



- 4) Complainant is represented by [REDACTED] Esq. Respondent is represented by [REDACTED].
- 5) Investigative methods used: A thorough review of the written materials provided by the parties, an Issues and Resolution Conference ("IRC"), a request for additional information from Respondent, and a telephone interview. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" here.

**IV. Development of Facts:**

- 1) The parties in this case are as follows:
  - a) [REDACTED] hired Mr. [REDACTED] in March 2011 in the housekeeping department as a laundry attendant. Throughout Mr. [REDACTED] employment, he was assigned to various positions including laundry attendant, room attendant, houseperson, and the breakfast room position. These positions all were in the housekeeping department. [REDACTED] terminated Mr. [REDACTED] employment on February 21, 2013.
  - b) [REDACTED] is a hotel.
- 2) Complainant provided the following in support of his position:
  - a) Mr. [REDACTED] is Jamaican and is 35 years old.
  - b) During his employment, Mr. [REDACTED] was very good at his job.
  - c) In January 2012, Mr. [REDACTED] was injured on the job. In June or July 2012, he was placed in the breakfast room. Mr. [REDACTED] supervisor ("Supervisor") told Mr. [REDACTED] that the breakfast room would be a good position for him because of his good customer service skills.
  - d) Mr. [REDACTED] job duties in the breakfast room included working in an unheated back room that opened to the outside. There was a large gap under the door where snow would blow inside. Mr. [REDACTED] asked for a [REDACTED] sweater to wear, but he was not given one. The sweater was routinely provided to Caucasian employees. Mr. [REDACTED] tried to wear his own sweater when he was working in the back room, but he was forced to remove it.
  - e) On or around February 7, 2013, Mr. [REDACTED] was working in the breakfast room when he saw a man he had not seen before. He was told later by other employees that the man he saw was the owner of [REDACTED] Mr. [REDACTED] noticed that the Owner was looking at him, giving him a strange look, and seemed surprised and unhappy to see Mr. [REDACTED] in the breakfast room.
  - f) On February 13, 2013, his day off, Mr. [REDACTED] received a voice message from Supervisor. In the message, Supervisor stated that Mr. [REDACTED] should come into work later on February 14, 2013, and he should not report to the breakfast room "because there was a special [REDACTED] person coming in". Supervisor stated that she would explain the rest when she saw Mr. [REDACTED] on February 14, 2013.
  - g) When Mr. [REDACTED] arrived at work the next day, he saw a new employee ("Employee 1") working in the breakfast room. She was an older Caucasian woman, and she was wearing a [REDACTED] sweater.
  - h) Mr. [REDACTED] went to Supervisor to ask for an explanation; Supervisor told him that high level

management officials with [REDACTED] were visiting that morning and the Owner and the management company wanted "an older white woman" working in the breakfast room instead of Mr. [REDACTED]

- i) Mr. [REDACTED] told Supervisor that he felt that was race discrimination.
- j) Employee 1 took over Mr. [REDACTED] job, and he was moved back to housekeeping on February 14, 2013.
- k) Later that day, Mr. [REDACTED] requested a second meeting with Supervisor with a third person present. An Assistant Housekeeper was present for the meeting. Mr. [REDACTED] told Supervisor that he felt her statement that the owner wanted an older white woman to replace him was discrimination. Supervisor denied that she made the statement and stated that she had said that [REDACTED] wanted an older lady.
- l) February 14, 2013 was Mr. [REDACTED] first day back in housekeeping. Mr. [REDACTED] completed his housekeeping duties for the day, but forgot to hand in the housekeeping checklist at the end of his shift that day. In Mr. [REDACTED] past experience, the checklist was not considered an important document and the requirement that it be completed was not strictly enforced. In the morning of February 15, 2013, Mr. [REDACTED] brought his housekeeping checklist from the previous day to Supervisor.
- m) Later on February 15, 2013, Mr. [REDACTED] received a verbal warning from Supervisor for not filling out paperwork on February 14 and 15, 2013.
  - i. When Mr. [REDACTED] received the warning, he had not finished his shift on February 15, 2013, but the warning reflected that he had also failed to turn in his paperwork that day.
  - ii. Mr. [REDACTED] submitted his paperwork on February 15, 2013, and every day after that point.
- n) On February 18, 2013, Mr. [REDACTED] saw a new employee doing the housekeeping job he had been assigned to do.<sup>2</sup>
- o) That same day, Mr. [REDACTED] requested a meeting with the general manager of the hotel ("General Manager") to talk about harassing behavior by Supervisor related to Mr. [REDACTED] breaks. During the meeting between General Manager, Supervisor, and Mr. [REDACTED] Supervisor stated that Owner stated that he wanted an older lady in the breakfast room. General Manager only stated that Mr. [REDACTED] needed to follow the rules.
- p) Later that day Mr. [REDACTED] received another written warning from Supervisor. The warning stated that Supervisor had asked Mr. [REDACTED] daily to fill out the proper paperwork and he refused to do so. The warning further stated that, "[i]f he does not do the paperwork he could be let go!"
  - i. The warning states that Mr. [REDACTED] refused to sign it, but Mr. [REDACTED] stated that he never saw this warning while he was employed by [REDACTED].
  - ii. Mr. [REDACTED] stated that he had completed the checklist that day and turned it in to Supervisor.

---

<sup>2</sup> One of the tasks the new employee did was clean the carpets. While Respondent claims that Mr. [REDACTED] did not perform this task, Complainant states that he did perform rug cleaning as part of his job, as evidenced by a doctor's note that his injury was getting better until he had to shampoo carpets at work.

- q) On February 20, 2013, Mr. [REDACTED] had a doctor's appointment for his work-related injury. Mr. [REDACTED] gave Supervisor advance notice of his doctor's appointment. Before he left for the appointment, he punched out of work and told Supervisor he was not sure if he would be back to finish out his shift.
  - i. At the IRC, Mr. [REDACTED] stated that he told both Supervisor and General Manager about his doctor's appointment. He was not told he could not go. He also stated that Supervisor told him to leave the checklist on her desk; she would not take it from him when he was doing laundry.
- r) Later in the afternoon of February 20, 2013, General Manager called Mr. [REDACTED] and left him a voice message. The message asked Mr. [REDACTED] where he had gone because Mr. [REDACTED] had not done what General Manager asked him to do. The voice message ended with General Manager stating, "[s]o obviously you quit. I don't think that was a smooth move but that's your choice. So good luck."
- s) Mr. [REDACTED] went to work the next morning to explain to General Manager that he had not quit, he had gone to a doctor's appointment for his work related injury, and Supervisor had excused him from work. General Manager told Mr. [REDACTED] to leave and that it was on the record that Mr. [REDACTED] had been fired.
- t) Mr. [REDACTED] did not work in the breakfast room between February 14, 2013, and February 21, 2013, when his employment was terminated.
- u) With regard to Respondent's claim that it ordered him a sweater for the breakfast room, Mr. [REDACTED] did not believe that it was ordered for him. The sweater ordered was size large, but Complainant had told Supervisor that he needed a medium. Mr. [REDACTED] felt that the sweater was bought for Employee 1 soon after she started working in the breakfast room.
- v) Mr. [REDACTED] felt that other [REDACTED] employees were able to stay employed for more serious violations of company policy. Supervisor was disciplined for stealing tips left for housekeepers, but her employment was not terminated. Another employee left a blood-soaked sheet on a bed but was not terminated.

3) Respondent provided the following in response to Complainant's allegations:

