PRELIMINARY CASE REVIEW

CP # 04-22-78265

EEOC # 26A-2022-00580

Area: Public Accommodation, Employment*

Bases: Sex, Gender Identity

Complainant: Alexandra Distance Marie Wilson

Respondents: Love Club, LLC; Reliable Street, Inc.; Lockwood Cafe

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Adverse Action: Denied Service
Date: March 31, 2022

*Note: Complainant indicated Unequal Treatment, and this will be analyzed as Denied Service. Complainant indicated Employment adverse actions including: Discipline, Failure to Hire, Failure to Train, Denied Accommodation or Modification, and Termination, on her complaint. Based on her narrative and her questionnaire responses, Complainant was not an employee of Respondents, and thus the area of Employment will not be analyzed.

COMPLAINANT'S ALLEGATIONS

Relevant Factual Allegations:

Complainant is transgender, but she does not identify as a transgender female, she is simply female. Her California license and related court orders confirm she is female, and she began presenting this gender in 2003. Complainant legally changed her name in 2011. She alleges after six months of managing and performing the vast majority of planning and labor on a garden and prairie restoration project, she was asked to leave and not return. Complainant alleges the project was on behalf of businesses Reliable Street, Inc. and Lockwood Café [and project property, the Love Club LLC] (Respondents). She alleges everyone at Respondents knew her gender history.

Complainant states a local high school gardening club, Students Helping End Poverty and Hunger (SHEPH), has permission to garden on the property site. Complainant alleges she was appointed manager of the garden by café owners Lyndsay Nissen (female, gender identity not provided) and Sharon Stewart (female, gender identity not provided). Complainant states she is an author who is known for her skills with gardening and native plants. She recalls she was offered the 50% employee discount on all purchases at the café. Complainant alleges she assisted SHEPH with planning and labor, and she provides photos of the garden from October 2021 before she began her work. Complainant was told by Respondents to communicate with café employees Willa Colville (female, non-transgender) and Denise Martinez (female, gender identity not provided), and they also attended meetings with SHEPH with Complainant.

Complainant states she cleared land, weeded, picked up garbage like tires, framed edges of an area to be mulched with boards, and built fences. Complainant alleges she provide six loads of mulch, purchased 4 x 4s, and painted signs.

Complainant notes by March 2022 the project was going well, and the relations between all parties was excellent. Complainant remembers she received many compliments on the garden improvements. However, on March 31, 2022, Transgender Day of Visibility, Complainant was removed from the project. Complainant states on this day she was to meet with Nissen and Stewart to show them the work that was done, and Complainant would explain what supplies were needed. Instead, Nissen and Stewart told Complainant "multiple people" [1] complained Complainant was "violating their space" and made them feel "unsafe." Complainant states she questioned why no one ever told her this, and Nissen and Stewart noted they had tried, but Complainant should "read a book on active listening."

Complainant states she spoke with friends and community members, in effort to find out who made the statements, as she was concerned about her reputation. As a transgender woman, Complainant states she already faces the stereotype of being a predator, and she always tries to be mindful of peoples' personal space. Complainant notes she contacted several others who work on the project to let them know she was leaving the project, and received nice messages. Finally, Colville told Complainant she was the one who complained. Complainant wishes Colville would have told her personally, because she would have adjusted her interactions, and Complainant alleges in fact Colville showed the opposite, that she was comfortable with Complainant.

Complainant believes Nissen and Stewart mishandled the complaint, and they were unfair in their "investigation" of the complaint, and caused her injury. Complainant contends if a non-transgender woman was in her position and interacted in the same way with them, there would not have been these complaints in the first place. Complainant alleges if there were complaints, a non-transgender woman would have been given a benefit of the doubt and would not have been accused the way she was. Complainant states she has suffered great distress from being cut-off from her community as a result of their actions. Complainant was banned indefinitely from the project and from Respondents, as she was no longer able to go to the café or the art gallery connected with Reliable. Complainant alleges their conduct was based on her sex because a non-transgender woman who complained was given preferential treatment, and Complainant was presumed guilty. Complainant believes she was treated unfairly by this presumption of guilt based on typical prejudices many transgender women face.

