



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via Electronic Mail and U.S. Mail

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

JACQUELINE P. MINOR
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

March 5, 2020

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Stephanie Winston

SUBJECT: APPEAL BY STEPHANIE WINSTON OF THE HUMAN RESOURCES DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY CLOSE HER COMPLAINT OF HARASSMENT AND RETALIATION.

Dear Stephanie Winston:

The above matter will be considered by the Civil Service Commission at a meeting to be held on **March 16, 2020 at 2:00 p.m. in Room 400**, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/CivilService under "Meetings" no later than end of day on Wednesday, March 11, 2020. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is again attached for your review; however, a hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, March 10, 2020** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Again, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

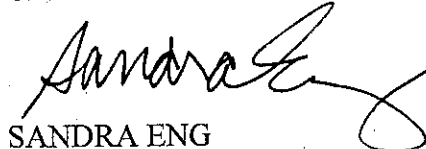
RECEIVED SUPPORTS
CALENDAR 14

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

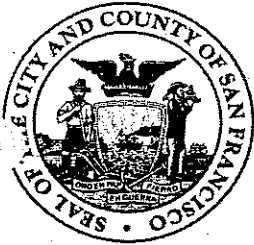
CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: Micki Callahan, Department of Human Resources
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Carlos Cueva Alegria, Department of Human Resources
Trent Rhorer, Human Services Agency
Luenna Kim, Human Services Agency
Asa King, Human Services Agency
Commission File
Commissioners' Binder
Chron



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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Sent via U.S. Mail

March 5, 2020

NOTICE OF CIVIL SERVICE COMMISSION MEETING

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Mark Zeiter

Subject: APPEAL BY STEPHANIE WINSTON OF THE HUMAN
RESOURCES DIRECTOR'S DETERMINATION TO
ADMINISTRATIVELY CLOSE HER COMPLAINT OF
HARASSMENT AND RETALIATION.

Dear Mark Zeiter:

As you may be aware, Stephanie Winston filed the above-referenced discrimination complaint with the Department of Human Resources ("DHR"). The Department of Human Resources reviewed Stephanie Winston's allegations, and the Human Resources Director determined that there was insufficient evidence to establish her claims of discrimination and harassment. Stephanie Winston has appealed that determination to the Civil Service Commission.

In accordance with the City Charter and Civil Service Rules, the Commission may sustain, modify or reverse the Human Resources Director's determination; and may effectuate an appropriate remedy in the event that it finds discrimination in the work environment. Any such finding is binding on City departments. The Commission may not impose discipline on an employee, but in an appropriate case may recommend that the department consider discipline.

The Equal Employment Opportunity Division of DHR will present and defend the Human Resources Director's determination on Stephanie Winston's complaint at the Civil Service Commission meeting to be held on **March 16, 2020 at 2:00 p.m.** in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. The Commission will have received the DHR staff report, which reviews the evidence pertaining to the complaint and supports the Human Resources Director's determination, in advance of the meeting. You will have an opportunity to address Stephanie Winston's allegations at the Commission meeting, if you wish to do so, although you are not required to appear. The Commission will rule on the information previously submitted and any testimony or other evidence provided at its meeting.

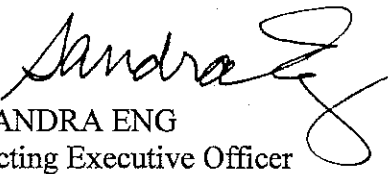
SANDRA ENG
ACTING EXECUTIVE OFFICER

The March 16, 2020 meeting agenda will be posted on the Civil Service Commission’s website at www.sfgov.org/CivilService under “Meetings” no later than end of day on Wednesday, March 11, 2020. Additionally, hard copies of DHR’s staff report regarding Stephanie Winston’s appeal will be available for review at the Commission’s office located at 25 Van Ness Avenue, Suite 720, San Francisco; however, you may also contact the Commission at CivilService@sfgov.org to request that a copy of the report be emailed to you instead.

You may contact me at Sandra.Eng@sfgov.org or (415) 252-3247 should you have any questions.

Sincerely,

CIVIL SERVICE COMMISSION


SANDRA ENG
Acting Executive Officer

Cc: Micki Callahan, Department of Human Resources
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
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November 7, 2019

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Stephanie Winston

SUBJECT: APPEAL BY STEPHANIE WINSTON OF THE HUMAN RESOURCES DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY CLOSE HER COMPLAINT OF HARASSMENT AND RETALIATION.

Dear Stephanie Winston:

The above matter will be considered by the Civil Service Commission at a meeting to be held on **November 18, 2019 at 2:00 p.m. in Room 400**, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/CivilService under "Meetings" no later than end of day on Wednesday, November 13, 2019. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is again attached for your review; however, a hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

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SANDRA ENG
ACTING EXECUTIVE OFFICER

THE CIVIL SERVICE COMMISSION
CALENDAR
9

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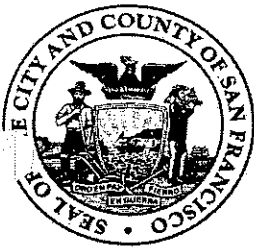
CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: Micki Callahan, Department of Human Resources
Mawuli Tugbenyoh, Department of Human Resources
Anna Biasbas, Department of Human Resources
Stephanie Mayorga-Tipton, Department of Human Resources
Jeanne Buick, Department of Human Resources
Michael Brown, Department of Public Health
Princess Campbell, Department of Public Health
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NOTICE OF CIVIL SERVICE COMMISSION MEETING

Mark Zeiter

Subject: APPEAL BY STEPHANIE WINSTON OF THE HUMAN
RESOURCES DIRECTOR'S DETERMINATION TO
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HARASSMENT AND RETALIATION.

Dear Mark Zeiter:

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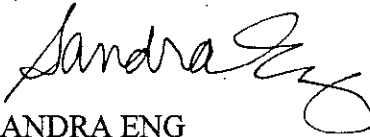
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The November 18, 2019 meeting agenda will be posted on the Civil Service Commission’s website at www.sfgov.org/CivilService under “Meetings” no later than end of day on Wednesday, November 13, 2019. Additionally, hard copies of DHR’s staff report regarding Stephanie Winston’s appeal will be available for review at the Commission’s office located at 25 Van Ness Avenue, Suite 720, San Francisco; however, you may also contact the Commission at CivilService@sfgov.org to request that a copy of the report be emailed to you instead.

You may contact me at Sandra.Eng@sfgov.org or (415) 252-3247 should you have any questions.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Sandra Eng", with a stylized flourish at the end.

SANDRA ENG
Acting Executive Officer

Cc: Micki Callahan, Department of Human Resources
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Carlos Cueva Alegria, Department of Human Resources
Trent Rhorer, Human Services Agency
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CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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October 10, 2019

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MICHAEL L. BROWN
EXECUTIVE OFFICER

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Stephanie Winston

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Dear Stephanie Winston:

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THIS DOCUMENT SUPPORTS
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CIVIL SERVICE COMMISSION



MICHAEL L. BROWN
Executive Officer

Attachment

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You may contact me at Michael.Brown@sfgov.org or (415) 252-3247 should you have any questions.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Michael L. Brown", written in a cursive style.

MICHAEL L. BROWN
Executive Officer

Cc: Micki Callahan, Department of Human Resources
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Carlos Cueva Alegria, Department of Human Resources
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APPEAL



CIVIL SERVICE COMMISSION

City and County of San Francisco

25 Van Ness Avenue, Suite 720

San Francisco, California 94102-6030

Executive Officer

(415) 252-3247

CSC Register No.

0184-19-6

To: X M. Callahan

CC: S. Gard
K. Howard
L. Simon
M. Valdez
L. Kim

APPEAL TO THE CIVIL SERVICE COMMISSION

INSTRUCTIONS:

Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.

TYPE OF APPEAL: (Check One)

- Examination Matters (by close of business on 5th working day)
- Employee Compensation Matters (by close of business on 7th working day) - Limited application
- Personal Service Contracts (Posting Period)
- Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days)
- Future Employability Recommendations (See Notice to Employee)

Stephanie Winston

1650 Mission

415-

Full Name of Appellant

Work Address

Work Telephone

1404

Clerk

IPAC Dept

Job Code

Title

Department

Residence Address

City

State

Zip

Home Telephone

Full Name of Authorized Representative (if any)

Telephone Number of Representative (including Area Code)

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the staff report, please provide your email address below.

Email:

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.

Check One:

Yes

No

Stephanie Winston

7-29-19

Original Signature of Appellant or Authorized Representative

Date

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/Civil_Service.

I Disagree with this Decision Because the investigation was not done thoroughly please look at my statement my witness's statement and also one of my co-worker's wrote a letter of facts to show that my supervisor has a history of the action that he has displayed this ^{behaving} many times in the past before me and last year & this year, so please can you do further investigation, also there is a manager ^{managers} that witness and there is a letter she wrote wrote a letter.

Thank you

PS: Please Review all
Document and fact's
and witness statements

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Stephanie Winston

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3092

Dear Ms. Winston:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint EEO File No. 3092.

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Asa King, Office of Civil Rights Analyst at the Human Services Agency (HSA). Mx. King reported your allegations that Mark Zeiter, 2914 HSA Social Work Supervisor, harassed you due to your race (African American) and sex (female), and retaliated against you for your prior EEO complaint. On June 17, 2019, DHR EEO received from Mx. King information regarding your additional allegation that Mr. Zeiter retaliated against you for your filing of the present complaint.

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Although the conduct you reported does not raise an inference of harassment or retaliation, some of the alleged conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Your department has taken appropriate action to address Mr. Zeiter's alleged conduct with him and will also conduct a mediation between you and Mr. Zeiter to address the concerns you raised. Accordingly, DHR EEO will administratively close your complaint without further investigation. In the future, should you experience any inappropriate conduct, please do not hesitate to contact Brenden Lim, OCR Analyst at HSA, at (415) 557-6140.

I. BACKGROUND AND ALLEGATIONS

You are employed as a 1404 Clerk at HSA, and you are responsible for scanning and uploading documents.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race (African American) and sex (female) and retaliated against you for filing an unspecified prior EEO complaint. That day, he instructed you to scan and upload a document. You scanned the document but could not validate it, and you realized you had tried unsuccessfully to scan the same document the previous day. Mr. Zeiter came to your desk, and you explained that since you could not validate the document, you would have to delete information from the internal task management system. He screamed at you and asked if you were complaining about having to delete information. You asked him to refrain from using that tone with you and informed him that his behavior was wrong, unprofessional, and disrespectful. He returned to his office and slammed the door.

After this incident, you immediately complained to Hugh Wang, 0923 HSA Manager II, and went to HSA OCR to make an in-person complaint with Mx. King. On April 24, 2019, you met with Mx. King again. You explained for the first time during this meeting that you believe Mr. Zeiter's conduct was sex-based harassment because he is male and you are female. You did not provide any information in support of your claim that his conduct was racially motivated or retaliatory.

On June 11, 2019, when reporting a new and separate complaint to HSA OCR, you also alleged Mr. Zeiter retaliated against you for complaining about his conduct on April 5, 2019. Since that date, he has allegedly increased your workload by giving you additional documents to scan.

On June 17, 2019, HSA took appropriate action to address with Mr. Zeiter his alleged conduct toward you. In addition, HSA has reported to DHR EEO that it will conduct mediation between you and Mr. Zeiter regarding the concerns you raised.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Insufficient Allegations to Support Harassment

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment. Severe behavior may be a single incident that is so extremely offensive that it seriously affects the recipient's work environment, and it is more likely to occur when the conduct is physical. Pervasive behavior occurs where there is a concerted pattern of repeated, routine, or generalized harassment. Occasional, isolated, sporadic, or trivial conduct does not give rise to a harassment claim.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race and sex by screaming at you about whether you were complaining about having to delete information from the task management system and slamming the door when he returned to his office. Although his alleged conduct was unwelcome and inappropriate, it is not objectively related to your race or sex. You did not provide any information linking the conduct to your race, and the only information you provided in support of your claim that it was based on your sex is that Mr. Zeiter is male and you are female. Nonetheless, Mr. Zeiter's allegedly screaming at you and slamming his office door, if true, would violate the City's Respect Policy, and HSA has taken appropriate action to address this conduct. In addition, HSA will conduct mediation with you and Mr. Zeiter to address the concerns you raised. Because your allegations do not raise an inference of harassment and your department is addressing the matter, DHR EEO is closing your complaint without further investigation.

B. Insufficient Allegations to Support Retaliation

To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when she opposes conduct she reasonably and in good faith believes to be discriminatory, or when she files a charge, testifies, assists, or participates in an investigation of discrimination. An adverse employment action is any objectively materially adverse action affecting the terms, conditions, or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement, or those that would dissuade a reasonable employee from supporting a discrimination complaint.

You alleged that on April 5, 2019, Mr. Zeiter retaliated against you for your prior EEO complaint by screaming at you and slamming his office door after you told him you would have to delete information regarding a scanned document from the task management system. You engaged in a protected activity when you made an EEO complaint; however, Mr. Zeiter's alleged conduct on a single occasion is not an adverse employment action. In addition, you did not provide any information supporting a causal link between your unspecified prior EEO complaint and Mr. Zeiter's conduct on April 5, 2019, such as information that the complaint was related to him or that he was even aware of the complaint. Therefore, your allegations do not raise an inference of retaliation.

You further alleged that Mr. Zeiter retaliated against you for your April 5, 2019 complaint against him by subsequently giving you additional documents to scan. You engaged in a protected activity when you made your complaint; however, you did not provide any information demonstrating that you suffered an adverse employment action by having to scan extra documents or that Mr. Zeiter gave the assignments because you filed a complaint. Therefore, your allegations do not raise an inference of retaliation.

Nonetheless, as explained above, HSA is taking appropriate action, including facilitating a mediation, to address these matters. Accordingly, DHR EEO is closing your complaint without further investigation.

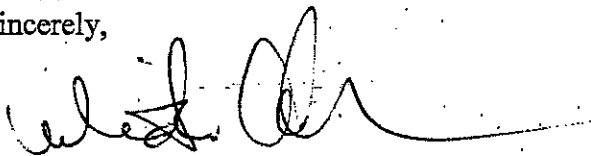
III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 3092, will not be investigated further and is administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

We appreciate that you reported your concerns so that they may be reviewed. Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,



Micki Callahan
Human Resources Director

c: Trent Rhorer, Executive Director, HSA
Luenna Kim, Human Resources Director, HSA
Brenden Lim, OCR Analyst, HSA
Linda C. Simon, Director, EEO and Leave Programs, DHR

Winston, Stephanie (HSA)

From: Stephanie Winston
Sent: Monday, April 8, 2019 3:21 PM
To: Winston, Stephanie (HSA)
Subject: I believe that I am working in a hostile environment since the incident...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I believe that I am working in a hostile environment since the incident on April 5 2019 with my supervisor screaming at me and everything now is seems like I'm working in a hostile environment where no one is speaking to me everyone that usually sits around me and speaks to me is not speaking to me but around 3 o'clock Miss Regina Maria N3b3 who was coming to put some documents in the mail and I told her a little bit about what happened to me on Friday, April 5, 2019 she says he has a habit of screaming at women especially and he screamed at her Mila ,Ina and Serena and she also let me know if I needed a witness she would be more than happy to do the honors of being a witness.

Sent from my iPhone

Doris Barone
Disaster Preparedness and Response Manager
CCSF Human Services Agency, Disaster Preparedness & Response
(415) 557-6444
Doris.Barone@sfgov.org
5/17/2019

Stephanie
CCSF Human Services Agency, DAAS-IHSS

Dear Stephanie:

This letter is to acknowledge that in late April/early May (I do not recall the exact date) I was privy to the exchange between yourself and Mark Zeiter here at 1640 Mission St.

My observation at the time of the incident was that there was a conversation between you and Mark where he was audibly frustrated and used a high tone to communicate. I was not aware of the context as I only began to listen when the tone became abnormally high for the space – the incident occurred right outside my office in an open workspace. At that time I did not hear you speak to him in a loud tone.

During the exchange my concern was that it seemed that the conversation should have occurred in a more private setting. The open workspace meant that all of the IHSS workers on the floor, as well as those of us situated in the surrounding offices, could clearly hear the incident.

I have given my statement to IHSS management and am stating what I provided to them in this letter.

Thank you,



Doris Barone

July 1, 2019

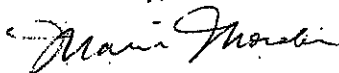
Dear Stephanie:

Per your request, I am providing you with information regarding an incident that occurred a couple of months ago involving one of our supervisors, Mr. Mark Zeiter and myself.

The day the incident took place, I was assigned at the window to assist providers visiting 77 Otis. It was a slow day and a provider walked in requesting to watch the enrollment video. I checked the list and no one was scheduled to watch the video at that time. I asked the provider to take a seat at Station #5. An IPAC staff assigned at Station #8 became upset that I took a "walk-in" and reported me to his supervisor, Mark Zeiter. After I assisted another provider at the window, I walked to the back office to speak to Mark. Before I said anything, he immediately said: **"To have providers wait is ridiculous!"** I was not given an opportunity to explain the situation. He walked away to go to his meeting. Later that afternoon, he apologized.

With regards to another incident which happened last year during an all-staff meeting, a female co-worker asked a question and Mark Zeiter responded to her question. The manner in which he spoke made my co-worker cry. He apologized to her after the meeting.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Zeiter".

May 16, 2019

2019 MAY 16 PM 1:39

My name is Stephanie Winston and I had a meeting today with my managers and I was told they have no witnesses also my supervisor Mark denied everything. But I have a witness Ms. Doris and Ms. [unclear] Both are in the IPAC unit. See attached Doc.

P.S. Please take further investigation because my complaint is valid and true.

Time 1:40pm

Stephanie Winston

Winston, Stephanie (HSA)

From: Stephanie Winston
Sent: Friday, June 28, 2019 8:55 AM
To: Winston, Stephanie (HSA)
Subject: I am also a document is bad on 627 2019 CMIMPS printer did not print..

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am also a document is bad on 627 2019 CMIMPS printer did not print all of the document so I have to go to My supervisor Mark Zeiter and ask him to Ask Sally Chung the supervisor of stairs which is my supervisor that takes my attendance to request from the state to reprint the document So I asked Mark to let me make sure the ink is good and everything before he sends the request Sally but when I came back to let him know everything was good he was talking to jingle and I stood at the door waiting patiently if you stop for a moment and start talking to me about what him and I were trying to get the request put in a want to know if it was ago and I told hi Sally Sally but when I came back to let him know everything was good he was talking to Django and I stood at the door waiting patiently so as I waited he starts his conversation for the moment asked me what it I knee at tell him that is ago he can go ahead and email sally so I respond it and let him know what I had done so jiggle Said anyway shut me up and I said to her you don't need to disrespectful me like that I didn't do nothing to you you mad because I reported that you stroke my face and touch my hair that's unprofessional of you to come at me like that I don't disrespect you so don't disrespect me so I went later on I end up having a conversation with Mark about it and he agreed that she was rude and disrespectful about jumping in like that .

Sent from my iPhone

Winston, Stephanie (HSA)

From: Stephanie Winston <
Sent: Wednesday, June 5, 2019 8:04 PM
To: Winston, Stephanie (HSA)
Subject: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached me and said Stephanie (in front of everyone: Irene, Jingle, Doris' door was open, and Israel) and asked me to send him my log from my scanning log. I said "ok I'll do that" and then he said it was because were having a one on one tomorrow and that he sent me an email about it. I said "you did? Something needs to happen before that meeting happens..." and he said "decline it" as if he was unaware of the proper mediation procedure, in front of everyone, sarcastically.

My union rep asked her about the follow up for the mediation.

I opened my email and I got a message from the EEO rep stating she is unaware that I was "disciplined" in some type of way during the meeting regarding the recap of my statement I gave on May 16, 2019. She mentioned the meditation She did not tell Hugh or Chin Yong about Doris or Regina being my witnesses.

I feel like I am being forced to jump through hoops to get this situation taken care of. As far as I know, there has been no disciplinary action taken towards Mark who has created a hostile work environment for me. I feel uncomfortable knowing that this has not been resolved. Additionally, I feel as though I have recently been given double the work which puts additional stress on me. I do not think it is appropriate to administer a performance evaluation during this time since there is a current investigation of an EEO complaint that I filed against him on April 5th.

I would feel more comfortable if he came to me in a way that was confidential, as one professionally should. Mark is still able to come to work without being disciplined. At times I feel unsafe at work because of Mark. I feel as though he is being protected while I am having to come to work under stress and feel unsafe, as a woman. He has a known history of screaming at women at the workplace. He has displayed this kind of behavior to me and others before. I feel as though he intimates me because of the abuse of power he has shown. I feel as though I am not being protected by management. I gave my statement and that should be enough, yet I am constantly having to provide evidence that I have witnesses and prove that he harassed me. I feel like my basic rights to do my job at my workplace without harassment are not being protected.

Respect is due where you give it. That being said, the golden rule is not being applied here. "Treat others how you want to be treated".

Sent from my iPhone

Winston, Stephanie (HSA)

From: Winston, Stephanie (HSA)
Sent: Thursday, June 6, 2019 10:30 AM
To: Blyth-Gaeta, Krista (HSA)
Cc: Gail Byrdsong; Law, Chun Yin (HSA); Wang, Hugh (HSA); King, Asa (HSA)
Subject: Requesting Mediation meeting
Attachments: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...; RE: Complaint Follow Up

To resolve the situation at had in regard to open EEO investigation on my supervisor Mark Because I'm working in a hostile environment He now starting to have me work harder than normal, and now this is retaliations.

Winston, Stephanie (HSA)

From: Stephanie Winston
Sent: Wednesday, April 10, 2019 11:49 AM
To: Winston, Stephanie (HSA)
Subject: On April 10, 2019 I was approached by a young lady named Jenny Chan...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On April 10, 2019 I was approached by a young lady named Jenny Chan she asked me if I would be interested in doing a lateral move to PA/PC/PG to the fourth floor due to department needing a clerk I asked her who gave her my name she told me Sylvie Leong which is her secretary she said she talk to two of the clarks and I told her flat out no which was Alina and Susan it feels really strange that she is asking me about this lateral move due to all the stuff that has been happening lately with my supervisor screaming at me and then me feeling like I'm working in a hostile environment because now people are not speaking to me because of the screaming that my supervisor did on Friday, April 5 2019 she assured me that it had nothing to do with anything that I have previously been dealing with because I didn't mention my supervisor and screamed at me ms Jeannie And I asked her what made her ask me about the lateral move she said I looked like a person that is approachable so I told her the only way I would if they pay me five to ten dollars more than what I also without me being on probation and their permanent position but apparently that wasn't the reason I feel that this is all connected to my supervisor screaming at me now they want me to be moved that's what I feel.

Sent from my iPhone

Winston, Stephanie (HSA)

From: Stephanie Winston
Sent: Wednesday, July 17, 2019 12:36 PM
To: Winston, Stephanie (HSA)
Subject: Today is July 8 I take lunch between 12 and 1230 jingle sits on the...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Today is July 8 I take lunch between 12 and 1230 jingle sits on the end where I was coming from the restaurant so I see her first she was looking at me like she was ready to beat me down so I look back at her and we stare at each other for a good minute but I felt more threatened there anything else, as though she's ready to fight type mode someone needs to talk to her because she's already been talked to about touching and putting her hands on my face and my hair and every since then she does not speak to at all this looking at me like she is ready to fight me needs to stop I am not here to be fighting anyone or getting intimidated by anyone because I reported that they did a sexual-harassment thing towards me this is documentation I also reported it to Miss Saba so she should definitely be reported to EEO an I also reported this to Mark the very next day please help me to ma this inappropriate conduct stop towards me .

