

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

IOWA CIVIL RIGHTS COMMISSION,)	Docket No. 14ICRC014
)	
Agency,)	
)	
v.)	
)	
MEDICAL LABORATORIES OF)	PROPOSED DECISION
EASTERN IOWA, INC., d/b/a MEDLABS,)	
)	
Respondent.)	

A contested case hearing was held on October 19-20, 2015, at the Linn County Courthouse in Cedar Rapids, Iowa. Complainant Vondell Maxine Prime, who is African American, appeared and testified. Jennifer Metzen, Jennifer Felton, Brittany Nelson, Darla Moander, and Julie Behr who are Caucasian also appeared and testified. Exhibits 1 through 23, D, F, I through T, W through Z, BB through HH, JJ through NN, and PP through VV were admitted into the record. The record was left open for post-hearing briefing.

FINDINGS OF FACT

Medical Laboratories of Eastern Iowa, Inc. d/b/a MedLabs (“MedLabs”) provides laboratory services supporting physician office practices in Cedar Rapids, Iowa. MedLabs is jointly owned by St. Luke’s Hospital and Cedar Valley Pathologists, P.C. MedLabs performs a variety of tests in its lab, including blood, urine, stool, and swabs of other body parts and secretions. The testing and analysis includes infectious disease, assaying pharmaceutical treatment and dosage levels for patients, cardiac related diagnosis and treatment, cancer diagnosis and treatment, blood related diagnosis and treatment, and general health and wellness assays.

At all times material hereto, MedLabs employed between 60 and 65 employees. The main lab is located on 1st Avenue in Cedar Rapids, and its administrative offices are located on A Avenue in Cedar Rapids.

Behr is the Administrative Director of MedLabs and works with a management team on personnel matters. MedLabs employs lead workers who train and provide assistance to other employees as needed. Lead workers ensure employees follow protocols and documents are kept in order for inspections. Lead workers are not involved in hiring or disciplining employees, but may provide information to the managers regarding employee performance.

On or about August 20, 2012, MedLabs hired Prime as a Medical Assistant earning \$10.97 per hour. MedLabs also refers to Medical Assistants as Laboratory Assistants.¹ Prime had recently completed training in medical assisting through Kirkwood Community College (“Kirkwood”). While attending Kirkwood Prime received training on blood borne pathogens, phlebotomy, and running medical testing equipment. The Medical Assistant position is an entry level position, requiring a high school diploma or GED. Medical Assistants are responsible for registering patients, collecting blood, nasal and throat specimens, and explaining how to collect urine, stool, and other specimens to patients.

MedLabs provides a general six week orientation for new employees. During the orientation employees are trained on the computer system, registering patients, ordering, phlebotomy, blood borne pathogens, urinalysis, and machine and kit testing. New employees are first assigned to work in the main lab, and then to work in the pediatric lab.

New employees work on their phlebotomy skills by drawing blood from other employees. At the pediatrics lab employees perform finger sticks, butterflies, heel sticks, and urine testing. After receiving training at the pediatrics lab, a new employee is sent to a Physician Office Laboratory (“POL”) for training. Employees in the POLs register patients, order tests, perform tests, and process tests. The testing procedures at all of the labs differ and employees are trained on the procedures for each lab by lead workers and by other coworkers.

MedLabs initially assigned Prime to work at the 1st Avenue location. Moander is the Manager of Phlebotomy and Clinical Services and was Prime’s direct supervisor and Karolyn Drake was responsible for her initial training, including training on the EPIC system. MedLabs uses the EPIC system for patient records. When an employee registers a patient, the employee enters a medical record number (“MRN”) for the patient into the computer. If the employee cannot find the MRN number for the patient, the employee can also use the patient’s social security number. After a patient is registered, the employee is required to verify the patient’s name before collecting specimens from the patient. While working at the 1st Avenue location Prime also received training on the forms patients fill out at registration.

Prime’s coworkers complained about Prime’s work habits to management during her first month of employment at the 1st Avenue location. Management received e-mails from three of Prime’s coworkers at the 1st Avenue location on September 13, 2012. Nicole Nost sent Moander an e-mail, which states:

A few things: maxine [sic] has an attitude that she knows everything, when you try to tell her something she replies with a rude remark I know what I’m doing. If you try and tell her she did something wrong she blames it on someone else. I get offended whe [sic] she makes comments

¹ The parties submitted one job description for Prime at hearing for Laboratory Assistant I. Exhibits 8 and 9 show that Prime held two positions, Medical Assistant, and Physician Office Laboratory Technician.

to patients that she has way more experience than just being a phlebotomist that she is a CMA but has to start somewhere. She doesn't take constructive criticism at all. She claims she knows everything and doesn't need to be told what to do. I don't [sic] know how to work with someone with such an attitude she's [sic] been here a month and acts, she doesn't [sic] know everything. Karie's been here 15 yrs ive [sic] been here almost 3 and we still learn new [sic] things. I can vouch [sic] that Karie has not been intimidating to her or bullying her I feel that she may play that card. It's pretty sad when the other new employees see it as well. She doesn't answer [sic] the phone and when she does she's [sic] rude. I took a call from a Dr.'s office this week that said they talked to a Maxine earlier and the nurse was saying how rude she was.

