

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building – Third Floor
Des Moines, Iowa 50319

MERLA “JEN” TEGELER,)	DIA No. 14ICRC007
)	
Complainant,)	
)	
and)	
)	
IOWA CIVIL RIGHTS COMMISSION,)	
)	
v.)	
)	
QUALITY INN & SUITES PEOSTA,)	PROPOSED DECISION
LAXMEE, INC., and RAJ CHOKSI,)	
)	
Respondents.)	

The parties to this proceeding are Complainant Merla “Jen” Tegeler, the Iowa Civil Rights Commission, and Respondents Quality Inn & Suites Peosta (“Quality Inn”), Laxmee, Inc., and Raj Choksi. A contested case hearing was held on November 5, 2014. Attorney Christine Louis represented the Tegeler and the Commission. Tegeler appeared and testified. Sheila Oyler and Kimberly Smith appeared and testified on Tegeler’s behalf. Attorney Dennis Mitchell represented the Quality Inn, Laxmee, Inc., and Choksi. Vijay Patel, the principal owner of Laxmee, Inc. and the Quality Inn, appeared and testified. Attorney Brooke Timmer represented Oyler. Exhibits 1 through 7 were admitted into the record.

FINDINGS OF FACT

Laxmee owns and operates the Quality Inn. Patel and Nayaneben Patel are the owners of Laxmee. Laxmee purchased the Quality Inn on May 1, 2012.

On October 22, 2012, Kim Smith, the General Manager of the Quality Inn, hired Tegeler to work at the front desk, as an at-will employee. Tegeler was responsible for checking guests in and out, attending to the breakfast area, cleaning the common areas, including the lobbies and breakfast area, checking the chemical levels in the swimming pool, and washing and folding the bed linens. Tegeler earned \$9 per hour and did not receive any benefits.

When Smith hired Tegeler she told Tegeler she would not be able to work 40 hours per week, but assured Tegeler she would be able to work 38 to 39 hours per week. Tegeler lives alone and needed the hours to pay her bills.

Smith was Tegeler's supervisor. Smith introduced Tegeler to Choksi the day she started. Tegeler was informed Choksi was a part-owner of the hotel. Choksi was listed on the Employee Phone Number Listing in Exhibit 1. Exhibit 1 contains two Employee Phone Number Listings. Patel is listed as an owner on both forms. At some point the Employee Phone Number Listing was updated and also listed Choksi as an owner. Choksi lived at the Quality Inn and was present most days.

Patel testified Choksi is not an owner of the Quality Inn. Patel reported his business partner lives in South Carolina and placed Choksi at the hotel. Patel testified the General Manager had the power to hire and fire employees and Choksi did not.

Smith testified Patel told her Choksi was going to be a maintenance person for the hotel. She was uncertain what his role was and never received a clear answer from Patel. Smith reported Choksi did some maintenance work and ran the front desk at night. Smith testified Choksi stood over the employees and watched their every move. Smith complained to Patel about Choksi. She noted Choksi tried to change employees' schedules so he could work seven days per week. Smith told Patel the schedule was her job, not Choksi's. She also expressed concern that Choksi was directing the employees while they were working.

During the time Smith worked for the Quality Inn, Smith prepared the schedule. Choksi had access to the computer and used the computer to make reservations. Smith sent the payroll to Patel every week, including hours for Choksi. Smith did not list an hourly wage for Choksi on the payroll and just included the hours he worked. Smith listed the hourly wage for the other employees.

When she was first hired, Tegeler did not have any problems with Choksi. Choksi told Tegeler he liked her work. Tegeler testified Choksi directed Tegeler's work activities. Smith reported that Tegeler did a good job.

Shortly after commencing her employment Tegeler had a conversation with Choksi about her age. An employee named Julie had been an employee of the previous owner for approximately five years. Julie was familiar with the front desk duties and worked on Wednesdays. Choksi told Tegeler to stay late on a Wednesday to meet with Julie because Julie is a teacher and is older. Tegeler responded Julie is not that old and is about the age of Tegeler's son. Tegeler testified Choksi responded that if he had known how old Tegeler was he would not have hired her.

