the US Embassy in the Middle East and helps with the vetting process for refugees.

HUD projects

Beltran and Littrell are working on projects for outreach for Women and domestic violence victims. The grant will create a campaign for this population. Beltran is contacting vendors and planning is in progress for print material and focus groups. The final phase will involve the advertising for this outreach project.

Travel

Littrell attended a conference at John Marshal School of Law on Fair Housing in Chicago.

NEW BUSINESS:

HUD Contract Updates

Nichols talked about the number of cases during the last contract year. The department completed 31 cases, this was the most LCHR had ever closed in one year for Housing. LCHR requested an upward modification to the EEOC contract as well as an EEOC approved payment for 18 more cases.

There was an additional \$1,000 grant received from EEOC for promotional items.

New Commissioner Status

Taylor-Riley updated the Commissioners on the status of the roster for 2017. Three of the Commissioners agreed to an additional three-year term and the Mayor continues to review applications for a replacement for Kennedy-King.

PUBLIC COMMENT:

Taylor-Riley talked about the African American Leadership Conference in Omaha on October 11th. National speakers will be at this event and national trends and issues will be discussed. We will email information on this conference to the Commissioners.

The meeting was adjourned at 5:31 p.m.

Next Meeting:

Thursday, October 27, 2016, at 4:00 p.m.
555 S. 10th Street, 1st Floor, Council Chambers