Sorry about all this i [sic] know everyone is stressed just trying to nip it in the butt before its worse.

(Exhibit JJ). During the hearing Prime denied making the remark, "I know what I am doing" and denied blaming others. She also denied having any issues with the telephone. Prime testified Moander spoke with her about Nost and told her to take Nost's comments with a grain of salt.

Bridget Vlahos also sent Moander an e-mail stating,

Darla I'm sorry to have to send this but I've had reoccurring issues with Maxine. I was told by Kari to show her how to fill out Wellmark insurance paper for a CBC. She said can't [sic] be hard seen [sic] it done before I'll do it. Kari had to stop her from handing pt. [sic] blank form. Then [sic] asked after lunch why am I doing front desk still she should be trained on it she already knows how to do it. I said I'm doing what I'm told. Sorry, I don't know what the plan is. I do know Kari is helping Hollie so she may be busy with that. She walked away rolled her eyes then [sic] said who calls the shots with job positions because I know it's not Darla I already talked to her. Then [sic] grabbed paper with Julie B. number with everyone else's number to find out stuff.

(Exhibit HH).

Drake also sent Moander an e-mail, which provides,

This is in regards to the phone conversation that we had today regarding Maxine Prime. We have issues with her seeming to think that she knows everything. She had a patient that needed a waiver signed for a blue cross [sic] insurance for a CBC with dx of screening. I never talked to Maxine yet about the medicare [sic] stuff and I was going to do it today. Bridget V. went to help her with it because I was in the back putting supplies away. She told Bridget V. that "it's not hard I have seen Karie do it." Maxine only did one waiver and that was for a PSA that she wanted to get to have the

patient sign for and the patient was a female. I was told by Nicole and Bridget that she made that comment and so I went to help her with it. Maxine was going to have this patient sign a BLANK waiver and tell the patient about the policy and then go back and fill in the rest of the waiver. This is something that needs to be filled out before the patient signs the waiver. If this was me I would not sign a piece of paper that was blank.

As for lunches she just likes to leave without telling people that she wants to take a lunch or for the matter a smoke break. I caught her and Christy F. out back smoking while Jean C. and I were in working and we both asked each other where those two were. I looked for them and found them out back. I told both of them that they need to let other staff members know and ask if it's ok to go to break.

She doesn't answer the phones, I have made many comments about everybody needs to answer the phones and when you tell her this she gets very upset. She also wonders why she needs to sit up front to deal with patients and to pull orders from TW, standing orders ect. She makes the comment that she was to be up front all week and Bridget ended up being up there. She came to me and asked if that was to happen and I told her yes we need to have you face to face contact up front. She again told me she knows how to do it already why does she need to get retrained. We [sic] both Bridget and Maxine [sic] scheduled for the front at the same time. I'm breaking it up to be one person at a time.

Maxine seems to be the type of person that doesn't like to be told what to do and how to do it. I don't bother her only when I need to tell her something. I have had comments that she is very rude on the phone. I will keep you posted as to what happens with her.

(Exhibits I, MM).

Moander reported she received approximately one report per week from laboratory personnel about Prime's negative interactions with coworkers. Prime's coworkers reported that when Prime made a mistake and her coworkers would attempt to facilitate her training and she would respond aggressively and would display her displeasure with quick, aggressive moves, and state, "well, I am not the only one who makes mistakes." (Exhibit J ¶ 5).

Prime made many errors during her employment. On September 20, 2012, Prime selected the wrong MRN number for a patient. Another employee caught the error before any tests were ordered and moved the documents to the correct patient. MedLabs documented the incident through an Employee HIPPA Violation Notification.

In early October, Cindy Scovel sent Moander an e-mail informing her Prime entered a duplicate MRN for a patient because she did not look at the spelling of the patient's first

name. Scovel noted the errors “create the potential for IT to make errors and push to the incorrect chart.” (Exhibit L).