Tegeler testified that after her conversation with Choksi about Julie and her son, Choksi started treating her differently. He made other comments about her age, and told her she had "small memory" and began raising his voice at her almost on a daily basis.

Smith also had concerns about Choksi. Smith discussed her concerns about Choksi with Patel during two meetings. Smith testified Patel stated he would take care of the situation, but nothing changed. Patel testified he spoke with Choksi and told him he needed to follow Smith because she was the General Manager. Smith gave Patel a two-

week notice and resigned from the Quality Inn. Smith's last day was November 19, 2012.

The Quality Inn began looking for a new General Manager before Smith left. A couple, Gary and Sharon, from Waverly came to the Quality Inn to interview for the General Manager position. Tegeler was working at the front desk when Choksi spoke to the couple. Choksi became irritated with Tegeler. Tegeler testified when Choksi walked away the couple said to her, "you don't have to take that type of abuse from an employee." Tegeler responded Choksi was not an employee, he was the owner. Tegeler testified Choksi's comments to her were demeaning and made her feel bad. The couple did not become the General Managers of the Quality Inn.

Oyler interviewed for a front desk position with Smith. Shortly thereafter, Choksi called Oyler and inquired whether she would like to be the General Manager. The position would also involve marketing. Oyler accepted the position and told Choksi she preferred to work days, from 7:00 a.m. through 3:00 p.m., because it would be easier to work on the marketing functions during the day. Oyler worked the front desk 40 hours per week and also performed marketing functions for the hotel five hours per week. Oyler testified Choksi informed her he was the owner of the Quality Inn.

During her final two weeks with the hotel, Smith was present sporadically. Toward the end of Smith's employment, Tegeler told Smith her hours were being reduced. Smith told Tegeler to talk to Oyler because she was not really part of the company anymore. Smith testified she did not reduce Tegeler's hours during her employment and noted Tegeler worked at least 38 hours per week when she was the General Manager.

Smith reported Choksi approached her several times and said Tegeler was too slow and he wanted Smith to cut Tegeler's hours. Smith testified Choksi told her Tegeler was "too old, so that made her too slow on the computer" and that she was not efficient for the hotel. Smith thought Tegeler was still learning her position. Smith noted all employees have to learn and learning takes time.

Oyler testified Choksi worked at the front desk overnight. He also lived at the Quality Inn and was there throughout the day.

Tegeler had been working at the front desk during the day before the Quality Inn hired Oyler. Oyler worked the front desk during the day. Oyler was responsible for running the hotel and oversaw the employees. Oyler submitted payroll to Patel, including Choksi's hours.

Choksi told Tegeler that Oyler was the new General Manager and she would be working the front desk during the day. Tegeler offered to work 3:00 p.m. to 11:00 p.m. on Thanksgiving weekend. Choksi refused to allow her to work from 3:00 p.m. to 11:00 p.m.

Oyler testified after she started working Choksi told her that since Oyler was going to be working days, Tegeler could fill in and he wanted to wean Tegeler off the schedule because she was old.

During her employment, Tegeler's hours decreased. The first week of her employment Tegeler worked a partial week of 11 hours. The second week she worked 38 hours. The third week she worked 39 hours and the fourth week she worked 38 hours. Tegeler worked 17 hours her fifth week of employment. The sixth week of her employment she worked 8 hours. Tegeler was originally scheduled to work 25 hours the sixth week of her employment, but her hours were reduced.

Oyler testified Choksi told her he wanted an employee named Angie, who is in her 30s, to receive more hours and Tegeler to receive fewer hours, to force Tegeler to quit.

Oyler reported she entered the schedule for the employees into the computer. Oyler noted Choksi had access to the schedule and he made changes to the schedule.

Tegeler reported that when her hours were reduced she lost sleep and felt drained. She did not know what would happen and how to support herself. Tegeler testified that when she asked Choksi for more hours, he "brushed her off." Tegeler testified Choksi told her that he could not fire anyone, but he could reduce an employee's hours.

