

State of Wisconsin



Labor and Industry Review Commission

Crystal Beckett, Complainant

Fair Employment Decision¹

Agrace Hospicecare Inc., Respondent

Dated and Mailed:

ERD Case No. CR202200315
EEOC Case No. 26G202200571

October 30, 2025

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The decision of the administrative law judge is **modified** and, as modified, is **affirmed**. Accordingly, the complainant's complaint is dismissed.

By the Commission:

/s/

Michael H. Gillick, Chairperson

/s/

Georgia E. Maxwell, Commissioner

/s/

Marilyn Townsend, Commissioner

¹ **Appeal Rights:** See the green enclosure for the time limit and procedures for obtaining judicial review of this decision. If you seek judicial review, you **must** name the Labor and Industry Review Commission as a respondent in the petition for judicial review. Appeal rights and answers to frequently asked questions about appealing a fair employment decision to circuit court are also available on the commission's website <http://lirc.wisconsin.gov>.

Procedural Posture

This case is before the commission to consider the complainant's allegation that the respondent discriminated against her because of her race, color, and conviction record, in violation of the Wisconsin Fair Employment Act (hereinafter "Act"). An administrative law judge for the Equal Rights Division of the Department of Workforce Development held a hearing and issued a decision finding that there is no probable cause to believe that the respondent violated the Act by discriminating against the complainant in the terms or conditions of employment or by terminating the complainant's employment. The complainant filed a timely petition for commission review of that decision.

The commission has considered the petition and the positions of the parties, and has reviewed the evidence submitted at the hearing. Based on its review, the commission makes the following:

Findings of Fact

1. The respondent, Agrace Hospicecare (hereinafter "respondent"), is a health care facility.
2. The complainant, Crystal Beckett (hereinafter "complainant"), is an individual who was hired to work for the respondent as a Certified Nursing Assistant (CNA) in November of 2021. Her job duties including feeding patients, repositioning patients, and performing other cares for patients in the respondent's inpatient unit.
3. The complainant identifies her color as black and her race as African American. The complainant has a conviction record from approximately twenty years ago which she disclosed on her application for employment. The respondent conducted a background check on the complainant but did not find any conviction record information.
4. Nicole Flemming, the manager of the respondent's general inpatient unit, was the complainant's supervisor. Ms. Flemming made the decision to hire the complainant after interviewing her for the role. Ms. Flemming was aware of the complainant's color and race when she chose to hire the complainant but was not aware of the complainant's conviction record until after the complainant was discharged.
5. On December 15, 2021, the complainant was assigned to care for a patient who did not like her. The patient's daughter was present in the patient's room. As the complainant left the patient's room, she overheard the patient say to her daughter: "I do not want that nigger in my room." The complainant discussed the comment with a supervisor but continued to be assigned to work with the patient.

6. The respondent received complaints about the complainant from patients' families and other members of the respondent's staff. The complaints included that the complainant did not follow care plan orders, was rough with patients, did not inform patients about what she was going to do before doing it, turned off bed alarms, failed to collaborate with nurses when patients were showing signs of distress, repositioned patients alone when the patients' orders provided that two staff should be involved, and provided care to patients without ensuring the patients were premedicated when required.

7. In response to a complaint that the complainant was rough with a patient and left a patient soiled, the respondent placed the complainant on leave effective December 29, 2021 and conducted an investigation. The information obtained by the respondent during its investigation did not substantiate the complaint. However, during the investigation, the complainant admitted to the respondent that she was not reading patients' care plans prior to performing care for the patients.

8. The complainant returned to work but, on January 10, 2022, was placed on a training plan. The plan involved additional training on the respondent's medical record system and additional training and support regarding scope of practice, care, and documentation standards in the unit in which the complainant worked. The respondent expected the complainant to improve in reviewing and following care plans and completing required documentation.

9. The staff working with the complainant on her training reported to the complainant's supervisor, Ms. Flemming, that the complainant was not improving. The complainant continued to fail to review patients' care plans and charted actions she had not completed. The complainant's supervisor discussed these concerns with the complainant, but her performance did not improve. Although only a few days into the training plan, it became obvious to the respondent's staff that the complainant was not inclined to improve.

10. On Friday, January 14, 2022, Ms. Flemming made the decision to discharge the complainant because of her poor performance and lack of improvement in spite of the additional training provided to her.

11. Ms. Flemming informed the complainant in person that she was being discharged due to her performance. Two members of the respondent's human resources team were also present at the discharge meeting.

Conclusions of Law

1. There is no probable cause to believe that the respondent discriminated against the complainant in the terms and conditions of her employment because of her race or color, within the meaning of the Act.

2. There is no probable cause to believe that the respondent discriminated against the complainant by discharging her because of her race, color, or conviction record, within the meaning of the Act.