On October 18, 2012, a clinic delivered a swab and printed the requisition. Prime ordered the culture on the wrong patient and labeled the swab with the wrong patient. The clinic noticed the error when it received the report.

Moander testified that between Prime’s hiring in late August 2012 and October 2012 she counseled her on her attitude and interactions with coworkers at least three to five times and spoke with her about her mistakes at least twice. Prime acknowledged Moander told her she needed to be more careful because patients may have similar names or social security numbers and she should double check information, but denied Moander spoke with her about her interactions with coworkers three to five times. Prime reported Moander told her another employee had stated Prime was “nasty” to her. Prime testified she explained the situation to Moander and Moander responded she should be mindful of the tone she used with people.

Moander informed Prime that after three mistakes she could be suspended without pay. Moander reported she was the first person suspended without pay. During Prime’s employment she was never suspended without pay. Prime testified that after Moander spoke with her she slowed down. On a typical day she would process between 60 and 70 MRNs.

In October 2012 MedLabs had openings for two POL Technicians. Prime and another internal candidate, Linda Benner, who is Caucasian, applied. Both Prime and Benner had performance issues during their initial training. Despite the performance issues, MedLabs placed Prime and Benner in POL positions. When Benner and Prime were promoted they had received several weeks of training. Because the positions involved some new duties, MedLabs planned to provide Benner and Prime with an additional two to four weeks of training. Benner and Prime were assigned to work opposite schedules at the Hiawatha POL. At the time of Prime’s transfer, Moander did not have any ongoing concerns with Prime’s behavior and interaction with her coworkers.

Metzen supervised Benner and Prime. Felton is the medical technologist lead for three POLs, including the Hiawatha location. Metzen was their direct supervisor and Felton was the lead worker. The Hiawatha POL is located in a building with an internal medicine practice. Radiology and physical therapy services are also offered at the Hiawatha POL. When Prime worked at the Hiawatha POL she would register patients, perform phlebotomy, process specimens, and perform some testing for internal medicine and urgent care patients.

Prime and Benner received additional training at Pediatric Associates downtown and then at the POL locations. MedLabs tried to have only one person training at the Hiawatha location on the same day.

After Prime moved to the POL position at the Hiawatha Clinic, Felton was primarily responsible for her training. If Felton was absent from the laboratory, other employees would step in and assist with Prime's training.

On October 30, 2012, Felton documented Prime had made several errors. On October 18, 2012 Prime entered the wrong MRN on a gluteal cleft wound culture and the matter was not remedied until the lab was contacted by urgent care staff several days later about the results. On October 17, 2012, Prime noted white blood cell clumps in a patient's urine, but did not enter the information into the computer when entering the results. On October 19, 2012, Prime wrote down calcium oxalate crystals for a patient, but reported the patient's white blood cell count instead. On October 29, 2012, Prime reported a positive "MYCO" for a patient when the test was negative. (Exhibit N). And on October 30, 2012 Felton checked urine results and found Prime had entered the incorrect results for two patients on October 29, 2012. Felton also documented Prime entered the wrong clinic location codes five times.

In addition to the errors, management continued to receive complaints about Prime's interaction with her coworkers. On November 28, 2012, Benner sent an e-mail to Moander, stating:

Jill repeatedly tried to call Hiawatha for over 10 min because Maxine was suppose [sic] to be faxing us an order, however she never answers the phone. Jill said she didn't know what to do so I called Urgent Care and asked them if she [sic] could tell Maxine to call Main. When she did call I told her we were repeatedly trying to call her and she said no you didn't because I was only gone for a minute and said what do you want (With a snotty tone I might add). This is not the first night that us [sic] at main couldn't get through to her for questions. Just wanted to let you know that she is missing several calls and I really don't appreciate her getting a snotty tone with me. She is a coworker and can be civil over the phone!!! But I will say she called back to see if we received the order and I said yes but could you please explain to me what is going on because Jill handed me a sticky noted and asked me to take care of it. She did give me the information and didn't have an attitude in her voice so I really appreciated that. Sorry its just frustrating when you can't get her to answer the phone and it was a stat.

(Exhibit O).

On November 30, 2012, Felton sent Metzen an e-mail stating the night before Prime had entered a negative result for a strep test, which was positive. Felton changed the result and informed the physician of the result.

Felton acknowledged all employees make errors at work, but when they make errors they generally accept responsibility for their errors and show remorse. Felton testified Prime did not accept responsibility for her errors. Instead, Felton reported she would have to prove to Prime she made a mistake, and after she did, Prime would shake her

head indicating, "okay." Felton testified Prime never said she would try to do things differently.