When Tegeler saw she was only scheduled for one shift the sixth week of her employment she called Oyler and told her she needed to resign because she could not survive on eight hours of work per week. Oyler told her she would speak to Choksi. Oyler testified Choksi told her Tegeler was old and he wanted Tegeler to work fewer hours to force her to quit.

Oyler testified Tegeler did not have adequate training for her position. Tegeler struggled with the computer. Oyler reported Tegeler started a week or two before she was hired and she needed additional training. Oyler offered to stay late to help Tegeler with the computer, but Choksi told her she could not stay late.

Smith confirmed new front desk employees need training to work on the computer. Smith reported employees have a hard time learning the computer system when they start, but noted Tegeler was a fine employee.

Oyler reported she spoke with Patel weekly, by telephone and e-mail. Oyler testified she complained to Patel numerous times about Choksi. She cannot recall if she complained to Patel about Choksi's treatment of Tegeler. Oyler reported Patel told her that Choksi was an owner and she needed to listen to him.

Tegeler began looking for other work. Approximately two weeks later she secured employment through a temporary agency, earning \$10 per hour. Tegeler continued with her temporary employment from December through April or May.

When her temporary employment ended Tegeler looked for another position. It took her about two weeks to find another job. Tegeler accepted employment with a lawn care company.

Tegeler seeks actual damages for lost wages and \$15,000 in emotional distress damages. She testified the Quality Inn “took a piece out” of her life. Tegeler reported how she was treated was debilitating. She felt depressed and it was difficult to move forward. Tegeler testified her experience at the Quality Inn affects her today. Tegeler was hoping to remain with the Quality Inn and to be promoted to the General Manager position. Tegeler also seeks attorney fees, costs, and the expenses she incurred for her deposition in Iowa City.

CONCLUSIONS OF LAW

The Iowa Civil Rights Act (“ICRA”) precludes an employer from discriminating against an employee because of the employee’s age.¹ An employee may prove discrimination under the ICRA through direct evidence or the *Price Waterhouse* method, or through the burden-shifting method established in *McDonnell Douglas Corp. v. Green*.² The Commission has presented direct evidence of discrimination in this case.

I. Direct Evidence of Age Discrimination

Under the direct evidence method, the complainant “must present credible evidence of conduct or statements of supervisors which may be seen as discrimination sufficient to support an inference that the discriminatory attitude was a motivating factor.”³ If the complainant presents sufficient evidence, “the employer bears the burden of establishing by a preponderance of the evidence it would have made the same decision even in the absence of the improper motive.”⁴ The employer’s burden “is not satisfied by merely articulating a reason” for its action.⁵

Patel testified Choksi is not a supervisor and did not act on behalf of the Quality Inn. Oyler, Smith, and Tegeler testified Choksi was a supervisor. This raises an issue of credibility. There are many factors used when considering the credibility of witness testimony. Some of the most common standards are as follows:

1. Whether the testimony is reasonable and consistent with other evidence you believe.
2. Whether a witness has made inconsistent statements.
3. The witness’ appearance, conduct, age, intelligence, memory and knowledge of facts.
4. The witness’ interest in the trial, their motive, candor, bias

¹ Iowa Code § 216.6(1)a.

² *Reiss v. ICI Seeds, Inc.* 548 N.W.2d 170, 174 (Iowa 1996); *Vaughn v. Must, Inc.*, 542 N.W.2d 533, 538 (Iowa 1996).

³ *Vaughn*, 542 N.W.2d at 538.

⁴ *Id.* at 539.

⁵ *Id.*

and prejudice.⁶

Patel's testimony is not reasonable and consistent with the other evidence I believe. Patel was not on-site at the Quality Inn. Oyler and Smith were the General Managers of the Quality Inn. Oyler, Smith, and Tegeler testified Choksi was a supervisor and was referred to as an owner. Exhibit 1 supports their contention. The Quality Inn did not present evidence showing Oyler and Smith had a motive to support a finding Choksi was a supervisor, unlike Patel, who could be liable for Choksi's actions if he was a supervisor.

