

## **BEFORE THE IOWA CIVIL RIGHTS COMMISSION**

**PATRICIA HARRIS, Complainant,**

**vs.**

**ALCOA ALUMINUM CO. OF AMER., DAVENPORT, IOWA and PITTSBURGH, PA.,  
Respondent.**

**CP# 12-84-12367**

THIS MATTER, a complaint filed by Patricia Harris (Complainant) with the Iowa Civil Rights Commission (Commission) charging Alcoa Aluminum Company of America, Davenport, Iowa and Pittsburgh, Pennsylvania, (Respondent) with discrimination in employment on the basis of race and sex came on for hearing in Davenport, Iowa on the 5th day of November 1987, before Ione G. Shaddock serving as Hearing Officer. Complainant was represented by Rick Autry, Assistant Attorney General. Respondent was represented by Barbara Ann Mohajery and Russell W. Porter, Attorneys at Law, from Pittsburgh, Pennsylvania. Dana Waterman, local attorney, was not present.

The issues in this case are as follows:

ISSUE I - Did Alcoa terminate Harris because she is Black?

ISSUE II - Did Alcoa terminate Harris because she is female?

After having reviewed the record, testimony, and exhibits the Hearing Officer makes the following findings of fact, conclusions of law, recommended decision and order.

### **FINDINGS OF FACT**

1. The Complainant, Patricia Harris, timely filed verified complaint CP# 12-84-12367 with the Iowa Civil Rights Commission on or about November 19, 1984, alleging a violation of Iowa Code section 601A.6, discrimination in employment on the basis of race in that she was terminated by Respondent, Alcoa Aluminum.
2. An amendment adding sex as a basis was filed; objection to the amendment was filed; the complaint was investigated, probable cause found, conciliation attempted but failed. Notice of Hearing was issued on December 30, 1986.
3. Harris was hired by Alcoa on August 20, 1984, as a laborer in the plate mill. Her duties were primarily clean-up but she also helped with the hooks. The supervisor assigned the department and unit of work at the beginning of the shift, then the foreman would designate the task which was to be done.

4. There was a 75 day probationary period. A Probationary Review Report was to be completed when a new employee reached 25 calendar days and again after 60 days. Harris's 25 day review was all 'satisfactory". Her 60 day review, which she denies ever seeing, indicated three areas which were unsatisfactory, i.e., conduct, work habits and dependability. Two areas, attendance and safety rules, were satisfactory. A Norm Mitchell did the first report; Dale Labath did the second report. The notation on the second report was as follows: "Hasn't shown improvement on saws and is hesitate (sic) and slow while working on saws. Has problems taking instructions from hourly help. " Harris was terminated on October 31,1984.

5. Harris alleges that she did not receive help in working on the saws and that when she asked for help, particularly from Steve Crane, she was refused. (Transcript 43).

6. Prior to working for Alcoa, Harris had worked for John Deere. This included working in the foundry with various size tractor parts, some very heavy.

7. Thomas Gillum, an employee of Alcoa for 10 years, was an overhead crane operator during the time at issue. The work team includes a laborer, who receives the piece of metal, sets it against the stops, and cleans the saw. The helper figures out what metal is going in, then sends it in, and assists in setting the metal down on the sawbed so the operator can cut it. The laborer, when the metal is cut, hooks it up with hooks lowered by the crane operator and the helper sends the metal to the next area. Gillum said the hooks are dangerous and workers should act cautiously. He indicated that new employees are identified for the first 30 days by a green cross on their hard hats. Harris was a member of the crew on which Gillum worked for a couple of weeks. He testified that she was as scared as any new employee when she worked with the hooks. He also testified that she appeared to need help when she worked with the #1 Tysaman saw. Gillum stated that Harris spent a lot of time, more than usual, on cleanup. He also said that he was given a lot of help when he was hired. Gillum testified that for the time that he was able to observe her, Harris was not helped like the other people, that she was not given a fair chance to learn the sawbed. The record indicates that Harris worked with the #1 Tysaman on October 8 and again on October 16, 17, 18, and 19 (See Respondent's Exhibit 5), the day immediately prior to her termination.