Sent from my iPhone

STAFF REPORT



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0184-19-6
2. For Civil Service Commission Meeting of: March 16, 2020
3. Check One:
☐ Ratification Agenda
☐ Consent Agenda
☒ Regular Agenda
☐ Human Resources Director's Report
4. Subject: Appeal by Stephanie Winston of the Human Resources Director's determination to administratively close Winston's complaint of harassment and retaliation.
5. Recommendation: Adopt the report and deny Stephanie Winston's appeal.
6. Report prepared by: Carlos Cueva Alegria, DHR EEO Telephone number: (415) 557-4948
7. Notifications: Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: Micki Callahan

Date: March 5, 2019

9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

**Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102**

10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

CSC RECEIPT STAMP

Attachment

NOTIFICATIONS

Stephanie Winston (Appellant)

Mark Zeiter (Respondent)

Trent Rhorer

Executive Director
Human Services Agency
170 Otis Street, 8th Floor
San Francisco, CA 94103

Luenna Kim

Human Resources Director
Human Services Agency
1650 Mission Street, 2nd Floor
San Francisco, CA 94103

Asa King

OCR Analyst
Human Services Agency
1650 Mission Street, 2nd Floor
San Francisco, CA 94103

Micki Callahan

Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Linda C. Simon

Director, EEO and Leave Programs
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Mawuli Tugbénboh

Chief of Policy
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Carlos Cueva Alegria

EEO Programs Senior Specialist
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

CIVIL SERVICE COMMISSION REPORT

MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

THROUGH: Linda C. Simon, Director, EEO and Leave Programs

FROM: Carlos Cueva Alegria, EEO Programs Senior Specialist, DHR

DATE: March 5, 2020

EEO FILE NO: 3092

REGISTER NO: 0184-19-6

APPELLANT: Stephanie Winston

I. AUTHORITY

The San Francisco Charter, Section 10.103, and Civil Service Commission Rules provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to Civil Service Commission Rules, Section 103.3, the Civil Service Commission shall review and resolve appeals of the Human Resources Director's determinations.

II. BACKGROUND

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received notice that Appellant Stephanie Winston alleged that on April 5, 2019, her supervisor, Mark Zeiter, harassed her due to her race (African American) and sex (female) when Zeiter allegedly screamed at Winston and asked if she was complaining about having to delete information from the internal task management system following a failed attempt to scan a document. Winston also alleged that Zeiter retaliated against her by giving her more documents to scan.

In a letter dated June 28, 2019, the Human Resources Director informed Winston that although Winston's allegations did not meet the standards for a harassment or retaliation complaint, Zeiter's alleged screaming, if true, violated the City's Respect Policy. The letter also advised Winston that HSA had taken prompt appropriate action by removing Zeiter from supervising Winston, issuing Zeiter the City's Respect Policy and reminding Zeiter to be professional at all times. The letter further informed Winston that HSA would conduct mediation between Winston and Zeiter to address the concerns she raised in the complaint. However, this mediation never took place as Winston declined the mediation each time it was offered. Because Winston's

allegations did not raise an inference of harassment or retaliation and HSA took appropriate action to address Zeiter's alleged conduct, Winston's complaint was administratively closed without further investigation.

On July 29, 2019, Winston appealed the Human Resources Director's determination. On November 18, 2019, Civil Service Commission heard Winston's appeal of the Human Resources Director's determination to administratively close her complaint. The Commission voted to continue the matter pending the possibility of mediation and report back within three months.

This report provides information on the attempts to resolve the matter through mediation over the three months after the November 18, 2019 hearing and provides additional information to supplement the October 10, 2019 staff report.

A. Attempts to Mediate

Since the November 18, 2019 hearing, HSA offered mediation on three separate occasions with three different mediators. However, after initially agreeing to mediate, Winston declined to participate in mediation on all three occasions.

In December 2019, HSA contracted with mediator Carol Wright from CPS HR Consulting to conduct the mediation. Winston and her union representative, Gail Byrdsong, agreed to mediate the matter. On December 17, 2019, Wright explained that her process is to set aside a full day, with a three-hour session in the morning and, if needed, a three-hour session in the afternoon, to ensure that there is enough time to complete the process in one day. However, Byrdsong objected to Wright's recommendation that a full day be set aside for the mediation and said that her schedule would "never allow for a full day mediation." Wright informed Winston that Byrdsong is unable to schedule a full day for mediation and advised Winston of her options regarding the mediation. On December 18, 2019, Winston accused Wright of "trying to pressure us in doing this sooner" and told Wright that she felt that "this is a money thing with you like your [sic] only here to milk the cow." As a result, Winston requested a new mediator due to a lack of trust with Wright. Exhibit B, pp. 44 - 60.

The next day, December 19, 2019, Asa King, then-Office of Civil Rights Analyst, informed Winston and Byrdsong that HSA would still like to offer mediation and they would work to identify another mediator to facilitate. King also invited Winston and Byrdsong to suggest a mediator that they felt would be a good fit. HSA identified Dave Glib as a potential mediator. However, on January 6, 2020, Winston informed King for the first time that Winston preferred a female mediator. Exhibit C, pp. 62.

HSA still sought to mediate the conflict and chose to honor Winston's request so the department identified a female mediator, Michele Modena, to facilitate the mediation. After getting an agreement from Winston and Byrdsong to participate in mediation with Modena, HSA executed a contract with Modena. On January 28, 2020, Modena sent an introductory email to both Winston and Zeiter, which outlined her process and the "homework" that would be necessary for a successful mediation. On January 29, 2020, Winston replied that this process would not work for

her and again said that “the process is being forced on me to accept someone’s apology and forgive and forget.” Exhibit D, pp. 63 – 67.

Since then, HSA has not attempted to schedule another mediation as Winston has made clear that she does not wish to participate. Additionally, despite the invitation from King to identify a mediator that Winston and Byrdsong, felt would be a good fit, Winston and Byrdsong have not made any suggestions.

B. Investigation of April 5, 2019

The Human Resources Director closed Winston’s allegations regarding the April 5, 2019 incident because the allegations on their face were not related to Winston’s race or sex, and Winston did not provide any information to suggest the alleged conduct was related to her race or sex. Thus, because her allegations were not within EEO jurisdiction, the complaint was closed without further investigation by DHR EEO.

However, as the alleged conduct violated the City’s Respect Policy as well as departmental policies, HSA investigated the incident. Contrary to Winston’s assertions during the November 18, 2019 appeal hearing, in May 2019, the department interviewed witnesses, including the witnesses Winston identified. Chun Yin Law, In-Home Support Services (IHSS) Section Manager, interviewed the employees who sit in the area and witnessed the April 5, 2019 incident. However, none of these employees corroborated that Zeiter yelled at Winston.

On May 16, 2019, Law and Hugh Wang, IHSS Section Manager, met with Winston and shared with her that the individuals present during the April 5, 2019 incident denied that Zeiter yelled at Winston. During that meeting, Winston identified two additional witnesses, Maria Morabe and Doris Padilla Barone. These witnesses are the same individuals that Winston identifies in her appeal as supporting her claim. After the May 16, 2019 meeting, Law and Wang interviewed Morabe and Barone. Neither witness supported Winston’s allegation that Zeiter yelled or screamed at her. Morabe said that she was nowhere near the area at the time of the incident and could not provide any information. Barone stated that while Zeiter was speaking loudly, Zeiter was not screaming or yelling. Therefore, Winston’s own witnesses did not corroborate that Zeiter was yelling. Exhibit F, pp. 73 – 76.

Nonetheless, the department counseled Zeiter regarding the City’s Respect Policy, reminded him of his obligations as a supervisor to model appropriate workplace behavior, and Zeiter has remained willing to participate in mediation to resolve the conflict.

C. De-Escalation Training

During the November 18, 2019 appeal hearing, Winston stated that she was retaliated against by being required to attend De-Escalation Training. She stated, “I shouldn’t be in a de-escalation class if I didn’t do nothing.” She expressed that she felt it was unfair that after the April 5, 2019 incident, she was required to attend De-Escalation Training. However, based on information from the department, Winston was aware that the training requirement was not in response to the

April 5, 2019 incident. During a Performance Appraisal Review (PAR) meeting around March 15, 2019, weeks before the incident, Winston's supervisors, Zeiter and Chung, informed Winston that one of the goals on the PAR was to attend the De-Escalation Training, which was scheduled for April 9, 2019. As Winston acknowledged during the November 18, 2019 hearing, she purposely skipped the April 9, 2019 training course. As a result, Law had to reschedule Winston to take the training on May 2, 2019. Exhibit G, pp. 77-80.

III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

The issue on appeal is whether the Human Resources Director appropriately administratively closed Winston's complaint without conducting further investigation. Below is a summary of the allegations presented in the October 10, 2019 staff report.

IV. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Winston's Harassment Claim

As stated above, there is no indication that Zeiter screamed at Winston or that it was due to race or sex. Winston's own witnesses did not corroborate that Zeiter was screaming. Nevertheless, HSA still took action and reminded Zeiter that as a supervisor, Zeiter must model appropriate behavior to subordinates at all times. Additionally, merely being of a different sex does not make conduct sex-based. The conduct provided by Winston shows that Zeiter was responding to employees about how to perform work. In Winston's case, Zeiter was referencing the process for scanning a document, which is not sex based.

B. Winston's Retaliation Claim

Winston alleged that Zeiter screaming at Winston and gave Winston extra documents to scan in retaliation for Winston's prior and current EEO complaints. Having additional documents to scan and screaming on this one occasion are not adverse employment actions because scanning documents is one of Winston's duties and would not impair a reasonable employee's job performance or prospects for advancement or dissuade a reasonable employee from supporting a discrimination complaint.

C. Allegations Raised on Appeal

During the November 18, 2019 hearing, Winston alleged Winston was subjected to retaliation for filing EEO complaints against Zeiter and Kit Wah Tang, 2904 Human Services Technician. As previously addressed in the October 10, 2019 Staff Report, the allegations were not adverse employment actions and were addressed and administratively closed in Winston's separate EEO complaint, EEO File No. 3165.

V. RECOMMENDATION

As discussed above, HSA attempted to mediate as requested by the Commission but Winston

rejected it each time. Therefore, the issue on appeal remains the same as in November 18, 2019, and the Human Resources Director's decision should be upheld and the appeal should be denied.

VI. APPENDIX/ATTACHMENTS TO THE REPORT

Attached to this report are the following:

- Exhibit A: November 18, 2019 Civil Service Commission Report with exhibits, pp. 7 – 43.
- Exhibit B: Email thread showing mediation attempts with Carol Wright, pp. 44 – 60.
- Exhibit C: Email thread showing mediation attempts with Dave Gilb, pp. 61 – 62.
- Exhibit D: Email thread showing mediation attempts with Michele Modena, pp. 63 – 67.
- Exhibit E: Email thread showing mediation attempts with Winston in 2019, pp. 68 – 72.
- Exhibit F: Email thread showing HSA interviews of Winston's Witnesses, pp. 73 – 76.
- Exhibit G: Email thread showing prior discussion with Winston regarding de-escalation classes, pp. 77 – 80.

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EXHIBIT A

November 18, 2019 Civil Service Commission Report with exhibits




CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0184-19-6
2. For Civil Service Commission Meeting of: October 21, 2019
3. Check One: Ratification Agenda
 Consent Agenda
 ✓ Regular Agenda
 Human Resources Director's Report
4. Subject: Appeal by Stephanie Winston of the Human Resources Director's
 determination to administratively close Winston's complaint of harassment
 and retaliation.
5. Recommendation: Adopt the report and deny Stephanie Winston's appeal.
6. Report prepared by: Carlos Cueva Alegria, DHR EEO Telephone number: (415) 557-4948
7. Notifications: Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda:

 Human Resources Director: Micki Callahan 
 Date: October 10, 2019
9. Submit the original time-stamped copy of this form and person(s) to be notified
(see Item 7 above) along with the required copies of the report to:

Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

10. Receipt-stamp this form in the "CSC RECEIPT STAMP"
box to the right using the time-stamp in the CSC Office.

Attachment

CSC-22 (11/97)

CSC RECEIPT STAMP
11:11AM 01 OCT 2019
CIVIL SERVICE COMMISSION

NOTIFICATIONS

Stephanie Winston (Appellant)

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Mark Zeiter (Respondent)

Linda C. Simon
Director, EEO and Leave Programs
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Trent Rhorer
Executive Director
Human Services Agency
170 Otis Street, 8th Floor
San Francisco, CA 94103

Mawuli Tugbenyoh
Chief of Policy
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Luenna Kim
Human Resources Director
Human Services Agency
1650 Mission Street, 2nd Floor
San Francisco, CA 94103

Carlos Cueva Alegria
EEO Programs Senior Specialist
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Asa King
OCR Analyst
Human Services Agency
1650 Mission Street, 2nd Floor
San Francisco, CA 94103

CIVIL SERVICE COMMISSION REPORT

MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director
Department of Human Resources

FROM: Carlos Cueva Alegria, EEO Programs Senior Specialist

DATE: October 10, 2019

EEO FILE NO: 3092

REGISTER NO: 0184-19-6

APPELLANT: Stephanie Winston

I. AUTHORITY

The San Francisco Charter, Section 10.103 and Civil Service Commission (CSC) Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to CSC Rule 103.3, the CSC shall review and resolve appeals of the Human Resources Director's determinations.

II. BACKGROUND

Since September 25, 2017, Stephanie Winston has been employed as a 1404 Clerk with the City's Human Services Agency (HSA). Winston is responsible for scanning and uploading documents. Winston's supervisor is Sally Lamus, 2907 Eligibility Worker Supervisor, HSA, and at the time of the complaint, Winston also reported to Mark Zeiter, 2914 HSA Social Work Supervisor, HSA.

A. Appellant's Complaint, EEO File No. 3092

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Asa King, Office of Civil Rights Analyst at the Human Services Agency (HSA). King reported Winston's allegations that Zeiter harassed Winston due to Winston's race (African American) and sex (female), and retaliated against Winston for filing a prior EEO complaint, EEO File No. 3015, when on April 5, 2019, Zeiter screamed at Winston and asked if Winston was complaining about having to delete information to scan a document.

On June 17, 2019, King reported that Winston alleged Zeiter subjected Winston to retaliation for reporting the April 5, 2019 incident by increasing Winston's workload and giving Winston additional documents to scan.

B. Human Resources Director's Administrative Closure

In a letter dated June 28, 2019, the Human Resources Director informed Winston that although Winston's allegations did not meet the standards for a harassment or retaliation complaint, Zeiter's conduct, if true, violated the City's Respect Policy. The letter also advised Winston that HSA had taken prompt appropriate action to address the alleged conduct and that HSA would conduct mediation between Winston and Zeiter to address the concerns Winston raised in the complaint. As Winston's allegations did not raise an inference of harassment or retaliation and HSA took appropriate action to address Zeiter's alleged conduct, Winston's complaint was administratively closed without further investigation.

C. Winston's Appeal

On July 29, 2019, Winston appealed the Human Resources Director's determination. In support of the appeal, Winston provided statements from other employees to corroborate Winston's allegation that Zeiter yelled at Winston. This new information, however, does not change the Human Resources Director's determination.

Winston also raised four additional allegations of retaliation that were not raised in the initial complaint; therefore, these allegations are not properly before the Commission. Additionally, three of these allegations have already been addressed and were administratively closed in a subsequent complaint, EEO File No. 3165.

III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

The issue on appeal is whether the Human Resources Director appropriately administratively closed Winston's complaint without conducting further investigation.

IV. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Winston's Harassment Claim

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) the appellant was subjected to physical, verbal, or visual conduct on account of appellant's membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of the appellant's employment and create an abusive working environment.

Winston alleged that Zeiter harassed Winston due to Winston's race and sex when Zeiter screamed at Winston. This conduct was unprofessional, inappropriate, and violated the City's Respect Policy if true. Therefore, HSA took action to address this alleged conduct and reminded

Zeiter that as a supervisor, Zeiter must model appropriate behavior to subordinates at all times. Additionally, HSA offered to mediate with Winston and Zeiter, but on September 11, 2019, in a conversation with King, Winston declined to participate in mediation. However, HSA took additional action as Winston no longer reports to Zeiter. Nevertheless, Zeiter screaming at Winston was not objectively related to Winston's race or sex and Winston did not provide any information linking the conduct to Winston's race. The only information Winston provided in support of this claim that Zeiter harassed Winston due to Winston's sex is that Zeiter is male and Winston is female. However, merely being of a different sex does not make conduct sex-based.

Further, in support of the appeal, Winston provided information that Zeiter has a history of speaking loudly and interrupting other female employees on unspecified dates. Winston provided an account from an employee who overheard Zeiter on an unspecified date using "a high tone to communicate" with Winston. Another employee provided an account of Zeiter saying to the employee, "To have providers wait is ridiculous" without giving the employee a chance to explain the situation, and this employee provided another account of a female employee crying due to the manner in which Zeiter responded to the female employee's question. However, these accounts do not add new information and reiterate what Winston already alleged. In addition, this additional information does not link Zeiter's screaming at Winston to Winston's sex. Zeiter's screaming at Winston was about the process for scanning a document and was not sex based. Therefore, even with this new information, Winston has still not demonstrated that Zeiter subjected Winston to harassment based on Winston's sex. Nevertheless, HSA still took action to address this alleged conduct.

B. Winston's Retaliation Claim

To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) the appellant engaged in a protected activity; (2) the appellant suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action.

Winston alleged that Zeiter screamed at Winston and gave Winston extra documents to scan in retaliation for Winston's prior and current EEO complaints. Winston engaged in protected activity when filing EEO complaints; however, having additional documents to scan is not an adverse employment action because scanning documents is one of Winston's duties. Further, Zeiter's alleged screaming on a single occasion is not an adverse employment action because it did not affect the terms, conditions, or privileges of Winston's employment. Screaming at Winston on a single occasion, while inappropriate, would not impair a reasonable employee's job performance or prospects for advancement, and would not dissuade a reasonable employee from supporting a discrimination complaint. Similarly, having to scan extra documents would not impair a reasonable employee's job performance or prospects for advancement, and would not dissuade a reasonable employee from supporting a discrimination complaint. Therefore, Winston's allegations of retaliation do not meet the standards requiring further investigation.

C. Allegations Raised on Appeal

For the first time in this appeal, Winston alleged Winston was subjected to retaliation for filing EEO complaints against Zeiter and Kit Wah Tang, 2904 Human Services Technician, when:

1. On April 10, 2019, Jeannie Chan, 2913 Program Specialist, asked if Winston wanted to move to the 4th floor as a lateral move;
2. On June 5, 2019, Zeiter sarcastically told Winston to cancel their one on one meeting;
3. On June 27, 2019, Tang interrupted Winston and was rude and disrespectful; and
4. On July 8, 2019, Tang looked at Winston as though Tang wanted to fight Winston.

Allegation 1 is not properly before the commission because Winston did not file an EEO complaint about this allegation. However, allegation 1 is not an adverse employment action because Chan asked whether Winston wanted to move to the 4th floor and when Winston declined, no action was taken. Chan's question did not affect the terms, conditions, or privileges of Winston's employment, would not impair a reasonable employee's job performance or prospects for advancement, and would not dissuade a reasonable employee from supporting a discrimination complaint. Therefore, since Winston did not suffer an adverse employment action, allegation 1 does not meet the standards to warrant further investigation.

The remaining allegations are also not properly before the Commission as they were not reported as part of this complaint. Further, allegations 2 through 4 have been administratively closed in a separate complaint filed by Winston, EEO File No. 3165. Therefore, since those allegations were addressed in a separate complaint, they will not be addressed in this appeal.

V. RECOMMENDATION

For the reasons set forth above, the Human Resources Director's decision should be upheld and the appeal should be denied.

VI. APPENDIX/ATTACHMENTS TO THE REPORT

Attached to this report are the following:

- Exhibit A: Department Report of Employment Discrimination Complaint, dated May 6, 2019, with attached April 8, 2019 email, pp. 5 – 9.
- Exhibit B: Human Resources Director's Letter of Determination to Stephanie Winston, dated June 28, 2019, pp. 10 – 14.
- Exhibit C: Stephanie Winston's Appeal to the Civil Service Commission, dated July 27, 2019, pp. 15 – 30.
- Exhibit D: CSC Notice of Receipt of Appeal and Acknowledgement Letter to Stephanie Winston dated July 30, 2019, pp. 31 – 34.

EXHIBIT A

Department Report of Employment Discrimination Complaint, dated May 6, 2019, with attached April 8, 2019 email.

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT* Report Within Five Working Days of Receipt of Complaint*

Return to: Linda C. Simon, Director, DHR EEO Division, One South Van Ness, 4th Floor, San Francisco, CA 94103; linda.simon@sfgov.org

1. Department/Worksite: Human Services Agency/DAAS-IHSS-1650 Mission
2. Complainant: Stephanie Winston Tel. No. (Work): (415) 557-6729
Address: [REDACTED] Tel. No. (Home): [REDACTED]
Personal E-mail: [REDACTED] DSW #: [REDACTED]
3. Complaint Filing Date: April 5, 2019 Classification: 1404
4. Complainant's Current Employment Status (circle one):
PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE

5. Basis of Discrimination (specify):

- ☒ Race: African American
☐ Color: _____
☐ Religion: _____
☐ Creed: _____
☐ Sex: _____
☐ National Origin: _____
☐ Ethnicity: _____
☐ Age: _____
☐ Disability/Medical Condition: _____
☐ Political Affiliation: _____
☐ Sexual Orientation: _____
☐ Ancestry: _____
☐ Marital or Domestic Partner Status: _____
☐ Gender Identity: _____
☐ Parental Status: _____
☐ Veteran Status: _____
☐ Other Non-Merit Factors: _____
☒ Retaliation: prior EEO activity

6. Issue complained of:

- ☐ Denial of Employment
☐ Denial of Training
☐ Denial of Promotion
☐ Denial of Reasonable Accommodation
☐ Termination
☐ Lay-off
☐ Constructive Discharge
☐ Disciplinary Action
☐ Harassment
☐ Work Assignment
☒ Sexual Harassment
☐ Compensation
☐ Other (please specify): _____

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s), provide DSW # for Accused/Respondent(s): (Attach letter of complaint)

Stephanie Winston (Complainant/Winston), a 1404 Human Services Agency (HSA) Clerk, alleged she was subjected to discrimination based on race, retaliation, and sexual harassment by Mark Zeiter (Zeiter [REDACTED]), a 2914 HSA Social Work Supervisor, due to filing a prior EEO complaint. HSA's Office of Civil Rights (OCR) was notified of Complainant's allegations on April 5, 2019 when Complainant made her complaint in-person with OCR. On April 8, 2019, Complainant also emailed additional information concerning her allegations. (Please see email attached.) At Complainant's request, on April

24, 2019 OCR held a subsequent intake interview with Complainant and her union representative, Gail Byrdsong, SEIU Local 1021 Field Representative.