The evidence at hearing established Choksi directed the work of the employees. Oyler testified Patel told her she needed to listen to Choksi. Choksi also called Oyler to offer her the General Manager position. A preponderance of the evidence establishes Choksi was a supervisor.⁷

Oyler and Smith both served as the General Manager for the Quality Inn during Tegeler's employment. Smith reported Choksi approached her several times and said Tegeler was too slow and he wanted Smith to cut Tegeler's hours. Smith testified Choksi told her Tegeler was "too old, so that made her too slow on the computer" and that she was not efficient for the hotel. Oyler testified Choksi told her that since Oyler was going to be working days, Tegeler could fill in and he wanted to wean Tegeler off the schedule because she was old. The Commission has presented credible evidence of conduct and statements by Choksi which may be seen as discrimination sufficient to support an inference that the discriminatory attitude was a motivating factor.

Given the Commission met its burden, the burden shifts to the Quality Inn to establish it would have reduced Tegeler's hours even in the absence of an improper motive. The Quality Inn contends it reduced Tegeler's hours because Tegeler was not a good employee, and Tegeler resigned from her employment. The Quality Inn has not met its burden of proof.

Smith and Oyler acknowledged Tegeler struggled with the computer. Smith reported new front desk employees struggle with the computer. Oyler believed Tegeler needed more training and offered to assist her. Choksi informed Oyler she could not help Tegeler. Smith and Oyler did not contend Tegeler's hours should have been reduced because of her problems with the computer. Tegeler needed additional training.

The Quality Inn avers Tegeler is precluded from recovering in this case because she resigned. Tegeler alleges she was constructively discharged. An employer constructively discharges an employee when "the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an

⁶ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996).

⁷ *Cf. Chauffeurs, Teamsters & Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 380 (Iowa 1986) (rejecting the union's argument that any discriminatory acts were made by the union members in their capacity as individuals and not as agents of the Union, and finding the steward wore two hats, as an individual and as an agent for the union).

involuntary resignation.”⁸ Trivial or isolated acts are insufficient to support a constructive discharge claim.⁹ “Rather, the working conditions must be unusually aggravated or amount to a continuous pattern before the situation will be deemed intolerable” and the employee must establish the employee gave the employer a “reasonable chance to resolve the problem.”¹⁰ Smith testified Tegeler informed her she needed to work at least 38 hours per week. Toward the end of her employment, the Quality Inn had reduced Tegeler’s hours to eight hours per week. Tegeler lives alone and supports herself. She could not continue to work for the Quality Inn and pay her bills. Tegeler has established she was constructively discharged due to age discrimination in employment.

II. Damages

If the administrative law judge finds the respondent has engaged in a discriminatory or unfair practice under the ICRA, the administrative law judge “shall issue an order requiring the respondent to cease and desist from the discriminatory or unfair practice” and afford necessary remedial action.¹¹ Remedial action includes, but is not limited to “payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees.”¹²

A. Lost Wages

The Commission presented evidence the Quality Inn hired Tegeler to work 38 to 39 hours per week. Tegeler earned \$9 per hour. Tegeler worked 17 hours her fifth week of employment, and 8 hours her sixth week of employment. The Commission has established the Quality Inn reduced Tegeler’s hours by 51 hours the two last weeks of her employment. The Commission has established Tegeler is entitled to \$459 in lost wages for the last two weeks of her employment.

Tegeler testified she did not secure employment for two weeks after she resigned from the Quality Inn. Tegeler earned equivalent wages through her new employment. If Tegeler had remained at the Quality Inn and her hours had not been reduced, she would have worked 76 hours for the two-week period she was not employed. Tegeler is entitled to additional damages of \$684 for the two weeks until she secured new employment.