Prime acknowledged her relationship with Felton was not good. Felton had a lot of experience working in the laboratory and Prime asked Felton a lot of questions. Prime believes Felton did not want to answer her questions. Prime testified on one occasion she asked Felton to explain why MedLabs performed a mono test differently at the Hiawatha location and contends Felton walked out of the room angry.

Metzen reported that Felton and her coworker, Ryan Long, told her Prime struggled to accept instruction from more experienced coworkers and to take ownership for her mistakes. Felton testified Prime was eager to learn, but she could come across as overbearing. Felton observed Prime had had a pleasant manner when working with patients and she had very good phlebotomy skills. Patients would request Prime complete their blood draws.

On December 5, 2012 Metzen completed an Orientation (90-day) Assessment ("December Review") of Prime, noting she met expectations for all of the areas except for one. Metzen found Prime met expectations for technical competence, sense of ownership, positive attitude, responsiveness, communication, privacy/confidentiality, safety awareness, effective time usage, asks appropriate questions, seeks assistance, and adherence to policies. Metzen determined Prime needed to improve her commitment to coworkers and noted "Maxine, continue to work towards breaking down your defense barrier. You want your team to be able to approach you and work on a solution; they value your input but need to also bring forth constructive criticism." (Exhibit P at 1).

Metzen testified that teamwork is critical to assure good patient care and safety in the laboratory environment. Metzen reported she had received a number of complaints from Felton and Long that Prime struggled to accept instruction from more experienced coworkers and to accept responsibility for her mistakes. Metzen described Prime as "exhibiting a know-it-all attitude and, further, would become openly put-off when someone tried to assist her or facilitate her training." (Exhibit D at 87).

After completing Prime's written review, Metzen conferred with Moander and they agreed Prime's probationary period should be extended 90 days to facilitate her integration into the Hiawatha POL environment. MedLabs also extended Benner's probationary period. Even though Prime had not successfully completed her probation MedLabs increased her pay to \$11.97 to reward Prime for her hard work.

Metzen met with Prime to discuss her December Review. During the meeting Metzen discussed Felton's concerns with Prime. Metzen informed Prime her probationary period would be extended 90 days and she would be evaluated in February 2013. Prime made a written comment, "I understand that people may take me as harsh. I will work on being mindful of how I come off to other people." (Exhibit P at 2). Prime testified she wrote the phrase in her evaluation because she was trying to figure out why people hated her.

Prime approached Felton after her meeting with Metzen and asked Felton why she did not want to work with her. Prime avers Felton told her she was abrasive and offensive and believed Prime questioned how she did things. Prime contends she responded that she learned by asking questions.

Prime testified she had issues with Felton, Metzen, and Drake, but stated she did not have issues with her other coworkers. Prime reported she thought she worked well with Long. Prime avers MedLabs shared concerns with her on three occasions. The first involved MRN errors, the second concerned her attitude, and the third was a MRN issue.

After Prime moved to the Hiawatha POL, Prime continued to fill in at the 1st Avenue and A Avenue laboratories as needed. On December 6, 2012, Moander sent Metzen and e-mail after Prime had worked at the main lab. Moander reported:

Just a few items staff has mentioned that we need to “*train*” Maxine on:

Biopsies – she avoids them like the plague. Accessioning and delivering to histo.

Pap reports – seemed offended when Linda offered to show her how to distribute reports.

Helping with the work load – when her stack is done, she won’t find more work to do.

Looking up information/questions – she would rather put the questions on a co-worker to handle than dealing with them herself.

(Exhibit CC). Moander testified she was documenting Prime’s performance problems and believed Prime had already been trained and should not have needed additional training.

Prime continued to make errors. On December 20, 2012, Drake sent Metzen an e-mail stating a patient would need to be redrawn because Prime had ordered the wrong test again.

On December 21, 2012, Moander sent Prime an e-mail informing her that MedLabs had found some errors when reviewing pap smear tests. Moander noted Prime had entered incorrect physicians and addresses, and had failed to write down physician numbers. Moander informed Prime,

With all these errors we had 8 patients that we had to fix today before we can order these paps. This makes the ordering process very cumbersome when we have a lot to get ordered and especially since we have to check these paps for a second time. Please let me know if there is something we can do to help reduce these errors.

(Exhibit Q). Prime responded stating, “I will be taking second looks at every pap that I do. I didn’t know that I was messing that many of them up. I know on that other day

that I did a lot of the checking and didn't order a lot of them. I am sorry and will double check my work for now on before I pass them on to be checked or ordered." (Exhibit Q).