Complaint

Complainant is responsible for scanning and uploading documents. On April 5, 2018, Zeiter instructed Complainant to scan and upload a document. She scanned the document and attempted to upload it, but was having technical difficulties doing so. Complainant realized that she had previously unsuccessfully attempted to upload the same document on April 4, 2019. Zeiter came to Complainant's workstation to view the error message she was receiving on her computer when she attempted to upload the document. Complainant explained to Zeiter that since she had not been able to scan the document, she would need to delete information from the internal task management system. Complainant alleged that Zeiter responded by screaming at her and asked her if she was complaining about having to delete information. She stated that she responded by asking Zeiter to refrain from taking that tone with her and informed him that his behavior was wrong, unprofessional, and disrespectful. Complainant alleged that Zeiter then went into his office and slammed the door. Complainant explained that shortly thereafter Zeiter left his office and went to another location. After the incident, Complainant immediately informed Hugh Wang (Wang [REDACTED]), a 0923 HSA Manager II, of her allegations and made an EEO complaint in-person with OCR.

On April 24, 2019, Complainant stated that she now believes that Zeiter's actions were sexual harassment because Zeiter is a male and she is a female. She further stated that Zeiter's actions were discriminatory against her due to her race. She alleged that she now feels uncomfortable working with Zeiter and attempts to avoid all unnecessary interaction with him.

Remedy

Complainant would like to meet with Zeiter to informally mediate her complaint. Chun Yin Law, a 0923 HSA In-Home Supportive Services Section Manager, has been instructed to facilitate a conversation with Complainant and Zeiter with assistance from the Employee Assistance Program.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes ☐ No ☒

If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes ☒ No ☐

Name: Gail Byrdsong, Field Representative Organization/Firm: SEIU Local 1021

Address: 350 Rhode Island, Suite 100 South Bldg. San Francisco, CA 94103

Phone No.: 415-361-1994

- *10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal)

DHR to review and advise of next action.

- *10a. Name, position, and phone number of person who will implement recommended steps:
DHR to review and advise of next action.

11. Completed by: Asa King, OCR Analyst

Date: May 6, 2019

Address: 1650 Mission Street San Francisco, CA 94103

Tel. No. (415) 557-6613

- *12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

- ☐ Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

- ☐ Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for Micki Callahan, Human Resources Director

Date _____

King, Asa (HSA)

To: King, Asa (HSA)
Subject: RE: Stephanie Winston

From: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>
Sent: Monday, April 8, 2019 8:40 AM
To: Chung, Sally (HSA) <sally.chung@sfgov.org>
Cc: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>; Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>; Lim, Brenden (HSA) <Brenden.Lim@sfgov.org>
Subject: complaint

Or Friday, April 5 2019 I was working mastering in my job in every capacity I was working so hard that I was not able to take lunch at 12 o'clock I asked my supervisor if I could take a later lunch at 3:30 because the day had gone by so fast that's when I was able to settle down and stop so I took lunch around 330. At 345 my supervisor Mark Zeitzer walked up and asked me to scan this IPP into X-Files so I a stop my lunch with no hesitation opened up the scanning computer and began to scan it when he was pulled away by two employees one by the name of Irene and other Carlos he told me he would be right back go ahead and continue I did just that and didn't realize that the document that I was trying to scan was not allowing me to validate it I didn't realize that this was the same document I returned to my supervisor on April 4 2019 I put a sticky note on the document stating that this was from another county an could not be scanned, that's the reason why I put a sticky note on it and put it on my supervisors Mark Zeiter desk, because they were in a meeting when I was trying to let mark know about this document. So moving forward he came back after he was done with the other employees and I showed him that it would not let me validate it I asked Mark this is the document that I gave back to you yesterday he said yes I said it now it's in my queue flow and I now I have delete it he begins screaming at me saying are you complaining about having to delete something I said hey don't take that tone with me why are you screaming at me he still began screaming then he stormed away and as he stormed away I said you wrong Mark that is unprofessional inappropriate insensitive and disrespectful for you to be talking to me like that and screaming and stretching your eyes wow. So he went into his office is slammed the door took his coat off apparently and came back out without his coat on and stormed out the office and I went up to my supervisors office Sally Chung Office to report what he had done she was not there so I spoke to Hugh which is another manager and he listen to what I had to say about what had just and he had a lot of Sympathy for me. He let me know he will be reporting this to Marks supervisor About what happened between my supervisor Mark Zeiter and myself, there was also other people around that I'm sure heard everything jingle Janet and Miss Doris office is right behind me so I'm sure they heard everything, I was so upset I was in tears and then went down to the second floor to the EEO end up speaking to Asia I told her what happened between my supervisor and myself with his screaming at me unprofessional inappropriate an disrespectful he had done This to me before me so Asia said we would take this up on Monday because it was 4:55 when I was informing her about everything.

EXHIBIT B

Human Resources Director's Letter of Determination to Stephanie Winston, dated June 28, 2019

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Stephanie Winston
[REDACTED]

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3092

Dear Ms. Winston:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint EEO File No. 3092.

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Asa King, Office of Civil Rights Analyst at the Human Services Agency (HSA). Mx. King reported your allegations that Mark Zeiter, 2914 HSA Social Work Supervisor, harassed you due to your race (African American) and sex (female), and retaliated against you for your prior EEO complaint. On June 17, 2019, DHR EEO received from Mx. King information regarding your additional allegation that Mr. Zeiter retaliated against you for your filing of the present complaint.

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Although the conduct you reported does not raise an inference of harassment or retaliation, some of the alleged conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Your department has taken appropriate action to address Mr. Zeiter's alleged conduct with him and will also conduct a mediation between you and Mr. Zeiter to address the concerns you raised. Accordingly, DHR EEO will administratively close your complaint without further investigation. In the future, should you experience any inappropriate conduct, please do not hesitate to contact Brenden Lim, OCR Analyst at HSA, at (415) 557-6140.

I. BACKGROUND AND ALLEGATIONS

You are employed as a 1404 Clerk at HSA, and you are responsible for scanning and uploading documents.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race (African American) and sex (female) and retaliated against you for filing an unspecified prior EEO complaint. That day, he instructed you to scan and upload a document. You scanned the document but could not validate it, and you realized you had tried unsuccessfully to scan the same document the previous day. Mr. Zeiter came to your desk, and you explained that since you could not validate the document, you would have to delete information from the internal task management system. He screamed at you and asked if you were complaining about having to delete information. You asked him to refrain from using that tone with you and informed him that his behavior was wrong, unprofessional, and disrespectful. He returned to his office and slammed the door.

After this incident, you immediately complained to Hugh Wang, 0923 HSA Manager II, and went to HSA OCR to make an in-person complaint with Mx. King. On April 24, 2019, you met with Mx. King again. You explained for the first time during this meeting that you believe Mr. Zeiter's conduct was sex-based harassment because he is male and you are female. You did not provide any information in support of your claim that his conduct was racially motivated or retaliatory.

On June 11, 2019, when reporting a new and separate complaint to HSA OCR, you also alleged Mr. Zeiter retaliated against you for complaining about his conduct on April 5, 2019. Since that date, he has allegedly increased your workload by giving you additional documents to scan.

On June 17, 2019, HSA took appropriate action to address with Mr. Zeiter his alleged conduct toward you. In addition, HSA has reported to DHR EEO that it will conduct mediation between you and Mr. Zeiter regarding the concerns you raised.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Insufficient Allegations to Support Harassment

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment. Severe behavior may be a single incident that is so extremely offensive that it seriously affects the recipient's work environment, and it is more likely to occur when the conduct is physical. Pervasive behavior occurs where there is a concerted pattern of repeated, routine, or generalized harassment. Occasional, isolated, sporadic, or trivial conduct does not give rise to a harassment claim.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race and sex by screaming at you about whether you were complaining about having to delete information from the task management system and slamming the door when he returned to his office. Although his alleged conduct was unwelcome and inappropriate, it is not objectively related to your race or sex. You did not provide any information linking the conduct to your race, and the only information you provided in support of your claim that it was based on your sex is that Mr. Zeiter is male and you are female. Nonetheless, Mr. Zeiter's allegedly screaming at you and slamming his office door, if true, would violate the City's Respect Policy, and HSA has taken appropriate action to address this conduct. In addition, HSA will conduct mediation with you and Mr. Zeiter to address the concerns you raised. Because your allegations do not raise an inference of harassment and your department is addressing the matter, DHR EEO is closing your complaint without further investigation.

B. Insufficient Allegations to Support Retaliation

To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when she opposes conduct she reasonably and in good faith believes to be discriminatory, or when she files a charge, testifies, assists, or participates in an investigation of discrimination. An adverse employment action is any objectively materially adverse action affecting the terms, conditions, or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement, or those that would dissuade a reasonable employee from supporting a discrimination complaint.

You alleged that on April 5, 2019, Mr. Zeiter retaliated against you for your prior EEO complaint by screaming at you and slamming his office door after you told him you would have to delete information regarding a scanned document from the task management system. You engaged in a protected activity when you made an EEO complaint; however, Mr. Zeiter's alleged conduct on a single occasion is not an adverse employment action. In addition, you did not provide any information supporting a causal link between your unspecified prior EEO complaint and Mr. Zeiter's conduct on April 5, 2019, such as information that the complaint was related to him or that he was even aware of the complaint. Therefore, your allegations do not raise an inference of retaliation.

You further alleged that Mr. Zeiter retaliated against you for your April 5, 2019 complaint against him by subsequently giving you additional documents to scan. You engaged in a protected activity when you made your complaint; however, you did not provide any information demonstrating that you suffered an adverse employment action by having to scan extra documents or that Mr. Zeiter gave the assignments because you filed a complaint. Therefore, your allegations do not raise an inference of retaliation.

Nonetheless, as explained above, HSA is taking appropriate action, including facilitating a mediation, to address these matters. Accordingly, DHR EEO is closing your complaint without further investigation.

III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 3092, will not be investigated further and is administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

We appreciate that you reported your concerns so that they may be reviewed. Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,

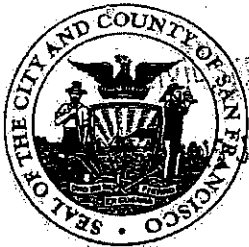


Micki Callahan
Human Resources Director

c: Trent Rhorer, Executive Director, HSA
Luenna Kim, Human Resources Director, HSA
Brenden Lim, OCR Analyst, HSA
Linda C. Simon, Director, EEO and Leave Programs, DHR

EXHIBIT C

Stephanie Winston's Appeal to the Civil Service Commission, dated July 27, 2019



CIVIL SERVICE COMMISSION
City and County of San Francisco
25 Van Ness Avenue, Suite 720
San Francisco, California 94102-6030
Executive Officer
(415) 252-3247

CSC Register No.

0184-19-6

TO: M. Callahan

CC: S. Gard
K. Howard
L. Simon
M. Valdez
L. Kira

APPEAL TO THE CIVIL SERVICE COMMISSION

INSTRUCTIONS:

Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.

TYPE OF APPEAL: (Check One)

- ☐ Examination Matters (by close of business on 5th working day)
☐ Employee Compensation Matters (by close of business on 7th working day) - Limited application
☐ Personal Service Contracts (Posting Period)
☐ Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days)
☐ Future Employability Recommendations (See Notice to Employee)

Stephanie Winston

Full Name of Appellant

1650 Mission

Work Address

415-

Work Telephone

1404 Clerk

Job Code

Title

IPAC Dept

Department

Residence Address

City

State

Zip

Home Telephone

Full Name of Authorized Representative (if any)

Telephone Number of Representative (including Area Code)

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email:

Stephanie.Winston@sfgov.org or [REDACTED]

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.

Check One:

Yes

No

Stephanie Winston

Original Signature of Appellant or Authorized Representative

7-29-19

Date

CSC-12 (10/14)

Date Received by Civil Service Commission:

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/Civil_Service.

I Disagree with this Decision Because the Investigation was not done thoroughly please Look at my Statement my witness's Statement and also one of my co-worker's wrote a Letter of facts to show that my supervisor has a history of the action that he has displayed this ^{or discriminated} many times in the past before me and last year & this year. So please can you do further Investigation, also there is a manager that witness and there is a letter she ~~wrote~~ wrote a letter.

Thank you

PS: Please Review all Document and fact's and witness statements

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Stephanie Winston
[REDACTED]

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3092

Dear Ms. Winston:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint EEO File No. 3092.

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Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Although the conduct you reported does not raise an inference of harassment or retaliation, some of the alleged conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Your department has taken appropriate action to address Mr. Zeiter's alleged conduct with him and will also conduct a mediation between you and Mr. Zeiter to address the concerns you raised. Accordingly, DHR EEO will administratively close your complaint without further investigation. In the future, should you experience any inappropriate conduct, please do not hesitate to contact Brenden Lim, OCR Analyst at HSA, at (415) 557-6140.

I. BACKGROUND AND ALLEGATIONS

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You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race (African American) and sex (female) and retaliated against you for filing an unspecified prior EEO complaint. That day, he instructed you to scan and upload a document. You scanned the document but could not validate it, and you realized you had tried unsuccessfully to scan the same document the previous day. Mr. Zeiter came to your desk, and you explained that since you could not validate the document, you would have to delete information from the internal task management system. He screamed at you and asked if you were complaining about having to delete information. You asked him to refrain from using that tone with you and informed him that his behavior was wrong, unprofessional, and disrespectful. He returned to his office and slammed the door.

After this incident, you immediately complained to Hugh Wang, 0923 HSA Manager II, and went to HSA OCR to make an in-person complaint with Mx. King. On April 24, 2019, you met with Mx. King again. You explained for the first time during this meeting that you believe Mr. Zeiter's conduct was sex-based harassment because he is male and you are female. You did not provide any information in support of your claim that his conduct was racially motivated or retaliatory.

On June 11, 2019, when reporting a new and separate complaint to HSA OCR, you also alleged Mr. Zeiter retaliated against you for complaining about his conduct on April 5, 2019. Since that date, he has allegedly increased your workload by giving you additional documents to scan.

On June 17, 2019, HSA took appropriate action to address with Mr. Zeiter his alleged conduct toward you. In addition, HSA has reported to DHR EEO that it will conduct mediation between you and Mr. Zeiter regarding the concerns you raised.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Insufficient Allegations to Support Harassment

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment. Severe behavior may be a single incident that is so extremely offensive that it seriously affects the recipient's work environment, and it is more likely to occur when the conduct is physical. Pervasive behavior occurs where there is a concerted pattern of repeated, routine, or generalized harassment. Occasional, isolated, sporadic, or trivial conduct does not give rise to a harassment claim.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race and sex by screaming at you about whether you were complaining about having to delete information from the task management system and slamming the door when he returned to his office. Although his alleged conduct was unwelcome and inappropriate, it is not objectively related to your race or sex. You did not provide any information linking the conduct to your race, and the only information you provided in support of your claim that it was based on your sex is that Mr. Zeiter is male and you are female. Nonetheless, Mr. Zeiter's allegedly screaming at you and slamming his office door, if true, would violate the City's Respect Policy, and HSA has taken appropriate action to address this conduct. In addition, HSA will conduct mediation with you and Mr. Zeiter to address the concerns you raised. Because your allegations do not raise an inference of harassment and your department is addressing the matter, DHR EEO is closing your complaint without further investigation.

B. Insufficient Allegations to Support Retaliation

To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when she opposes conduct she reasonably and in good faith believes to be discriminatory, or when she files a charge, testifies, assists, or participates in an investigation of discrimination. An adverse employment action is any objectively materially adverse action affecting the terms, conditions, or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement, or those that would dissuade a reasonable employee from supporting a discrimination complaint.

You alleged that on April 5, 2019, Mr. Zeiter retaliated against you for your prior EEO complaint by screaming at you and slamming his office door after you told him you would have to delete information regarding a scanned document from the task management system. You engaged in a protected activity when you made an EEO complaint; however, Mr. Zeiter's alleged conduct on a single occasion is not an adverse employment action. In addition, you did not provide any information supporting a causal link between your unspecified prior EEO complaint and Mr. Zeiter's conduct on April 5, 2019, such as information that the complaint was related to him or that he was even aware of the complaint. Therefore, your allegations do not raise an inference of retaliation.

You further alleged that Mr. Zeiter retaliated against you for your April 5, 2019 complaint against him by subsequently giving you additional documents to scan. You engaged in a protected activity when you made your complaint; however, you did not provide any information demonstrating that you suffered an adverse employment action by having to scan extra documents or that Mr. Zeiter gave the assignments because you filed a complaint. Therefore, your allegations do not raise an inference of retaliation.

Nonetheless, as explained above, HSA is taking appropriate action, including facilitating a mediation, to address these matters. Accordingly, DHR EEO is closing your complaint without further investigation.

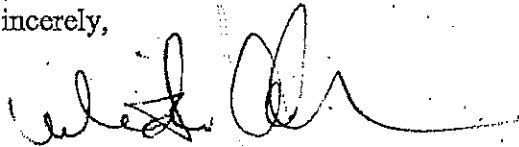
III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 3092, will not be investigated further and is administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

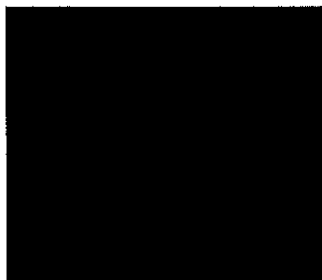
We appreciate that you reported your concerns so that they may be reviewed. Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,



Micki Callahan
Human Resources Director

c: Trent Rhorer, Executive Director, HSA
Luenna Kim, Human Resources Director, HSA
Brenden Lim, OCR Analyst, HSA
Linda C. Simon, Director, EEO and Leave Programs, DHR



Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Monday, April 8, 2019 3:21 PM
To: Winston, Stephanie (HSA)
Subject: I believe that I am working in a hostile environment since the incident...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I believe that I am working in a hostile environment since the incident on April 5 2019 with my supervisor screaming at me and everything now is seems like I'm working in a hostile environment where no one is speaking to me everyone that usually sits around me and speaks to me is not speaking to me but around 3 o'clock Miss Regina Maria N3b3 who was coming to put some documents in the mail and I told her a little bit about what happened to me on Friday, April 5, 2019 she says he has a habit of screaming at women especially and he screamed at her Mila ,Ina and Serena and she also let me know if I needed a witness she would be more than happy to do the honors of being a witness.

Sent from my iPhone

Doris Barone
Disaster Preparedness and Response Manager
CCSF Human Services Agency, Disaster Preparedness & Response

[REDACTED]
Doris.Barone@sfgov.org
5/17/2019

Stephanie
CCSF Human Services Agency, DAAS-IHSS

Dear Stephanie:

This letter is to acknowledge that in late April/early May (I do not recall the exact date) I was privy to the exchange between yourself and Mark Zeiter here at 1640 Mission St.

My observation at the time of the incident was that there was a conversation between you and Mark where he was audibly frustrated and used a high tone to communicate. I was not aware of the context as I only began to listen when the tone became abnormally high for the space – the incident occurred right outside my office in an open workspace. At that time I did not hear you speak to him in a loud tone.

During the exchange my concern was that it seemed that the conversation should have occurred in a more private setting. The open workspace meant that all of the IHSS workers on the floor, as well as those of us situated in the surrounding offices, could clearly hear the incident.

I have given my statement to IHSS management and am stating what I provided to them in this letter.

Thank you,



Doris Barone

July 1, 2019

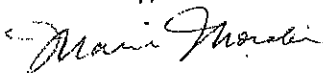
Dear Stephanie:

Per your request, I am providing you with information regarding an incident that occurred a couple of months ago involving one of our supervisors, Mr. Mark Zeiter and myself.

The day the incident took place, I was assigned at the window to assist providers visiting 77 Otis. It was a slow day and a provider walked in requesting to watch the enrollment video. I checked the list and no one was scheduled to watch the video at that time. I asked the provider to take a seat at Station #5. An IPAC staff assigned at Station #8 became upset that I took a "walk-in" and reported me to his supervisor, Mark Zeiter. After I assisted another provider at the window, I walked to the back office to speak to Mark. Before I said anything, he immediately said: **"To have providers wait is ridiculous!"** I was not given an opportunity to explain the situation. He walked away to go to his meeting. Later that afternoon, he apologized.

With regards to another incident which happened last year during an all-staff meeting, a female co-worker asked a question and Mark Zeiter responded to her question. The manner in which he spoke made my co-worker cry. He apologized to her after the meeting.

Sincerely,



May, 16, 2019

2019 MAY 16 PM 1:39

My name is Stephanie Winston and I
Had a meeting today with my managers
and I was told they have no witnesses
also my supervisor Mark denied everything
But I have a witnesses ms. Doris and ms. [redacted]
Both are in the IPAC unit. See attached
Doc.

P.S. Please take further Investigation Because
my complaint is valid and true.

Time 1:40pm

Stephanie Winston
[redacted]

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Friday, June 28, 2019 8:55 AM
To: Winston, Stephanie (HSA)
Subject: I am also a document is bad on 627 2019 CMIMPS printer did not print..

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am also a document is bad on 627 2019 CMIMPS printer did not print all of the document so I have to go to My supervisor Mark Zeiter and ask him to Ask Sally Chung the supervisor of stairs which is my supervisor that takes my attendance to request from the state to reprint the document So I asked Mark to let me make sure the ink is good and everything before he sends the request Sally but when I came back to let him know everything was good he was talking to jingle and I stood at the door waiting patiently if you stop for a moment and start talking to me about what him and I were trying to get the request put in a want to know if it was ago and I told hi Sally Sally but when I came back to let him know everything was good he was talking to Django and I stood at the door waiting patiently so as I waited he starts his conversation for the moment asked me what I knee at tell him that is ago he can go ahead and email sally so I respond it and let him know what I had done so jiggle Said anyway shut me up and I said to her you don't need to disrespectful me like that I didn't do nothing to you you mad because I reported that you stroke my face and touch my hair that's unprofessional of you to come at me like that I don't disrespect you so don't disrespect me so I went later on I end up having a conversation with Mark about it and he agreed that she was rude and disrespectful about jumping in like that .

Sent from my iPhone

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Wednesday, June 5, 2019 8:04 PM
To: Winston, Stephanie (HSA)
Subject: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached me and said Stephanie (in front of everyone: Irene, Jingle, Doris' door was open, and Israel) and asked me to send him my log from my scanning log. I said "ok I'll do that" and then he said it was because were having a one on one tomorrow and that he sent me an email about it. I said "you did? Something needs to happen before that meeting happens..." and he said "decline it" as if he was unaware of the proper mediation procedure, in front of everyone, sarcastically.

My union rep asked her about the follow up for the mediation.

I opened my email and I got a message from the EEO rep stating she is unaware that I was "disciplined" in some type of way during the meeting regarding the recap of my statement I gave on May 16, 2019. She mentioned the meditation She did not tell Hugh or Chin Yong about Doris or Regina being my witnesses.

I feel like I am being forced to jump through hoops to get this situation taken care of. As far as I know, there has been no disciplinary action taken towards Mark who has created a hostile work environment for me. I feel uncomfortable knowing that this has not been resolved. Additionally, I feel as though I have recently been given double the work which puts additional stress on me. I do not think it is appropriate to administer a performance evaluation during this time since there is a current investigation of an EEO complaint that I filed against him on April 5th.