Complainant alleges she should have been an employee but was not properly employed, and that Respondents violated the Fair Labor Standards Act. Complainant states she believed she was working on behalf of Respondent Reliable Street Inc., which was primarily run by Nissen and Complainant was told "[Nissen] owns the property." Complainant includes emails from Nissen, written to Complainant with an email address for Reliable. Complainant later learned the property was owned by Love Club LLC, not a non-profit. Thus, Complainant indicates she was not working as a volunteer but in fact as an unpaid employee of the LLC.

Complainant states Respondents should establish fair protocols for handling complaints, and she would like to be reimburse for her labor and emotional distress.

Relevant Information/Documents:

- ICRC Initial Complaint Form
- Responses to ICRC Questionnaires

[1] All quotes herein are verbatim. Any alteration will be denoted by brackets.

- Complainant's statement, including photos of gardens

RESPONDENT'S REASONS

Relevant Factual Allegations:

Stewart owns Respondent Lockwood Café, a small restaurant which seeks to be a space that remains safe for the Queer and Trans community as well as POC. Stewart states over half of her staff identifies as Queer, and while there are not currently transgender employees, there were previously who have now moved out of the state.

Stewart states Complainant began to come to the café regularly in the late summer 2021. Respondents note Complainant identified herself by the name of Sondra, and she spoke openly about being transgender. Complainant seemed happy and wanted to build a community connection, and she expressed an interest in the community garden and prairie. Stewart states the garden is not part of the café, but is part of the Reliable Street, Inc. non-profit.

Nissen states Complainant first appear to her at an open mic night at the Reliable Street, Inc. gallery, and then she became a fixture there. Nissen alleges Complainant needed community, and they embraced her. Nissen states Complainant became interested in the community garden that was part of Reliable Street, Inc. Nissen notes Reliable Street Inc. is a non-profit organization and a collective space, whose mission is to provide community improvement through the arts. They encourage a working environment, both interdependent and collaborative, and they intend for the public to be involved. Reliable is a tenant of The Love Club LLC. Nissen says the garden is a volunteer project that incorporates high school students in a club called SHEPH.

Nissen alleges Complainant would corner her regularly to talk about the garden and her ideas for it. Nissen states she told Complainant that yes, she could have the opportunity to work on the land, but that the others already involved had a plan. Complainant soon came up with the idea of a prairie, and Nissen encouraged her to talk to the other involved parties who already worked on the garden project. Regardless, Nissen states Complainant began to clear the weeds from the space she wanted to work in without talking to anyone else about it, and the prairie became an obsession. Nissen says she agreed Complainant could plant a prairie, and Complainant continued to push her for more control of the project. Nissen alleges Complainant did not listen to others, she bulldozed them, and Nissen states she continued to attempt to get Complainant to listen to other people. Nissen states Complainant wanted to raise money to buy the seed for the prairie but never did, instead she asked Nissen and others for donations for it. Nissen notes the prairie was not the community project, the garden was.

Nissen recalls Complainant spent money on garden purchases without authorization, and then she began to solicit funds for them from café employees and customers, and others involved with the garden, which became very uncomfortable. In addition, Nissen states Complainant had become "obsessed" with Colville, to the extent that Complainant was stalking and harassing her. When the Colville complained to Stewart, she and other employees such as Martinez shared that Complainant had also made racist comments and inappropriate comments about employees' sexual identities, and they provide text messages and statements from employees and patrons who express these sentiments and those communications.

One text message is a conversation between Complainant and an employee where Complainant wrongly identifies and asks questions about the employee's national origin. In a statement, a patron alleges he witnessed Complainant make racially insensitive comments, and Complainant harassing staff at the café, including asking them, other patrons, and even the high school students in SHEPH for money for the garden projects. The patron alleges Complainant harassed him by texting and calling him and numerous others in the community, multiple times a day.