Benner also made errors, her phlebotomy skills were poor, and she had an abrasive tone with patients. On January 28, 2013, Metzen met with Benner and told her that she had the choice of accepting reassignment to a non-patient care role at the main lab with a pay cut of \$1.00 or voluntary termination. Benner accepted the demotion. Benner continued to work for MedLabs and moved to an "as needed" status in April 2013 when she accepted a full-time position with the University of Iowa Hospitals and Clinics. At the time of Benner's demotion, MedLabs was still working with Prime and hoped she would successfully complete her probation.

In early 2013, Kayte Dahl started working as a POL at the Hiawatha location. Prime had been working 11:00 a.m. through 8:00 p.m. After Dahl was hired, Prime's hours change from 10:00 a.m. through 6:00 p.m. If Dahl had to leave early, Prime would cover the lab.

Prime was scheduled to take medical assistant testing. When the testing was rescheduled for January 7, 2013, from 8:00 a.m. through 12:00 p.m., Prime requested MedLabs accommodate her schedule. Prime approached Dahl and the two agreed to change hours that day. Prime called and stated she could not be to work by 12:00 p.m. Metzen told her to get to the Hiawatha location as soon as possible. Metzen documented that Prime clocked in at 3:10 p.m. that day. Metzen was concerned Prime was not being a team player by failing to report to work.

Toward the end of January 2013, Nelson started with MedLabs as a POL technician from 12:00 p.m. through 8:30 p.m. Nelson holds a Bachelor of Science degree in Animal Science from Iowa State University and a veterinary technician certificate. Nelson testified the pace was faster during the day at the Hiawatha POL, and slower from 5:00 p.m. through 8:30 p.m. Nelson reported that she was stressed when she first started because she was trying to learn a new position.

Nelson testified one evening in February 2013 Prime confronted her and accused her of being rude. Nelson responded she was not trying to be rude and that she felt overwhelmed and was just trying to get her work done. Nelson testified she went home and cried because she was worried about her new work environment and was wondering what her coworkers were thinking about her. Nelson felt like she was walking on pins and needles around Prime. Nelson considered Prime intimidating. Nelson testified Dahl also felt bullied by Prime and was scared of her. Dahl did not want to work alone with Prime.

Prime continued to make errors. Moander completed an Error Evaluation form on February 1, 2013, documenting Prime's first MRN error for the year for misidentifying a patient. Moander testified she used the Error Evaluation as a training or learning opportunity. Under the plan of action Moander provided Prime should "verify patient's first & last name, DOB, address & social security number." (Exhibit T).

On February 6, 2013, Moander sent Prime an e-mail, asking her to update a patient's insurance information. Prime responded, "Hey Im [sic] sorry but Im [sic] not sure what you want me to do. I don't have anyother [sic] information about it. And it came back as contract payor. If you could please send me some more information about it I would be very happy to fix it. I'm sorry I dont [sic] understand but do you want me to just it self [sic] pay." (Exhibit RR). On February 7, 2013, Moander sent Prime an e-mail attaching the correct insurance information on a patient and asked Prime to update the information on EPIC. Prime responded she had fixed it and stated she was sorry she was unable to fix it the day before because she had been very busy.

On February 14, 2013, Prime and Dahl were labeling tubes with labels. Felton noted "Kayte was looking for a certain patient and found a tube with that hand written name, but it was already labeled with a sunquest label, however the two names didn't match up." (Exhibit FF). Felton documented Prime initially refused to acknowledge she made the error, but later admitted she labeled the tube incorrectly and removed the incorrect label.

Metzen reported Prime's behavior did not change after the December Review. Metzen continued to receive information from Prime's coworkers about Prime's attitude and receptivity to instruction from more experienced coworkers. Prime's coworkers reported she was particularly harsh and aggressive with her coworkers, and spoke with them in a demeaning and unprofessional tone.

On February 13, 2013, Benner sent an e-mail to Metzen stating:

I understand I made some mistakes at HUC but that don't [sic] give them the ok to be rude to me when I call with a question from central. Today I had to call 2 separate times and Maxine was not very nice so I handed the phone to Shital. Shital said they don't need to be getting testy with us when we have questions on tubes. I'm going to start documenting instances like this in a notebook because I don't deserve to be treated that way. I have respect for my coworkers and expect them to have respect for me as well.

(Exhibit GG).

Prime testified that in mid-February Metzen pulled her into her office and told her she had received information that Prime had been intimidating and bullying Dahl. Prime testified she denied she had been intimidating or bullying Dahl and noted that Dahl was having problems at home and did not have a place to live. Prime avers she tried to explain the situation to Metzen, but Metzen would not listen to her.