I would feel more comfortable if he came to me in a way that was confidential, as one professionally should. Mark is still able to come to work without being disciplined. At times I feel unsafe at work because of Mark. I feel as though he is being protected while I am having to come to work under stress and feel unsafe, as a woman. He has a known history of screaming at women at the workplace. He has displayed this kind of behavior to me and others before. I feel as though he intimates me because of the abuse of power he has shown. I feel as though I am not being protected by management. I gave my statement and that should be enough, yet I am constantly having to provide evidence that I have witnesses and prove that he harassed me. I feel like my basic rights to do my job at my workplace without harassment are not being protected. Respect is due where you give it. That being said, the golden rule is not being applied here. "Treat others how you want to be treated".

Sent from my iPhone

Winston, Stephanie (HSA)

From: Winston, Stephanie (HSA)
Sent: Thursday, June 6, 2019 10:30 AM
To: Blyth-Gaeta, Krista (HSA)
Cc: Gail Byrdsong; Law, Chun Yin (HSA); Wang, Hugh (HSA); King, Asa (HSA)
Subject: Requesting Mediation meeting
Attachments: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...; RE: Complaint Follow Up

To resolve the situation at had in regard to open EEO investigation on my supervisor Mark Because I'm working in a hostile environment He now starting to have me work harder than normal, and now this is retaliations.

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Wednesday, April 10, 2019 11:49 AM
To: Winston, Stephanie (HSA)
Subject: On April 10, 2019 I was approached by a young lady named Jenny Chan...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On April 10, 2019 I was approached by a young lady named Jenny Chan she asked me if I would be interested in doing a lateral move to PA/PC/PG to the fourth floor due to department needing a clerk I asked her who gave her my name she told me Sylvie Leong which is her secretary she said she talk to two of the clerks and I told her flat out no which was Alina and Susan it feels really strange that she is asking me about this lateral move due to all the stuff that has been happening lately with my supervisor screaming at me and then me feeling like I'm working in a hostile environment because now people are not speaking to me because of the screaming that my supervisor did on Friday, April 5 2019 she assured me that it had nothing to do with anything that I have previously been dealing with because I didn't mention my supervisor and screamed at me ms Jeannie And I asked her what made her ask me about the lateral move she said I looked like a person that is approachable so I told her the only way I would if they pay me five to ten dollars more than what I also without me being on probation and their permanent position but apparently that wasn't the reason I feel that this is all connected to my supervisor screaming at me now they want me to be moved that's what I feel.

Sent from my iPhone

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Wednesday, July 17, 2019 12:36 PM
To: Winston, Stephanie (HSA)
Subject: Today is July 8 I take lunch between 12 and 1230 jingle sits on the...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Today is July 8 I take lunch between 12 and 1230 jingle sits on the end where I was coming from the restaurant so I see her first she was looking at me like she was ready to beat me down so I look back at her and we stare at each other for a good minute but I felt more threatened there anything else, as though she's ready to fight type mode someone needs to talk to her because she's already been talked to about touching and putting her hands on my face and my hair and every since then she does not speak to at all this looking at me like she is ready to fight me needs to stop I am not here to be fighting anyone or getting intimidated by anyone because I reported that they did a sexual-harassment thing towards me this is documentation I also reported it to Miss Saba so she should definitely be reported to EEO an I also reported this to Mark the very next day please help me to ma this inappropriate conduct stop towards me .

Sent from my iPhone

EXHIBIT D

CSC Notice of Receipt of Appeal and Acknowledgement Letter to Stephanie Winston, dated
September July 30, 2019



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

NOTICE OF RECEIPT OF APPEAL

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

DATE: July 30, 2019

REGISTER NO.: 0184-19-6

APPELLANT: STEPHANIE WINSTON

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dear Ms. Callahan:

The Civil Service Commission has received the attached letter from Stephanie Winston, appealing the Human Resources Director's decision to administratively close without further investigation her discrimination complaint, EEO File No. 3092. Your review and action are required.

If this matter is not timely or appropriate, please submit CSC Form 13 "Action Request on Pending Appeal/Request," with supporting information and documentation to my attention at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. CSC Form 13 is available on the Civil Service Commission's website at www.sfgov.org/CivilService under "Forms."

In the event that Stephanie Winston's appeal is timely and appropriate, the department is required to submit a staff report in response to the appeal within sixty (60) days so that the matter may be resolved in a timely manner. Accordingly, **the staff report is due no later than 11 a.m. on October 10, 2019** so that it may be heard by the Civil Service Commission at its meeting tentatively scheduled on October 21, 2019. If you will be unable to transmit the staff report by the October 10th deadline, or if required departmental representatives will not be available to attend the October 21st meeting, please notify me by use of CSC Form 13 as soon as possible, with information regarding the reason for the postponement and a proposed alternate submission and/or hearing date.

You may contact me at Michael.Brown@sfgov.org or (415) 252-3250 if you have any questions. For more information regarding staff report requirements,

MICHAEL L. BROWN
EXECUTIVE OFFICER

Appellant: Stephanie Winston
July 30, 2019
Page 2 of 2

meeting procedures or future meeting dates, please visit the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION



MICHAEL L. BROWN
Executive Officer

Attachment

Cc: Susan Gard, Department of Human Resources
Kate Howard, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Jeanne Buick, Department of Human Resources
Luenna Kim, Human Services Agency



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via U.S. Mail and Email

July 30, 2019

Stephanie Winston
[REDACTED]

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

Subject: **Register No. 0184-19-6: Appealing the Human Resources Director's decision to Administratively Close Without Further Investigation your Discrimination Complaint, EEO File No. 3092.**

Dear Stephanie Winston:

This is in response to your appeal submitted to the Civil Service Commission on July 29, 2019 appealing the Human Resources Director's decision to administratively close without further investigation your discrimination complaint, EEO File No. 3092. Your appeal has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If your appeal is timely and appropriate, the department will submit its staff report on this matter to the Civil Service Commission in the near future to request that it be scheduled for hearing. The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. You will receive notice of the meeting and the department's staff report on your appeal two Fridays before the hearing date via email, as you have requested on your appeal form. A hard copy of the report will also be available for your review at the Commission's offices located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date (note that the Commission requires an original and nine copies of any supplemental/rebuttal materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email at Michael.Brown@sfgov.org or by phone at (415) 252-3247 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

MICHAEL L. BROWN
Executive Officer

Cc: Micki Callahan, Department of Human Resources
Kate Howard, Department of Human Resources
Susan Gard, Department of Human Resources
Jeanne Buick, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Luenna Kim, Human Services Agency

EXHIBIT B

Email thread showing mediation attempts with Carol Wright

Archived: Monday, February 24, 2020 4:10:32 PM
Importance: Low
Attachments: image001.png ;

From: Kim, Luenna (HSA) <luenna.kim@sfgov.org>
Sent: Wednesday, December 18, 2019 6:11 PM
To: King, Asa (HSA) <asa.king@sfgov.org>
Subject: FW: Mediation

From: Callahan, Micki (HRD) <micki.callahan@sfgov.org>

Date: Wednesday, Dec 18, 2019, 2:07 PM

To: Gail Byrdsong <Gail.Byrdsong@seiu1021.org>

Cc: _____ <_____, Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>, Isen, Carol (HRD) <carol.isen@sfgov.org>, Buick, Jeanne (HRD) <jeanne.buick@sfgov.org>, Kim, Luenna (HSA) <luenna.kim@sfgov.org>

Subject: RE: Mediation

Hello Gail,

I am copying in Employee Relations Director Carol Isen. The Employee Relations Division will review the matter with the department.

DHR-6@1.5x

Micki Callahan

Human Resources Director

(she, her, hers)

Department of Human Resources

One South Van Ness Ave., 4th Floor

San Francisco, CA 94103

Phone: (415) 557-4845

Website: www.sfdhr.org

Connecting People with Purpose

From: Gail Byrdsong <Gail.Byrdsong@seiu1021.org>

Sent: Wednesday, December 18, 2019 1:07 PM

To: Callahan, Micki (HRD) <micki.callahan@sfgov.org>

Cc: _____; Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>

Subject: Fwd: Mediation

I am forwarding this conversation; as it seems Micki's email address was incorrect.

Thank you,

Gail Byrdsong

SEIU 1021 Field Representative

350 Rhode Island St., Ste. 100, South

San Francisco, CA 94103

gail.byrdsong@seiu1021.org

(415) 361-1994

MRC/Member Resource Center

1-877-687-1021

"I am no longer accepting things I cannot change...I am changing things I can no longer accept". (Angela Davis)

Begin forwarded message:

From: "Winston, Stephanie (HSA)" <stephanie.winston@sfgov.org>
Date: December 18, 2019 at 12:53:34 PM PST
To: CAROL WRIGHT <_____
Cc: Gail Byrdsong <Gail.Byrdsong@seiu1021.org>, "Collahan.micki@sfgov.org" <Collahan.micki@sfgov.org>
Subject: RE: Mediation

Carol look when my union rep tells you anything in regards to my case she has my permission I trust her and she can speak for me anytime, so what she has told you still stands

It seems to me you are the one trying to pressure us in doing this sooner I thought when Gail spoke to you last week that we were clear because I told you that I have death in my family ECT, I felt this is a money thing with you like your only here to milk the cow meaning the city I'm already uncomfortable with you and so your process and I really don't trust you I'm requesting that they hire someone else.

From: CAROL WRIGHT <_____
Sent: Wednesday, December 18, 2019 10:54 AM
To: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>
Cc: Gail Byrdsong <gail.byrdsong@seiu1021.org>
Subject: Re: Mediation

Hello Stephanie:

As you requested, I am continuing to include both you and Gail on all of my correspondence related to scheduling this mediation. As you can see below, Gail has stated that she's not able to schedule a whole day for mediation. As I've described below, in circumstances like these, it is my process and my practice to schedule 2 sessions on one day in order to create the best environment for a successful mediation. With this in mind, I'd like to outline the options as I see them:

1. Schedule 2 mediation sessions as I've described below on a date that you're available. Gail can be present for as long as she's able.
2. Schedule 2 mediation sessions as I've described below on a date that you're available. You may secure another union representative who is able to attend the entire session, if you are willing and able to do so.
3. Schedule 2 mediation sessions as I've described below on a date that you're available, without a union rep.
4. Decline to mediate.

Stephanie, the decision is yours, and I look forward to receiving your decision.

Sincerely,

Carol

On Tuesday, December 17, 2019, 04:04:08 PM PST, Gail Byrdsong <gail.byrdsong@seiu1021.org> wrote:

Unfortunately, my schedule will never allow for a full day mediation. And to be honest I think it would be quite overwhelming and stressful for both parties to be in a mediation all day.

Thank you,

Gail Byrdsong

SEIU 1021 Field Representative

350 Rhode Island St., Ste. 100, South

San Francisco, CA 94103

gail.byrdsong@seiu1021.org

(415) 361-1994

MRC/Member Resource Center

1-877-687-1021

"I am no longer accepting things I cannot change...I am changing things I can no longer accept". (Angela Davis)

On Dec 17, 2019, at 3:16 PM, CAROL WRIGHT <wright2517@sbcglobal.net> wrote:

Every mediation is different, and every process is a little different. This is the process that I use, and I've found it to work well. On rare occasions, less than 2

hours are needed. In most cases a mediation takes about 3 hours, and sometimes as many as 6. I am very hopeful that this case proves to be an exceptional situation that requires less than 2 hours. However, given the logistics and the amount of time that has passed, I think it's prudent to set aside one full day to resolve this matter.

Carol

Sent from my iPhone

On Dec 17, 2019, at 3:04 PM, Gail Byrdsong <Gail.Byrdsong@seiu1021.org> wrote:

Hi Carol. I do not have a full day for any mediations. Mediations that I have been involved in usually takes 2 hours or less? Why is a full day need for this one?

Thank you,

Gail Byrdsong

SEIU 1021 Field Representative

350 Rhode Island St., Ste. 100, South

San Francisco, CA 94103

gail.byrdsong@seiu1021.org

(415) 361-1994

MRC/Member Resource Center

1-877-687-1021

"I am no longer accepting things I cannot change...I am changing things I can no longer accept". (Angela Davis)

On Dec 17, 2019, at 2:47 PM, CAROL WRIGHT < >
wrote:

Hi Gail: Do you have a full day available on January 21-23, or 27-31?

Sent from my iPhone

On Dec 17, 2019, at 2:28 PM, Gail Byrdsong <
Gail.Byrdsong@seiu1021.org> wrote:

Hi Carol. January 9th from 1-3. Works best for me. However, I will need to leave that day by 3:30 for another appointment. Please let me know if this works.

Thank you,

Gail Byrdsong

SEIU 1021 Field Representative

350 Rhode Island St., Ste. 100, South

San Francisco, CA 94103

gail.byrdsong@seiu1021.org

(415) 361-1994

MRC/Member Resource Center

1-877-687-1021

"I am no longer accepting things I cannot change...I am changing things I can no longer accept". (Angela Davis)

On Dec 17, 2019, at 2:14 PM, CAROL WRIGHT <[REDACTED]> wrote:

Stephanie and Gail:

As a follow-up to Friday's email, here are some dates that I'm available in January.

Tuesday, January 7 through Friday, January 10, 2020.

I recommend that we schedule our first meeting for 9:00 a.m - noon, and a second session for 2:00 - 5:00 p.m., if necessary. This will minimize my travel time and ensure us enough time to complete the process in one day.

Please let me know which dates, if any, will work best for you. Feel free to reach out to me with any questions or concerns.

Best Regards,

Carol

Sent from my iPhone

On Dec 13, 2019, at 3:29 PM, CAROL WRIGHT <[REDACTED]> wrote:

Gail and Stephanie:

Thanks for making the time for our conversation today. After our call, I hung up the phone, took a breath, and realized that the timing doesn't feel right. Your point, Gail, about the stress of the holiday season, resonates with me. If the two of you are okay with delaying this mediation until January, then I think that's the better way to go. I think that everyone will feel more relaxed and able to focus after the holidays. Please let me know if you agree with this plan. At this point, I'm pushing the pause button on my travel arrangements.

Sincerely,

Carol

Sent from my iPhone

On Dec 13, 2019, at 11:32 AM, Gail Byrdsong <Gail.Byrdsong@seiu1021.org> wrote:

(415) 361-1994

Thank you,

Gail Byrdsong

SEIU 1021 Field Representative

350 Rhode Island St., Ste. 100, South

San Francisco, CA 94103

gail.byrdsong@seiu1021.org

(415) 361-1994

MRC/Member Resource Center

1-877-687-1021

"I am no longer accepting things I cannot change...I am changing things I can no longer accept". (Angela Davis)

On Dec 13, 2019, at 11:17 AM, CAROL WRIGHT <
_____> wrote:

Thank you Gail. Yes, this is an unusual situation for me as well. However, we're working with a very tight timeframe and I think that much can be accomplished through a phone call. As I've mentioned to Stephanie, I'd like to schedule the mediation for Monday, December 16 or Tuesday, December 17. The purpose of the phone call is to pin down the date and discuss your role in the mediation process. It's my understanding that Stephanie wants to be on the call as well. I would be happy to call you both at 2:35 and I'll be available until 3:00. Gail, please let me know the best number to reach you.

Carol

Sent from my iPhone

On Dec 13, 2019, at 10:46 AM, Gail Byrdsong <
Gail.Byrdsong@seiu1021.org> wrote:

Hi Stephanie. That is unusual? But she can give me a call after 2:30 this afternoon.

Thank you,

Gail Byrdsong

SEIU 1021 Field Representative

350 Rhode Island St., Ste. 100, South

San Francisco, CA 94103

gail.byrdsong@seiu1021.org

(415) 361-1994

MRC/Member Resource Center

1-877-687-1021

***"I am no longer accepting things I cannot change...I
am changing things I can no longer accept".
(Angela Davis)***

On Dec 13, 2019, at 10:13 AM, Winston, Stephanie
(HSA) <stephanie.winston@sfgov.org> wrote:

Good morning Gail Ms. Carol would like to have a
telephone conversation with you and I before we all
meet what is your available time?

From: CAROL WRIGHT <_____>

Sent: Thursday, December 12, 2019 6:00 PM

To: Winston, Stephanie (HSA) <
stephanie.winston@sfgov.org>

Subject: Re: Mediation

Okay

Sent from my iPhone

On Dec 12, 2019, at 4:39 PM, Winston, Stephanie (HSA) <stephanie.winston@sfgov.org> wrote:

I will have to see when my union rep is available, I will let you know.

From: CAROL WRIGHT <_____>

Sent: Thursday, December 12, 2019 3:04 PM

To: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>

Subject: Re: Mediation

That's great Stephanie. As part of the process, I'd like to schedule a phone conversation with you and your union rep before we hold the mediation session. I believe that your employer will allow you time away from work to have this call.

Are you and your rep available to hold the mediation next week on Monday, December 16, or Tuesday, December 17? If so, I will check with Mark for his availability.

I'm looking forward to moving forward with you.

Carol

Sent from my iPhone

On Dec 12, 2019, at 1:12 PM, Winston, Stephanie (HSA) <stephanie.winston@sfgov.org> wrote:

Ok Ms. Carol set it up I will do the mediations with you and my union rep an Mark, and I will keep my union rep in the loop please.

From: CAROL WRIGHT <
>

Sent: Thursday, December 12, 2019 7:55 AM

To: Winston, Stephanie (HSA) <
stephanie.winston@sfgov.org>

Subject: Re: Mediation

Good Morning Stephanie:

I appreciate you taking the time to talk to me yesterday, and I hope I was able to answer all of your questions. As we agreed, I look forward to hearing your decision today as to whether or not you choose to participate in a mediation session with Mark. It's my intention to report back to my employer by the end of the day that the mediation is moving forward or that the process has come to an end. I'd also like to renew my offer to talk to you and your union rep in order to assist you in making that decision. Please feel free to contact me with any questions or concerns about the mediation process that I can help you with.

Sincerely,

Carol

On Monday, December 9, 2019, 12:34:09 PM
PST, CAROL WRIGHT <
_____> wrote:

Perfect! I'll call you then.

Sent from my iPhone

> On Dec 9, 2019, at 11:37 AM, Winston,
Stephanie (HSA) <
stephanie.winston@sfgov.org> wrote:

>

> Wednesday at 3pm.

>

> -----Original Message-----

> From: CAROL WRIGHT <

> Sent: Monday, December 9, 2019 9:23 AM

> To: Winston, Stephanie (HSA) <

stephanie.winston@sfgov.org>

> Subject: Re: Mediation

>

> Good to hear. What's your availability this
week?

>

> Sent from my iPhone

>

>> On Dec 9, 2019, at 8:59 AM, Winston,
Stephanie (HSA) <

stephanie.winston@sfgov.org> wrote:

>>

>> Okay an thank you so much an yes
everything worked out.

>>

>> -----Original Message-----

>> From: CAROL WRIGHT <

>> Sent: Friday, December 6, 2019 3:07 PM

>> To: Winston, Stephanie (HSA) <

stephanie.winston@sfgov.org>

>> Subject: Re: Mediation

>>

>> Hi Stephanie:

>>

>> I'm sorry we weren't able to talk today. I hope you're able to get your emergency resolved. It sounds like you're in a tough spot and I wish you the best. Let's try to connect next week. I should have time any day except Tuesday. Please let me know what works best for you.

>>

>> Thanks!

>> Carol

>>

>> Sent from my iPhone

>>

>>> On Dec 5, 2019, at 2:52 PM, Winston, Stephanie (HSA) <stephanie.winston@sfgov.org> wrote:

>>>

>>> Give me a call 9169979503

>>>

>>> -----Original Message-----

>>> From: CAROL WRIGHT <

>>>

>>> Sent: Thursday, December 5, 2019 11:42 AM

>>> To: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>

>>> Subject: Mediation

>>>

>>>

>>> This message is from outside the City email system. Do not open links or attachments from untrusted sources.

>>>

>>>

>>>

>>> Hello Ms. Winston:

>>>

>>> I am the mediator assigned to your case. I'd like to schedule a 1-hour confidential phone meeting with you to discuss your case. I wonder if you are available tomorrow between 11:00 a.m. and 3:00 p.m. to discuss the mediation process and help me understand the nature of your dispute.

>>>

>>> If so, please let me know the best time
and phone number to contact you.

>>>

>>> If tomorrow doesn't work, please provide
me some more convenient dates and times for
next week.

>>>

>>> I look forward to your response.

>>>

>>> Sincerely,

>>> Carol Wright

>>> Mediator, Facilitator, Trainer

>>> CPS HR Consulting

>>> (916)215-0183

>>>

>>> Sent from my iPhone

>>>

>>>

>>>

>>> CCSF-HSA - All outbound HSA email is
automatically scanned for PII and PHI by Zix
Email Encryption

>>

>

EXHIBIT C

Email thread showing mediation attempts with Dave Gilb

Mercado, Ruth (HRD)

From: King, Asa (HSA)
Sent: Tuesday, January 21, 2020 4:50 PM
To: Cueva-Alegria, Carlos (HRD)
Subject: FW: Mediation

Regarding mediator Dave Gilb

From: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>
Sent: Monday, January 6, 2020 2:19 PM
To: King, Asa (HSA) <asa.king@sfgov.org>
Cc: Gail Byrdsong <Gail.Byrdsong@seiu1021.org>
Subject: RE: Mediation

I understand you hired a man as mediator I would prefer it to be a woman.

From: King, Asa (HSA) <asa.king@sfgov.org>
Sent: Thursday, December 19, 2019 5:02 PM
To: Gail Byrdsong <Gail.Byrdsong@seiu1021.org>; Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>
Subject: Mediation

Hi Stephanie and Gail,

I was informed by Carol Wright that a mutually agreeable time and method was not able to be agreed upon for mediation to occur. Nevertheless, the Agency would still like to provide Stephanie and Mark the opportunity for mediation. I will be working to identify another mediator who may be able to facilitate mediation.

Please feel free to suggest a mediator that you think may be a good fit. I will provide an update once I have more information. Happy Holidays.

Thanks,
Asa King
Senior Human Resources Analyst
Human Resources, Office of Civil Rights (OCR)
Human Services Agency
T: (415) 557-5797 | F: (415) 355-2429 | asa.king@sfgov.org

EXHIBIT D

Email thread showing mediation attempts with Michele Modena

Mercado, Ruth (HRD)

From: King, Asa (HSA)
Sent: Wednesday, January 29, 2020 4:49 PM
To: Cueva-Alegria, Carlos (HRD)
Subject: Stephanie Winston Mediation

Hi Carlos,


I was able to get a contract executed with a 3rd mediator to provide mediation to Stephanie Winston and Mark Zeiter. After getting an agreement from Stephanie and Gail Brydsong, her union representative to attempt mediation with Michele Modena, I received the message below from Stephanie after Michele sent an introductory message to her. I called Gail today to get more information about this change in Stephanie's willingness to participate in mediation. (I have not received a call back yet.) As I stated at the Civil Service Commission meeting, there has been a continued pattern of Stephanie agreeing to mediation and then rejecting it. I will let you know if I hear anything further, but for now I will consider this the third rejection and not pursue contracting any additional mediators.

Thanks,
Asa

From: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>
Sent: Wednesday, January 29, 2020 4:23 PM
To: Michele Modena <michelemod@mac.com>
Cc: Gail Byrdsong <Gail.Byrdsong@seiu1021.org>; King, Asa (HSA) <asa.king@sfgov.org>
Subject: RE: Mediation services

Your process will not work for me, I feel your process is being forced on me to except someone
Apology an forgive and forget which is not something I'm, willing to do you have no idea what I have been through an
what I'm
Still going through working in a hostile environment you don't know me an have not reach out to me or to get to know
what has happen so No
This is not a solution for me.