- a) Complainant was first assigned to the breakfast room on August 16, 2012. Complainant was assigned to this position because it was a good position for his skills. In early 2013, [REDACTED]n decided to hire an additional part-time employee. The position for this new employee was for two or three days a week. Due to the nature of the part-time position, Owner suggested recruiting a retiree. Owner felt a retiree would be most likely to accept and remain in the position since it offered limited hours.
- b) [REDACTED] ended up hiring Employee 1, a former employee of the hotel, on February 12, 2013.
- c) When Mr. [REDACTED] arrived to work on February 14, 2013, Supervisor told him that he would be working in housekeeping instead of the breakfast room. Another employee was present for this conversation. Mr. [REDACTED] immediately complained that he was being discriminated against because of his race. Supervisor stated that there was no discrimination. Employee 1 was hired to work two days per week. Supervisor also told Mr. [REDACTED] that one of the hotel owners had suggested they hire a retiree since the position was only for two days a week.
- d) On February 14, 2013, there were two inspections taking place at the hotel. There was one by an

individual from Arizona who was there to "size-up" the breakfast operation because it was a new function for the hotel. [REDACTED] had to meet certain criteria to keep its licensing. This individual was used to interfacing with people of color and different ethnicities.<sup>3</sup> The second inspection was by an area manager who was doing a drop-in inspection, but [REDACTED] was not sure when the inspection would take place. General Manager had talked to Supervisor about getting things cleaner in the public areas for the inspection.

- i. At the IRC, [REDACTED] stated that Supervisor's statement to Mr. [REDACTED] was that they have a [REDACTED] person coming so they had to move him from the breakfast room to cleaning.
- e) When Mr. [REDACTED] left work that day, he did not turn in the required checklist. Since Mr. [REDACTED] had been assigned to housekeeping many times before, he was aware he had to turn in the checklist. Supervisor prepared a discipline record to give to Mr. [REDACTED] for not turning in the required checklist.
- f) On February 15, 2013, Supervisor spoke with Mr. [REDACTED] at the beginning of shift, confirming that he did not complete the paperwork from the day before. Supervisor decided not to give Mr. [REDACTED] the disciplinary record she had prepared at that time.
- g) Later that day, Supervisor saw Mr. [REDACTED] leaving for the day, addressed him, and confirmed he did not have the required checklist for February 14 or February 15. Supervisor added the February 15 violation to the disciplinary record she had prepared and gave it to Mr. [REDACTED] who refused to sign it.
- h) Mr. [REDACTED] requested a meeting with Supervisor and General Manager, which was held on February 18, 2013. During the meeting, Mr. [REDACTED] was told again Owner's reasoning for hiring Employee 1. Supervisor did not tell the Mr. [REDACTED] that Respondent wanted an older white woman to work in the breakfast room instead of him.
- i) A new male employee started on February 18, 2013. He initially worked performing extensive renovations and deep cleaning which including rug cleaning. In March 2013, he did room cleaning. Mr. [REDACTED] did not perform any of these tasks.
- j) Mr. [REDACTED] failed to turn in the required checklist on February 18, 2013, and received a written warning as a result.
- k) On February 18, 2013, Respondent ordered Mr. [REDACTED] a [REDACTED] sweater anticipating that he would occasionally be assigned to the breakfast room.
  - i. At the IRC, [REDACTED] stated that if someone requested a sweater, it was ordered. It was also stated that typically the employees do not have sweaters at all. The hotel was in the middle of construction and starting the breakfast process and there was a gap.
  - ii. Employee 1 was not issued a [REDACTED] sweater when she was hired for the two day breakfast room position, she wore Supervisor's sweater, which would not have fit Mr. [REDACTED]
- l) During mid-morning on February 20, 2013, General Manager saw that a common bathroom had empty paper towel holders and the floor was sticky and covered with tissues. There was a hotel inspection scheduled for that day, and it was Mr. [REDACTED] responsibility to clean the bathroom. General Manager

---

<sup>3</sup> [REDACTED] stated that Owner had seen Mr. [REDACTED] in the breakfast room before.

found Mr. [REDACTED] and asked him why he had not cleaned the bathroom. Mr. [REDACTED] stated that he had cleaned the bathroom. General Manager and Mr. [REDACTED] then went to look at the bathroom and General Manager instructed Mr. [REDACTED] to clean the bathroom again.

- i. Mr. [REDACTED] did not tell General Manager that he did not have time to clean the bathroom because he had a doctor's appointment or give any other indication that he would not clean the bathroom as he was instructed to do.
- m) General Manager inspected the bathroom 45 minutes later and saw that the bathroom had not been cleaned. General Manager determined that Complainant had turned in an incomplete and inaccurate checklist and had left for the day. General Manager called Mr. [REDACTED] phone and left a message stating that he felt Mr. [REDACTED] had quit.
  - i. General Manager stated that he was not aware that Mr. [REDACTED] had a doctor's appointment that day.
  - n) Mr. [REDACTED] was assigned to cleaning public spaces throughout his employment. Supervisor had to repeatedly remind him to turn in his checklist on a daily basis. Despite these reminders, Mr. [REDACTED] would not turn in the checklist. Supervisor began to have Complainant check in with her before leaving for the day, but he failed to do so repeatedly. Complainant's repeated failure in doing these tasks triggered a written warning.
  - o) Mr. [REDACTED] returned to work the next day and told General Manager that he had not quit. General Manager told Complainant that due to his ongoing disregard for company procedures and failure to perform his duties as expected, his employment was terminated.
- 4) When Mr. [REDACTED] was hired, he received good reviews for his interview. He also received all nines on a one to 10 scale (10 being the highest) for his 90 day evaluation.
- 5) Supervisor's voice message to Mr. [REDACTED] stated that he would not be in the breakfast room the next day. She further stated that there was a "special [REDACTED] guy coming for breakfast room tomorrow", and Supervisor would explain more when she saw Complainant.
- 6) At the IRC, [REDACTED] stated that Employee 1 was hired to work two days a week. For the other days, [REDACTED] used a rotation including Mr. [REDACTED] and another employee. Mr. [REDACTED] had been working in breakfast room five days a week. [REDACTED] was not sure why Mr. [REDACTED] did not work in the breakfast room again before his termination.
- 7) Supervisor provided the following in a telephone interview:
  - a) Mr. [REDACTED] seemed to lose interest in his job after he was injured. She found him on his phone a lot, and he was not cleaning well. Specifically, he could have cleaned the breakfast room more.
  - b) Employee 1 was hired and placed in the breakfast room for the inspection because she cleaned well and had a lot of food service work. [REDACTED] thought she would be the better person for the inspection. Since they had the inspection coming, they wanted Mr. [REDACTED] to do cleaning. Mr. [REDACTED] was told that he would still be in the breakfast room, but not that day because the inspector was coming. Supervisor does the scheduling for the breakfast room.

- c) Supervisor stated that she spoke with General Manager about the fact that Complainant had not cleaned the bathroom when asked, but she did not recommend that Complainant's employment be terminated.
- d) Mr. [REDACTED] did not tell Supervisor that he had a doctor's appointment to attend on February 20, 2013. Employees put the days they want off on the calendar by Supervisor's desk.

**V. Analysis:**

- 1) The MHRA provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

*Race, Color, National Origin/Ancestry, Age and Sex Discrimination Claims*

- 2) The MHRA prohibits discrimination in the terms, conditions, and privileges of employment on the basis of race, color, national origin/ancestry, age or sex. *See* 5 M.R.S. § 4572(1)(A).
- 3) The phrase "terms, conditions, . . . or privileges of employment" is broad and not limited to discrimination that has an economic or tangible impact. *See Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986) (interpreting Title VII of the Civil Rights Act of 1964); *King v. Bangor Federal Credit Union*, 611 A.2d 80, 82 (Me. 1992) (interpreting 5 M.R.S. § 4572(1)(A)). "An employee has suffered an adverse employment action when the employee has been deprived either of 'something of consequence' as a result of a demotion in responsibility, a pay reduction, or termination, or the employer has withheld 'an accouterment of the employment relationship, say, by failing to follow a customary practice of considering the employee for promotion after a particular period of service.'" *LePage v. Bath Iron Works Corp.*, 2006 ME 130, ¶ 20 (citations omitted).
- 4) Because here there is no direct evidence of discrimination,<sup>4</sup> the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 5) With regard to his race, color, national origin/ancestry, age, and sex discrimination claims, Complainant establishes a prima-facie case of unlawful discrimination by showing that he (1) was a member of a protected class, (2) was qualified for the position he held, (3) suffered an adverse employment action, (4) in circumstances giving rise to an inference of discrimination. *See Harvey v. Mark*, 352 F. Supp. 2d 285, 288 (D.Conn. 2005). *Cf. Gillen v. Fallon Ambulance Serv.*, 283 F.3d 11, 30 (1<sup>st</sup> Cir. 2002).
- 6) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of

---

<sup>4</sup> Complainant asserts that the statement Supervisor allegedly made about Owner wanting an older white lady in the breakfast room during the hotel's inspection constitutes direct evidence of discrimination. "Direct evidence" consists of "explicit statements by an employer that unambiguously demonstrate the employer's unlawful discrimination. . . ." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6. The record here does not meet that standard.

Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet his overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.

- 7) In order to prevail, Complainant must show that he would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.
- 8) Here, Complainant has not established a prima-facie case of race, color, national origin/ancestry, age, and sex discrimination. While Complainant has shown that he is a member of the protected classes, and that he was qualified for the position he held, he has not shown that he suffered an adverse employment action. Complainant alleged that he was removed from the breakfast room, but the breakfast room was one of several locations where he could work as a member of the housekeeping department. He did not experience a decrease in pay or hours when he was taken out of the breakfast room; he was simply switched from one housekeeping assignment to another.<sup>5</sup> Complainant also alleged that he was denied a sweater after asking for one; based on this record, this, too, is not an adverse employment action under the MHRA.
- 9) Discrimination based on race, color, national origin/ancestry, age, and sex in violation of the MHRA is not found.

#### Retaliation Claim

- 10) The MHRA provides, in part, that it is unlawful, based on protected-class status, to terminate an individual's employment or to "discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment. . . ." because of previous actions that are protected under the WPA. *See* 5 M.R.S. § 4572(1)(A).
- 11) The WPA protects an employee who "acting in good faith . . . reports orally or in writing to the employer . . . what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States." 26 M.R.S. § 833(1)(A).
- 12) The MHRA also makes it unlawful for "an employer . . . to discriminate in any manner against individuals because they have opposed a practice that would be a violation of [the Act] or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under [the MHRA]." 5 M.R.S. § 4572(1)(E).
- 13) In order to establish a prima-facie case of retaliation in violation of the WPA, Complainant must show that he engaged in activity protected by the WPA, he was the subject of adverse employment action, and there

---

<sup>5</sup> Complainant may well have felt that he was removed from the breakfast room because of his race, color, national origin/ancestry, age, and/or sex, given the circumstances of his reassignment. Even assuming this to be true – that Respondent thought it would be preferable to have an older Caucasian woman in the breakfast room instead of a younger African-American man – Complainant's claim is not actionable because he did not lose anything of consequence through his reassignment. Complainant also did not make a claim of a hostile work environment.

was a causal link between the protected activity and the adverse employment action. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991).

- 14) In order to establish a prima-facie case of MHRA retaliation, Complainant must show that he engaged in statutorily protected activity, he was the subject of a materially adverse action, and there was a causal link between the protected activity and the adverse action. *See Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 20, 824 A.2d 48, 56; *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006). The term "materially adverse action" covers only those employer actions "that would have been materially adverse to a reasonable employee or job applicant. In the present context that means that the employer's actions must be harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern*, 126 S. Ct. 2405.
- 15) One method of proving the causal link is if the adverse job action happens in "close proximity" to the protected conduct. *See DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 514-515.
- 16) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in WPA- or MHRA-protected activity. *See Wyrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1<sup>st</sup> Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. If Respondent makes that showing, the Complainant must carry her overall burden of proving that "there was, in fact, a causal connection between the protected activity and the adverse action." *Id.* Complainant must show that she would not have suffered the adverse action but for her protected activity, although the protected activity need not be the only reason for the decision. *See University of Texas Southwestern Medical Center v. Nassar*, 2013 WL 3155234, \*16 (2013) (Title VII); *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).
- 17) Complainant has met his prima-facie case here, establishing that he complained about what he reasonably believed to be unlawful discrimination, his employment was terminated shortly after he lodged his complaint, and due to the timing of his complaint and his termination, there is a causal connection between his protected activity and the adverse action he experienced.
- 18) Respondent has stated a legitimate non-discriminatory reason for terminating Complainant's employment: he did not turn his housekeeping checklist on multiple days as he was required to do and he did not follow the directive of the General Manager to clean a restroom.
- 19) The record supports that Complainant has at least an even chance of success in a civil action on his retaliation claim with reasoning is as follows:
  - a. Complainant made a complaint about unlawful discrimination, and his employment was terminated within one week. Respondent stated that it terminated Complainant's employment because he did not complete the housekeeping checklists, and also because he did not follow General Manager's directive to clean a bathroom. However, the record shows that Respondent stated that Complainant had not filled the housekeeping checklist out in the past and Supervisor reminded him daily to do so. Supervisor even got to the point where she was asking Complainant to check in daily and Complainant was not doing that consistently. However, Complainant was never disciplined for not turning in his checklist prior to his complaint about unlawful discrimination.
  - b. Complainant received his first discipline from Supervisor for not filling out the checklist the day after he told Supervisor that he believed reassigning him from the breakfast room was discriminatory. The