On February 26, 2013, Metzen prepared an Employee Coaching form for Prime, noting concerns in patient identification, positive attitude, and co-workers. The Employee Coaching provides:

I share concern over a few area's

1. Patient ID errors continue – one near miss last week.
2. Attitude issues when a co-worker brings a problem or concern.
3. Prefers to sit at the registration desk and watch T.V.
4. Attendance – a surge of missed days over the last month.

(Exhibit 3). Metzen testified Prime was making patient identification mistakes and MedLabs was also concerned about her interaction with leads and coworkers who reported that she was not approachable when they approached her about correcting her work. Metzen documented, “[w]e need a professional and cohesive team to assist with reporting quality lab results. We need to be able to approach each team member with questions or concerns.” (Exhibit 3). During the meeting Prime informed Metzen she believed that Dahl had disrespected her.

Prime’s coworkers and the management team continued to have concerns about Prime’s behavior and errors. Metzen recalled three events that occurred in Prime’s last few days of employment: (1) the collection and storage of a child’s blood; (2) the critical value incident; and (3) the blood in the bathroom.

In late February 2013, Prime collected a blood specimen from a child. The laboratory protocol required the serum to be separated from the specimen prior to storage. Prime failed to separate the serum and stored the specimen, which ruined the specimen. As a result of the error the child had to return to the lab for a second blood draw.

On February 25, 2013, Prime ran a test that revealed a critical value for a patient of the Hiawatha clinic. A critical value is a result that is outside of a specified range, which can be indicative of a critical or life-threatening condition for the patient. When testing reveals a critical value, MedLabs requires the staff to recheck the test and to inform the physician of the critical value.

Prime testified after she received the critical value she saw the patient’s physician and asked him if he redrew the patient and he replied that he had. Prime reports she asked the physician if he wanted her to run a recheck of the test and he said he did not. Prime did not document her conversation with the physician in the patient’s record.

Three days later, on February 28, 2013, Felton ran a report for the machine Prime had used to process the specimen and discovered the critical value. Felton asked Prime if she ran a recheck. Prime affirmed she had. Felton looked for the recheck and could not locate it. Felton printed the results from the testing which revealed Prime had not performed a recheck. Prime testified Felton accused her of not running the test and being untruthful. Felton checked to see what had happened to the patient and the patient had received follow up care in the hospital. Behr testified the failure to run a recheck and to document the incident was not a good laboratory practice and could have impacted the lab’s accreditation.

On March 1, 2013, an elderly man came into the Hiawatha Clinic to give a urine specimen. After the patient left Prime discovered blood splattered in the bathroom and placed an “Out of Order” sign on the bathroom door. Dahl noticed the sign and went to

look at the bathroom. Dahl asked Prime if she wanted her to clean up the blood. Prime testified she replied, "I won't stop you." Prime alleges Dahl responded she did not think they should have to clean it up and Prime responded that it was "below their pay grade." Dahl reported Prime made the comment in front of a nurse. Dahl left for lunch and when she returned the bathroom was clean.

Prime alleges she spoke with the office manager for the physician clinic and the office manager told her the janitor would sanitize the bathroom.

On March 1, 2013, Christine Devine, a radiographer for St. Luke's Hospital – Hiawatha Campus sent Metzen an e-mail about the incident:

I was given your name as someone who I could contact regarding the following situation.

Tonight MedLabs had a patient who had difficulty in the MedLabs bathroom and somehow got blood on the floor. The lab technologist Maxine stated to a nurse that "She doesn't get paid enough to clean that up" and had our janitor Katherine clean it up. Katherine was unsure of what to do in this situation, but is always happy to help out and so she cleaned it up. Afterward, Katherine came to me and told me of the situation and what she should do in the future. After talking to Katherine, it sounds as if Katherine does not receive the proper training from the janitor service she works for to know how to clean up bodily fluids like blood.

(Exhibit W).

Felton testified when a staff member finds a mess in the bathroom the staff member is responsible for cleaning the bathroom. Felton reported she has cleaned the bathroom herself. On one occasion she found a patient had an explosive bowel movement in the bathroom and she cleaned the bathroom. Felton has also cleaned up blood spills and disinfected the lab.

Prime avers that a couple of days before her termination, Metzen took her into her office and asked her about the blood in the bathroom incident. Metzen told Prime that if she was the first to notice blood in the bathroom, she should have cleaned it. Prime reports Metzen did not want to hear her version of the story.

Following the three incidents the MedLabs' management team discussed Prime during a meeting. Metzen discussed Prime's performance issues, her unwillingness to accept instruction, and her abrupt, aggressive attitude with coworkers. Metzen believed Prime needed to be terminated and the team concurred.

