
Civil Rights Division - Bureau of Labor and Industries
NOTICE OF SUBSTANTIAL EVIDENCE DETERMINATION

Complainant: Geraldine A Goff

Respondent: The Corvallis Clinic, P.C.

Case Number: AGEMAG150427-42349

Investigator: Louise Hansen

Filing Date: April 27, 2015

Reviewed By: Eric Yates, Field Operations Manager

DATE ISSUED:

April 21, 2016

CIVIL RIGHTS DIVISION

I. Jurisdiction:

Oregon Revised Statutes chapters 659A, ORS 25.337, 25.424, 171.120, 345.240, 441.178, 476.576, 651.060, 651.120, 652.355, 653.060 and 654.062, and Oregon Administrative Rules chapter 839 divisions 2, 3, 5, 6, 9 and 10 authorize the Civil Rights Division to accept, investigate, amend, resolve and determine complaints alleging unlawful practices in employment, housing, places of public accommodation, state government and career, professional and trade schools.

Specific facts supporting a conclusion that the Division has jurisdiction over respondent(s) are found below.

II. Synopsis

Complainant alleges violations based on age and whistleblowing in that Respondent subjected her to different terms and conditions, retaliated against her, and terminated her employment in violation of ORS 659A.030(1)(a)(b)(f), 659A.199, and 652.355. Respondent denies the allegations.

The Bureau of Labor and Industries found substantial evidence of a violation based on age in that Respondent terminated Complainant's employment. This is in violation of ORS 659A.030(1)(a)(b).

The Bureau of Labor and Industries did not find substantial evidence to support Complainant's allegations of violations based on whistleblowing and wage claim, in that Respondent subjected her to different terms and conditions, retaliation, and employment termination in violation of ORS 659A.199 and ORS 652.355.

III. Findings of Fact

1. Respondent, The Corvallis Clinic, P.C., is a domestic professional corporation and is a person pursuant to ORS 659A.001(9). At all relevant times, Respondent

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employed one or more persons in the State of Oregon and is an employer pursuant to ORS 659A.001(4)(a).

2. Aider and Abettor, Dr. Dennis W. Regan, was Medical Director of Respondent at all times material to this complaint. Dr. Regan is a person pursuant to ORS 659A.001(9).
3. Complainant was born November 3, 1938. Complainant was hired as a registered nurse (RN) on April 13, 1994, and her employment was terminated on February 10, 2015. Complainant worked in Respondent's Immediate Care Unit (ICU).
4. Complainant alleges that on several occasions leading up to her employment termination, she complained about not receiving breaks or lunches on weekends. Respondent took no corrective action. Complainant contends a few years prior, the Assistant Director of Nurses stated that all employees over 60 should retire. In August 2014, an efficiency expert evaluated the ICU and decided Respondent should make staffing changes or cuts. On November 18, 2014, Complainant was evaluated and received her worst evaluation to date. She was evaluated by Clinical Nurse Education Manager, Eleanor Reynders, who did not work in the ICU. There were errors in the evaluation and Complainant submitted a rebuttal. Complainant underwent a second evaluation in January 2015. On February 10, 2015, Complainant was told her second evaluation was worse, she was accused of "unsafe nursing" practices, and her employment was terminated. Complainant was not given an explanation or an opportunity to correct any mistakes she may have made. A younger employee was given options on how to improve her performance. Complainant was told at the time of the termination that she should be able to get a job in a nursing home. Complainant had not previously received any write-ups or discipline. Complainant alleges that this constitutes a violation of ORS 659A.030(1)(a)(b)(f), 659A.199, and 652.355.
5. Respondent submitted a written position statement in answer to this complaint. Respondent denies the allegations. Respondent contends it did not have any discussions with Complainant about a lack of breaks or lunches. The November 18, 2014, evaluation was of all RNs in the ICU. This evaluation was requested by Medical Director, Dr. Dennis Regan, after an incident involving Complainant occurred in November 2014. Respondent has no record of a rebuttal presented by Complainant. Complainant was evaluated again as a result of her poor performance. All nurses who had poor performances in November 2014 were reevaluated in January 2015. The evaluations were provided to Complainant and gave specific details about her mistakes. Her employment termination was performance based, rather than the result of a lay-off or reduction in force.
6. Respondent offered documentation in support of its defense. Respondent submitted a copy of Complainant's November 18, 2014, evaluation. Complainant

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was rated as “Unsatisfactory” in seven of the twelve categories in which she received a rating. One of the strengths listed on this evaluation was that Complainant “ha[d] been a nurse for over 40 years.”

