



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMrt14110899

██████████
Complainant,

v.

INDIANA DEPARTMENT OF CORRECTIONS-CAMP SUMMIT BOOT CAMP,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission (“Commission,”) pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

On November 20, 2014, ██████████ (“Complainant”) filed a Complaint with the Commission against State of Indiana/Department of Corrections-Camp Summit Boot Camp (“Respondent”) alleging retaliation and discrimination on the basis of race in violation of Title VII of the Civil Rights Act of 1964. Accordingly, the Commission has jurisdiction over the parties and the subject matter. An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

There are two issues pending before the Commission. The first issue is whether Respondent retaliated against Complainant for filing a previous complaint of discrimination with the Commission. In order to prevail, Complainant must show that (1) she filed a previous Complaint with the Commission; (2) Respondent was aware of the Complainant; (3) she suffered an adverse employment action; and (4) there is a nexus between the filing of the previous Complaint and the adverse employment action. It is undisputed that Complainant filed a prior complaint of discrimination against Respondent with the Commission (EMra14060473) on or about June 23, 2014 and that Respondent was fully aware of the Complaint. Further, it is evident that Complainant suffered an adverse employment action when Respondent terminated her employment on or about November 8, 2014; however, evidence shows that Complainant failed to meet Respondent’s legitimate business expectations. Moreover, there is insufficient evidence to establish a nexus between the filing of the previous complaint of discrimination and the adverse employment action.



By way of background, Complainant filed a previous claim of discrimination against Respondent on or about June 20, 2014. At all times relevant to the Complaint, Respondent maintained a “use of physical force” policy regarding juvenile offenders that permitted the use of force to regain or maintain control and as a last resort. While Complainant was aware of the provision, evidence reveals that she utilized force against a juvenile offender on or about October 11, 2014. Specifically, evidence shows that the juvenile offender refused to comply with Complainant’s instructions; however, there is conflicting evidence as to whether Complainant used profanity as well as force against the juvenile or whether Complainant used an appropriate amount of force in light of the situation. Ultimately, Respondent placed Complainant on emergency suspension on or about October 16, 2014 and terminated her employment on or about November 8, 2014. Despite Complainant’s assertions, there is insufficient evidence to support her claims. Rather, conflicting evidence has been provided by both parties regarding the use of force used by Complainant. Moreover, there is insufficient evidence to establish a nexus between Complainant’s act of filing a complaint of discrimination with the Commission in June 23, 2014 and her termination on or about November 8, 2014, nearly five months later. As such, there is no probable cause with respect to the first issue.

However, probable cause exists to believe that Complainant was subjected to disparate discipline as defined under the law. With respect to the second issue, Complainant must show that (1) she engaged in prohibited conduct similar to that of similarly-situated white co-workers and (2) the disciplinary measures enforced against Complainant were more severe than that levied against similarly-situated white colleagues. There is probable cause to believe that Complainant was subjected to more severe disciplinary action than her similarly-situated white co-workers. By way of background, Complainant is an African-American female and was terminated on or about November 8, 2014 after receiving a written disciplinary action for playing cards with an offender on or about March 3, 2014 and using force against a juvenile offender on or about October 11, 2014. However, evidence shows that Respondent issued a similarly-situated white male employee [REDACTED] three written counselings over a three year period (December 2009, November 2011, and July 2012) for the inappropriate use of force without terminating his employment. Moreover, evidence shows that another white male [REDACTED] received a written counseling for engaging in the inappropriate use of force in January 2012 along with several other disciplinary actions for various violations of Respondent’s policies and procedures; however, Respondent failed to terminate either of the aforementioned employees. Rather, evidence shows that these individuals were treated more favorably than Complainant as one of the identified individuals merely received written warnings regarding his inappropriate use of force while the other white male employee received numerous disciplinary actions, resigned, and was rehired. Simply stated, there is sufficient evidence to believe that Respondent treated similarly-situated white employees more favorably under similar circumstances. As such, probable cause exists to believe that a discriminatory practice occurred as alleged with respect to the second issue.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. The parties may agree to have these claims heard in the circuit or

superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter.

June 30, 2015

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission