STATE OF RHODE ISLAND
COMMISSION FOR HUMAN RIGHTS

RICHR NO. 09 EMD 098 EEOC NO. 16J-2009-00020

Tracy L. Stewart
Complainant

v. DECISION AND ORDER

T & T Donuts, Inc. and Izilda Teves
Respondents

INTRODUCTION

On October 30, 2008, Tracy L. Stewart (hereafter referred to as the complainant) filed a charge of discrimination against T & T Donuts, Inc. and Izilda Teves (hereafter collectively referred to as the respondents) with the Rhode Island Commission for Human Rights (hereafter referred to as the Commission). The charge alleged that the respondents discriminated against the complainant with respect to terms and conditions of employment, harassment and constructive discharge because of her disability, in violation of Sections 28-5-7 and 42-87-2 of the General Laws of Rhode Island. On December 29, 2009, Preliminary Investigating Commissioner Rochelle Bates Lee found probable cause to believe the respondents discriminated against the complainant in violation of Sections 28-5-7 and 42-87-2 of the General Laws of Rhode Island, as alleged in the charge. On February 8, 2010, a complaint and notice of hearing issued. The complaint alleged that the respondents violated the Fair Employment Practices Act, Title 28, Chapter 5 of the General Laws of Rhode Island (hereafter referred to as the FEPA) and the Civil Rights of Persons with Disabilities Act, Title 42, Chapter 87 of the General Laws of Rhode Island (hereafter referred to as the PDA) by discriminating against the complainant with respect to terms and conditions of employment, harassment and constructive termination of employment because of her disability.

A hearing on the complaint was held before Commissioner Camille Vella-Wilkinson on August 12, 2010. None of the parties were represented by counsel. The parties made oral closing arguments and did not file post-hearing written memoranda.

JURISDICTION

The respondent, T & T Donuts, Inc. employed four or more people within the State of Rhode Island at the time of the events in question and thus it was an employer within the definition of R.I.G.L. Section 28-5-6(7)(i). T & T Donuts, Inc. was an entity doing business within the state at the time of the events in question and thus it is covered by the prohibitions

of Title 42, Chapter 87 of the General Laws of Rhode Island. T & T Donuts, Inc. is therefore subject to the jurisdiction of the Commission.

Respondent Izilda Teves was a manager of T & T Donuts, Inc. at the time in question. She acted, directly and indirectly, in the interest of the employer, T & T Donuts, Inc., and thus she was an employer within the definition of R.I.G.L. Section 28-5-6(7)(i). She also was doing business within the state and thus is covered by the prohibitions of Title 42, Chapter 87 of the General Laws of Rhode Island. Ms. Teves was alleged to have aided, abetted and compelled unlawful employment practices and thus is covered by the prohibitions of R.I.G.L. Section 28-5-7(6). Ms. Teves is therefore subject to the jurisdiction of the Commission.

FINDINGS OF FACT

1. The complainant worked for T & T Donuts, Inc. (hereafter T & T) over a ten-year period.

2. Respondent Izilda Teves was the store manager of the store where the complainant worked as a Shift Leader at the time of the events in question. Valter Teves was the President of T & T and is the father of Izilda Teves.

3. The complainant had a disability, specifically a seizure disorder. The complainant has had seizures all her life. The complainant had had many seizures at respondents' store with Mr. Teves being present. The respondents knew of the complainant's disability.

4. On or around June 10, 2008, the complainant suffered a seizure while working at T & T. Ms. Teves observed the complainant holding onto a cup of iced coffee until the cup cracked, spilling coffee on the complainant and a co-worker. The complainant then went to the break room and locked the door. After approximately twenty minutes, the complainant returned to work. The complainant was shaking. When Ms. Teves asked the complainant if she was OK, the complainant appeared to have no recollection of what had just happened. Ms. Teves told the complainant to go home for the day.

5. After the June 10, 2008 incident, Ms. Teves asked the complainant to obtain a note from her doctor saying that it was safe for her to work at T & T. Mr. Teves testified that there were safety concerns with the complainant dealing with hot coffee and being near the new TurboChefs, ovens that could reach temperatures of 500 degrees. Trans. p. 25. While the complainant had originally indicated that she would be able to get a doctor's note fairly soon, she later told Ms. Teves that she would not be seeing her doctor for three months.

6. On or around July 14, 2008, the complainant had a seizure while working. A co-worker reported the seizure to Ms. Teves.

7. Ms. Teves constantly asked the complainant, in front of co-workers and customers, how she was feeling lately and if she had had any seizures lately.

8. The complainant told Mr. Teves that Ms. Teves was making these comments and asked him to tell her to stop. He told the complainant that he would say something to Ms. Teves, but the comments continued.

9. On July 18, 2008, the complainant came into the store to obtain her paycheck while she was on vacation time. Her son was accompanying her. Ms. Teves asked the complainant, in front of her son and customers, whether the complainant had had a seizure. The complainant said no. Ms. Teves then asked the complainant's son if the complainant looked different to him and he said that he didn't know. Ms. Teves told the complainant's son that Ms. Teves probably saw the complainant more often than her son does and that is why she notices something wrong. Mr. Teves was present within earshot and did not ask Ms. Teves to be quiet or to discuss the matter in private. He testified that: "I wasn't even involved in all of these things because she [Ms. Teves] is the manager…. She had full responsibility for the front area." Trans. pp. 24-25.

10. On July 20, 2008, the complainant came into the store, put her uniform on the counter, and informed Ms. Teves that she quit. The complainant believed that she had no alternative but to leave her employment to avoid the constant questioning about her seizures.

CONCLUSIONS OF LAW

The complainant proved by a preponderance of the evidence that she had a disability as that was defined in the FEPA, R.I.G.L. Section 28-5-6(4) and the PDA, R.I.G.L. Section 42-87-1(1) at the time of the events in question.[1]

The complainant did not prove by a preponderance of the evidence that the respondents discriminated against her with respect to the request for a medical note.

The complainant proved by a preponderance of the evidence that the respondents discriminated against her with respect to terms and conditions of employment and constructive termination in violation of the FEPA and the PDA.

DISCUSSION

I. THE COMPLAINANT PROVED THAT SHE HAD A DISABILITY

[1] The FEPA and the PDA have been amended since the time of the events in question. For this Decision, the Commission will utilize the statutory language in effect at the time of the events in question.

The FEPA prohibits employment discrimination on the basis of disability with respect to terms and conditions of employment and termination. At the time of the actions in question, the FEPA, in R.I.G.L. Section 28-5-6(4), defined disability in relevant part as follows:

> "Disability" means any physical or mental impairment which substantially limits one or more major life activities, … and includes any disability which is provided protection under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and federal regulations pertaining to the act, 28 CFR 35 and 29 CFR 1630; provided, that whether a person has a disability shall be determined without regard to the availability or use of mitigating measures, such as reasonable accommodations, prosthetic devices, medications or auxiliary aids. As used in this subdivision, the phrase:
> …
> (ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
> (iii) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; …

The definition of disability in the PDA, at the time of the events in question, was essentially identical to the above definition, although in a slightly different format.

The complainant has a physiological disorder affecting her neurological system, a seizure disorder. She has suffered from periodic seizures all her life. This condition substantially affects her major life activities, in that her seizures prevent her from functioning. At unexpected times, the complainant is unable to control her movements and is impaired in communication. The complainant had seizures at work in June and July of 2008. With respect to the June seizure, the complainant locked herself in the break room for twenty minutes and was shaky after she came out. Because the seizures come at unpredictable times, they have an impact on the complainant's major life activities even when they are not occurring. The complainant must conduct her life activities on the assumption that a seizure may come at any time. The complainant's impairment substantially limits her major life activities. *See* Otting v. J.C. Penney Co., 223 F.3d 704 (8th Cir. 2000) (the jury's finding that the plaintiff had a disability under the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (ADA) was upheld, the plaintiff had sporadic seizures that lasted between 30 seconds and two minutes and that left her shaky and with trouble concentrating for some time afterward); Alastra v. Nat'l City Corp., 2010 WL 4739763 (E.D. Mich. 2010) (summary judgment denied, the plaintiff submitted sufficient evidence that her epilepsy was a disability under the ADA); Lane v. Harborside Healthcare-Westwood Rehab. & Nursing Ctr., 2002 WL 1674184 (D.N.H. 2002) (plaintiff argued that her seizure disorder "has defined her existence as to what she can and cannot do"; the court found that she presented sufficient evidence of a disability for her ADA case to go to trial, her seizures were intermittent, lasted for several

minutes and imposed severe limitations on her major life activities).[2] The Commission finds that the complainant's condition is a disability as it was defined under the FEPA and the PDA.

II. THE COMPLAINANT DID NOT ESTABLISH THAT THE RESPONDENTS' REQUEST FOR A MEDICAL NOTE VIOLATED THE FEPA OR THE PDA

The Commission, as discussed above, uses federal civil rights law as a guideline and the PDA specifically provides that prohibitions against employment discrimination shall track the ADA. See R.I.G.L. Section 42-87-3(6). The ADA provides as follows with respect to requesting medical information from current employees:

> A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

42 U.S.C.A. § 12112(d)(4)(A)

Legitimate safety concerns justify requesting medical information. *See* James v. Goodyear Tire & Rubber Co., 354 F. Appx. 246 (6th Cir. 2009) (summary judgment for employer upheld; the plaintiff, who had multiple sclerosis and had worked for the company in its tire manufacturing plant for over ten years in a position which required strength and dexterity, was experiencing difficulties in moving which caused legitimate concern for his safety and therefore the employer could ask the employee to undergo a medical examination without violating the ADA).

In the instant case, the respondents' request for a medical note from the complainant was due to legitimate safety concerns. The respondents did not act based on stereotypes about her disorder. The evidence showed that the respondents requested it after an incident in which the complainant's seizure at work caused her to hold a cup of iced coffee so tightly that it cracked, splashing the coffee on the complainant and a co-worker. The respondents' concerns, that the complainant's impairment might cause her to spill hot coffee or might make it unsafe for her to work near the respondents' 500 degree ovens, were legitimate

[2] The Commission generally utilizes the decisions of the R.I. Supreme Court, the Commission's prior decisions and decisions of the federal courts interpreting federal civil rights laws in establishing its standards for evaluating evidence of discrimination. The Rhode Island Supreme Court has utilized federal cases interpreting federal civil rights law as a guideline for interpreting the FEPA. "In construing these provisions, we have previously stated that this Court will look for guidance to decisions of the federal courts construing Title VII of the Civil Rights Act of 1964. *See* Newport Shipyard, Inc., 484 A.2d at 897-98." Center for Behavioral Health, Rhode Island, Inc. v. Barros, 710 A.2d 680, 685 (R.I. 1998).

safety concerns and therefore their request for a medical note was lawful.

III. THE COMPLAINANT PROVED THAT THE RESPONDENTS SUBJECTED HER TO UNLAWFUL HARASSMENT

A. THE STANDARDS FOR PROOF OF DISABILITY HARASSMENT

The standards for evaluating evidence of harassment based on protected class status generally track the standards for sexual harassment. *See* Faragher v City of Boca Raton, 524 U.S. 775, 786 – 787, 141 L.Ed.2d 662, 118 S. Ct. 2275, 2283 (1998) (the standards for evaluating racial and ancestral origin harassment track the standard for sexual harassment). *See also* E.E.O.C. v. Bobrich Enterprises, 2009 WL 577728 p. 3 (5th Cir. 2009), in which the Court of Appeals discussed hostile work environments caused by disability as follows:

> A hostile-work environment, sufficient to give rise to an action under the ADA, exists when "the disability-based harassment [is] '... sufficiently pervasive or severe to alter the conditions of employment and create an abusive working environment'". Flowers v. S. Reg'l Physician Servs. Inc., 247 F.3d 229, 236 (5th Cir. 2001) (quoting McConathy v. Dr. Pepper/Seven Up Corp., 131 F.3d 558, 563 (5th Cir. 1998)). For determining whether a working environment is abusive,
>
> > this court must consider the entirety of the evidence presented at trial, including the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance, and whether it unreasonably interferes with an employee's work performance. …
>
> *Id.* (internal quotations and citations omitted)….

See also DeCamp v. Dollar Tree Stores, 875 A.2d 13 (R.I. 2005), in which the Court discussed the standards of proof of harassment on the basis of sex:

> The test for determining a gender-based hostile work environment claim is whether: (1) the employee is a member of a protected class; (2) the employee was subjected to unwanted harassment; (3) that harassment was based upon his or her sex; (4) "that the harassment was sufficiently severe and pervasive so as to alter the conditions of plaintiff's employment and create an abusive work environment"; (5) that harassment "was both objectively and subjectively offensive, such that a reasonable person would find it hostile or abusive and the victim in fact did perceive it to be so"; and (6) "that some basis for employer liability has been established." O'Rourke v. City of Providence, 235 F.3d 713, 728 (1st Cir. 2001).
>
> …

> Concerning the creation of an abusive work environment, Title VII, and therefore FEPA and RICRA [Rhode Island Civil Rights Act of 1990, Title 42, Chapter 112 of the General Laws of Rhode Island], are violated "when the workplace is permeated with 'discriminatory intimidation, ridicule, and insult' * * * that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" Harris [v. Forklift Systems, Inc.], 510 U.S. at 21.
>
> …
>
> The next element of a hostile work environment claim requires that the harassment be objectively and subjectively offensive. We make this determination "by 'looking at all the circumstances,' including the 'frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" Faragher, 524 U.S. at 787-88 (quoting Harris, 510 U.S. at 23).

Id., 875 A.2d at 22-24. [Footnotes omitted.]

B. THE RESPONDENTS' FREQUENT PUBLIC INQUIRIES ABOUT THE COMPLAINANT'S HEALTH STATUS CONSTITUTED HARASSMENT

Looking at the totality of the circumstances with respect to complainant's situation, the Commission finds that the complainant proved unlawful disability harassment. Ms. Teves constantly asked the complainant how she was feeling lately and whether she had suffered a seizure lately. She asked these questions in public, in front of the complainant's co-workers and customers. While the respondents had legitimate safety concerns, there is no justification for asking global questions about the complainant's disability in public.

As noted above, the ADA provides as follows with respect to requesting medical information from current employees:

> A covered entity shall not … make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

42 U.S.C.A. § 12112(d)(4)(A). It further provides that, if a covered entity does collect such information, it must be "treated as a confidential medical record". 42 U.S.C.A. § 12112(d)(3)(B) applied through 42 U.S.C.A. § 12112(d)(4)(C). Ms. Teves asked questions about the complainant's disability and used the answers to continually ask further questions. While the respondents might have been justified in requiring the complainant to provide her medical note sooner; they were not justified in attempting to determine the complainant's condition by asking her about whether she had had seizures "lately". Ms. Teves did not claim any expertise that would allow her to evaluate the

complainant's condition. Asking the complainant in public did not clarify the medical situation. The respondents subjected the complainant to public exposure of her health condition without justification. The incident of July 18, 2008 is a clear illustration of the humiliation inflicted by Ms. Teves. Ms. Teves asked the complainant, in front of the complainant's son and the public, whether the complainant had had a seizure. The complainant was on vacation leave at the time, so she was not even on duty. Ms. Teves then asked the complainant's son if the complainant looked different to him. The constant public exposure of the complainant's disability in these circumstances constituted an abusive work environment. The Commission further finds that a reasonable person would find a work environment abusive if the employer constantly questioned her in public about her disability.

The complainant attempted to stop the harassment. She asked the President of T & T, Mr. Teves, to stop Ms. Teves' comments. The comments did not stop. At the hearing, Mr. Teves stated definitively that: "I wasn't even involved in all of these things because she [Ms. Teves] is the manager…. She had full responsibility for the front area." Trans. pp. 24-25.

It is evident that the complainant had a disability, that she was subjected to unwanted harassment, that the harassment was based on her disability, that the harassment was both subjectively and objectively offensive and that the harassment was practiced by the complainant's manager and not rectified by T & T's President. The complainant proved that the respondents unlawfully harassed her because of her disability. *See* E.E.O.C. v. Bobrich Enterprises, 2009 WL 577728 (5th Cir. 2009) (the jury verdict finding discrimination in this ADA claim should not be overturned; a hostile environment was established by proving that Ms. Gitsham's immediate supervisor constantly made comments about her hearing impairment and hearing aids, including at staff meetings and an office party, and did not stop even after she complained to management).

IV. THE COMPLAINANT PROVED THAT SHE WAS CONSTRUCTIVELY TERMINATED BECAUSE OF HER DISABILITY

The complainant terminated her employment on July 18, 2008. She alleges constructive termination. The U.S. Supreme Court set forth standards for constructive discharge in Pennsylvania State Police v. Suders, 542 U.S. 129, 146-147, 124 S. Ct. 2342, 2354 (2004):

> The constructive discharge here at issue stems from, and can be regarded as an aggravated case of, sexual harassment or hostile work environment. For an atmosphere of sexual harassment or hostility to be actionable, we reiterate, see *supra,* at 2347, the offending behavior "must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Meritor, 477 U.S., at 67, 106 S. Ct. 2399 (internal quotation marks and brackets omitted). A hostile-environment constructive discharge claim entails something more: A plaintiff who advances such a compound claim must show working conditions so

> intolerable that a reasonable person would have felt compelled to resign. *See*, *e.g.,* Breeding v. Arthur J. Gallagher & Co., 164 F.3d 1151, 1160 (C.A.8 1999) ("[A]lthough there may be evidence from which a jury could find sexual harassment, ... the facts alleged [for constructive discharge must be] ... so intolerable that a reasonable person would be forced to quit."); Perry v. Harris Chernin, Inc., 126 F.3d 1010, 1015 (C.A.7 1997) ("[U]nless conditions are beyond 'ordinary' discrimination, a complaining employee is expected to remain on the job while seeking redress."). [Footnote omitted.]

The respondents harassed the complainant because of her disability, as described above. The complainant had appealed to the President of T & T to stop Ms. Teves' harassment, but the harassment continued. Approximately two days before the complainant notified the respondents that she was leaving her employment, Ms. Teves had again asked the complainant about her seizures in public. The complainant was not working, she had come to pick up her check. Ms. Teves asked this question in front of the complainant's son and asked the complainant's son to evaluate his mother's condition. When he replied that he didn't know, Ms. Teves made a snide comment on how she saw the complainant more than her son did and that was why she noticed something wrong. Mr. Teves was in earshot, but did not attempt to stop Ms. Teves' public remarks. This encounter with Ms. Teves illustrates that Ms. Teves felt free to use her authority as the complainant's manager to expose the complainant's medical information to anyone. The complainant testified that: "It was either quit my job or to stay there and have you [Ms. Teves] continually ask me about my seizures". Trans. p. 7. The complainant proved that she found the work conditions so intolerable that she was forced to quit and that a reasonable person would have found these conditions so intolerable that she would be forced to quit. *See* Boumehdi v. Plastag Holdings, LLC, 489 F.3d 781 (7th Cir. 2007) (a grant of summary judgment in favor of the employer on the issue of constructive termination was reversed; in this sex discrimination case the plaintiff's evidence of harassment and her employer's failure to respond to her complaints was sufficient for the case to proceed to trial). The complainant proved that she was forced to quit her job because the respondents harassed her based on her disability and refused to stop the harassment.

DAMAGES

R.I.G.L. Section 28-5-24 sets forth the remedies that the Commission can award after finding that a respondent has committed an unlawful employment practice. R.I.G.L. Section 42-87-5(a) provides that: "the commission may proceed in the same manner and with the same powers as provided in §§ 28-5-16 – 28-5-26…". R.I.G.L. Section 28-5-24(a)(1) provides as follows:

> **§ 28-5-24 Injunctive and other remedies – Compliance. –** (a) If upon all the testimony taken the commission determines that the respondent has engaged in or is engaging in unlawful employment practices, the commission shall state its findings of fact and shall issue and cause to be served on the respondent an order requiring the respondent to cease and

> desist from the unlawful employment practices, and to take any further affirmative or other action that will effectuate the purposes of this chapter, including, but not limited to, hiring, reinstatement, or upgrading of employees with or without back pay, or admission or restoration to union membership, including a requirement for reports of the manner of compliance. Back pay shall include the economic value of all benefits and raises to which an employee would have been entitled had an unfair employment practice not been committed, plus interest on those amounts.
>
> …
>
> (b) If the commission finds that the respondent has engaged in intentional discrimination in violation of this chapter, the commission in addition may award compensatory damages. The complainant shall not be required to prove that he or she has suffered physical harm or physical manifestation of injury in order to be awarded compensatory damages. As used in this section, the term "compensatory damages" does not include back pay or interest on back pay, and the term "intentional discrimination in violation of this chapter" means any unlawful employment practice except one that is solely based on a demonstration of disparate impact.

The Commission will order affirmative relief to effectuate the purposes of the FEPA and the PDA. The Commission will schedule a hearing at which the parties can present evidence as to the appropriate amount of damages to be awarded to the complainant for the actions which the Commission found to be unlawful employment practices. The hearing date for the hearing on damages will be scheduled after consultation with the parties.

ORDER

I. Having reviewed the evidence presented, the Commission, with the authority granted it under R.I.G.L. Section 28-5-25, finds that the complainant failed to prove that the respondents discriminated against her with respect to the request for a medical note and hereby dismisses that portion of the complaint with prejudice.

II. Violations of R.I.G.L. Section 28-5-7, 42-87-2 and 42-87-3 having been found with respect to the respondents' discrimination against the complainant in terms and conditions of employment and constructive termination because of her disability, the Commission hereby orders that the respondents:

A. Cease and desist unlawful employment practices;

B. Post a copy of the Commission's anti-discrimination poster prominently in all of T & T's Rhode Island facilities within forty-five (45) days of the date of this Order;

C. Train T & T's supervisors and officers, and Ms. Teves whether or not she is still in a supervisory position at T & T, on state and federal anti-discrimination laws and provide a certification to the Commission within six (6) months of the date of this Order that the training has been completed, a list of the people who were trained, the name of the trainer and a copy of the syllabus;

D. Within forty-five (45) days of the date of this Order, adopt a policy against harassment that contains the following:
   (1) A statement that discriminatory harassment in the workplace is unlawful;
   (2) A statement that it is unlawful to retaliate against an employee for filing a complaint of discrimination or for cooperating in an investigation of a complaint of discrimination;
   (3) A description and examples of harassment;
   (4) A statement of the range of consequences for employees who are found to have committed harassment;
   (5) A statement on the process for filing internal complaints about harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and
   (6) Identification of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact these agencies;

E. Provide to all employees a written copy of T & T's policy against harassment; and provide all new employees such a copy at the time of their employment;

F. Provide to the Commission a copy of T & T's policy against harassment, and a certification that it has been provided to all of T & T's employees, within sixty (60) days of the date of this Order;

G. Offer the complainant the next available position of Shift Leader.

III. The Commission will hold a hearing to determine the appropriate amount of damages, if any, to be awarded to the complainant for the discrimination in terms and conditions of employment and constructive termination committed by the respondents.

Entered this [30th] day of [June], 2011.

_____/S/_____

Camille Vella-Wilkinson
Hearing Officer

I have read the record and concur in the judgment.

_____/S/_____
Iraida Williams
Commissioner

CONCURRENCE AND DISSENT OF COMMISSIONER ALTON W. WILEY, JR.

I concur with the Commission's finding that the complainant proved that she has a disability. I also concur that the respondents did not violate the FEPA or the PDA by asking the complainant for a note from her doctor.

I dissent from the Commission's finding that the respondents discriminated against the complainant with respect to harassment and constructive termination. The respondents had a legitimate reason for asking the complainant about her health status – they had legitimate safety concerns and the complainant told them that she would not provide them with a medical note for three months. The complainant did not testify that Ms. Teves made any derogatory or threatening comments about the complainant's disability. Without more evidence as to the severity of the comments, I cannot find that the evidence established that the environment created was abusive. *See* McConathy v. Dr. Pepper/Seven Up Corp., 131 F.3d 558 (5th Cir. 1998) (the supervisor's rude and insensitive comments about the plaintiff's temporomandibular joint disease were not sufficiently severe to constitute harassment). Similarly, while Ms. Teves' comments were often made in inappropriate circumstances, they did not create an environment so intolerable that a reasonable person would be compelled to resign.

_____/S/_____ __[6/30/11]_____

Alton W. Wiley, Jr. Date
Commissioner