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INDIANA STATE
CIVIL RIGHTS COMMISSIONSTATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION

AMBER LUMPKIN,	}	Docket No.: EMse12061304
	}	
Complainant,	}	EEOC No.: 24F-2012-00660
	}	
vs.	}	
	}	
AMERICAN HEATING & COOLING,	}	
	}	
Respondent.	}	

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

The undersigned Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) conducted a hearing on March 27, 2014. Complainant, Amber Lumpkin (“Lumpkin”), *pro se*, was present. Respondent, American Heating & Cooling (“AHC”) appeared by President Murrell Loveless and was represented by David P. Murphy, who also appeared.

Both parties made opening statements. For her case, Lumpkin testified on her own behalf and called Murrell Loveless. During the presentation of Lumpkin’s case, Complainant’s Exhibit 1 (Lumpkin’s handwritten narrative of events), Exhibit 2 (sketch of office), Exhibit 3 (Lumpkin’s calculation of damages), Exhibit 4 (June 17, 2011 AHC letter of lay off due to lack of work), and Exhibit 5 (Payroll record) were admitted over/without objection.

Upon Claimant resting her case, Respondent called Debra Addison an employee of AHC and Murrell Loveless, President/CEO of AHC to testify. During the presentation of AHC’s case, Respondent’s Exhibits A (Indiana Department of Workforce Development Statement of Benefit Charges for AHC), and B (Chronological Case Summary for 33C02-1212-FD-000499) were admitted without objection and over objection, respectively.

Both parties made closing arguments. The ALJ took the matter under advisement and ordered the parties file Proposed Findings of Fact and Conclusions of Law on or before April 28, 2014. Both parties did so.

Having carefully considered the foregoing and being duly advised in the premises, the ALJ proposes that the ICRC enter the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. The issues identified are (1) whether AHC terminated Lumpkin's employment due to gender, if AHC subjected Lumpkin to sexual harassment, and (2) [if so,] what damages Lumpkin is entitled to. PRE-HEARING ORDER ¶ 6 (September 11, 2013). Lumpkin's Complaint alleges discrimination based upon sex, asserting that her employment was terminated because she refused the sexual advances of Respondent's President/Owner, Murrell Loveless. COMPLAINT OF DISCRIMINATION (June 21, 2012).

2. Lumpkin is an adult female who has, at all material times, resided in the state of Indiana.

3. Respondent was at all material times an Indiana business that employed 6 or more persons for wages or salary within the state.

4. Lumpkin was hired as an employee of AHC in October 2010.

5. During the course of Ms. Lumpkin's employment at AHC, Mr. Loveless made comments of a sexual nature to Ms. Lumpkin. Mr. Loveless asked Ms. Lumpkin if she "wanted to fuck". In addition, he asked Ms. Lumpkin if she would "suck his dick". (*See transcript p. 44*) The record is absent of an answer from Ms. Lumpkin telling Mr. Loveless "no". Mr. Loveless also told Ms. Lumpkin she was the only one who could give him a "hard on". (*See transcript p. 229*). Mr. Loveless believed speaking to Ms. Lumpkin in this manner was welcomed because of the way Ms. Lumpkin dressed at work and because Ms. Lumpkin touched Ms. Loveless on his genitals.

6. Employment pay records and State unemployment insurance benefits records show Lumpkin was last employed by AHC on April 3, 2012.

7. AHC laid off Ms. Lumpkin for two reasons: (a) her inconsistent work habits (excessive absences, poor work performance), and (b) a general slow-down in the economy.

8. Since being laid off, Ms. Lumpkin made two visits to the work premises. Mr. Loveless and Ms. Lumpkin had a personal relationship whereby Mr. Loveless spoke to Ms. Lumpkin about personal matters. For example, on May, 24 2012, Mr. Loveless requested Lumpkin's assistance to help prepare for a trial against a debtor of AHC. Although, Ms. Lumpkin came to the business premises, she refused to assist in the preparation of exhibits for trial and left the business premises.

9. The parties stipulated that in May 2012, Lumpkin was not an employee of AHC since AHC laid Lumpkin off on April 3, 2012.