On March 12, 2015, when Prime arrived at work Metzen asked her to come into a room. Prime saw Behr there. During the meeting Behr told Prime she was going to be terminated. Prime asked why she was being terminated and Metzen told her because:

(1) she had made too many mistakes; (2) the mistake with the child's blood draw; (3) the bathroom incident; and (4) she did not work well with others. Prime testified she responded she believed Dahl was going to clean up the blood in the bathroom and she was not aware the child's serum needed to be removed from the specimen.

After her termination Prime filed a Complaint alleging MedLabs discriminated against her on the basis of race by terminating her employment. MedLabs denies Prime's assertion.

CONCLUSIONS OF LAW

An employer engages in an unfair or discriminatory practice if the employer discharges any employee, or otherwise discriminates against an employee in employment because of the employee's race.² The Commission alleges MedLabs discriminated against Prime by terminating her employment and refusing to transfer her to another position within the company.

To establish a case of discrimination, the Commission may rely on a theory of disparate impact or disparate treatment.³ A disparate impact claim involves a facially neutral employment practice that results in one group being treated more harshly than another and cannot be justified by business necessity.⁴ A disparate treatment claim exists when an employer treats an employee differently than another employee because of a protected characteristic.⁵ Prime's claim raises an issue of disparate treatment based on race.

An employee may prove discrimination under the Iowa Civil Rights Act ("ICRA") through the direct evidence or the *Price Waterhouse* method, or through the burden-shifting method established in *McDonnell Douglas Corp. v. Green*.⁶ 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."⁷ 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."⁸ During the hearing Commission did not set forth direct evidence of discrimination, and relied on the indirect, burden-shifting method.

² Iowa Code § 216.6 (2013).

³ *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 803 (Iowa 2003).

⁴ *Id.*

⁵ *Id.*

⁶ *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). *Cf. Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 6-7 (Iowa 2009).

⁷ *Vaughn*, 542 N.W.2d at 538.

⁸ *Id.* at 539.

I. Prima Facie Case

Under the burden-shifting method, the Commission must first establish a prima facie case of discrimination, by showing: (1) Prime is a member of a protected class; (2) she was qualified for the position; (3) Prime experienced an adverse action; and (4) the circumstances give rise to an inference of discrimination.⁹ The Iowa Supreme Court has noted, the prima facie case “is a minimal requirement that is not as onerous as the ultimate burden to prove discrimination.”¹⁰

The evidence presented at hearing established Prime is a member of a protected class based on her race. The Commission has also established Prime experienced an adverse action. Conduct establishing an adverse action includes

depriving an employee of the opportunity to advance, as well as more obvious actions such as “disciplinary demotion, termination, unjustified evaluations and reports, loss of normal work assignments, and extension of probationary period.” Internal transfers from department to department can also constitute adverse employment action when “accompanied by a negative change in the terms and conditions of employment,” or when the transfers substantially affect future career prospects. However, internal transfers involving “minor changes in working conditions and no reduction in pay or benefits will not constitute an adverse employment action.”¹¹

Prime’s termination is an adverse action.

MedLabs avers Prime was not qualified for her position and that she has failed to establish an inference of discrimination. To prove Prime is qualified for a given position the Commission must establish Prime can perform the “essential functions” of the position.¹² The “essential functions” of the position are those that “bear more than a marginal relationship to the [position] at issue.”¹³ If the Commission establishes Prime can perform the essential functions of her position, then she is qualified for the position.¹⁴ Prime was qualified when MedLabs hired her for the position. While MedLabs contends Prime made mistakes, the Commission has established Prime was qualified for her position.

The Commission alleges it has established an inference of discrimination because in late January 2013 MedLabs offered Benner, a Caucasian employee, the opportunity to resign or be demoted, and did not offer Prime the same opportunity. Even assuming the

⁹ *Smidt v. Porter*, 695 N.W.2d 9, 14 (Iowa 2005).

¹⁰ *Id.* at 15.

¹¹ *Farmland Foods, Inc. v. Dubuque Human Rights Comm’n*, 672 N.W.2d 733, 741-42 (Iowa 2003).

¹² *Falczynski v. Amoco Oil Co.*, 533 N.W.2d 226, 231 (Iowa 1995) (noting standard for national orgina discrimination claims).

¹³ *Id.*

¹⁴ *Id.*

Commission has established an inference of discrimination, the Commission has not established pretext in this case.