B. Emotional Distress Damages

Tegeler seeks an award of \$15,000 for emotional distress damages. The Iowa Supreme Court has recognized that emotional distress damages are recoverable under the ICRA.¹³

⁸ *Van Meter Indus. v. Mason City Human Rights Comm’n*, 675 N.W.2d 503, 511 (Iowa 2004). (quoting *First Judicial Dist. Dep’t of Corr. Servs. v. Iowa Civil Rights Comm’n*, 315 N.W.2d 83, 87 (Iowa 1982)).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Iowa Code § 216.15(9)

¹² *Id.* § 216.15(9) a.

¹³ *Chauffers, Teamsters & Helpers, Local Union No. 238*, 394 N.W.2d at 383.

A complainant may recover emotional distress damages “without a showing of physical injury, severe distress, or outrageous conduct.”¹⁴

Tegeler worked for the Quality Inn for six weeks. Tegeler testified Choksi’s comments to her were demeaning and made her feel bad. She testified the Quality Inn “took a piece out” of her life. Tegeler reported Choksi’s treatment was debilitating. Tegeler felt depressed and it was difficult for her to move forward. Tegeler testified she continues to be affected by her experience at the Quality Inn. When she was hired Tegeler hoped to remain with the Quality Inn and to be promoted to the General Manager position. Tegeler is entitled to \$3,000 in emotional distress damages.

C. Costs and Attorney Fees

1. Costs

Tegeler seeks recovery of costs she incurred for her deposition and at hearing for transportation and hotel accommodations. The Commission has adopted rules governing the payment of costs.¹⁵ If the Commission or complainant prevails at hearing, the respondent “shall pay the ‘contested case costs’ incurred by the Commission.” Under the Commission’s rules allowable costs include: (1) the daily charge of the court reporter for attending and transcribing the hearing; (2) all mileage for the court reporter for traveling to and from the hearing; (3) all travel time charges for the court reporter for traveling to and from the hearing; (4) the costs of the original of the transcripts for the hearing; and (5) postage incurred by the administrative law judge in sending by mail (regular or certified) any papers made part of the record.¹⁶ The Commission’s rules expressly list the above “contested case costs” and state “no others will be assessed or apportioned.”¹⁷ The Commission’s rules do not provide for the recovery Tegeler seeks.

2. Attorney Fees

The ICRA also allows for the recovery of reasonable attorney fees.¹⁸ At hearing the Commission presented the attorney fees incurred by Karin Zeigler, before she withdrew from the case, totaling \$7,739.62. Quality Inn submitted no evidence at hearing Zeigler’s attorney fees are excessive. Tegeler is entitled to an award of attorney fees.

¹⁴ *City of Hampton v. Iowa Civil Rights Comm’n*, 554 N.W.2d 532, 537 (Iowa 1996) (modifying \$50,000 emotional distress award to \$20,000 where complainant and her daughter testified about her emotional distress, but the case lacked any medical or psychiatric evidence to support it); *Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Comm’n*, 453 N.W.2d 512, 526 (Iowa 1990) (affirming award of emotional distress damages where complainant alleged stress from not being promoted caused her to feel bad, have headaches, and caused her psoriasis to flare up).

¹⁵ 161 IAC 4.32(3)

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Iowa Code § 216.15(9)a.

ORDER

The Quality Inn, Laxmee, and Choksi discriminated against Tegeler on the basis of age. The Quality Inn, Laxmee, and Choksi shall cease and desist from engaging in discriminatory practices. Tegeler is awarded \$1,143 in actual damages for lost wages, \$3,000 in emotional distress damages, and \$7,739.62 in attorney fees. The Commission shall take any steps necessary to implement this decision.

Dated this 24th day of November, 2014.



Heather L. Palmer
Administrative Law Judge
515-281-7183

cc: Christine Louis
Dennis Mitchell
Merla "Jen" Tegeler

Notice

Any adversely affected party may appeal this decision to the Iowa Civil Rights Commission within 30 days of the date of the decision.¹⁹ The appeal must be signed by the appealing party or representative of the appealing party and contain a certificate of service upon the other parties, and specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.²⁰

The Commission may also initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of the decision.²¹

¹⁹ *Id.* 4.23(1).

²⁰ *Id.* 4.23(3).

²¹ *Id.* 4.23(2).