7. Respondent submitted a copy of Complainant’s January 27, 2015, evaluation. Complainant was not rated “Unsatisfactory” in this evaluation. Complainant was rated “Needs Improvement” in five of the twelve categories in which she received a rating. Complainant received “Meets” ratings in categories which included, inter alia: Adheres to Oregon State Board of Nursing Standards of Practice and Follows TCC Policy and Procedures. The evaluator noted, “I have been told by her co-workers that she has spoken very negative to her team mates about me and her previous evaluation.”
8. The evaluations do not include language stating Complainant was accused of “unsafe” nursing practices.
9. On April 3, 2015, the Bureau of Labor and Industries received Complainant’s Employment Discrimination Questionnaire. Complainant stated in the questionnaire that the individual who made the comment that “anyone over 60 should retire so [the commenter’s] age group could have our jobs,” was hired as an assistant to the director of nurses, but “[s]he left the Clinic last year....” Complainant also stated that the other RN who had evaluation issues “is 10 years younger.”
10. Complainant’s BOLI Intake Interview dated April 14, 2015, noted, “The nurse that [Respondent] kept employed is 10 years younger than me.”
11. On December 31, 2015, BOLI requested that Respondent provide additional information. Respondent provided the requested information.
12. Respondent provided copies of Complainant’s evaluations from 2010 to 2015. Complainant received overall positive reviews and was not rated with “Unacceptable Performance” in any category. The categories and ratings in these annual evaluations were not the same as the categories and ratings used in the November 2014 and January 2015 evaluations of Complainant.
13. On June 11, 2015, Complainant was interviewed. She clarified that the person making the alleged statement that all employees over 60 should retire was not the Director of Nurses, but rather another employee named Miranda who is no longer employed by Respondent. Complainant admitted Miranda left a year prior. Complainant could not indicate any specific instances in which she reported not receiving a break or a lunch. Complainant stated her annual evaluation was not due until April 2015, yet she was evaluated in November 2014. She stated for 20 years they had yearly evaluations and she had not previously ever had “a full

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- evaluation like this...like the annual evaluation.” Complainant stated the Nurse Educator that evaluated her “had never worked in [ICU], did not know our procedures,” and that she “had never evaluated us.” Complainant stated another nurse, Nourieh Montizian, “got a bad review, but I was chosen.” Complainant stated that she and Ms. Montizian “were going to retire at the same time.”
14. On September 22, 2015, William Hinckle was interviewed. He is a current Respondent employee and a paramedic in the ICU. He did not support that Complainant’s nursing skills were unsatisfactory. Mr. Hinkle stated Complainant’s skill level was good, better than average. Although he suspected age could have played a role, he did not have information linking Complainant’s employment termination to her age.
 15. On September 22, 2015, Nourieh Montizian was interviewed. She is a current Respondent employee and an RN in the ICU. She did not support that Complainant’s nursing skills were unsatisfactory. Ms. Montizian was also reevaluated in January 2015. Ms. Montizian stated the following: She felt younger employees were not evaluated the same and older employees were evaluated more harshly. She stated what was pointed out was not about skills, but Respondent was evaluating her and she does not know the reason. In addition, the things she was told in person were not what was provided on the evaluation. She felt the evaluation did not portray her nursing and was not truthful because she observed other employees who were not criticized. She did not have additional information linking Complainant’s employment termination to Complainant’s age.
 16. On March 23, 2016, Aider and Abettor, Dr. Dennis Regan, was interviewed. He no longer works for Respondent. He supported the presence of concerns with Complainant’s ability to perform her job duties. He supported that he requested the ICU staff be evaluated in November 2014. He denied Complainant was treated differently based on her age. He supported that Complainant’s employment was terminated for performance issues and that Respondent would not terminate an employee without first giving the employee a chance to improve.
 17. On April 5, 2016, Dr. Christabeth Boyd was interviewed. She is a current Respondent employee. She did not play a role in the decision to evaluate nursing staff or terminate Complainant’s employment. She did not have information supporting that Complainant’s nursing skills were unsatisfactory. Dr. Boyd stated she thought Respondent was planning to end Complainant’s employment at the end of December and that she was aware of a conversation of a possible termination around Christmas time. She stated that the “head” stated they may terminate Complainant around Christmas. Dr. Boyd confirmed that “when I was working with Dr. Parker around that time, he said that he was talking to Mr. Denluck and he asked Mr. Denluck to give them a chance to correct and reevaluate, see if they had improved instead of us terminating [Complainant] right

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away.” Dr. Boyd confirmed that “[t]here had not been an instance of a similar type of evaluation. . . . That was the first time I saw them conduct the evaluation in that matter.”