8. Vickie Milton, a Black female, worked with Harris for two days and testified that she was doing good work. That occurred on August 29 and 30.

9. David Anderson, an employee of Alcoa for 29 years, worked as a crane operator during the time at issue. The crane operators move the loads of metal in and out as needed. He did not work directly with Harris but was in a position to observe her when she worked an the #1 Tysaman. Based on his experience in years of working with the saws, he stated he knew that Harris did not get the instruction and help that she needed. He testified that the night before, a white female, received "all kinds of help." He testified that, after Steve Crane showed Harris what to do he just walked off and left her to do it alone. Anderson also testified that he spoke to Dorothy Sprung, a unit supervisor, about what was happening.

10. Had Complainant not been terminated, she would have been laid off on September 29, 1985 and probably recalled on May 11, 1987.

11. Harris was terminated from her job as of October 31, 1984.

12. Harris received \$441.00 in unemployment compensation in 1984 after her termination. She started work for Lifecare Centers beginning on May 15, 1986 and is currently employed there.

13. Dale Labath, shift supervisor for Alcoa for about five years including the time at issue, testified that a daily record is kept by the unit supervisors on probationary employees. New employees are assigned to various machines. Improvement is expected during this period. The shift supervisor reviews the comments made by the unit supervisor at the 30 & 60 day review periods. The daily report provides for recording the day, date, station, "poor, fair, good, excellent" rating, and comments/initials. Harris's ratings were all "good" except for 6 "fair" ratings; 4 of the "fair" ratings were on the Tysaman saws and occurred on October 16, 17, 20 and 24. Harris was introduced to the #1 Tysaman on August 22 her third day at work and then worked on that saw on August 27, but did not work on that saw again until October 8, when the unit supervisor noted that she, "had a lot to learn." The next time she worked on the #1 Tysaman was October 16 when she received her first "fair" rating.

14. A saw crew consists of a saw operator, crane operator, helper and laborer. Harris worked as a laborer.

15. Labath is the shift supervisor who terminated Harris. He had not spoken to her prior to the time of her termination. (Tr. p. 131).

16. A white male, Eugene Asleson, was also hired by Alcoa on August 20, 1984. He was terminated on October 29, 1984. He had "good" ratings except for 10 "fair" ratings. On September 6, 1984, Labath talked with Asleson about his performance, that he would have to improve or they would have to let him go. Labath also talked with him on 10/29/84, when he was terminated. Asleson did not improve after he was warned that he must improve or be let go. He was observed on the date of termination being told what to do by an employee who had only been there two weeks. The unit supervisor also noted that Asleson was "looking for a seat instead of picking up scrap," on that same night.

17. Dorothy Sprung was an employee of Alcoa and unit supervisor over Harris beginning on October 1, 1984. According to Sprung, a laborer who works on a saw is aware of what alloy they are working on, they hook and unhook the metal on the sawbed, sweep off the chips to get ready for the next load, position the loads on the sawbed, and direct the crane operator with hand and eye signals. Sprung testified that Harris performed good on the leveler and stretcher, but her work on the saws was unsatisfactory. She testified that Harris had her back to the crane operator and was slow in placing the hooks because she walked all the way around instead of over the top. Sprung became aware of this problem when she was approached by a co-worker of Harris, a Steve Crane. Crane told Sprung that Harris wouldn't follow directions and wasn't doing her job. He told her that he tried to help her and she would do something else. Sprung testified that she then observed her more closely and noted that she worked with her back to the crane operator, an unsafe position. Sprung said she personally tried to help Harris by showing her how to do it correctly and that Harris said she understood and then went back to doing it the wrong way.