Nissen and Stewart were concerned about how both employees and customers were being treated, as providing a safe space was an important goal. Nissen states she and Stewart asked the employees what they needed to feel safe and comfortable at work and on the property, and the employees agreed Complainant should no longer be involved. Nissen and Stewart then spoke to Complainant on March 31, 2022 to ask her to leave the projects and space. Nissen asserts they made their explanation of why, broad, so as to protect their employees and to not hurt Complainant's feelings. Nissen states Complainant was extremely defensive, did no personal reflection, and did not accept any responsibility. Nissen notes she gave Complainant $300 in cash for the money Complainant spent without asking, and the prairie seed, though Nissen also provides an email stating Complainant was purchasing the prairie seed as a donation.

Stewart and Nissen state Complainant was never an employee, she was a volunteer.

Relevant Information/Documents:

- Responses to ICRC Questionnaires from Stewart and from Nissen
- Statement from trans resident and Respondents' patron Charlie Esker

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STANDARD

The ICRC issues screening decisions based on the information collected to date. If the information indicates a "reasonable possibility of a probable cause determination or the legal issues in the complaint need development" the ICRC will "screen in" a case for further investigation. Iowa Admin. Code r. 161—3.12(1)(f). During the screening stage, the ICRC draws all "rational, reasonable, and otherwise permissible" inferences in Complainant's favor. *See Phillips v. Covenant Clinic*, 625 N.W.2d 714, 718 (Iowa 2001) (quoting *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994)). Importantly, the ICRC does not evaluate credibility at the screening stage, and instead evaluates only whether the stated facts create a "reasonable possibility" for a probable cause finding. The ICRC relies in part on its own experience and expertise with the Iowa Civil Rights Act (ICRA), while remaining mindful that many cases turn on circumstantial—rather than direct—evidence of discrimination. *Ritz v. Wapello Cty. Bd. of Supervisors*, 595 N.W.2d 786, 791 (Iowa 1999).

ANALYSIS

Adverse Action: Denied Service
Date: March 31, 2022

Timely? ☒ Yes ☐ No ☐ Undetermined

"Except as otherwise provided in section 614.8, a claim under this chapter shall not be maintained unless a complaint is filed with the commission within three hundred days after the alleged discriminatory or unfair practice occurred." Iowa Code § 216.15(13). Complainant filed her complaint on April 29, 2022, and the incident is question was on March 31, 2022, which is within the 300-day window beginning July 3, 2021. The complaint is timely.

Complainant can prove unlawful discrimination through direct evidence or indirectly through inference using the pretext analytical model. *Butler v. Crittenden Cty., Ark.*, 708 F.3d 1044, 1050 (8th Cir. 2013) (citing *Young-Losee v. Graphic Packaging Int'l, Inc.*, 631 F.3d 909, 912 (8th Cir. 2011); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 242 109 S. Ct. 1775 (1989). Complainant must show the adverse action "'occurred under circumstances giving rise to an inference of discrimination,'" and Complainant's status as a protected class member was a motivating factor in the decision. *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 13 (Iowa 2009) (citations omitted).

Is there direct evidence? ☐ Yes ☒ No ☐ Undetermined

A claim that is not supported by direct evidence can proceed under the three-stage, burden-shifting standard set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). Under the *McDonnell Douglas* burden-shifting approach, Complainant must establish a prima facie case of discrimination. Once a prima facie case is established, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the employment decision. If the employer articulates such a reason, the presumption disappears and the complainant bears the burden of proving that the employer's proffered reason is merely a pretext for discrimination. *Id.*

Prima Facie Case

A prima facie case of discrimination in public accommodation requires a showing Complainant (1) is a member of a protected class; (2) sought to enjoy the accommodations of the public accommodation; and (3) did not enjoy the accommodations because of discrimination in that (a) the individual was refused or denied the accommodations while similarly situated persons outside the protected class were not deprived of those services, or (b) the individual was allowed to use them but was otherwise subjected to markedly hostile conduct. *Kirt v. Fashion Bug #3253*, 479 F. Supp. 2d 938, 959 (N.D. Iowa 2007).

