



**UPON RECONSIDERATION  
CHARGING PARTY'S REQUEST –  
PROBABLE CAUSE**

**AUGUST 27, 2020  
= APPEARANCE =**

**Before the Ohio Civil Rights Commission:**

**Karen Aluma v. City of Cleveland, Department of Public Health  
CLEA4(45463)09102019; 22A-2019-03499C**

**COMMISSION ACTION**

On May 7, 2020, the Cleveland Regional Office of the Commission made a determination of **NO PROBABLE CAUSE**. A copy of the Letter of Determination is attached. The Charging Party and the Respondent were notified of the Commission's findings by letter on May 7, 2020. The Charging Party's request for reconsideration was received on May 18, 2020. The Charging Party's request is timely filed.

**CHARGING PARTY'S ALLEGATIONS**

By affidavit filed on September 10, 2019, Charging Party, **Karen Aluma**, filed a charge alleging that the Respondent, **City of Cleveland, Department of Public Health (CDPH)**, subjected her to harassment; different terms and conditions of employment; continually being treated disrespectfully, by tone of voice and body language; being treated dismissively; and being belittled because of her age (over the age of 40 with date of birth-10/28/1958), and her national origin (Columbia). Charging Party stated that she is a naturalized U.S. citizen, who was born in Columbia and that Spanish is her first language.

Charging Party further alleged that Katie Roming, Chief Epidemiologist and her immediate supervisor, has been harassing/humiliating her by rudely cutting her off when speaking, by speaking of her accent and her English-speaking ability to other employees, and by singling her out to do things that was not required of the other two epidemiologists-Stephanie Pike Moore and Sheena Fryson. Moore and Fryson are Charging Party's co-workers who were not treated the same as Charging Party. On March 28, 2019, Roming mandated that the department select four personal goals to complete within the next year. Charging Party chose to translate four communicable disease sheets from ODH/CDC into Spanish. After two months of work, Roming set up a meeting for July 2<sup>nd</sup> and presented Charging Party two more fact sheets, of her selection, to translate. Since these were not goals Charging Party had established, Charging Party questioned having to do extra documents. Roming threatened Charging Party with insubordination. The other employees' goals were not changed, only the Charging Party's. On April 10th, Roming instructed Charging Party alone to pack up 2 kitchen areas (instead of a team of employees to do the work) in addition to her cubicle, for a move, which affected charging Party's timing in having her cubicle ready for the move. All jurisdictional requirements for filing a charge have been met.

**CLEVELAND REGIONAL OFFICE**

**Karen Aluma v. City of Cleveland, Department of Public Health**

**CLEA4(45463)09102019; 22A-2019-03499C**

**Page 2**

**PRIMA FACIE ELEMENTS**

**A. Disparate Treatment (Denied Equal Terms and Conditions of Employment) Due to Age and National Origin**

Charging Party alleged that she was subjected to disparate treatment/unequal terms and conditions of employment because of her national origin. In order to establish the prima facie elements of disparate treatment based on national origin, Charging Party must show that: (1) she is a member of the protected class, (2) she was qualified for the position, (3) she was subjected to an adverse employment action, and (4) he was treated differently than other persons outside of the protected class.

Once Charging Party established a prima facie case, Respondents may rebut the Charging Party's prima facie elements/proof by articulating a legitimate, nondiscriminatory reason for the treatment of Charging Party.

Once the Respondent articulates a legitimate nondiscriminatory reason for the action taken, the burden of proof then shifts to the Charging Party to prove/rebut that the reasons advanced by the Respondents are pretext (cover up) for unlawful discrimination. Evidence of pretext may be established by demonstrating: (1) the reason advanced by the Respondents is not believable, (2) similarly situated individuals outside Charging Party's class were treated differently, (3) evidence of bias by Respondent's decision makers towards persons of Charging Party's class.

**B. Discrimination Based on Age**

Charging Party alleged that she was subjected to disparate treatment/unequal terms and conditions of employment because of her age. To establish the prima facie elements of discrimination on the basis of age, Charging Party must show that: (1) she is 40 years old or older; (2) she was subjected to an adverse employment action, (3) she is qualified for the position, or (3) a substantially younger co-worker was treated differently.

Once Charging Party established a prima facie case, Respondents may rebut the Charging Party's prima facie elements/proof by articulating a legitimate, nondiscriminatory reason of the treatment of Charging Party.