Hams worked for Sprung for 12 out of the 73 days, which included 5 times on the saws. Two out of the 4 "fair" ratings on the saw were given by Sprung and 1 "fair" rating on the leveler. Sprung noted the problems she believed Harris was having on October 8, 16, 17, 18 and 19 (See Respondent's Exhibit 10).

18. Roger Strefling, employee of Alcoa and unit supervisor over Harris for 3 days, i.e., October 7, 13, 20, testified that Harris's performance on the 7th was "up and ready to go," on the 13th her performance was "very good;" but on the 20th, he was not satisfied because she had to be told to remove the scrap from the sawbed. On the 20th, he rated Harris "fair;" the other 2 days, he rated her "good." The "fair" rating was after the 60 day evaluation.

19. Clarence Hillard, Shift supervisor during the time at issue was the person who terminated Asleson and the person who was over Harris's unit supervisor, Sprung. Hillard testified that he talked with Harris about her performance on October 18 and noted that on the bottom of page 2 of Harris's daily report. (Respondent's Exhibit 5). He did not personally observe Harris's work.

## CONCLUSIONS OF LAW

1. The complaint was timely filed, processed and the issues in the complaint are properly before the Hearing Officer and ultimately before the Commission.

2. Alcoa Aluminum Company of America are "persons" and "employer" as defined in Iowa Code section 601A.2(2) and (5), and are therefore subject to Iowa Code section 601A.6 and do not fall under any of the exceptions of §601A.6(5).

3. The applicable statutory provision is as follows:

1. It shall be an unfair or discriminatory practice for any:

a. Person to ... discharge any employee, or to otherwise discriminate in employment against any... employee because of the ... race ... sex ... of such applicant or employee, unless based upon the nature of the occupation...

4. The United States Supreme Court set out the basic allocation of burden and order of presentation of proof in a case alleging discriminatory treatment in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). In Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256, 101 S.Ct. 1089, 1093, 67 L.Ed. 2d 207, 215 (1981), the Court summarized that burden and order from McDonnell as follows:

First, the plaintiff has the burden of proving by the preponderance of the evidence a prima facie case of discrimination. Second, if the plaintiff succeeds in proving a prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. at 802, 5 FEP Cases, at 969. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate

reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. Id. at 804, 5 FEP Cases at 907.

This basic allocation of burdens and order of presentation of proof was adopted by the Iowa Supreme Court in Linn Cooperative Oil Co. v. Quigley, 305 N.W. 2d 729, 733 (Iowa 1981).

5. The complainant carries the initial burden of offering evidence adequate to create an inference that actions by a respondent were based on a discriminatory criterion which is illegal under the law, International Brotherhood of Teamsters v. United States, 431 U.S. 324, 358, 97 S.Ct. 1843 (1977). In evaluating the evidence to determine whether the complainant has succeeded in establishing that inference, which is referred to as a "prima facie" case, the Commission and the Iowa Court have relied on McDonnell Douglas. The criteria established in McDonnell Douglas, however, were specific to a qualified applicant of a protected class who applied for a job and was rejected despite the qualification. Since then the Supreme Court has made it clear that the McDonnell Douglas criteria were to be neither "rigid, mechanized, or ritualistic." Furnco Const. Corp. v. Waters, 438 U.S. 567, 98 S.Ct. 2943 (1978). Courts have been flexible in adopting the criteria to other types of cases.

6. In order to establish a prima facie case Complainant must meet the initial burden of proving that she was a member of a protected class, that she was discharged, and also produce evidence of disparate treatment from which may be inferred a causal connection between the basis and the discharge. The record is clear that Patricia Harris was a Black female and therefore a member of protected classes. She was discharged. Was evidence of disparate treatment produced which would infer a causal connection between the discharge and the fact that Harris is Black and a female? There is minimal evidence that a white person or a male was treated differently. As a matter of fact there was evidence that a white male was treated similarly. One difference between the two situations was that Labath recorded the content of his warning talk with Asleson (Respondent's Exhibit 11) and there was only a notation that a talk occurred with Harris (page 2, Respondent's Exhibit 5). Different persons, Labath with Asleson and Hillard and Sprung with Harris, held the warning sessions and recorded the events. Another difference was the length of time Asleson was given for improvement (9-6-84 to 10-29-84) prior to termination whereas Harris was given only from 10-18-84 to 10-31-84. Whether or not this time element had any effect is not in evidence.