"'Markedly hostile' conduct means conduct that '(1) is so profoundly contrary to the manifest financial interests of the merchant and/or her employees; (2) so far outside of widely accepted business norms; and (3) so arbitrary on its face, that the conduct supports a rational inference of discrimination.'" *Id.* at 966 (quoting *Callwood v. Dave & Buster's, Inc.*, 98 F.Supp. 2d 694, 708 (D. Md. 2000)). A complainant must prove the conduct was "'in a manner that a reasonable person would find objectively unreasonable'" for the conduct to be considered markedly hostile. *Id.* at 962 (quoting *Callwood*, 98 F.Supp.2d at 708). "Any credible evidence" showing a respondent engaged in an adverse action based on a complainant's protected class "may establish an inference of discrimination." *Id.*

Element 1: ☒ Yes ☐ No ☐ Undetermined

Complainant is female, and she is transgender, thus she is a member of protected classes based on her sex and gender identity.

Element 2: ☒ Yes ☐ No ☐ Undetermined

The ICRA defines "public accommodation" as "each and every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods for a fee or charge." Iowa Code § 216.2(13)(a).

Respondents are a café, and collective space for art, including a gallery, which makes them public accommodations. Complainant sought to order at the café, and participate in the collaborative space, including the garden, and therefore sought the use of the public accommodations.

Element 3: ☒ Yes ☐ No ☐ Undetermined

Complainant was denied service, as she was told by Stewart and Nissen she was banned indefinitely from Respondents, including the community garden project. Complainant was denied service, while she alleges males and non-transgender patrons and collaborators are allowed to enjoy them. Complainant alleges their conduct was based on her sex because a non-transgender woman who complained was given preferential treatment, and Complainant was presumed guilty. Complainant believes she was treated unfairly by this presumption of guilt based on typical prejudices many transgender women face, such as being a predator.

Respondent's Reason

Respondent provided legitimate, nondiscriminatory reason and supported with admissible evidence:
☒ Yes ☐ No

The establishment of a prima facie case creates a rebuttable presumption of discrimination. *McCullough v. Real Foods, Inc.*, 140 F.3d 1123, 1126 (8th Cir. 1998). Once a prima facie case is established, the burden shifts to Respondent to articulate some legitimate, nondiscriminatory reason for the challenged action. *Valline*, 2003 WL 21361344, at *3 (citing *Bd. of Supervisors of Buchanan Cnty. v. Iowa Civil Rights Comm'n*, 584 N.W.2d 252, 256 (Iowa 1998)). The reason must be articulated with some specificity and clarity in order to afford Complainant "a full and fair opportunity to demonstrate pretext." *Burdine*, 450 U.S. at 255–56.

This burden involves the production of some admissible evidence giving rise to a genuine issue of fact. *Hamilton v. First Baptist Elderly Housing Found.* 436 N.W.2d 336, 338 (Iowa 1989). The supporting evidence does not need to be enough to persuade a court that the proffered reason was the actual motivation. *Id.* Attorney arguments are not considered admissible evidence. *State v. Graves*, 668 N.W.2d 860, 878 (Iowa 2003); 8th Circuit Model Civil Jury Instructions 1.02(1); Iowa Model Jury Instruction 100.4.

Respondents state Complainant was a volunteer, not an employee. Nissen recalls Complainant began to solicit funds for the prairie from café employees and customers, and others involved with the garden. The situation became very uncomfortable, as there was a business being run, and employees were there to work and customers were there to be patrons of the business. Respondents

state Complainant was stalking and harassing an employee, and she and other employees shared that Complainant had also made racist comments and inappropriate comments about employees' sexual identities and national origin. They provide text messages and statements from employees and patrons who express these sentiments and those communications. The patron alleges Complainant harassed him by texting and calling him and numerous others in the community, multiple times a day.