Once Respondent articulates a legitimate nondiscriminatory reason for the action taken, the burden of proof then shifts to the Charging Party to prove/rebut that the reasons advanced by the Respondents are pretext (cover up) for unlawful discrimination. Evidence of pretext may be established by demonstrating: (1) the reason advanced by the Respondents is not believable, (2) similarly situated individuals outside Charging Party's class were treated differently, or (3) evidence of bias by Respondent's decision makers towards persons of Charging Party's class.

**C. Harassment Based on National Origin and/or Age**

Charging Party additionally asserts that she was harassed due to protected class. To establish the prima facie elements of harassment, Charging Party must show that: (1) she was subjected to unwelcome comments or conduct based on his/her protected class status, (2) the conduct resulted in a tangible job action or was sufficiently severe or pervasive to interfere with Charging Party's work performance to

**CLEVELAND REGIONAL OFFICE**

**Karen Aluma v. City of Cleveland, Department of Public Health**

**CLEA4(45463)09102019; 22A-2019-03499C**

**Page 3**

create a hostile environment (measured by standard of a reasonable person in Charging Party's situation), and (3) a basis exists for holding Respondent liable for the harassment.

Once Charging Party established a prima facie case, Respondents may rebut the Charging Party's prima facie elements/proof by showing that the harassment did not happen, or the Charging Party welcomed the conduct, or it was not sufficiently severe or pervasive, or that it did not know about the harassment and therefore cannot be held liable.

**RESPONDENT'S ARTICULATED NON-DISCRIMINATORY DEFENSE**

Respondent stated that Charging Party has failed to state prima facie of discrimination based on age and/or national origin. Charging Party failed to identify any actionable adverse employment actions allegedly taken by Respondent and has not alleged facts sufficient to demonstrate a hostile work environment. As such, Charging Party has completely failed to state a cause of action. Respondent denied this charge, stated it is entirely without merit, and submits that the charge be dismissed in its entirety.

**SUMMARY OF THE REGIONAL RECOMMENDATION AND PRETEXT ANALYSIS**

After receiving the charge, the Commission investigated Charging Party's allegation against Respondent. During the investigation, the Commission considered relevant documents and testimony. Information gathered does not support a recommendation that Respondent unlawfully discriminated against Charging Party. Specifically, the Commission found that Respondent did not subject Charging Party to different terms and conditions of employment or harassment based on her age, and/or national origin/ancestry. Information suggested that Charging Party and her supervisor have a tense working relationship. However, the investigation did not corroborate that the supervisor's actions were motivated by Charging Party's protected class membership.

**SUMMARY OF THE REQUEST FOR RECONSIDERATION**

**The Charging Party has requested reconsideration for the following reasons:**

1. The Human Resource (HR) Manager of the City of Cleveland, CDPH submitted an affidavit providing new evidence and names of new witnesses critical to her case,
2. City of Cleveland's internal handling and investigation of her discrimination complaint was biased and [filled] with opined statements of interviewees about her, and
3. Supervisor (Katie Roming) told CDPH HR Department that she no longer wanted her in the current job and that there was nowhere to place her.

**REQUEST FOR RECONSIDERATION ANALYSIS**

Upon review of the Charging Party's request for reconsideration and the entire case record, the Cleveland Regional Office recommends that the Commission make a finding of **Upon Reconsideration: GRANT Charging Party's Request, Reverse the No Probable Cause Finding to Probable Cause**, for the following reasons:

**Background Information**

**CLEVELAND REGIONAL OFFICE**

**Karen Aluma v. City of Cleveland, Department of Public Health**

**CLEA4(45463)09102019; 22A-2019-03499C**

**Page 4**

The record indicates that, Charging Party was hired by Respondent as a Preventive Health Counselor on June 15, 2009. On March 26, 2018, Charging Party was awarded the full-time position of Disease Surveillance Specialist. (*Check the dates*).

The record further indicates that, as a Disease Surveillance Specialist, Charging Party is responsible for investigating cases of infectious diseases as guided by the Ohio Infectious Disease Control Manual. Charging Party's other duties include, but not limited to: working closely with Emergency Preparedness staff; providing educational information on disease etiology; assisting in the prevention and control of communicable diseases, and assisting with outreach and education of the community.

**Analysis of the Request for Reconsideration**

On September 10, 2019, Charging Party filed the charge under consideration alleging that the Respondent subjected her to harassment; different terms and conditions of employment; continually being treated disrespectfully, by tone of voice and body language; being treated dismissively; and belittled her because of her age (over the age of 40, date of birth-10/28/1958), and national origin, Columbia.