II. Pretext

Under the burden-shifting method, if a complainant establishes a prima facie case of discrimination, then the burden shifts to the employer to offer a legitimate, nondiscriminatory reason for its action.¹⁵ If the employer offers a legitimate, nondiscriminatory reason for its action, then the complainant must establish the stated reason is a mere pretext for discrimination.¹⁶ The Commission bears the burden of persuasion at all times.¹⁷ The Eighth Circuit has held:

At the pretext stage, “the test for determining whether employees are similarly situated to a plaintiff is a rigorous one.” To succeed with this argument, [the plaintiff] must show that [the plaintiff] and the [Caucasian] employees were “similarly situated in all relevant respects.” That is, the employees “used for comparison must have dealt with the same supervisor, have been subject to the same standards, and engaged in the same conduct without any mitigating or distinguishing circumstances.”¹⁸

While the standard for determining whether employees are similarly situated is “rigorous” at the pretext stage, the Eighth Circuit does not require the plaintiff to produce evidence of “a clone.”¹⁹

MedLabs avers it terminated Prime’s employment because she made too many mistakes and she failed to work well with others. The Commission contends MedLabs’s stated reasons are a mere pretext for discrimination because MedLabs provided Benner, a Caucasian employee, with the opportunity to resign or be demoted. The Commission has not established MedLabs’s stated reasons for Prime’s termination are a mere pretext for discrimination.

Both Prime and Benner had performance issues, made errors, and were promoted despite the problems. MedLabs provided both Prime and Benner with additional training and extended their probationary periods.

Benner had performance issues with phlebotomy and her interaction with patients. Prime did not have problems with phlebotomy. Patients asked for her. Throughout Prime’s employment Prime had a difficult time getting along with her coworkers, starting in her first month of employment.

The evidence shows Benner used an abrasive tone in the workplace. Metzen documented Benner needed improvement with her communication and noted “Linda, I

¹⁵ *Smidt*, 695 N.W.2d 9 at 15.

¹⁶ *Id.*

¹⁷ *Burton v. Arkansas Secretary of State*, 737 F.3d 1219, 1230 (8th Cir. 2013).

¹⁸ *Id.* (quoting *Muor v. U.S. Bank Nat’l Ass’n*, 716 F.3d 1072, 1078 (8th Cir. 2013)).

¹⁹ *Id.* at 1230-31.

want you to be aware that the tone of your voice can come across abrasive, when dealing with others it is important to make them feel at ease.” (Exhibit 16). MedLabs gave Benner the choice of resigning or being demoted on January 28, 2013. Benner chose to be demoted. Prime continued to work for MedLabs through March 2013.


While MedLabs documented Benner had an abrasive tone, the evidence presented at hearing does not support Benner had a history of repeated issues with her coworkers like Prime. Prime had a long history of problems interacting with her coworkers beginning within the first 30 days of her employment. When Prime was assigned to the main lab, Nost, Vlahos, and Drake complained about her interaction with them. Moander testified she received one complaint on average each week from Prime’s coworkers. In October 2012, Prime moved to the Hiawatha PLO. Felton and Long complained about her behavior. In November 2012, Benner was working at the main lab and complained about Prime’s behavior to management after she contacted Prime at the Hiawatha PLO. MedLabs hired Dahl and Nelson in early 2013. Dahl complained about Prime’s behavior, and Nelson testified she felt intimidated by Prime and uncomfortable working around her. During the hearing the Commission did not present evidence Benner engaged in similar conduct with her coworkers.

Moander testified that Benner was receptive to coaching on her errors and apologetic. Benner was reassigned to the lab where she did not perform phlebotomy. Prime had problems interacting with her coworkers at the main lab and at the Hiawatha POL. MedLabs coached Prime on several occasions before her termination. Metzger testified her behavior did not change. The Commission has not established Benner and Prime were similarly situated in all respects. The Commission has failed to prove MedLabs’s stated reason for Prime’s termination is a mere pretext for discrimination.

ORDER

The Commission has not proven MedLabs engaged in an unfair or discriminatory practice in employment. This matter is dismissed. The Commission shall take any steps necessary to implement this decision.

Dated this 3rd day of December, 2015.



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

cc: Katie Fiala – Assistant Attorney General (electronic mail)
Stephanie Cox – Attorney (electronic mail)
Glenn Johnson – Attorney for Respondent (electronic and first class mail)

Notice

Any adversely affected party may appeal this decision to the Iowa Civil Rights Commission within 30 days of the date of the decision.²⁰ 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.²¹

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.²²

²⁰ 161 IAC 4.23(1).

²¹ *Id.* 4.23(3).

²² *Id.* 4.23(2).