18. On April 6, 2016, Dr. Charles Parker was interviewed. He is a current Respondent employee. He did not have information supporting that Complainant’s nursing skills were unsatisfactory. Dr. Parker did not play a role in the decision to evaluate nursing staff or terminate Complainant’s employment. He stated that Dr. Regan “did make the comment that he felt that it was time for [Complainant] to retire.” Dr. Parker stated this comment was made “not long before the first evaluation, I think a couple weeks.” Dr. Parker paraphrased a comment made to him by Dr. Regan where Dr. Regan stated, “[Y]ou don’t really need more staff, you need people who do their job efficiently, and I think that some staff have outlived their effectiveness.” Dr. Parker stated this comment was specific as to Complainant and that he knew this because “[h]er name was specifically brought up, that Gerry needs to retire. Or very close to that. If that’s not exact, it’s close enough.” Dr. Parker stated this comment was not tied to observations of Complainant’s skills or knowledge and that “[i]t was tied to staffing and wanting more bodies and the administration wanting less bodies.” He also stated that Dr. Regan’s “comment was it’s not a matter of numbers and we need to fix what we have because what we have is someone that quote ‘needs to retire.’” He stated in late November or early December 2014, Mr. Denluck and Department Chair, Dr. Robin Lannan, informed him that Complainant’s employment was going to be terminated. Dr. Parker stated, “I asked [Mr. Denluck] if [Complainant] had been informed of what her deficiencies were and had there been any opportunity for her to improve. He said no. And I said it would seem to me that before you fire someone who had worked there for so many years you would identify the deficiencies and offer a chance to improve. And he said thank you for your comment, we’ll take that under advisement.” Dr. Parker confirmed he told Dr. Boyd about his conversation with Mr. Denluck and stated, “I specifically remember telling her that I was under the impression that [Complainant] was going to be outright fired until it was brought up to give the opportunity to improve.” Dr. Parker stated that Complainant mentioned “she was at odds with the management because they were not giving her adequate break time,” but that Complainant was just venting and he “was just listening as a coworker.” He stated, “It had nothing to do with our working relationship.” Dr. Parker could not recall the timing of his conversation with Complainant regarding breaks. He was also unable to confirm whether Complainant reported any break concerns to others. He stated he had concerns that Complainant’s employment termination was linked to her age. When asked about the origin of his concern, he cited the “sequence of events,” how events “snowballed,” and how “they seemed strongly interconnected to me on a temporal relationship.”

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19. On April 6, 2016, Charlene Yager was interviewed. She is the current Respondent Director of Clinical Services. She supported that ICU staff was evaluated based on concerns reported by Dr. Regan. Ms. Yager made the decision to have Ms. Reynders conduct the November 2014 evaluation. Ms. Yager stated she did not know whether Ms. Reynders had conducted past evaluations of ICU nurses, and then she stated, "I would almost say no...." Ms. Yager also stated she did not know the extent to which Ms. Reynders was familiar with ICU nurse practices. Ms. Yager supported that Complainant was given the opportunity to improve after the November 2014 evaluation and prior to being reevaluated in January 2015. Ms. Yager participated in the January 2015 evaluation as an observer. She supported that new categories were added to the evaluation. She also supported that Complainant's employment was terminated for performance issues.
20. There is one comparator in favor of Complainant. Although no other ICU nurses were terminated due to the November 2014 evaluation, the only other nurse who received a negative evaluation and subsequent reevaluation was a nurse who was allegedly over 60 years of age and thus in a similar age bracket as Complainant.
21. On April 27, 2015, Complainant filed a verified complaint against Respondent. This complaint was amended.

IV. Summary

A reasonable person could conclude that Complainant's employment was terminated based on her age. Although all nurses in the ICU were evaluated in November 2014, a witness supported that the person requesting the evaluation stated Complainant "needs to retire" in close temporal proximity to the first evaluation. There was no confirmation of any other statements related to Complainant's age. The evidence supports that the November 2014 evaluation was not part of the annual evaluation cycle and was not completed by the standard evaluator. Complainant's prior evaluations do not demonstrate a concern with her performance. Several witnesses who worked directly with Complainant did not support having concerns with her performance. Two witnesses supported that until protests were raised by one of the doctors, Respondent had planned to terminate Complainant's employment without informing her about performance deficiencies or providing an opportunity for improvement. Moreover, the weight of the evidence does not substantiate that Complainant received additional opportunities to improve her skills prior to her reevaluation. Lastly, the only other nurse who received a negative evaluation and subsequent reevaluation was an individual who was allegedly over 60 years of age and thus in a similar age bracket as Complainant. This other nurse stated she felt older employees were evaluated more harshly and she observed other employees who were not similarly criticized. Based on the totality of the circumstances, a discriminatory motive for the employment termination can be inferred.

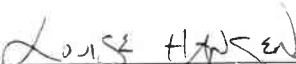
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Complainant was unable to provide substantial evidence that any reporting activity regarding breaks or lunches played a role in her workplace treatment or termination.

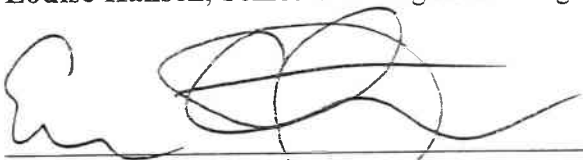
V. Determination(s)

The Bureau of Labor and Industries, Civil Rights Division, finds **SUBSTANTIAL EVIDENCE** of an unlawful employment practice (employment termination based on age), in violation of ORS 659A.030(1)(a)(b).

The Bureau of Labor and Industries, Civil Rights Division, finds **NO SUBSTANTIAL EVIDENCE** of an unlawful employment practice (terms and conditions of employment, retaliation, or termination), in violation of ORS 659A.199 or 652.355.



Louise Hansen, Senior Civil Rights Investigator



Eric Yates, Field Operations Manager
Civil Rights Division