timing of this discipline provides support for Complainant's claim of retaliation.

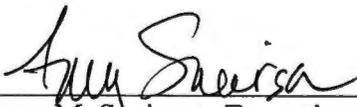
- c. Respondent stated that it needed Complainant to do cleaning related to the inspection, but also stated that Complainant was not doing a good job cleaning, in particular in the breakfast room. It does not reasonably follow that Respondent would remove Complainant from the breakfast room to do cleaning for the inspection if they did not view his cleaning skills in high regard. However, Complainant received great reviews of his work performance during his employment, even though Supervisor stated that he appeared to lose interest in his job after his injury. Complainant was even moved to the breakfast room because he was told it would be a good fit for his skills. Supervisor stated that Complainant's work performance had declined, but this was not reflected in the record at all until after Complainant's complaint about unlawful discrimination.
- d. Complainant noted that other employees had committed far more serious violations of policy (including leaving a bloody sheet on a bed), and those employees did not lose their jobs. Respondent did not convincingly rebut this contention. This supports Complainant's claim that his relatively minor infractions are pretext for retaliation.
- e. General Manager's assumption that Complainant had quit under the circumstances of what had occurred on February 20, 2013, seems unreasonable. In addition, when Complainant returned to work to explain what had happened, General Manager terminated his employment for an ongoing failure to comply with policies and to complete his duties. The record does not support the existence of any ongoing issues being problematic until after Complainant's protected activity.
- f. Finally, Complainant's employment was terminated just two or three days after he met with Supervisor and General Manager and reiterated his belief that he was being discriminated against. The proximity between Complainant's protected activity and his termination supports a reasonable grounds finding on the retaliation claim. This is true especially in light of the fact that Respondent regarded Complainant as a good employee until approximately a week before he was terminated.

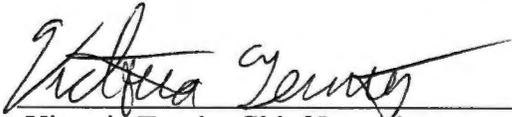
20) Retaliation in violation of the MHRA and/or the WPA is found.

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Commission issue the following findings:

1. There are **No Reasonable Grounds** to believe that Respondent [REDACTED] discriminated against Complainant [REDACTED] [REDACTED] in the terms and conditions of his employment due to his race, color, national origin/ancestry, age, and sex in violation of the Maine Human Rights Act; and these claims should be dismissed in accordance with 5 M.R.S. § 4612(2).
2. There are **Reasonable Grounds** to believe that Respondent [REDACTED] retaliated against Complainant [REDACTED] [REDACTED] for engaging in protected activity under the MHRA; and conciliation of this claim should be attempted in accordance with 5 M.R.S. § 4612(3).

  
\_\_\_\_\_  
Amy M. Sneider, Executive Director

  
\_\_\_\_\_  
Victoria Ternig, Chief Investigator