From: Michele Modena <michelemod@mac.com>
Sent: Tuesday, January 28, 2020 5:49 PM
To: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>; Zeiter, Mark (HSA) <Mark.Zeiter@sfgov.org>
Cc: Gail.Byrdsong@seiu1021.org; King, Asa (HSA) <asa.king@sfgov.org>
Subject: Mediation services

 This message is from outside the City email system. Do not open links or attachments from untrusted sources.

HSA has asked me to meet with the two of you to see if I can help you move through issues rising from a work interaction. The purpose of this email is to introduce myself and to begin the process that will lead to our meeting.

First, I always approach mediations, facilitations or negotiations with an interest based problem solving approach. I found a short, good article on Interest based problem solving and I'd like you both to read the article (the link is at the end of this email).

Second, once you've read this email and the article, there is homework for you to do listed in this email (sorry, it's not long, but it is necessary).

Third, a general overview for you of how I want to work with you on this matter:

1. **GROUND RULES:** Ground rules are the first thing I want to establish. The article lists them last, but they are first for me.

Here are the simple ground rules from the article, worth repeating here:

- Focus on the issue, not personalities.
 - Share information fully and early.
 - Listen actively.
 - Work hard to meet interests, not sell positions.
 - Be open to options.
 - Look for ways to build trust.

This process works only if we really do work to stay open and listen to each other. My experience with this process and parties who have absolutely no trust in each other prior to the process, has been nothing short of eye opening. If we really do follow the ground rules, we really can make progress (see the true story at the end of this email).

So, can you both commit to the ground rules above? I hope the answer is a definite yes.

I would also add a few more: no cell phones; one person speaks at a time; we keep to time lines (which will be decided when I set the agenda for our meeting), and consensus decision making (since there are only two of you, that seems strange, but I'll explain when we meet).

2. **INTERESTS:** You'll note that the article starts with identifying your interests, as opposed to positions. Can you both take a few minutes to jot down what your interests are? I think the article does a fairly good job providing examples.

Please email me your interests when you have them completed, so I'll be able to review them ahead of our meeting. DO NOT SHARE THEM WITH EACH OTHER RIGHT NOW. I will ask you to share your interests with each other when we meet.

Taking the time now to think about your interests and sending them to me in advance will help start our conversation when we meet. I will ask you to explain your interests when we meet and I'll likely ask probing questions to make sure that each of you understands the other's interest.

3. DATA SHARING: Is there data that needs to be? I don't know right now since I don't know much about the initial interaction or what's happened since then. The more information you can share with me and eventually, with each other, the better. I'm not sure if you are all on the same page regarding the facts of the initial interaction, so I'd like a brief narrative of what you think happened. Remember, I know nothing. No need to write everything, but give me what you think is important for me to know.

PLEASE SEND ME WHAT YOU THINK THE IMPORTANT FACTS ARE SEPARATELY SO I CAN EVALUATE THE SITUATION. ALTERNATIVELY, IF YOU WOULD LIKE TO TALK TO ME PERSONALLY, PLEASE LET ME KNOW AND WE CAN ARRANGE A TIME TO TALK ON THE PHONE.

Once I've reviewed what you send to me (or spoken to you), I can see if I can come up with some facts we can all agree to and present them in a way that you both can agree is fair and objective.

4. TIME OF THE MEETING: After I get the information, we will set a date, and a starting time and an ending time for the day we meet, and then I'll set a time line for discussions so we don't get bogged down. I will prepare the agenda after I get an idea of what we will need to be discussing. That will depend on the number of interests we need to go over.

HOMEWORK:

Read the article and start jotting down your interests. Think about how you would articulate your interests to someone who doesn't know anything about the situation. In interest based problem solving, you can't assume that the person you are problem solving with understands where you are coming from with your interest, or why. This process really calls on us to get underneath what we want (our "position") to figure out why we want it. When we can name why we want something, there are often options that present themselves.

As promised, a short, true story on the power of Interest Based problem solving. Many years ago, I was negotiating with a union (SEIU) that represented janitors at the San Francisco Unified School District. They presented a proposal ("position") that janitors would not empty garbage cans. The proposal made absolutely no sense to me and my team and truthfully, made us angry; what in the world were we paying janitors for if they didn't want to empty garbage cans?

I decided to ask one of the janitors — a woman on the team who hardly spoke, since English was not her first language — what was going on behind the proposal — the "why" of it. And then she told us that in some schools, after the garbage was emptied in the big garbage container bin, principals wanted janitors to then sort through the refuse to do recycling. When we found out the "why" behind the proposal, we understood what had seemed like a really ridiculous proposal wasn't ridiculous at all. Making janitors climb into a bin and then sort through trash? No. We decided right there that our better option was to instruct principals not to make janitors do any of that sort of work, and empowered the union to file a grievance if anyone made janitor "sort" through trash.

The combination of establishing "why", deep listening, understanding, and then discussing the problem, went a long way to gaining trust – and resolving at least this particular problem. It felt positive, it felt like progress, and that felt good to everyone involved.

As soon as I hear from you regarding your narrative on what happened and what your interests are, I can schedule something relatively quickly so we can meet. While I'd like to meet with you as soon as possible, I can only move as quickly as you provide me with the information I've requested. **I'd appreciate getting your input (or talking to you) by Sunday night at 5 pm, so I can determine next steps.**

If you have questions in the meantime, please let me know. I appreciate the opportunity to listen to you both and to try to help resolve the issues you raise in a way that respects the both of you.

Thanks.

<https://www.lmpartnership.org/stories/six-tips-successful-interest-based-problem-solving>

EXHIBIT E

Email thread showing mediation attempts with Winston in 2019

Mercado, Ruth (HRD)

From: King, Asa (HSA)
Sent: Thursday, September 12, 2019 2:39 PM
To: Cueva-Alegria, Carlos (HRD)
Subject: FW: Stephanie Winston - Incident Report

Hi Carlos,

Please see the email below regarding Ms. Winston's unwillingness to participate in mediation unless Mr. Zeiter first apologized for his actions. In addition, when I spoke to Ms. Winston yesterday, she reiterated that she did not want to participate in mediation. Mr. Zeiter has denied yelling at Ms. Winston and therefore has not offered an apology for the alleged behavior but stated that he was willing to participate in mediation.

Thanks,

Asa King
Senior Human Resources Analyst
Human Resources, Office of Civil Rights (OCR)
Human Services Agency
T: (415) 557-5797 | F: (415) 355-2429 | asa.king@sfgov.org
1650 Mission Street, 2nd Floor, San Francisco California 94120

From: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Sent: Monday, May 13, 2019 10:44 PM
To: King, Asa (HSA) <asa.king@sfgov.org>
Subject: RE: Stephanie Winston - Incident Report

Dear Asa,

Hugh and I are scheduled to meet with Stephanie this Thursday. Initially Stephanie refused to meet without Union Rep but I told her this is only a meeting to talk so no Union Rep is needed. She did not agree but at the end, she was okay. Anyway, she did tell me that she is unwilling to meet with Mark unless Mark apologize to her first. But I told her we will talk more this Thursday.

She did attend Excel Level 1 training but the trainer told me to have Stephanie take Excel Level 1 again which I will help her sign up for next month.

I hope to give you more details after our Thursday meeting.

Thank you

Chun Yin

Sent with BlackBerry Work

From: "King, Asa (HSA)" <asa.king@sfgov.org>
Sent: May 9, 2019 4:56 PM
To: "Law, Chun Yin (HSA)" <ChunYin.Law@sfgov.org>
Subject: RE: Stephanie Winston - Incident Report

Hi Chun Yin,

Just checking to see if you had a chance to meet with Stephanie.

Thanks,

Asa

From: King, Asa (HSA)
Sent: Thursday, May 2, 2019 11:14 AM
To: Law, Chun Yin (HSA) <chunyin.law@sfgov.org>; DeLeon, Andrea (HSA) <andrea.deleon@sfgov.org>
Cc: Zeiter, Mark (HSA) <mark.zeiter@sfgov.org>; Chung, Sally (HSA) <sally.chung@sfgov.org>; Wang, Hugh (HSA) <hugh.wang@sfgov.org>
Subject: RE: Stephanie Winston - Incident Report

Hi Chun Yin,

I met with Stephanie and her union representative last week to discuss her complaint regarding the interaction she had with Mark on April 5. Stephanie has requested to have a facilitated conversation with Mark. She requested to have her union representative present at the meeting, however this is not the type of meeting that permits union representation. Please meet with Stephanie and let her know that you will coordinate her having a facilitated conversation with Mark without her union representative present. You can contact the Employee Assistance Program at (415) 554-0610 to have one of their staff members present for the conversation or get suggestions for facilitating the conversation without their staff present.

Prior to the meeting with Mark, please let Stephanie know that you spoke to other employees who witnessed the interaction between her and Mark on April 5 and they did not share her view that Mark yelled at her. Also, get more information about the incident on April 24 to better understand her view about what happened.

Please follow up with Andrea about the performance issues that Stephanie has been having. It will be important to continue to document the performance issues that you previously mentioned to me, such as Stephanie missing trainings and making scanning errors, in addition to any new concerns.

Let's stay in communication about this issue. Please give me a call if you have any questions or concerns.

Thanks,

Asa King
Senior Human Resources Analyst
Human Resources, Office of Civil Rights (OCR)
Human Services Agency
T: (415) 557-5797 | F: (415) 355-2429 | asa.king@sfgov.org
1650 Mission Street, 2nd Floor, San Francisco California 94120

From: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Sent: Wednesday, May 1, 2019 4:28 PM
To: King, Asa (HSA) <asa.king@sfgov.org>; DeLeon, Andrea (HSA) <andrea.deleon@sfgov.org>
Cc: Zeiter, Mark (HSA) <Mark.Zeiter@sfgov.org>; Chung, Sally (HSA) <sally.chung@sfgov.org>; Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>
Subject: Stephanie Winston - Incident Report

Dear Asa and Andrea,

I just want to forward you the following incident report from a staff regarding Stephanie Winston.

We are continuing to work with Stephanie.

Please let me know if there is anything else I need to do. Thank you,

Chun Yin Law (N300)
In-Home Supportive Services
Section Manager

This message and attachments are solely for the intended recipient and may contain confidential information. If you are not the intended recipient, any disclosure, copying, use or distribution of this message and any attachments is prohibited. If you have received this communication in error, please notify sender by reply e-mail immediately and permanently delete this message and any attachments.

From: Burgos, Rosette (HSA) <rosette.burgos@sfgov.org>
Sent: Wednesday, April 24, 2019 4:31 PM
To: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Subject: incident report

Hi Chun Yin,

I have an incident report involving an IPAC staff, Gina Miranda and a clerical staff, Stephanie Winston. Per Gina, she was interacting with a fellow IPAC staff, Irene Cook in the morning of 04/24/2019 and while conversing Gina said "So you're by yourself?" and suddenly Stephanie interrupted the conversation and commented, "I'm here!" who is two seats apart. Afterwards, Gina started hearing Stephanie mumble words against her that made her uncomfortable and decided to end the conversation and returned back to her cubicle to avoid any conflict.

Prior to this, Gina has mentioned a past incident that involved the same clerical staff and was reported to Mark Zeiter at the time. The staff has verbalized that she continue to feel uncomfortable and awkward and somewhat affecting her work performance since she is trying to distant herself from the particular clerical staff in the workplace.

At this time, I have advised Gina to avoid any interaction with the clerk involved to prevent future conflict.

Please advise what step/action needed to be taken in relation to this issue.

Thank you.

Rosette Burgos,N3A4
Acting Social Work Supervisor

Independent Provider Assistance Center
In Home Supportive Services
City and County of San Francisco
415-557-5708 phone
415-557-6200 main number
415-557-5813 fax

EXHIBIT F

Email thread showing HSA interviews of Winston's Witnesses

Mercado, Ruth (HRD)

From: King, Asa (HSA)
Sent: Monday, November 18, 2019 10:37 AM
To: Cueva-Alegria, Carlos (HRD)
Subject: FW: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

-----Original Message-----

From: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Sent: Friday, June 7, 2019 10:14 AM
To: King, Asa (HSA) <asa.king@sfgov.org>; Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>
Cc: Nisha, Sharee (HSA) <sharee.nisha@sfgov.org>
Subject: RE: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

Dear Asa and Sharee,

I just want to give you a quick update.

So on May 16th, Hugh and I met with Stephanie about her and Mark incident and what we found out from co-workers who sit nearby her area.

During the meeting, Stephanie gave us two more witnesses, who are Maria Morabe (IPAC Staff) and Doris Padilla Barone (Disaster Manager).

So afterward, Hugh and I went to talk with Maria and Doris.

According to Maria, she was nowhere near the area at that time so she cannot provide any information.

According Doris, whose office is behind Stephanie's cubical, she heard the conversation.

Doris stated that even though she can clearly hear that Mark was talking loudly to Stephanie, Mark was not screaming at Stephanie.

So far, Hugh and I did not have a chance to schedule another appointment with Stephanie to tell her what we found out.

Also I just received an email from Mark Zeiter on 6/6/2019, that Stephanie is refusing to meet one-on-one with Sally and him.

All our staff have been conducting routine one-on-one since April 2019.

Thank you,

Chun Yin Law (N300)
In-Home Supportive Services
Section Manager

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-----Original Message-----

From: King, Asa (HSA) <asa.king@sfgov.org>

Sent: Thursday, June 6, 2019 11:52 AM

To: Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>

Cc: Nisha, Sharee (HSA) <sharee.nisha@sfgov.org>; Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>

Subject: RE: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

Hi Hugh,

I touched base with Sharee about this. It is possible to meet about this next week or is there something urgent that must be addressed today?

Thanks,

Asa

-----Original Message-----

From: Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>

Sent: Thursday, June 6, 2019 8:56 AM

To: King, Asa (HSA) <asa.king@sfgov.org>

Cc: Nisha, Sharee (HSA) <sharee.nisha@sfgov.org>; Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>

Subject: FW: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

Good morning Asa,

Do you have time to meet today and talk about how to address Stephanie concern?

I am very concern if we don't address her concern soon, it will escalate to something else, and we will not be able to address her performance issues.

Please let me know, and I leave at 2:30 pm today.

Thank you and sorry to bother you for this matter.

Hugh

-----Original Message-----

From: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>

Sent: Thursday, June 6, 2019 7:33 AM

To: Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>

Cc: Chung, Sally (HSA) <sally.chung@sfgov.org>; Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>; Gail Byrdsong <Gail.Byrdsong@seiu1021.org>; King, Asa (HSA) <asa.king@sfgov.org>

Subject: FW: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

-----Original Message-----

From: Stephanie Winston <[REDACTED]>

Sent: Wednesday, June 5, 2019 8:04 PM

To: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>

Subject: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached me and said Stephanie (in front of everyone: Irene, Jingle, Doris' door was open, and Israel) and asked me to send him my log from my scanning log. I said "ok I'll do that" and then he said it was because were having a one on one tomorrow and that he sent me an email about it. I said "you did? Something needs to happen before that meeting happens..." and he said "decline it" as if he was unaware of the proper mediation procedure, in front of everyone, sarcastically.

My union rep asked her about the follow up for the mediation.

I opened my email and I got a message from the EEO rep stating she is unaware that I was "disciplined" in some type of way during the meeting regarding the recap of my statement I gave on May 16, 2019. She mentioned the meditation She did not tell Hugh or Chin Yong about Doris or Regina being my witnesses.

i feel like i am being forced to jump through hoops to get this situation taken care of. As far as i know, there has been no disciplinary action taken towards Mark who has created a hostile work environment for me. I feel uncomfortable knowing that this has not been resolved. Additionally, I feel as though I have recently been given double the work which puts additional stress on me. I do not think it is appropriate to administer a performance evaluation during this time since there is a current investigation of an EEO complaint that I filed against him on April 5th.

I would feel more comfortable if he came to me in a way that was confidential, as one professionally should. Mark is still able to come to work without being disciplined. At times I feel unsafe at work because of Mark. I feel as though he is being protected while I am having to come to work under stress and feel unsafe, as a woman. He has a known history of screaming at women at the workplace. He has displayed this kind of behavior to me and others before. I feel as though he intimates me because of the abuse of power he has shown. I feel as though I am not being protected by management. I gave my statement and that should be enough, yet I am constantly having to provide evidence that I have witnesses and prove that he harassed me. I feel like my basic rights to do my job at my workplace without harassment are not being protected.

Respect is due where you give it. That being said, the golden rule is not being applied here. "Treat others how you want to be treated".

Sent from my iPhone

EXHIBIT G

Email thread showing prior discussion with Winston regarding de-escalation classes

Mercado, Ruth (HRD)

From: King, Asa (HSA)
Sent: Monday, October 14, 2019 12:25 PM
To: Cueva-Alegria, Carlos (HRD)
Subject: FW: Stephanie Winston

Follow Up Flag: Follow up
Flag Status: Completed

From: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Sent: Friday, October 11, 2019 4:12 PM
To: King, Asa (HSA) <asa.king@sfgov.org>
Cc: Blyth-Gaeta, Krista (HSA) <krista.blyth-gaeta@sfgov.org>; Tran, Sandy (HSA) <Sandy.Tran@sfgov.org>
Subject: RE: Stephanie Winston

Dear Asa,

Thank you for your patience,

- 1) According to my record, HR and IHSS Management Team had a meeting on 6/10/2019 to discuss about Stephanie Winston. In that meeting, after looking at the IHSS Organization Chart, together we decided that Mark Zeiter should no longer provide any supervision to Stephanie Winston since Stephanie is a clerical staff and she is under the direct supervision of Sally Chung (Principle Clerk).
 - a. I have my one-on-one meeting with Mark every Friday, so on 6/14/2019, I verbally informed Mark Zeiter that he should no longer provide any supervision to Stephanie Winston and Mark should re-direct Stephanie to Sally Chung. All communication with Stephanie should go through her supervisor, Sally Chung.
 - b. However, since I do not supervise Stephanie, I do not know when did Sally Chung or Hugh Wang (Section Manager) informed Stephanie about the above decision
- 2) On around 3/15/2019, Mark Zeiter and Sally Chung sat down with Stephanie Winston to provide her with the PAR. One of the goals on the PAR is to attend De-Escalation class. According to Learning Center, Stephanie attended De-Escalation training on 5/2/2019

Departmental Goal #2: (specify)	
Enhancement of computer skills and performance growth	
1. Ms. Winston assigned to take following courses: Word 2010 Level 1 (Foundation) Excel 2010 Level 1 (Foundation) De-Escalation	REVIEW OF PERFORMANCE: Supervisors will schedule trainings and meet with Ms. Winston after each trainings. Ms. Winston to submit Certificate of Completion after each training to supervisors. Supervisors will meet with staff also to review the course information learned and evaluate how training can be used by staff. Together Ms. Winston and Supervisors will create plan to incorporate Training information into daily tasks
2. Ms. Winston will attend assigned training	
3. Ms. Winston will submit completion of training	
4. Ms. Winston will meet with Supervisor Sally Chung & Mark Zeiter for post training meeting	
5. Supervisors will evaluate learned information from training to use in daily work	

a.

Student Record for:		Winston, Stephanie		Date		10/10/2019	
Classes Attended							
Class Date	Class Name	Class #	Class Title	Completed	Class Status	Class Status	Class Status
2/2/2019	Winston, Stephanie		Multi-Generations - Cultural Competency Series	Cancellation	Active		
6/18/2019	Winston, Stephanie		Introduction to Emotional Intelligence	Did Not Attend	Active		
6/25/2019	Winston, Stephanie		Excel 2010, Level 1	Did Not Attend	Active		
3/5/2018	Winston, Stephanie		Appreciating Diversity - Cultural Competency series	Attended	Active		
1/24/2018	Winston, Stephanie		LGBTQ - Promoting Respect Among HSA	Attended	Active		
4/11/2019	Winston, Stephanie		Word 2010, Level 1	Attended	Active		
8/16/2019	Winston, Stephanie		Excel 2010, Level 1	Did Not Attend	Active		
11/29/2017	Winston, Stephanie		Workplace Violence Preparedness & Active Shooter	Attended	Active		
4/9/2019	Winston, Stephanie		De-Escalation	Completed	Active		
5/2/2019	Winston, Stephanie		De-Escalation	Attended	Active		

- 3) Sally Chung is on Leave and Hugh Wang is no longer with IHSS. So now, Susan Lee is acting on behalf of Sally Chung and Sandy Tran is acting on behalf of Hugh Wang.

Thank you Asa for your assistance.

I answered the above questions with the best of my knowledge.

Thank you,

Chun Yin Law (N300)
Pronouns: He/Him/His
In-Home Supportive Services
Section Manager

The San Francisco Department of Aging and Adult Services supports the well-being, safety and independence of adults with disabilities, older people, and veterans.

This message and attachments are solely for the intended recipient and may contain confidential information. If you are not the intended recipient, any disclosure, copying, use or distribution of this message and any attachments is prohibited. If you have received this communication in error, please notify sender by reply e-mail immediately and permanently delete this message and any attachments.

From: King, Asa (HSA) <asa.king@sfgov.org>
Sent: Monday, October 7, 2019 5:18 PM
To: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Subject: RE: Stephanie Winston

Hi Chun Yin,

Just to let you know, Stephanie has filed an appeal of DHR decision regarding her EEO complaint; therefore a hearing will be held with the Civil Service Commission on this matter. I already informed Mark because he will receive a letter informing him. There's nothing that needs to be done on your end, but I do need some information in preparation of the hearing.

1. When did Mark stop supervising Stephanie?
2. When was Stephanie told to attend the De-escalation training? Did she actually attend? If so, when did she attend?
3. Mark mentioned that Sally Lamus is currently out on leave. Who is Stephanie's current supervisor while Sally is on leave?

Thanks,
Asa

From: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Sent: Friday, September 20, 2019 2:34 PM
To: King, Asa (HSA) <asa.king@sfgov.org>
Cc: Nisha, Sharee (HSA) <sharee.nisha@sfgov.org>
Subject: RE: Stephanie Winston

Got it.

I just spoke with Mark and told him there is no need to say "Hello" to Stephanie.

But please note, in the past, Stephanie complained to me that she felt discriminated that staff do not say "Hello" to her and do not acknowledge that she is present.

Thank you,

Chun Yin Law (N300)
Pronouns: He/Him/His
In-Home Supportive Services
Section Manager

The San Francisco Department of Aging and Adult Services supports the well-being, safety and independence of adults with disabilities, older people, and veterans.

This message and attachments are solely for the intended recipient and may contain confidential information. If you are not the intended recipient, any disclosure, copying, use or distribution of this message and any attachments is prohibited. If you have received this communication in error, please notify sender by reply e-mail immediately and permanently delete this message and any attachments:

From: King, Asa (HSA) <asa.king@sfgov.org>
Sent: Friday, September 20, 2019 11:00 AM
To: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>
Cc: Nisha, Sharee (HSA) <sharee.nisha@sfgov.org>
Subject: Stephanie Winston

Hi Chun Yin,

Stephanie came to HR yesterday and asked that we ask Mark to limit his conversations and interactions with her to work-related matters. She stated that when Mark sees her, he says, "Hello, Stephanie" to her in a manner that she feels is mocking and/or provoking. While I do not see a current need for HR to issue a Cease and Desist Order, it may be easy enough to give Mark the feedback that Stephanie is not interested in him saying hello to her.

Thanks,
Asa King
Senior Human Resources Analyst
Human Resources, Office of Civil Rights (OCR)
Human Services Agency
T: (415) 557-5797 | F: (415) 355-2429 | asa.king@sfgov.org
1650 Mission Street, 2nd Floor, San Francisco California 94120

ORIGINAL STAFF REPORT



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0184-19-6
2. For Civil Service Commission Meeting of: October 21, 2019
3. Check One:
Ratification Agenda
Consent Agenda
✓ Regular Agenda
Human Resources Director's Report
4. Subject: Appeal by Stephanie Winston of the Human Resources Director's determination to administratively close Winston's complaint of harassment and retaliation.
5. Recommendation: Adopt the report and deny Stephanie Winston's appeal.
6. Report prepared by: Carlos Cueva Alegria, DHR EEO Telephone number: (415) 557-4948
7. Notifications: Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda:
Human Resources Director: Micki Callahan
Date: October 10, 2019
9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

Attachment

CSC RECEIPT STAMP

NOTIFICATIONS

Stephanie Winston (Appellant)

Micki Callahan

Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Mark Zeiter (Respondent)

Linda C. Simon

Director, EEO and Leave Programs
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Trent Rhorer

Executive Director
Human Services Agency
170 Otis Street, 8th Floor
San Francisco, CA 94103

Mawuli Tugbenyoh

Chief of Policy
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Luenna Kim

Human Resources Director
Human Services Agency
1650 Mission Street, 2nd Floor
San Francisco, CA 94103

Carlos Cueva Alegria

EEO Programs Senior Specialist
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Asa King

OCR Analyst
Human Services Agency
1650 Mission Street, 2nd Floor
San Francisco, CA 94103

CIVIL SERVICE COMMISSION REPORT

MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director
Department of Human Resources

FROM: Carlos Cueva Alegria, EEO Programs Senior Specialist

DATE: October 10, 2019

EEO FILE NO: 3092

REGISTER NO: 0184-19-6

APPELLANT: Stephanie Winston

I. AUTHORITY

The San Francisco Charter, Section 10.103 and Civil Service Commission (CSC) Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to CSC Rule 103.3, the CSC shall review and resolve appeals of the Human Resources Director's determinations.

II. BACKGROUND

Since September 25, 2017, Stephanie Winston has been employed as a 1404 Clerk with the City's Human Services Agency (HSA). Winston is responsible for scanning and uploading documents. Winston's supervisor is Sally Lamus, 2907 Eligibility Worker Supervisor, HSA, and at the time of the complaint, Winston also reported to Mark Zeiter, 2914 HSA Social Work Supervisor, HSA.

A. Appellant's Complaint, EEO File No. 3092

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Asa King, Office of Civil Rights Analyst at the Human Services Agency (HSA). King reported Winston's allegations that Zeiter harassed Winston due to Winston's race (African American) and sex (female), and retaliated against Winston for filing a prior EEO complaint, EEO File No. 3015, when on April 5, 2019, Zeiter screamed at Winston and asked if Winston was complaining about having to delete information to scan a document.

On June 17, 2019, King reported that Winston alleged Zeiter subjected Winston to retaliation for reporting the April 5, 2019 incident by increasing Winston's workload and giving Winston additional documents to scan.

B. Human Resources Director's Administrative Closure

In a letter dated June 28, 2019, the Human Resources Director informed Winston that although Winston's allegations did not meet the standards for a harassment or retaliation complaint, Zeiter's conduct, if true, violated the City's Respect Policy. The letter also advised Winston that HSA had taken prompt appropriate action to address the alleged conduct and that HSA would conduct mediation between Winston and Zeiter to address the concerns Winston raised in the complaint. As Winston's allegations did not raise an inference of harassment or retaliation and HSA took appropriate action to address Zeiter's alleged conduct, Winston's complaint was administratively closed without further investigation.

C. Winston's Appeal

On July 29, 2019, Winston appealed the Human Resources Director's determination. In support of the appeal, Winston provided statements from other employees to corroborate Winston's allegation that Zeiter yelled at Winston. This new information, however, does not change the Human Resources Director's determination.

Winston also raised four additional allegations of retaliation that were not raised in the initial complaint; therefore, these allegations are not properly before the Commission. Additionally, three of these allegations have already been addressed and were administratively closed in a subsequent complaint, EEO File No. 3165.

III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

The issue on appeal is whether the Human Resources Director appropriately administratively closed Winston's complaint without conducting further investigation.

IV. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Winston's Harassment Claim

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) the appellant was subjected to physical, verbal, or visual conduct on account of appellant's membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of the appellant's employment and create an abusive working environment.

Winston alleged that Zeiter harassed Winston due to Winston's race and sex when Zeiter screamed at Winston. This conduct was unprofessional, inappropriate, and violated the City's Respect Policy if true. Therefore, HSA took action to address this alleged conduct and reminded

Zeiter that as a supervisor, Zeiter must model appropriate behavior to subordinates at all times. Additionally, HSA offered to mediate with Winston and Zeiter, but on September 11, 2019, in a conversation with King, Winston declined to participate in mediation. However, HSA took additional action as Winston no longer reports to Zeiter. Nevertheless, Zeiter screaming at Winston was not objectively related to Winston's race or sex and Winston did not provide any information linking the conduct to Winston's race. The only information Winston provided in support of this claim that Zeiter harassed Winston due to Winston's sex is that Zeiter is male and Winston is female. However, merely being of a different sex does not make conduct sex-based.

Further, in support of the appeal, Winston provided information that Zeiter has a history of speaking loudly and interrupting other female employees on unspecified dates. Winston provided an account from an employee who overheard Zeiter on an unspecified date using "a high tone to communicate" with Winston. Another employee provided an account of Zeiter saying to the employee, "To have providers wait is ridiculous" without giving the employee a chance to explain the situation, and this employee provided another account of a female employee crying due to the manner in which Zeiter responded to the female employee's question. However, these accounts do not add new information and reiterate what Winston already alleged. In addition, this additional information does not link Zeiter's screaming at Winston to Winston's sex. Zeiter's screaming at Winston was about the process for scanning a document and was not sex based. Therefore, even with this new information, Winston has still not demonstrated that Zeiter subjected Winston to harassment based on Winston's sex. Nevertheless, HSA still took action to address this alleged conduct.

B. Winston's Retaliation Claim

To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) the appellant engaged in a protected activity; (2) the appellant suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action.

Winston alleged that Zeiter screamed at Winston and gave Winston extra documents to scan in retaliation for Winston's prior and current EEO complaints. Winston engaged in protected activity when filing EEO complaints; however, having additional documents to scan is not an adverse employment action because scanning documents is one of Winston's duties. Further, Zeiter's alleged screaming on a single occasion is not an adverse employment action because it did not affect the terms, conditions, or privileges of Winston's employment. Screaming at Winston on a single occasion, while inappropriate, would not impair a reasonable employee's job performance or prospects for advancement, and would not dissuade a reasonable employee from supporting a discrimination complaint. Similarly, having to scan extra documents would not impair a reasonable employee's job performance or prospects for advancement, and would not dissuade a reasonable employee from supporting a discrimination complaint. Therefore, Winston's allegations of retaliation do not meet the standards requiring further investigation.

C. Allegations Raised on Appeal

For the first time in this appeal, Winston alleged Winston was subjected to retaliation for filing EEO complaints against Zeiter and Kit Wah Tang, 2904 Human Services Technician, when:

1. On April 10, 2019, Jeannie Chan, 2913 Program Specialist, asked if Winston wanted to move to the 4th floor as a lateral move;
2. On June 5, 2019, Zeiter sarcastically told Winston to cancel their one on one meeting;
3. On June 27, 2019, Tang interrupted Winston and was rude and disrespectful; and
4. On July 8, 2019, Tang looked at Winston as though Tang wanted to fight Winston.

Allegation 1 is not properly before the commission because Winston did not file an EEO complaint about this allegation. However, allegation 1 is not an adverse employment action because Chan asked whether Winston wanted to move to the 4th floor and when Winston declined, no action was taken. Chan's question did not affect the terms, conditions, or privileges of Winston's employment, would not impair a reasonable employee's job performance or prospects for advancement, and would not dissuade a reasonable employee from supporting a discrimination complaint. Therefore, since Winston did not suffer an adverse employment action, allegation 1 does not meet the standards to warrant further investigation.

The remaining allegations are also not properly before the Commission as they were not reported as part of this complaint. Further, allegations 2 through 4 have been administratively closed in a separate complaint filed by Winston, EEO File No. 3165. Therefore, since those allegations were addressed in a separate complaint, they will not be addressed in this appeal.

V. RECOMMENDATION

For the reasons set forth above, the Human Resources Director's decision should be upheld and the appeal should be denied.

VI. APPENDIX/ATTACHMENTS TO THE REPORT

Attached to this report are the following:

- Exhibit A: Department Report of Employment Discrimination Complaint, dated May 6, 2019, with attached April 8, 2019 email, pp. 5 – 9.
- Exhibit B: Human Resources Director's Letter of Determination to Stephanie Winston, dated June 28, 2019, pp. 10 – 14.
- Exhibit C: Stephanie Winston's Appeal to the Civil Service Commission, dated July 27, 2019, pp. 15 – 30.
- Exhibit D: CSC Notice of Receipt of Appeal and Acknowledgement Letter to Stephanie Winston dated July 30, 2019, pp. 31 – 34.

EXHIBIT A

Department Report of Employment Discrimination Complaint, dated May 6, 2019, with attached April 8, 2019 email.

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT* Report Within Five Working Days of Receipt of Complaint*

Return to: Linda C. Simon, Director, DHR EEO Division, One South Van Ness, 4th Floor, San Francisco, CA 94103; linda.simon@sfgov.org

1. Department/Worksite: Human Services Agency/DAAS-IHSS-1650 Mission
2. Complainant: Stephanie Winston Tel. No. (Work): (415) 557-6729
Address: [REDACTED] Tel. No. (Home): [REDACTED]
Personal E-mail: [REDACTED] DSW #: [REDACTED]
3. Complaint Filing Date: April 5, 2019 Classification: 1404
4. Complainant's Current Employment Status (circle one):
PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE
5. Basis of Discrimination (specify):
- | | |
|---|---------------------------|
| <input checked="" type="checkbox"/> Race: | <u>African American</u> |
| <input type="checkbox"/> Color: | _____ |
| <input type="checkbox"/> Religion: | _____ |
| <input type="checkbox"/> Creed: | _____ |
| <input type="checkbox"/> Sex: | _____ |
| <input type="checkbox"/> National Origin: | _____ |
| <input type="checkbox"/> Ethnicity: | _____ |
| <input type="checkbox"/> Age: | _____ |
| <input type="checkbox"/> Disability/Medical Condition: | _____ |
| <input type="checkbox"/> Political Affiliation: | _____ |
| <input type="checkbox"/> Sexual Orientation: | _____ |
| <input type="checkbox"/> Ancestry: | _____ |
| <input type="checkbox"/> Marital or Domestic
Partner Status: | _____ |
| <input type="checkbox"/> Gender Identity: | _____ |
| <input type="checkbox"/> Parental Status: | _____ |
| <input type="checkbox"/> Veteran Status: | _____ |
| <input type="checkbox"/> Other Non-Merit Factors: | _____ |
| <input checked="" type="checkbox"/> Retaliation: | <u>prior EEO activity</u> |
6. Issue complained of:
- | |
|---|
| <input type="checkbox"/> Denial of Employment |
| <input type="checkbox"/> Denial of Training |
| <input type="checkbox"/> Denial of Promotion |
| <input type="checkbox"/> Denial of Reasonable Accommodation |
| <input type="checkbox"/> Termination |
| <input type="checkbox"/> Lay-off |
| <input type="checkbox"/> Constructive Discharge |
| <input type="checkbox"/> Disciplinary Action |
| <input type="checkbox"/> Harassment |
| <input type="checkbox"/> Work Assignment |
| <input checked="" type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> Compensation |
| <input type="checkbox"/> Other (please specify):
_____ |

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s), provide DSW # for Accused/Respondent(s): (Attach letter of complaint)

Stephanie Winston (Complainant/Winston), a 1404 Human Services Agency (HSA) Clerk, alleged she was subjected to discrimination based on race, retaliation, and sexual harassment by Mark Zeiter (Zeiter [REDACTED]), a 2914 HSA Social Work Supervisor, due to filing a prior EEO complaint. HSA's Office of Civil Rights (OCR) was notified of Complainant's allegations on April 5, 2019 when Complainant made her complaint in-person with OCR. On April 8, 2019, Complainant also emailed additional information concerning her allegations. (Please see email attached.) At Complainant's request, on April

24, 2019 OCR held a subsequent intake interview with Complainant and her union representative, Gail Byrdsong, SEIU Local 1021 Field Representative.

Complaint

Complainant is responsible for scanning and uploading documents. On April 5, 2018, Zeiter instructed Complainant to scan and upload a document. She scanned the document and attempted to upload it, but was having technical difficulties doing so. Complainant realized that she had previously unsuccessfully attempted to upload the same document on April 4, 2019. Zeiter came to Complainant's workstation to view the error message she was receiving on her computer when she attempted to upload the document. Complainant explained to Zeiter that since she had not been able to scan the document, she would need to delete information from the internal task management system. Complainant alleged that Zeiter responded by screaming at her and asked her if she was complaining about having to delete information. She stated that she responded by asking Zeiter to refrain from taking that tone with her and informed him that his behavior was wrong, unprofessional, and disrespectful. Complainant alleged that Zeiter then went into his office and slammed the door. Complainant explained that shortly thereafter Zeiter left his office and went to another location. After the incident, Complainant immediately informed Hugh Wang (Wang [REDACTED]), a 0923 HSA Manager II, of her allegations and made an EEO complaint in-person with OCR.

On April 24, 2019, Complainant stated that she now believes that Zeiter's actions were sexual harassment because Zeiter is a male and she is a female. She further stated that Zeiter's actions were discriminatory against her due to her race. She alleged that she now feels uncomfortable working with Zeiter and attempts to avoid all unnecessary interaction with him.

Remedy

Complainant would like to meet with Zeiter to informally mediate her complaint. Chun Yin Law, a 0923 HSA In-Home Supportive Services Section Manager, has been instructed to facilitate a conversation with Complainant and Zeiter with assistance from the Employee Assistance Program.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes ☐ No ☒

If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes ☒ No ☐

Name: Gail Byrdsong, Field Representative Organization/Firm: SEIU Local 1021

Address: 350 Rhode Island, Suite 100 South Bldg. San Francisco, CA 94103

Phone No.: 415-361-1994

- *10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal)

DHR to review and advise of next action.

*10a. Name, position, and phone number of person who will implement recommended steps:

DHR to review and advise of next action.

11. Completed by: Asa King, OCR Analyst

Date: May 6, 2019

Address: 1650 Mission Street San Francisco, CA 94103

Tel. No. (415) 557-6613

*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

☐ Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

☐ Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for Micki Callahan, Human Resources Director

Date

King, Asa (HSA)

To: King, Asa (HSA)
Subject: RE: Stephanie Winston

From: Winston, Stephanie (HSA) <stephanie.winston@sfgov.org>

Sent: Monday, April 8, 2019 8:40 AM

To: Chung, Sally (HSA) <sally.chung@sfgov.org>

Cc: Law, Chun Yin (HSA) <ChunYin.Law@sfgov.org>; Wang, Hugh (HSA) <Hugh.Wang@sfgov.org>; Lim, Brenden (HSA) <Brenden.Lim@sfgov.org>

Subject: complaint

Or Friday, April 5 2019 I was working mastering in my job in every capacity I was working so hard that I was not able to take lunch at 12 o'clock I asked my supervisor if I could take a later lunch at 3:30 because the day had gone by so fast that's when I was able to settle down and stop so I took lunch around 3:30. At 3:45 my supervisor Mark Zeitzer walked up and asked me to scan this IPP into X-Files so I stop my lunch with no hesitation opened up the scanning computer and began to scan it when he was pulled away by two employees one by the name of Irene and other Carlos he told me he would be right back go ahead and continue I did just that and didn't realize that the document that I was trying to scan was not allowing me to validate it I didn't realize that this was the same document I returned to my supervisor on April 4 2019 I put a sticky note on the document stating that this was from another county and could not be scanned, that's the reason why I put a sticky note on it and put it on my supervisors Mark Zeiter desk, because they were in a meeting when I was trying to let mark know about this document. So moving forward he came back after he was done with the other employees and I showed him that it would not let me validate it I asked Mark this is the document that I gave back to you yesterday he said yes I said it now it's in my queue flow and I now I have delete it he begins screaming at me saying are you complaining about having to delete something I said hey don't take that tone with me why are you screaming at me he still began screaming then he stormed away and as he stormed away I said you wrong Mark that is unprofessional inappropriate insensitive and disrespectful for you to be talking to me like that and screaming and stretching your eyes wow. So he went into his office is slammed the door took his coat off apparently and came back out without his coat on and stormed out the office and I went up to my supervisors office Sally Chung Office to report what he had done she was not there so I spoke to Hugh which is another manager and he listen to what I had to say about what had just and he had a lot of Sympathy for me. He let me know he will be reporting this to Marks supervisor About what happened between my supervisor Mark Zeiter and myself, there was also other people around that I'm sure heard everything Jingle Janet and Miss Doris office is right behind me so I'm sure they heard everything, I was so upset I was in tears and then went down to the second floor to the EEO end up speaking to Asia I told her what happened between my supervisor and myself with his screaming at me unprofessional inappropriate and disrespectful he had done This to me before me so Asia said we would take this up on Monday because it was 4:55 when I was informing her about everything.

EXHIBIT B

Human Resources Director's Letter of Determination to Stephanie Winston, dated June 28, 2019

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Stephanie Winston
[REDACTED]

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3092

Dear Ms. Winston:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint EEO File No. 3092.

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Asa King, Office of Civil Rights Analyst at the Human Services Agency (HSA). Mx. King reported your allegations that Mark Zeiter, 2914 HSA Social Work Supervisor, harassed you due to your race (African American) and sex (female), and retaliated against you for your prior EEO complaint. On June 17, 2019, DHR EEO received from Mx. King information regarding your additional allegation that Mr. Zeiter retaliated against you for your filing of the present complaint.

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Although the conduct you reported does not raise an inference of harassment or retaliation, some of the alleged conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Your department has taken appropriate action to address Mr. Zeiter's alleged conduct with him and will also conduct a mediation between you and Mr. Zeiter to address the concerns you raised. Accordingly, DHR EEO will administratively close your complaint without further investigation. In the future, should you experience any inappropriate conduct, please do not hesitate to contact Brenden Lim, OCR Analyst at HSA, at (415) 557-6140.

I. BACKGROUND AND ALLEGATIONS

You are employed as a 1404 Clerk at HSA, and you are responsible for scanning and uploading documents.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race (African American) and sex (female) and retaliated against you for filing an unspecified prior EEO complaint. That day, he instructed you to scan and upload a document. You scanned the document but could not validate it, and you realized you had tried unsuccessfully to scan the same document the previous day. Mr. Zeiter came to your desk, and you explained that since you could not validate the document, you would have to delete information from the internal task management system. He screamed at you and asked if you were complaining about having to delete information. You asked him to refrain from using that tone with you and informed him that his behavior was wrong, unprofessional, and disrespectful. He returned to his office and slammed the door.

After this incident, you immediately complained to Hugh Wang, 0923 HSA Manager II, and went to HSA OCR to make an in-person complaint with Mx. King. On April 24, 2019, you met with Mx. King again. You explained for the first time during this meeting that you believe Mr. Zeiter's conduct was sex-based harassment because he is male and you are female. You did not provide any information in support of your claim that his conduct was racially motivated or retaliatory.

On June 11, 2019, when reporting a new and separate complaint to HSA OCR, you also alleged Mr. Zeiter retaliated against you for complaining about his conduct on April 5, 2019. Since that date, he has allegedly increased your workload by giving you additional documents to scan.

On June 17, 2019, HSA took appropriate action to address with Mr. Zeiter his alleged conduct toward you. In addition, HSA has reported to DHR EEO that it will conduct mediation between you and Mr. Zeiter regarding the concerns you raised.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Insufficient Allegations to Support Harassment

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment. Severe behavior may be a single incident that is so extremely offensive that it seriously affects the recipient's work environment, and it is more likely to occur when the conduct is physical. Pervasive behavior occurs where there is a concerted pattern of repeated, routine, or generalized harassment. Occasional, isolated, sporadic, or trivial conduct does not give rise to a harassment claim.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race and sex by screaming at you about whether you were complaining about having to delete information from the task management system and slamming the door when he returned to his office. Although his alleged conduct was unwelcome and inappropriate, it is not objectively related to your race or sex. You did not provide any information linking the conduct to your race, and the only information you provided in support of your claim that it was based on your sex is that Mr. Zeiter is male and you are female. Nonetheless, Mr. Zeiter's allegedly screaming at you and slamming his office door, if true, would violate the City's Respect Policy, and HSA has taken appropriate action to address this conduct. In addition, HSA will conduct mediation with you and Mr. Zeiter to address the concerns you raised. Because your allegations do not raise an inference of harassment and your department is addressing the matter, DHR EEO is closing your complaint without further investigation.

B. Insufficient Allegations to Support Retaliation

To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when she opposes conduct she reasonably and in good faith believes to be discriminatory, or when she files a charge, testifies, assists, or participates in an investigation of discrimination. An adverse employment action is any objectively materially adverse action affecting the terms, conditions, or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement, or those that would dissuade a reasonable employee from supporting a discrimination complaint.

You alleged that on April 5, 2019, Mr. Zeiter retaliated against you for your prior EEO complaint by screaming at you and slamming his office door after you told him you would have to delete information regarding a scanned document from the task management system. You engaged in a protected activity when you made an EEO complaint; however, Mr. Zeiter's alleged conduct on a single occasion is not an adverse employment action. In addition, you did not provide any information supporting a causal link between your unspecified prior EEO complaint and Mr. Zeiter's conduct on April 5, 2019, such as information that the complaint was related to him or that he was even aware of the complaint. Therefore, your allegations do not raise an inference of retaliation.

You further alleged that Mr. Zeiter retaliated against you for your April 5, 2019 complaint against him by subsequently giving you additional documents to scan. You engaged in a protected activity when you made your complaint; however, you did not provide any information demonstrating that you suffered an adverse employment action by having to scan extra documents or that Mr. Zeiter gave the assignments because you filed a complaint. Therefore, your allegations do not raise an inference of retaliation.

Nonetheless, as explained above, HSA is taking appropriate action, including facilitating a mediation, to address these matters. Accordingly, DHR EEO is closing your complaint without further investigation.


III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 3092, will not be investigated further and is administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

We appreciate that you reported your concerns so that they may be reviewed. Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,



Micki Callahan
Human Resources Director

c: Trent Rhorer, Executive Director, HSA
Luenna Kim, Human Resources Director, HSA
Brenden Lim, OCR Analyst, HSA
Linda C. Simon, Director, EEO and Leave Programs, DHR

EXHIBIT C

Stephanie Winston's Appeal to the Civil Service Commission, dated July 27, 2019



CIVIL SERVICE COMMISSION

City and County of San Francisco

25 Van Ness Avenue, Suite 720

San Francisco, California 94102-6031

Executive Officer

(415) 252-3247

CSC Register No.