Memorandum Opinion

The complainant has the burden to prove that there is probable cause to believe that discrimination occurred. Probable cause is defined as “a reasonable ground for belief, supported by facts and circumstances strong enough in themselves to warrant a prudent person to believe that a violation of the act probably has been or is being committed.” Wis. Admin. Code § DWD 218.02(8). Probable cause “lies somewhere between preponderance of the evidence and suspicion.” *Mitchell v. DNR*, ERD Case No. CR201801226 (LIRC Oct. 30, 2023) (citing *Braunschweig v. SSG Corp.*, ERD Case No. CR200400816 (LIRC Aug. 31, 2006)). The complainant failed to carry this burden of proof at the hearing.

The respondent offered legitimate non-discriminatory reasons for its decision to discharge the complainant. Specifically, the complainant’s job performance was not up to the respondent’s standards. The respondent offered the complainant an opportunity to improve her performance, but even with additional training, her performance did not improve. The respondent was then motivated to discharge the complainant because of her performance. The complainant’s discharge was not related to her race or color. Her discharge was also not related to her conviction record, and could not have been, because the individual who made the decision to discharge the complainant was not aware of her conviction record until after her discharge.

The complainant also alleged that she was discriminated against in the terms and conditions of her employment because of her race and color. In one incident, she overheard a patient make a racist comment about her. A supervisor was aware of the comment, but no action was taken to address the situation. While the commission can certainly understand the complainant’s discomfort and concern, the respondent’s awareness of a single comment on the part of a patient is insufficient to warrant a conclusion that the respondent created a hostile work environment for the complainant. While an employer may be held responsible for discrimination based on race when an employee’s coworkers make racist comments about the employee and the employer is aware, or should have been aware, of the conduct, see *Crear v. LIRC*, 114 Wis. 2d 537, 339 N.W.2d 350 (Ct. App. 1983) and *Hyde v. LIRC*, No. 81-386, unpublished slip op., (WI App Sept. 15, 1981), occasional or sporadic instances of racial slurs by coworkers are insufficient to constitute discrimination. *Baird v. Kenosha Beef International*, ERD Case No. CR201902909 (LIRC May 24, 2024) and *Sheridan v. UW-Madison*, Case Nos. 86-0103-PC-ER, 87-0141-PC-ER (Wis. Pers. Comm. Feb. 22, 1989). Here, the offensive comment was not made by a coworker, but by a patient. Although the commission recognizes that an employer cannot always control the conduct of its clients or customers, employers have a

responsibility to attempt to provide a harassment free work environment for their employees. However, as in the case of a single racial slur by a coworker, an isolated comment made by a patient is insufficient to be considered actionable discrimination by the respondent, within the meaning of the Act.

The commission notes that the complainant has alleged that she was subject to additional racist behavior in the workplace but, again, has not established that the respondent engaged in discriminatory conduct. In one instance, the daughter of the patient who made the racist comment requested that a Caucasian staff member, rather than the complainant, assist her with Christmas decorations. However, the complainant did not establish that this incident was reported to any management staff for the respondent. Similarly, the complainant alleged that coworkers followed her around making monkey noises. This is a serious allegation and this behavior, if repeated and ignored by an employer, could well form the basis for a discrimination claim. However, absent any reason to believe the respondent was aware or should have been aware of these incidents, its failure to address them is not evidence of discrimination on its part.

The complainant also alleged that her coworkers and supervisors engaged in harassment by being rude and disrespectful to her, giving her mean looks, and failing to effectively train her. The complainant's allegations regarding general disrespect and mean looks are vague and insufficient to support a finding that she was subject to harassment. Regarding her training, the complainant alleged that staff assigned to train her would watch her work, but not provide any verbal guidance, while at other times they would step in and perform work for her. However, the complainant's training included job shadowing, which is consistent with staff performing work while the complainant watched. Even if the staff training the complainant did not communicate effectively, there is no evidence this was related to the complainant's race or color or that their conduct could be considered harassment.

Last, the complainant argues in her petition for commission review that she was often sent home even though she was scheduled to work. However, at the hearing, she provided testimony that she was sent home on only one occasion, when she believed she was scheduled to work but a coworker informed her she was not on the schedule. The complainant was not subject to any punishment for missing work that day. There is no evidence the complainant was repeatedly sent home when scheduled, nor any evidence that this single incident was due to the complainant's race or color. For all the reasons stated above, the commission agrees with the administrative law judge that the complainant has not shown probable cause to believe that she was discriminated against, within the meaning of the Act. The dismissal of the complaint is therefore affirmed.

NOTE: The commission agrees with the ultimate result reached by the administrative law judge but has rewritten the decision to more accurately reflect the commission's own findings of fact and legal analysis.

cc: Attorney Amy O. Bruchs