Nissen states she and Stewart asked the employees what they needed to feel safe and comfortable at work and on the property, and the employees agreed Complainant should no longer be involved.

Pretext:

Complainant can prove pretext: ☐ Yes ☒ No ☐ Undetermined

Once an employer offers a non-discriminatory reason, the burden then shifts back to the employee to show that the employer's explanation is a pretext for discrimination. *Yates v. Rexton, Inc.*, 267 F.3d 793, 798 (8th Cir. 2001). Complainant can demonstrate Respondent's reason is pretextual by showing that it is false, through the use of comparisons with similarly situated employees, or through the use of statistics to show a pattern of discrimination. *See, e.g., Miles v. M.N.C. Corp.*, 750 F.2d 867, 870 (11th Cir. 1985); *Bradford v. Norfolk S. Corp.*, 54 F.3d 1412, 1419 (8th Cir. 1995). Failing to follow its own policies or substantially changing its proffered reasons for its actions might also be evidence of pretext by Respondent. *Ledbetter v. Alltel Corp. Servs., Inc.*, 437 F.3d 717, 722 (8th Cir. 2006) (discussing an employer failing to follow its own policies); *Kobrin v. Univ. of Minn.*, 34 F.3d 698, 703 (8th Cir. 1994), cert. denied, 522 U.S. 1113 (1998) (discussing substantial changes in proffered reason). Complainant can prove pretext by offering "evidence of 'remarks of the employer that reflect a discriminatory attitude,' as well as 'comments which demonstrate discriminatory animus in the decisional process or those uttered by individuals closely involved in employment decisions.'" *Roberts v. Park Nicollet Health Servs.*, 528 F.3d 1123, 1128 (8th Cir. 2008) (quoting *EEOC v. Liberal R-II Sch. Dist.*, 314 F.3d 920, 923 (8th Cir. 2002)). Complainant may also show evidence of prior instances of disparate treatment by the employer in other contexts. *Phillip v. ANR Freight Sys. Inc.*, 945 F.2d 1054, 1056 (8th Cir. 1991).

Complainant does not show pretext through falsity. Complainant offers Coville as a non-transgender woman who she believes was give more favorable treatment, however Coville was an employee of a Respondent, and Complainant was a volunteer. In addition, Coville was complaining of misconduct by Complainant, whereas Complainant was being accused of possible misconduct. Complainant does not show falsity through a statistical pattern of discrimination. Complainant cannot establish Respondent failed to follow their own policies or substantially changed its reasons. Complainant does not believe Respondents conducted a fair investigation of the claims against her. However, Respondents detail the complaints they received in their questionnaire responses, despite not detailing them for Complainant in order to protect the employees and not hurt Complainant's feelings.

Complainant cannot demonstrate evidence of remarks or comments showing Respondents had a discriminatory attitude, and Respondents are known in the community, even to Complainant, for being a safe space for the Queer and Trans community. Complainant does not evidence prior instances of disparate treatment by Respondents.

No further investigation is warranted.

MATERIAL DISPUTED FACTS

☐ Yes ☒ No

MATERIAL CREDIBILITY DETERMINATIONS TO BE MADE

☐ Yes ☒ No

RECOMMENDATION ☐ Refer for Further Investigation ☒ Administratively Close

The ICRC's administrative rules provide the standard for screening. "A case will be screened in when further processing is warranted." Iowa Admin. Code r. 161—3.12(1)(f). "Further processing is warranted when the collected information indicates a reasonable possibility of a probable cause determination." *Id.* Probable cause exists where there are reasonable grounds to believe discrimination has occurred. *Wilson v. Hayes*, 464 N.W.2d 250, 261–62 (Iowa 1990) (citing 52 Am.Jur.2d *Malicious Prosecution* § 51, at 219).

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