0184-19-6

TO: X M. Callahan

CC: S. Card

K. Howard

L. Simon

M. Valdez

L. Kim

APPEAL TO THE CIVIL SERVICE COMMISSION

INSTRUCTIONS:

Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.

TYPE OF APPEAL: (Check One)

- ☐ Examination Matters (by close of business on 5th working day)
- ☐ Employee Compensation Matters (by close of business on 7th working day) - Limited application
- ☐ Personal Service Contracts (Posting Period)
- ☐ Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days)
- ☐ Future Employability Recommendations (See Notice to Employee)

Stephanie Winston

Full Name of Appellant

1650 Mission

Work Address

415-

Work Telephone

1404

Clerk

Job Code

Title

IPAC Dept

Department

Residence Address

City

State

Zip

Home Telephone

Full Name of Authorized Representative (if any)

Telephone Number of Representative (including Area Code)

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email:

Stephanie.Winston@sfgov.org or

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.

Check One:

Yes

No

Stephanie Winston

Original Signature of Appellant or Authorized Representative

7-29-19

Date

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/Civil_Service.

I Disagree with this Decision Because the investigations was not done thoroughly please look at my statement my witness's statement and also one of my co-worker's wrote a letter of facts to show that my supervisor has a history of the action that he has displayed this ^{or examined} many times in the past before me an last year & this year so please can you do further investigation, also there is a manager that witness and there is a letter she ~~wrote~~ wrote a letter.

Thank you

PS: Please Review all Document and fact's and witness statements

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Stephanie Winston
[REDACTED]
[REDACTED]

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3092

Dear Ms. Winston:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint EEO File No. 3092.

On May 6, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Asa King, Office of Civil Rights Analyst at the Human Services Agency (HSA). Mx. King reported your allegations that Mark Zeiter, 2914 HSA Social Work Supervisor, harassed you due to your race (African American) and sex (female), and retaliated against you for your prior EEO complaint. On June 17, 2019, DHR EEO received from Mx. King information regarding your additional allegation that Mr. Zeiter retaliated against you for your filing of the present complaint.

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Although the conduct you reported does not raise an inference of harassment or retaliation, some of the alleged conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Your department has taken appropriate action to address Mr. Zeiter's alleged conduct with him and will also conduct a mediation between you and Mr. Zeiter to address the concerns you raised. Accordingly, DHR EEO will administratively close your complaint without further investigation. In the future, should you experience any inappropriate conduct, please do not hesitate to contact Brenden Lim, OCR Analyst at HSA, at (415) 557-6140.

I. BACKGROUND AND ALLEGATIONS

You are employed as a 1404 Clerk at HSA, and you are responsible for scanning and uploading documents.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race (African American) and sex (female) and retaliated against you for filing an unspecified prior EEO complaint. That day, he instructed you to scan and upload a document. You scanned the document but could not validate it, and you realized you had tried unsuccessfully to scan the same document the previous day. Mr. Zeiter came to your desk, and you explained that since you could not validate the document, you would have to delete information from the internal task management system. He screamed at you and asked if you were complaining about having to delete information. You asked him to refrain from using that tone with you and informed him that his behavior was wrong, unprofessional, and disrespectful. He returned to his office and slammed the door.

After this incident, you immediately complained to Hugh Wang, 0923 HSA Manager II, and went to HSA OCR to make an in-person complaint with Mx. King. On April 24, 2019, you met with Mx. King again. You explained for the first time during this meeting that you believe Mr. Zeiter's conduct was sex-based harassment because he is male and you are female. You did not provide any information in support of your claim that his conduct was racially motivated or retaliatory.

On June 11, 2019, when reporting a new and separate complaint to HSA OCR, you also alleged Mr. Zeiter retaliated against you for complaining about his conduct on April 5, 2019. Since that date, he has allegedly increased your workload by giving you additional documents to scan.

On June 17, 2019, HSA took appropriate action to address with Mr. Zeiter his alleged conduct toward you. In addition, HSA has reported to DHR EEO that it will conduct mediation between you and Mr. Zeiter regarding the concerns you raised.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Insufficient Allegations to Support Harassment

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment. Severe behavior may be a single incident that is so extremely offensive that it seriously affects the recipient's work environment, and it is more likely to occur when the conduct is physical. Pervasive behavior occurs where there is a concerted pattern of repeated, routine, or generalized harassment. Occasional, isolated, sporadic, or trivial conduct does not give rise to a harassment claim.

You alleged that on April 5, 2019, Mr. Zeiter harassed you due to your race and sex by screaming at you about whether you were complaining about having to delete information from the task management system and slamming the door when he returned to his office. Although his alleged conduct was unwelcome and inappropriate, it is not objectively related to your race or sex. You did not provide any information linking the conduct to your race, and the only information you provided in support of your claim that it was based on your sex is that Mr. Zeiter is male and you are female. Nonetheless, Mr. Zeiter's allegedly screaming at you and slamming his office door, if true, would violate the City's Respect Policy, and HSA has taken appropriate action to address this conduct. In addition, HSA will conduct mediation with you and Mr. Zeiter to address the concerns you raised. Because your allegations do not raise an inference of harassment and your department is addressing the matter, DHR EEO is closing your complaint without further investigation.

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To warrant further investigation, a retaliation complaint must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when she opposes conduct she reasonably and in good faith believes to be discriminatory, or when she files a charge, testifies, assists, or participates in an investigation of discrimination. An adverse employment action is any objectively materially adverse action affecting the terms, conditions, or privileges of employment. Actions considered materially adverse are those that impair a reasonable employee's job performance or prospects for advancement, or those that would dissuade a reasonable employee from supporting a discrimination complaint.

You alleged that on April 5, 2019, Mr. Zeiter retaliated against you for your prior EEO complaint by screaming at you and slamming his office door after you told him you would have to delete information regarding a scanned document from the task management system. You engaged in a protected activity when you made an EEO complaint; however, Mr. Zeiter's alleged conduct on a single occasion is not an adverse employment action. In addition, you did not provide any information supporting a causal link between your unspecified prior EEO complaint and Mr. Zeiter's conduct on April 5, 2019, such as information that the complaint was related to him or that he was even aware of the complaint. Therefore, your allegations do not raise an inference of retaliation.

You further alleged that Mr. Zeiter retaliated against you for your April 5, 2019 complaint against him by subsequently giving you additional documents to scan. You engaged in a protected activity when you made your complaint; however, you did not provide any information demonstrating that you suffered an adverse employment action by having to scan extra documents or that Mr. Zeiter gave the assignments because you filed a complaint. Therefore, your allegations do not raise an inference of retaliation.

Nonetheless, as explained above, HSA is taking appropriate action, including facilitating a mediation, to address these matters. Accordingly, DHR EEO is closing your complaint without further investigation.

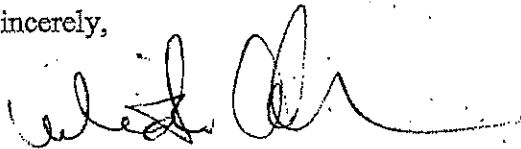
III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 3092, will not be investigated further and is administratively closed. The decision of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

We appreciate that you reported your concerns so that they may be reviewed. Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,



Micki Callahan
Human Resources Director

c: Trent Rhorer, Executive Director, HSA
Luenna Kim, Human Resources Director, HSA
Brenden Lim, OCR Analyst, HSA
Linda C. Simon, Director, EEO and Leave Programs, DHR



Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Monday, April 8, 2019 3:21 PM
To: Winston, Stephanie (HSA)
Subject: I believe that I am working in a hostile environment since the incident...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I believe that I am working in a hostile environment since the incident on April 5 2019 with my supervisor screaming at me and everything now is seems like I'm working in a hostile environment where no one is speaking to me everyone that usually sits around me and speaks to me is not speaking to me but around 3 o'clock Miss Regina Maria N3b3 who was coming to put some documents in the mail and I told her a little bit about what happened to me on Friday, April 5, 2019 she says he has a habit of screaming at women especially and he screamed at her Mila ,Ina and Serena and she also let me know if I needed a witness she would be more than happy to do the honors of being a witness.

Sent from my iPhone

Doris Barone
Disaster Preparedness and Response Manager
CCSF Human Services Agency, Disaster Preparedness & Response

[REDACTED]
Doris.Barone@sfgov.org

5/17/2019

Stephanie
CCSF Human Services Agency, DAAS-IHSS

Dear Stephanie:

This letter is to acknowledge that in late April/early May (I do not recall the exact date) I was privy to the exchange between yourself and Mark Zeiter here at 1640 Mission St.

My observation at the time of the incident was that there was a conversation between you and Mark where he was audibly frustrated and used a high tone to communicate. I was not aware of the context as I only began to listen when the tone became abnormally high for the space – the incident occurred right outside my office in an open workspace. At that time I did not hear you speak to him in a loud tone.

During the exchange my concern was that it seemed that the conversation should have occurred in a more private setting. The open workspace meant that all of the IHSS workers on the floor, as well as those of us situated in the surrounding offices, could clearly hear the incident.

I have given my statement to IHSS management and am stating what I provided to them in this letter.

Thank you,



Doris Barone

July 1, 2019

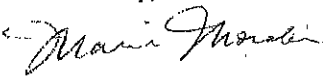
Dear Stephanie:

Per your request, I am providing you with information regarding an incident that occurred a couple of months ago involving one of our supervisors, Mr. Mark Zeiter and myself.

The day the incident took place, I was assigned at the window to assist providers visiting 77 Otis. It was a slow day and a provider walked in requesting to watch the enrollment video. I checked the list and no one was scheduled to watch the video at that time. I asked the provider to take a seat at Station #5. An IPAC staff assigned at Station #8 became upset that I took a "walk-in" and reported me to his supervisor, Mark Zeiter. After I assisted another provider at the window, I walked to the back office to speak to Mark. Before I said anything, he immediately said: **"To have providers wait is ridiculous!"** I was not given an opportunity to explain the situation. He walked away to go to his meeting. Later that afternoon, he apologized.

With regards to another incident which happened last year during an all-staff meeting, a female co-worker asked a question and Mark Zeiter responded to her question. The manner in which he spoke made my co-worker cry. He apologized to her after the meeting.

Sincerely,



May, 16, 2019

2019 MAY 16 PM 1:39

My name is Stephanie Winston and I
Had a meeting today with my managers
and I was told they have no witnesses
also my supervisor Mark denied everything
But I have a witnesses ms. Doris an ms. [redacted]
Both are in the IPAC unit. See attached
Doc

P.S. Please take Further Investigation Because
my complaint is valid an true.

Time 1:40pm

Stephanie Winston
[redacted]

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Friday, June 28, 2019 8:55 AM
To: Winston, Stephanie (HSA)
Subject: I am also a document is bad on 627 2019 CMIMPS printer did not print...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I am also a document is bad on 627 2019 CMIMPS printer did not print all of the document so i have to go to My supervisor Mark Zelter and ask him to Ask Sally Chung the supervisor of stairs which is my supervisor that takes my attendance to request from the state to reprint the document So I asked Mark to let me make sure the ink is good and everything before he sends the request Sally but when I came back to let him know everything was good he was talking to jingle and I stood at the door waiting patiently if you stop for a moment and start talking to me about what him and I were trying to get the request put in a want to know if it was ago and I told hi Sally Sally but when I came back to let him know everything was good he was talking to Django and I stood at the door waiting patiently so as I waited he starts his conversation for the moment asked me what it I knee at tell him that is ago he can go ahead and email sally so I respond it and let him know what I had done so jiggle Said anyway shut me up and I said to her you don't need to disrespectful me like that I didn't do nothing to you you mad because I reported that you stroke my face and touch my hair that's unprofessional of you to come at me like that I don't disrespect you so don't disrespect me so I went later on I end up having a conversation with Mark about it and he agreed that she was rude and disrespectful about jumping in like that .

Sent from my iPhone

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Wednesday, June 5, 2019 8:04 PM
To: Winston, Stephanie (HSA)
Subject: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached me and said Stephanie (in front of everyone: Irene, Jingle, Doris' door was open, and Israel) and asked me to send him my log from my scanning log. I said "ok I'll do that" and then he said it was because were having a one on one tomorrow and that he sent me an email about it. I said "you did? Something needs to happen before that meeting happens..." and he said "decline it" as if he was unaware of the proper mediation procedure, in front of everyone, sarcastically.

My union rep asked her about the follow up for the mediation.

I opened my email and I got a message from the EEO rep stating she is unaware that I was "disciplined" in some type of way during the meeting regarding the recap of my statement I gave on May 16, 2019. She mentioned the meditation She did not tell Hugh or Chin Yong about Doris or Regina being my witnesses.

I feel like I am being forced to jump through hoops to get this situation taken care of. As far as I know, there has been no disciplinary action taken towards Mark who has created a hostile work environment for me. I feel uncomfortable knowing that this has not been resolved. Additionally, I feel as though I have recently been given double the work which puts additional stress on me. I do not think it is appropriate to administer a performance evaluation during this time since there is a current investigation of an EEO complaint that I filed against him on April 5th.

I would feel more comfortable if he came to me in a way that was confidential, as one professionally should. Mark is still able to come to work without being disciplined. At times I feel unsafe at work because of Mark. I feel as though he is being protected while I am having to come to work under stress and feel unsafe, as a woman. He has a known history of screaming at women at the workplace. He has displayed this kind of behavior to me and others before. I feel as though he intimates me because of the abuse of power he has shown. I feel as though I am not being protected by management. I gave my statement and that should be enough, yet I am constantly having to provide evidence that I have witnesses and prove that he harassed me. I feel like my basic rights to do my job at my workplace without harassment are not being protected.

Respect is due where you give it. That being said, the golden rule is not being applied here. "Treat others how you want to be treated".

Sent from my iPhone

Winston, Stephanie (HSA)

From: Winston, Stephanie (HSA)
Sent: Thursday, June 6, 2019 10:30 AM
To: Blyth-Gaeta, Krista (HSA)
Cc: Gail Byrdsong; Law, Chun Yin (HSA); Wang, Hugh (HSA); King, Asa (HSA)
Subject: Requesting Mediation meeting
Attachments: On Wednesday June 5, 2019 between 5:15-5:30pm, my supervisor approached...; RE: Complaint Follow Up

To resolve the situation at had in regard to open EEO investigation on my supervisor Mark Because I'm working in a hostile environment He now starting to have me work harder than normal, and now this is retaliations.

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Wednesday, April 10, 2019 11:49 AM
To: Winston, Stephanie (HSA)
Subject: On April 10, 2019 I was approached by a young lady named Jenny Chan...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

On April 10, 2019 I was approached by a young lady named Jenny Chan she asked me if I would be interested in doing a lateral move to PA/PC/PG to the fourth floor due to department needing a clerk I asked her who gave her my name she told me Sylvie Leong which is her secretary she said she talk to two of the clerks and I told her flat out no which was Alina and Susan it feels really strange that she is asking me about this lateral move due to all the stuff that has been happening lately with my supervisor screaming at me and then me feeling like I'm working in a hostile environment because now people are not speaking to me because of the screaming that my supervisor did on Friday, April 5 2019 she assured me that it had nothing to do with anything that I have previously been dealing with because I didn't mention my supervisor and screamed at me ms Jeannie And I asked her what made her ask me about the lateral move she said I looked like a person that is approachable so I told her the only way I would if they pay me five to ten dollars more than what I also without me being on probation and their permanent position but apparently that wasn't the reason I feel that this is all connected to my supervisor screaming at me now they want me to be moved that's what I feel.

Sent from my iPhone

Winston, Stephanie (HSA)

From: Stephanie Winston [REDACTED]
Sent: Wednesday, July 17, 2019 12:36 PM
To: Winston, Stephanie (HSA)
Subject: Today is July 8 I take lunch between 12 and 1230 jingle sits on the...

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Today is July 8 I take lunch between 12 and 1230 jingle sits on the end where I was coming from the restaurant so I see her first she was looking at me like she was ready to beat me down so I look back at her and we stare at each other for a good minute but I felt more threatened there anything else, as though she's ready to fight type mode someone needs to talk to her because she's already been talked to about touching and putting her hands on my face and my hair and every since then she does not speak to at all this looking at me like she is ready to fight me needs to stop I am not here to be fighting anyone or getting intimidated by anyone because I reported that they did a sexual-harassment thing towards me this is documentation I also reported it to Miss Saba so she should definitely be reported to EEO an I also reported this to Mark the very next day please help me to ma this inappropriate conduct stop towards me .

Sent from my iPhone

EXHIBIT D

CSC Notice of Receipt of Appeal and Acknowledgement Letter to Stephanie Winston, dated
September July 30, 2019



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

NOTICE OF RECEIPT OF APPEAL

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

DATE: July 30, 2019

REGISTER NO.: 0184-19-6

APPELLANT: STEPHANIE WINSTON

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dear Ms. Callahan:

The Civil Service Commission has received the attached letter from Stephanie Winston, appealing the Human Resources Director's decision to administratively close without further investigation her discrimination complaint, EEO File No. 3092. Your review and action are required.

If this matter is not timely or appropriate, please submit CSC Form 13 "Action Request on Pending Appeal/Request," with supporting information and documentation to my attention at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. CSC Form 13 is available on the Civil Service Commission's website at www.sfgov.org/CivilService under "Forms."

In the event that Stephanie Winston's appeal is timely and appropriate, the department is required to submit a staff report in response to the appeal within sixty (60) days so that the matter may be resolved in a timely manner. Accordingly, **the staff report is due no later than 11 a.m. on October 10, 2019** so that it may be heard by the Civil Service Commission at its meeting tentatively scheduled on October 21, 2019. If you will be unable to transmit the staff report by the October 10th deadline, or if required departmental representatives will not be available to attend the October 21st meeting, please notify me by use of CSC Form 13 as soon as possible, with information regarding the reason for the postponement and a proposed alternate submission and/or hearing date.

You may contact me at Michael.Brown@sfgov.org or (415) 252-3250 if you have any questions. For more information regarding staff report requirements,

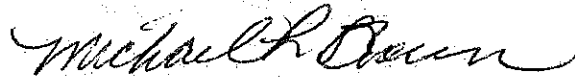
MICHAEL L. BROWN
EXECUTIVE OFFICER

Appellant: Stephanie Winston
July 30, 2019
Page 2 of 2

meeting procedures or future meeting dates, please visit the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in cursive script, reading "Michael L. Brown".

MICHAEL L. BROWN
Executive Officer

Attachment

Cc: Susan Gard, Department of Human Resources
Kate Howard, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Jeanne Buick, Department of Human Resources
Luenna Kim, Human Services Agency



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via U.S. Mail and Email

July 30, 2019

Stephanie Winston
[REDACTED]

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

Subject: **Register No. 0184-19-6: Appealing the Human Resources Director's decision to Administratively Close Without Further Investigation your Discrimination Complaint, EEO File No. 3092.**

Dear Stephanie Winston:

This is in response to your appeal submitted to the Civil Service Commission on July 29, 2019 appealing the Human Resources Director's decision to administratively close without further investigation your discrimination complaint, EEO File No. 3092. Your appeal has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If your appeal is timely and appropriate, the department will submit its staff report on this matter to the Civil Service Commission in the near future to request that it be scheduled for hearing. The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. You will receive notice of the meeting and the department's staff report on your appeal two Fridays before the hearing date via email, as you have requested on your appeal form. A hard copy of the report will also be available for your review at the Commission's offices located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date (note that the Commission requires an original and nine copies of any supplemental/rebuttal materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email at Michael.Brown@sfgov.org or by phone at (415) 252-3247 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

MICHAEL L. BROWN
Executive Officer

Cc: Micki Callahan, Department of Human Resources
Kate Howard, Department of Human Resources
Susan Gard, Department of Human Resources
Jeanne Buick, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Luenna Kini, Human Services Agency



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via Electronic Mail and U.S. Mail

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

JACQUELINE P. MINOR
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

March 5, 2020

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Eric Utley

**SUBJECT: APPEAL BY ERIC UTLEY OF THE HUMAN RESOURCES
DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY
CLOSE HIS COMPLAINT OF RETALIATION.**

Dear Eric Utley:

The above matter will be considered by the Civil Service Commission at a meeting to be held on **March 16, 2020 at 2:00 p.m. in Room 400**, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/CivilService under "Meetings" no later than end of day on Wednesday, March 11, 2020. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is attached for your review; however, a hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is 5:00 p.m. on **Tuesday, March 10, 2020** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Again, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

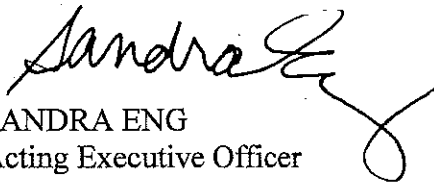
THE CIVIL SERVICE COMMISSION
CALENDAR 15

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION


SANDRA ENG
Acting Executive Officer

Attachment

Cc: Micki Callahan, Department of Human Resources
Diana Jou, Office of the Treasurer and Tax Collector
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Katie Limpach, Department of Human Resources
Guillermo Tapia, Office of the Treasurer and Tax Collector
Commission File
Commissioners’ Binder
Chron



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via U.S. Mail

March 5, 2020

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

JACQUELINE P. MINOR
COMMISSIONER

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Debra Lew

Subject: APPEAL BY ERIC UTLEY OF THE HUMAN RESOURCES
DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY
CLOSE HIS COMPLAINT OF RETALIATION.

Dear Debra Lew:

As you may be aware, Eric Utley filed the above-referenced discrimination complaint with the Department of Human Resources ("DHR"). The Department of Human Resources reviewed Eric Utley's allegations, and the Human Resources Director determined that there was insufficient evidence to establish her claims of discrimination and harassment. Eric Utley has appealed that determination to the Civil Service Commission.

In accordance with the City Charter and Civil Service Rules, the Commission may sustain, modify or reverse the Human Resources Director's determination; and may effectuate an appropriate remedy in the event that it finds discrimination in the work environment. Any such finding is binding on City departments. The Commission may not impose discipline on an employee, but in an appropriate case may recommend that the department consider discipline.

The Equal Employment Opportunity Division of DHR will present and defend the Human Resources Director's determination on Eric Utley's complaint at the Civil Service Commission meeting to be held on **March 16, 2020 at 2:00 p.m.** in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. The Commission will have received the DHR staff report, which reviews the evidence pertaining to the complaint and supports the Human Resources Director's determination, in advance of the meeting. You will have an opportunity to address Eric Utley's allegations at the Commission meeting, if you wish to do so, although you are not required to appear. The Commission will rule on the information previously submitted and any testimony or other evidence provided at its meeting.

SANDRA ENG
ACTING EXECUTIVE OFFICER

The March 16, 2020 meeting agenda will be posted on the Civil Service Commission’s website at www.sfgov.org/CivilService under “Meetings” no later than end of day on Wednesday, March 11, 2020. Additionally, hard copies of DHR’s staff report regarding Eric Utley’s appeal will be available for review at the Commission’s office located at 25 Van Ness Avenue, Suite 720, San Francisco; however, you may also contact the Commission at CivilService@sfgov.org to request that a copy of the report be emailed to you instead.