7. The testimony of coworkers that Harris was doing a good job and that she was not given adequate help on the saws plus comparison of 56 "good" and only 6 "fair" ratings, and no "poor" ratings would indicate that she was doing a good job and raise an inference that she was discharged for reasons other than her work performance. The Supreme Court in Burdine held: "The burden of establishing a prima facie case of disparate treatment is not onerous." The purpose of the prima facie case is to give rise to an inference of unlawful discrimination. 450 U.S. at 253, 25 FEP at 115. It is concluded that Harris has established a prima facie case of discrimination.

8. If a complainant succeeds in proving a prima facie case, the burden shifts to the respondent to "articulate some legitimate, nondiscriminatory reasons for the employee's rejection." McDonnell, at 802, 5 FEP at 969. In addition to the data on a similarly situated white male (Asleson)

mentioned in Item 6 above, Respondent submitted documentation and testimony regarding their pattern and practice of hiring/discharging females, males, white/Black persons. However, the role of statistics in a disparate treatment discharge case is quite limited. In some cases a bad overall company record may help an employee to prevail and a good overall record may help the employer to prevail. B. Schlei & P. Grossman, Employment Discrimination Law, 598 (2d ed. 1983). The Court has cautioned that regardless of how devastating and reliable the statistics may look, the issue remains in these cases whether a particular isolated event was discriminatory. Ward v. Westland Plastics, Inc., 651 F.2d 1266, 1270, 23 FEP 128, 130 (9th Cir. 1980).

9. Sprung, the unit supervisor over Harris for 12 out of the 73 days, testified that Harris was not working in a safe manner and that she helped her but Harris continued to do the job unsatisfactorily. Strefling, another unit supervisor over Harris for been flexible in adopting the criteria to other types of cases. 3 days testified that Harris was satisfactory on two of the days and "fair" on the other day.

It is concluded that Alcoa has provided legitimate business reasons for its action in discharging Harris.

10. The Complainant has the ultimate burden of proving by a preponderance of the evidence that the legitimate reasons offered by the employer were not its true reasons, but were a pretext for discrimination.

11. The Hearing Officer is convinced that Patricia Harris was treated unfairly, particularly by Dorothy Sprung. Basically an employer has the right to discharge an employee for good reasons, bad reasons, or no reason at all if there is no intent to discriminate against a protected class in the discharge. The result is a wrong without a remedy. Unless an unfair discharge is connected to a prohibited act it is not illegal. There is not a preponderance of the evidence that Alcoa intentionally discriminated against Patricia Harris on either the basis of race or sex. This case should be dismissed.

## **RECOMMENDED DECISION AND ORDER**

1. The Complainant Patricia Harris, has failed to establish a violation of Iowa Code section 601A.6, in her discharge by Alcoa Aluminum Company of America.

2. This case, CP# 12-84-12367, is dismissed.

Signed this 11th day of January, 1988.

IONE G. SHADDUCK

Hearing Officer

## **FINAL DECISION and ORDER**

The Iowa Civil Rights Commission has received and reviewed the Hearing Officer's Proposed Decision dated January 11, 1988.

On February 26, 1988, the Iowa Civil Rights Commission, at its regular meeting, adopted the Hearing Officer's proposed decision as its own Findings of Fact, Conclusions of Law, Decision and Order.

Signed this 10th day of March 1988.

JOHN STOKES, Chairperson

Iowa Civil Rights Commission