Respondent asserted that Charging Party failed to state a prima facie case of discrimination based on age and/or national origin. According to Respondent, Charging Party failed to identify any actionable adverse employment actions allegedly taken by Respondent and has not alleged facts sufficient to demonstrate a hostile work environment. As such, Respondent contends that Charging Party completely failed to state a cause of action. Respondent denied this charge, stating that it is entirely without merit, and submits that the charge be dismissed in its entirety.

The initial investigation found that Respondent did not subject Charging Party to different terms and conditions of employment or harassment based on her age, and/or national origin/ancestry. Information suggested that Charging Party and her supervisor have a tense working relationship. Information gathered in the initial investigation did not corroborate that the supervisor's actions were motivated by Charging Party's protected class membership.

After the initial determination, Charging Party applied for reconsideration of the Commission's decision. In her requested for reconsideration, Charging Party asserted that newly discovered evidence corroborates her allegations.

Therefore, the issue before the Commission is to determine whether the newly discovered information corroborates Charging Party's allegations and warrants a reversal of the initial determination.

As the below information shows, the newly obtained witnesses' statements corroborate the Charging Party's allegations of harassment, hostile work environment and unequal treatment based on national origin and age. Therefore, the newly obtained information warrants the reversal of the initial determination of No Probable Cause and a finding of Probable Cause.

In a notarized affidavit, Dreyon Wynn, Respondent's employee, testified that on December 17, 2019, AFSCME Union Steward and City of Cleveland employee, Carlton See, notified him [Wynn] that Austin Opalich, Respondent's Labor Relations Manager, was leading interviews with prejudicial statements about Charging Party (Karen Aluma) during an investigation about Charging Party's

**CLEVELAND REGIONAL OFFICE**

**Karen Aluma v. City of Cleveland, Department of Public Health**

**CLEA4(45463)09102019; 22A-2019-03499C**

**Page 5**

discrimination complaint against her supervisor Katie Roming. For example, Charging Party had disciplinary action taken against her for behaviors that were insubordinate. Mr. See immediately followed up with an email and attached the complaint written by the employee interviewed by Opalich.

Mr. Wynn further stated that on November 5, 2019, he was interviewed by Opalich and Monique Tabb-Young, Labor Relations Officer, about Charging Party's discrimination complaint. At Mr. Opalich's request, he provided first hand examples of discrimination he witnessed against Charging Party. Mr. Wynn stated that Merle Gordon and Katie Roming would belittle Charging Party's education because it was obtained from her native country of Columbia; would minimize her work experience because it was from her native country of Columbia; would mention at times that they couldn't understand her because of her dialect. Mr. Wynn stated that Ms. Gordon made racial comments stereotyping people from Columbia as being combative, difficult to work with, didn't like to be told what to do, and think they know everything. Gordon also stated that Charging Party had problems with every supervisor she had because she is a problem employee. Mr. Opalich disagreed that those were examples of discrimination and tried to lead him with interview questions that were biased against Charging Party.

According to Mr. Wynn, on August 7, 2019, Katie Roming emailed him about a problem she allegedly had with Charging Party. After an email exchange, Ms. Roming immediately came down to his office and said she no longer wanted Charging Party in her job, but there was nowhere to put her.

In addition, Mr. Wynn stated that Respondent's position statement, dated, November 5, 2019 and provided to the Ohio Civil Rights Commission in response to Charging Party's charge, had several false and misleading statements. For example, the position statement provided that "Ultimately, Wynn learned that the source of the conflict appeared to be from Charging Party's disagreement with Roming as a Supervisor and Charging Party's unwillingness to perform the tasks Roming requested coupled with Roming's inexperience as a supervisor." Mr. Wynn vehemently denied the false statement previously set forth.

Mr. Wynn finally stated that, on November 27, 2019, he met with Stephanie Pike- Moore, Epidemiologist, and did an intake of her discrimination complaint which he later emailed to Respondent's Human Resources on December 3, 2019. Ms. Pike-Moore reported that Merle Gordon called Charging Party an older employee. During the reconsideration process, the Commission's staff contacted Ms. Pike-Moore and she confirmed that she reported the above to Mr. Wynn.

Furthermore, Pike- Moore (Caucasian, American born, age 31, date of birth- 12/22/1988) testified that she wrote the statement to express her concern regarding Respondent's internal investigation into the workplace discrimination [complaints] of Charging Party (Karen Aluma).

Ms. Pike- Moore stated that on December 3, 2019, at 12:30pm, she too met with Austin Opalich, who interviewed her as a part of Respondent's internal investigation into Charging Party's case because of letter she wrote on her [Aluma] behalf.