10. Nevertheless, in May 2012, Mr. Loveless expected that as a former employee with knowledge of the relevant business records, Lumpkin would agree to assist in the preparation for trial, if for no other reason than to ensure that business would improve, and she would be recalled to work.

11. Lumpkin made another visit to the premises to AHC on June 5, 2012 to inquire about when she might be rehired. During that visit, Lumpkin claims Mr. Loveless touched her inappropriately that AHC Murrell Loveless denies any such event occurred. The ALJ credits Mr. Loveless' testimony that he did not touch Ms. Lumpkin, as he was very open about the overall relationship he had with Ms. Lumpkin.

12. Further, as of June 5, 2012, Lumpkin was not an employee of AHC, since she was laid off on April 3, 2012.

13. On June 21, 2012, Ms. Lumpkin filed a claim of discrimination with the ICRC.

14. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

CONCLUSIONS OF LAW

1. The ICRC has jurisdiction over the Parties and subject matter of this case.
2. Lumpkin and AHC are both "persons" as that term is defined in section 3(a) of the Indiana Civil Rights Law, I.C. 22-9-1-1 *et. seq.* ("the ICRL"), i.c. 22-9-1-3(1).
3. AHC is an employer, as that term is defined in the ICRL, I.C.22-9-1-3(h), (i) .
4. Lumpkin has the burden of proving all elements of her claim.
5. Cases decided under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec 2000e *et seq.* ("Title VII") are entitled to great weight in construing the intent of the ICRL. *Indiana Civil Rights Comm'n v. Culver Educational Foundation*, 535 N.E.2d 112 (Ind. 1989).
6. In order to establish a *prima facie* case of sex discrimination under Title VII, Ms. Lumpkin must show (1) she was a member of a protected class (i.e., female); (2) she was qualified for the job in question or was meeting her employer's legitimate performance expectations; (3) she suffered an adverse employment action (i.e., fired or asked to resign); and (4) the employer treated similarly situated persons not in the protected class more favorably.

Thayer v. Vaughan, 798 N.E.2d 249, 253 (Ind. Ct. App. 2003), *trans. denied*. If the plaintiff does not establish any one of the four elements, her Title VII claim fails as a matter of law. *Id.* If a plaintiff establishes a prima facie case, the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse action. *Id.* If such a reason is proffered, the plaintiff then bears the ultimate burden of showing that it is a pretext for discrimination. *Id.*

7. An element Ms. Lumpkin fails to prove, even by her own exhibit showing AHC laid her off, is element three.

8. Mr. Loveless as CEO/Owner of AHC behaved unprofessionally at the workplace with his employee. However, Lumpkin has failed to prove by a preponderance of the evidence that sex was a motive in the decision to lay her off in April 2012. AHC laid Ms. Lumpkin off due to lack of work in the business.

9. Further, AHC did not fail to call back or rehire Ms. Lumpkin from the layoff due to sex. Mr. Loveless chose not to rehire Ms. Lumpkin because she refused to assist in his upcoming hearing.

10. As such, Ms. Lumpkin failed to make a prima facie showing of gender discrimination under the ICRL.

11. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis for each objection within fifteen (15) days after service of this proposed decision. I.C.4-21.5-3-29(d).

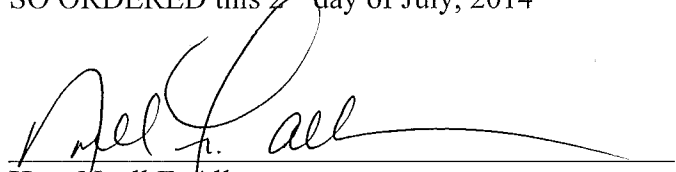
12. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

ORDER

1. Lumpkin's complaint is hereby **DISMISSED**, with prejudice.

2. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to I.C.4-21.5-3-31(a), stayed by the ICRC pursuant to I.C.4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

SO ORDERED this 2nd day of July, 2014



Hon. Noel F. Allen
Administrative Law Judge
Indiana Civil Rights Commission

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