Ms. Pike- Moore further stated that during the meeting, Mr. Opalich mentioned a couple of things that gave her the impression that the outcome of his investigation had already been decided before speaking with all the witnesses. This made her uncomfortable as she felt that he was steering the conversation. He told her that this case does not seem to be a case of discrimination, but a case of bad managerial practices by Catherine Roming. Ms. Pike- Moore said she felt that both, bad managerial practices and racism, were in play at the Health Department. Mr. Opalich asked her [Ms. Pike- Moore] if she had any

**CLEVELAND REGIONAL OFFICE**

**Karen Aluma v. City of Cleveland, Department of Public Health**

**CLEA4(45463)09102019; 22A-2019-03499C**

**Page 6**

overt examples of racism and she responded that she only had witnessed one occurrence of overt racism by Director Merle Gordon, but that the culture of racist and discriminatory behavior was evident in other, more insidious ways.

Ms. Pike- Moore further stated that Opalich asked her if she had witnessed Aluma (Charging Party), in ways that could be considered insubordination. She responded that the only time she had seen Charging Party push back a little was when Roming had tried to force her to change her work goal. Opalich mentioned that there had been disciplinary action against Charging Party which was a major red flag for her because to her knowledge, this is not correct.

Ms. Pike- Moore finally stated that she does not believe that the City of Cleveland's Department of Human Resources are investigating this case, [Charging Party's case], in a fair, equitable manner. On August 5, 2020, during the reconsideration process, staff has contacted Ms. Pike- Moore to verify her written statements. She stated that her statements are true and accurate.

Therefore, the above presented newly obtained information refutes Respondent's assertion that Charging Party's charge "is entirely without merit". Rather, contrary to Respondent's assertion, the investigation indicates that it is probable that Charging Party was subjected to discrimination, harassment, denial of equal terms and conditions employment due to consideration of her national origin and age. Furthermore, the newly obtained information also refutes the Commission's initial determination.

What is more, the newly obtained information challenged the integrity and impartiality of Respondent's internal investigation of the Charging Party's complaints. It also questioned the accuracy of Respondent's position statement that was provided to the Ohio Civil Rights Commission.

Thus, the newly obtained information supports a recommendation that Respondent unlawfully discriminated against and harassed Charging Party based on age and/or national origin.

**RECOMMENDATION**

Based on the above documentation, it is recommended that the Commission **GRANT Charging Party's** Request for Reconsideration and Reverse the initial recommendation of **NO PROBABLE CAUSE** to **PROBABLE CAUSE**.

**INDEX OF ATTACHMENTS**

- A. Charge Affidavit
- B. Charging Party's Request for Reconsideration
- C. Initial Letter of Determination
- D. Respondent's Position Statement and Responses to Requests for Information
- E. Respondent's EEO and Anti-Discrimination Policies
- F. Charging Party's Job Description – Disease Surveillance Specialist
- G. Documentation Showing Charging Party's Position Title
- H. Job Description – Epidemiologist
- I. Documentation Showing Sheena Fryerson and Stephanie Moore's Position Titles of Epidemiologist
- J. Documentation of Complaints Regarding Charging Party
- K. Employee Performance Log

**CLEVELAND REGIONAL OFFICE**

**Karen Aluma v. City of Cleveland, Department of Public Health**

**CLEA4(45463)09102019; 22A-2019-03499C**

**Page 7**

- L. Documentation Related to Charging Party's 30-Day and 60-Day Reviews
- M. Documentation Related to Charging Party's 6-Month Review
- N. Notice of Pre-Discipline Conference Issued to Charging Party
- O. Grievance Filed by Charging Party (12/10/18)
- P. Memo (5/2/19) Attached to Grievance Filed by Charging Party (12/10/18) and Correspondence
- Q. Minutes of Meeting between Katie Roming and Charging Party 6/12/19)
- R. Email from Charging Party to Roming (6/13/19)
- S. Amended Grievance Filed by Charging Party (8/22/19)
- T. EEOO Complaint Filed by Charging Party (8/27/19)
- U. Respondent's Report Regarding Charging Party's EEO Complaint
- V. Charging Party's Rebuttal with Attachments
- W. Documentation and Statements Submitted by Charging Party
- X. Witness Interview Notices –S. Fryerson, S. Pike- Moore, J. Jurcak, K. Koviak, J. Kraeger, W. Foster, F. Mills, D. Wynn and K. Roming
- Z. RFR Case Activity Log

8/5/20

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Beyan H. Asoba, Reconsideration Supervisor

*Date*