You may contact me at Sandra.Eng@sfgov.org or (415) 252-3247 should you have any questions.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Sandra Eng", with a stylized flourish at the end.

SANDRA ENG

Acting Executive Officer

Cc: Micki Callahan, Department of Human Resources
Diana Jou, Office of the Treasurer and Tax Collector
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Katie Limpach, Department of Human Resources
Guillermo Tapia, Office of the Treasurer and Tax Collector
Commission File
Commissioners’ Binder
Chron

APPEAL

Civil Service Commission

25 Van Ness Avenue, Room 720

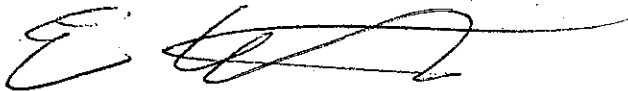
San Francisco, CA 94102

0193196
X' M. Callahan
K. Howard
S. Gant
J. Bruck
L. Simon
M. Valdez
D. Lou

Dear Civil Service Commission:

Let this letter serve as notice of my appeal of the DHR EEOs decision regarding my complaint,
File No. 2854. Please contact me to set up a meeting to continue the appeal process.

Sincerely,



Eric Utley

2019 AUG 21 PM 2:31

CIVIL SERVICE COMMISSION
SAN FRANCISCO

August 5, 2019

Civil Service Commission
25 Van Ness Avenue, Room 720
San Francisco, CA 94102

01916 19 6
ADDITIONAL INFORMATION
RE: E. UTLEY APPEAL

M. CALLAHAN
K. HOWARD
S. GARD
L. SIMON
M. VALDEZ
D. JOH

2019 AUG 5 PM 1:12

CIVIL SERVICE COMMISSION
SAN FRANCISCO

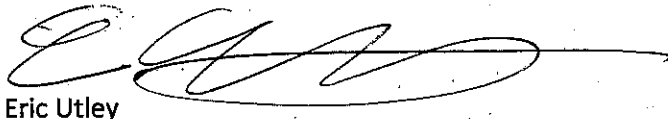
Dear Civil Service Commission:

On July 25, 2019 I received the enclosed response for the City and County of San Francisco Department of Human Resources. Several facts in the City's response are inaccurate.

- 1) The City did not mail the response to my current address, which they have access to. This in and of itself invalidates the City's response.
- 2) The City states that they received a report on August 31, 2018 from Guillermo Tapia documenting my complaint. I meet with Mr. Tapia on or about September 19, 2018. I have never signed nor seen any complaint I filed with Mr. Tapia. I asked the City to provide a copy of my complaint and have never received one.
- 3) Allegation #9 against Ms. Buckley is misstated. Ms. Buckley berated me and called me untrustworthy for reporting to HR that she was preventing the staff from taking a lunch break. Reporting illegal activity to HR is a protected activity. Ms. Buckley's response to me creates a hostile work environment.
- 4) On or about July 27, 2018 Ms. Buckley put in writing that I was being insubordinate. This is adverse employment action.

I am requesting the Civil Service Commission overturn DHR's decision to not investigate. I am requesting a full investigation of Theresa Buckley's behavior and the City's response to my complaint and the complaints of others against Ms. Buckley.

Sincerely,



Eric Utley

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Eric Utley

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 2854

Dear Mr. Utley:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint, EEO File. No. 2854.

On August 31, 2018, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Guillermo Tapia, Departmental Personnel Officer at the Office of the Treasurer and Tax Collector (TTX). Mr. Guillermo reported your allegations that Theresa Buckley, 8190 Attorney, subjected you to harassment due to your race (Caucasian) and sex (male), Debra Lew, 8177 Attorney, subjected you to retaliation, and Epifania Lardizabal, 4220 Tax Auditor-Appraiser, subjected you to harassment based on your sexual orientation.

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Some of the reported conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy) and the City's Equal Employment Opportunity (EEO) Policy. Therefore, TTX will take appropriate action to address Ms. Buckley's and Ms. Lardizabal's alleged conduct, prevent any reoccurrence, and remind the appropriate individuals that retaliation is prohibited. As such, this matter is deemed resolved and DHR EEO will administratively close your complaint without further investigation. Nevertheless, should you be subjected to any such inappropriate conduct in the future, please contact Dianna Jou, Departmental Personnel Officer, TTX, at (415) 554-7877.

I. BACKGROUND AND ALLEGATIONS

Since November 24, 2014, you have been employed as an 8173 Legal Assistant at TTX. From December 29, 2015 until July 1, 2018, Ms. Lew was your supervisor. Since October 18, 2018, Ms. Buckley has been your supervisor. You stated that Ms. Buckley and Ms. Lew have a strained

working relationship that is rife with conflict, which you attribute to Ms. Buckley's belief that Ms. Lew is an "older employee" who is "set in her ways," which has caused conflict because Ms. Buckley has tried to implement new changes at TTX.

A. Allegations Regarding Ms. Buckley's Conduct

You alleged that beginning in fall 2017 and continuing to January 2019, Ms. Buckley subjected you to harassment and discrimination based on your race (Caucasian) and sex (male) when:

- (1) In fall 2017, in reference to transgender City employees and health benefits, she said, "they get something, why do they need more?";
- (2) Between fall 2017 and summer 2018, on multiple occasions, she made negative comments about a male opposing counsel, including that he was a "white entitled male" and an "off base, typical white privileged male." On one occasion, after you mentioned opposing counsel's legal argument, and in what you believed to be an attempt to bond with you, you understood Ms. Buckley to be implying that because you are both white, you have experienced white privilege. You also believed that she was trying to tell you that she is a Republican, although you acknowledged she had not mentioned her political affiliation before, and does not know yours;
- (3) During summer 2018, you, Ms. Buckley and Dolores Zeigler, 8173 Legal Assistant, were on a conference call with the above-mentioned opposing counsel. During the call, Ms. Ziegler wrote a note that opposing counsel was a bully and showed it to Ms. Buckley. After the call and in your presence, Ms. Buckley and Ms. Ziegler discussed how opposing counsel was a bully;
- (4) By email on July 27, 2018, she told you that she felt you were being disrespectful and insubordinate in an email response that you had sent to Ms. Lew;
- (5) In August 2018, she asked you if you were having problems with Ms. Lew because of your experience working with only male attorneys at your previous job;
- (6) On September 19, 2018, she sent you multiple emails regarding your lack of response and incomplete tasks while you were talking to Human Resources (HR);
- (7) On October 4, 2018, she asked you to take lunch early, which you did, and then the next day, she was mad at you and spoke to you about protocols when taking lunch early;
- (8) On October 10, 2018, she discussed removing you from medical liens;
- (9) On October 19, 2018, she berated you for reporting to HR that she was mad at you for taking an early lunch after she asked, and called you untrustworthy;
- (10) She often refers to certain law schools as horrible, which you believe means the school does not promote women, and will look up the law schools where opposing counsel earned their degree and act differently based on her opinion of the school;
- (11) She once referred to Ms. Lew as "old;" and
- (12) In general, she is more cooperative and friendly with female attorneys.

B. Allegations Regarding Ms. Lew's Conduct

You alleged that between September 2017 and January 2019, Ms. Lew subjected you to the following unwelcome conduct:

- (1) In September 2017, she told you that you should look for another job elsewhere;
- (2) On July 26, 2018, she questioned you about your workload;
- (3) In August 2018, she told you that she agreed with Ms. Buckley's statements that your email on July 27, 2018 to Ms. Lew was insubordinate;
- (4) On August 30, 2018, she told you that if you raise your voice at her again, she would write you up;
- (5) In August or September 2018, she told you that you were not "warm enough" with Senior Collection Officers (SCOs);
- (6) On September 19, 2018, she sent you an email that you found disrespectful and hostile in tone, but you did not recall the context, or what triggered the email;
- (7) On January 15, 2019, she assigned you more tasks than the other Legal Assistants, and subsequently reassigned a case from another Legal Assistant to you.

C. Allegation Regarding Ms. Lardizabal

You alleged that, around late September or early October 2018, Ms. Lardizabal subjected you to harassment based on your sexual orientation when she asked you whether you would leave your husband for a woman.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Harassment

1. Ms. Buckley

To warrant further investigation, a complaint of harassment must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment.

You alleged that Ms. Buckley subjected you to unwelcome verbal conduct based on your race and sex as detailed in Section I.A, above. While her comment about transgender City employee's health benefits, her comments to you about white male privilege and your experience working with all male attorneys (Allegations (1), (2), and (5)) refer to race and sex, the comments were not about you, nor have you provided information to support your claim that they were directed at you because of your race or sex. Nonetheless, these comments, if true, were inappropriate and may violate the City's EEO Policy and TTX will be advised to take corrective action to ensure that the conduct does not continue.

Further, none of Ms. Buckley's remaining alleged conduct (Allegations (3), (4), and (6)-(12)) was based on your sex and race. While you attributed the remaining alleged conduct to some sort of animus by Ms. Buckley against Caucasian males because of her comments about opposing counsel and white privilege, you have not provided any information to suggest that she discussed opposing counsel being a bully in front of you, told you that she felt you were disrespectful to Ms. Lew in an email, questioned you about your incomplete tasks, counseled you for taking an

early lunch, berated you complaining about her to HR, discussed removing you from medical liens, called Ms. Lew "old," spoke negatively about various law schools and or generally is more cooperative with female attorneys than males, because you are Caucasian or male. Much of the conduct you reported was about, or directed at, people other than you. As such, the information you provided does not support your claim that you were subjected to unwelcome conduct because you are Caucasian and male.

Moreover, it is reasonable for a supervisor to ask their subordinates to take lunch at a different time than is normally scheduled on a busy day (Allegation (10)), provide feedback – even when you do not agree – regarding your interactions with other employees, discuss your work assignments, and completion of assignments. (Allegations (4), (6)-(9)). Further, you alleged that Ms. Buckley engaged in much of this conduct because of her own tension with Ms. Lew, who was previously your supervisor and still assigns work to you. As explained above, your allegations do not support your harassment claim, and DHR EEO is closing your complaint without further investigation.

2. Ms. Lardizabal

You alleged that Ms. Lardizabal subjected you to unwelcome verbal conduct based on your sexual orientation when she asked you if you would leave your husband for a woman, as described in Section I.C, above. Ms. Lardizabal's comment, if true, was inappropriate and violated the City's EEO Policy and Respect Policy and TTX will take appropriate action to address the alleged conduct. As this was a one-time incident, and will be appropriately addressed, DHR EEO considers this matter resolved and no further investigation is required.

B. Retaliation by Ms. Lew

To warrant further investigation, a complaint of retaliation must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when he opposes conduct he reasonably and in good faith believes to be discriminatory, or when he files a charge, testifies, assists, or participates in an investigation of discrimination.

You alleged that Ms. Lew subjected you to unwelcome conduct as detailed in Section I.C, above, because you now report to Ms. Buckley and Ms. Lew feels that you relay the information that you discuss with her to Ms. Buckley, and give her too much information. However, reporting to a new supervisor, with whom you share or discuss information, is not a protected category within the City's EEO complaint jurisdiction. Moreover, none of the conduct that you have identified is an adverse employment action. As such, the information you provided does not support a retaliation claim and DHR EEO is closing your complaint without further investigation.

III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 2854, will not be investigated and is administratively closed. The decision of the Human

Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Micki Callahan', with a long horizontal flourish extending to the right.

Micki Callahan
Human Resources Director

c: Jose Cisneros, Treasurer, TTX
Tajel Shah, Deputy Director, TTX
Dianna Jou, Departmental Personnel Officer, TTX
Linda C. Simon, Director, EEO and Leave Programs, DHR

City and County of San Francisco
Department of Human Resources
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103-5413



444#

ERIC UTLEY

9456334208 0000


STAFF REPORT



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0193-19-6
2. For Civil Service Commission Meeting of: March 16, 2020
3. Check One: Ratification Agenda
 Consent Agenda
 ✓ Regular Agenda
 Human Resources Director's Report
4. Subject: Appeal by Eric Utley of the Human Resources Director's
 determination to administratively close his complaint of retaliation.
5. Recommendation: Adopt the report and deny Eric Utley's appeal.
6. Report prepared by: Katie Limpach, DHR EEO Telephone number: (415) 557-4924
7. Notifications: Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda
 Human Resources Director: Micki Callahan  3/5/20
 Date: March 5, 2020
9. Submit the original time-stamped copy of this form and person(s) to be notified
(see Item 7 above) along with the required copies of the report to:

**Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102**

10. Receipt-stamp this form in the “CSC RECEIPT STAMP” box to the right using the time-stamp in the CSC Office.

Attachment

CSC-22 (11/97)

CSC RECEIPT STAMP

NOTIFICATIONS

Eric Utley (Appellant)

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Debra Lew (Respondent)

Linda C. Simon
Director, EEO and Leave Programs
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dianna Jou
Departmental Personnel Officer
Office of the Treasurer & Tax Collector
City Hall, Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Mawuli Tugbenyoh
Chief of Policy
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Guillermo Tapia
Senior Human Resources Analyst
Office of the Treasurer & Tax Collector
City Hall, Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Katie Limpach
EEO Programs Specialist
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

CIVIL SERVICE COMMISSION REPORT

MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

THROUGH: Linda C. Simon, Director, EEO and Leave Programs
Department of Human Resources

FROM: Katie Limpach, EEO Programs Specialist

DATE: March 5, 2020

EEO FILE NO: 2854

REGISTER NO: 0193-19-6

APPELLANT: Eric Utley

I. AUTHORITY

The San Francisco Charter, Section 10.103, and Civil Service Commission Rules provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to Civil Service Commission Rules, Section 103.3, the Civil Service Commission shall review and resolve appeals of the Human Resources Director's determinations.

II. BACKGROUND

Eric Utley is an 8173 Legal Assistant at the Office of the Treasurer & Tax Collector (TTX). From December 29, 2015 until September 17, 2018, Debra Lew, 8177 Attorney, supervised Utley. Since September 17, 2018, Theresa Buckley has been Utley's supervisor.

A. Appellant's Complaint, EEO File No. 2854

On October 10, 2018, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint," from Guillermo Tapia, 1244 Senior Human Resources Analyst, reporting Utley's allegations that Buckley harassed him based on his race (white) and sex (male) Exhibit A. Utley also alleged that Buckley made inappropriate remarks about age and gender identity, and that a co-worker, Epifania Lardizabal, 4220 Tax Auditor-Appraiser, harassed him based on his sexual orientation (gay).

On January 29, 2019, Katie Limpach, 1233 EEO Programs Specialist, met with Utley for an intake interview. During the intake interview, Utley submitted a written complaint in which he also alleged that Lew retaliated against him for requesting to work under Buckley and for having weekly one-on-one meetings with Buckley.

B. Human Resources Director's Administrative Closure

On June 28, 2019, the Human Resources Director informed Utley that some of Buckley's and Lardizabal's conduct, if true, violated the City's Equal Employment Opportunity (EEO) Policy and Policy Regarding the Treatment of Co-workers and Members of the Public (Respect Policy), and that the department would take appropriate action to address the alleged conduct. The letter also informed Utley that based on the information provided his allegations did not meet the standards for a complaint of harassment or retaliation and would be administratively closed without further investigation. Exhibit C.

III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

On August 1, 2019, Utley appealed the Human Resources Director's determination. Exhibit D. On August 5, 2019, the Civil Service Commission received additional information from Utley in support of his appeal. After further review of Utley's allegations, DHR EEO decided to investigate Utley's harassment allegations, and decided that his retaliation allegations should remain closed. On March 5, 2020, DHR EEO notified Utley that his harassment allegations were being investigated. As such, the only issue on appeal is whether the Human Resources Director appropriately administratively closed Utley's retaliation complaint without further investigation.

IV. INVESTIGATIVE STANDARDS AND ANALYSIS

To warrant further investigation, a complaint of retaliation must sufficiently allege all of the following: (1) the complainant engaged in a protected activity; (2) the complainant suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. Employees engage in protected activities when they oppose conduct that they reasonably and in good faith believe to be discriminatory, or when they file a charge, testify, assist, or participate in an investigation of discrimination.

Utley alleged that sometime prior to December 2017, he requested that Buckley supervise him instead of Lew. In December 2017, Lew, who Utley alleges has a tense working relationship with Buckley, told Utley that she knew that he had requested Buckley supervise him instead of her. Utley alleged that Lew retaliated against him for making this request by engaging in the following conduct:

- a. In September 2017, Lew told Utley that he should look for another job elsewhere because Lew had taught him everything they had to teach him.
- b. On July 26, 2018, prior to Lew's two week vacation, Lew questioned Utley about his workload.
- c. In August 2018, Lew told Utley that she agreed with Buckley's assessment that an email that he had sent to Lew was disrespectful and insubordinate.

- d. On August 30, 2018, Lew told Utley that if he raised his voice at Lew again, Lew would write him up.
- e. In August or September 2018, Lew suggested that Utley was having difficulty with the Senior Collection Officers providing him with documents because his emails were not "warm enough" and came across as mean.
- f. On September 19, 2018, Lew sent Utley an email that he found disrespectful and hostile in tone, but Utley did not recall the context.
- g. On January 15, 2019, Buckley assigned four of five new cases to Utley. Utley believes Lew is influencing Buckley to give him a high case load. Later that day, Lew reassigned the one case that had been assigned to his co-worker to Utley.

However, Utley's request to be supervised by Buckley was not a protected activity, as it was not a complaint of discrimination nor participation in an investigation of discrimination. As such, Utley's retaliation allegations do not fall within the jurisdiction of the City's EEO complaint procedures. Accordingly, Utley's retaliation complaint was closed without further investigation by DHR EEO.

V. RECOMMENDATION

For the reasons set forth above, the Human Resources Director's determination should be upheld and the appeal should be denied.

VI. APPENDIX/ATTACHMENTS TO THE REPORT

Attached to this report are the following:

- Exhibit A: August 31, 2018, Department Report of Employment Discrimination Complaint and Additional Allegations, pp. 5-11.
- Exhibit B: January 29, 2019, Notes from Intake Interview with Eric Utley, pp. 12-24.
- Exhibit C: June 28, 2019, Human Resources Director's Determination Letter to Appellant, pp. 25-30.
- Exhibit D: August 1, 2019, Appeal by Eric Utley, pp. 31-34.
- Exhibit E: August 5, 2019, Notice of Receipt of Appeal and Letter to Eric Utley, pp. 35-39.

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EXHIBIT A

August 31, 2018, Department Report of Employment Discrimination Complaint and Additional Allegations

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT

* Report Within Five Working Days of Receipt of Complaint*

Return to: Linda C. Simon, Director, DHR EEO Division, One South Van Ness, 4th Floor, San Francisco, CA 94103; linda.simon@sfgov.org; Masha.Mayevskaya@sfgov.org; Matthew.Valdez@sfgov.org

1. Department/Worksite: Office of the Treasurer & Tax Collector
2. Complainant: Eric A. Utley Tel. No. (Work): 554-4493
Address: [REDACTED] Tel. No. (Home): [REDACTED]
Personal E-mail: [REDACTED] DSW #: [REDACTED]
3. Complaint Filing Date: August 31, 2018
4. Complainant's Current Employment Status (circle one): Classification: 8173
PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE
5. Basis of Discrimination (specify):
 - ☒ Race: _____
 - ☒ Color: _____
 - ☐ Religion: _____
 - ☐ Creed: _____
 - ☒ Sex: _____
 - ☐ National Origin: _____
 - ☒ Ethnicity: _____
 - ☒ Age: _____
 - ☐ Disability/Medical Condition: _____
 - ☐ Political Affiliation: _____
 - ☐ Sexual Orientation: _____
 - ☐ Ancestry: _____
 - ☐ Marital or Domestic Partner Status: _____
 - ☐ Gender Identity: _____
 - ☐ Parental Status: _____
 - ☐ Veteran Status: _____
 - ☐ Other Non-Merit Factors: _____
 - ☐ Retaliation: _____
6. Issue complained of:
 - ☐ Denial of Employment
 - ☐ Denial of Training
 - ☐ Denial of Promotion
 - ☐ Denial of Reasonable Accommodation
 - ☐ Termination
 - ☐ Lay-off
 - ☐ Constructive Discharge
 - ☐ Disciplinary Action
 - ☐ Harassment
 - ☐ Work Assignment
 - ☐ Sexual Harassment
 - ☐ Compensation
 - ☒ Other (please specify): repeated comments about "entitled white men."

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s), provide DSW # for Accused/Respondent(s): (Attach letter of complaint):

On 8/31/18 Debra Lew, Mr. Utley's supervisor reported to Joni Kuroyama, Sr. HR Analyst, that Mr. Utley told her that he overheard Tax Collector Attorney, Theresa Buckley, make comments about "white men". TTX asked HR to investigate. Attached you will find drafts of the interview notes.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes ☐ No ☒
If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes ☐ No ☒
Name: _____ Organization/Firm: _____
Address: _____ Phone No.: _____

*10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal)
Investigation

*10a. Name, position, and phone number of person who will implement recommended steps:
David Augustine, Tax Collector

11. Completed by: Guillermo Tapia Date: 10/10/2018
Address: 1 Dr. Carlton B. Goodlett Pl. Rm 140, SF 94102 Tel. No. 415-554-4473

*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

☐ Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

☐ Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for Micki Callahan, Human Resources Director

Date

Revised 2016

September 19, 2018

Interview of Eric Utley

This memo memorializes an interview with Eric Utley, Legal Assistant conducted by Joni Kuroyama and Guillermo Tapia on Wednesday, September 19, 2018. Guillermo notified Mr. Utley about prohibition re retaliation, his obligation to respond truthfully and recommended to keep conversation confidential since we may need to interview other witnesses and to talk to his union representative if he had any concerns.

Mr. Utley stated that he started working for the Office of the Treasurer & Tax Collector as of November 2014, and that he used to be supervised by Debra Lew, Legal Section Attorney, but as of Monday, September 17, 2018, he is now supervised by Theresa Buckley, Tax Collector Attorney. Mr. Utley stated that he sends his time-off requests to Ms. Lew but that Ms. Buckley approves his timesheet. He said this is the same process that was done when Stephanie Proffitt, the prior Legal Section Manager, was there.

Mr. Utley stated that he works on medical debt collection for the San Francisco General Hospital, doing legal research and filing liens. Mr. Utley stated that during the past year Ms. Buckley has assigned him to work with the committee working on project such as Hyland and mail for the Legal Section.

Mr. Utley stated that he heard Ms. Buckley make comments referencing race, sex, and gender. He said as a third-party person overhearing the comments, he felt offended. Mr. Utley stated that he has also heard Ms. Buckley make comments to him directly about him being a "white privileged male." When asked whether in the past he has heard Ms. Buckley make comments in the past related to race, sex, or gender, Mr. Utley clearly answered: "Yes."

Mr. Utley stated that Ms. Buckley has made several comments to him and that he has also overheard comments that had made him go: "huh?" Mr. Utley stated that until these specific incidents "I did not realize, until the next day, she (Ms. Buckley) did not listen to me because of my gender." According to Mr. Utley, Ms. Buckley told him: "did you realize it could be because you're a male?" (regarding getting along with Ms. Lew). Mr. Utley reported this to David Augustine.

Mr. Utley stated that he does not know why his working relationship with Ms. Lew "has become tattered" this past year. changed this past year. Mr. Utley stated that back in August he went to Ms. Buckley to get assistance with this, and Ms. Buckley asked me: "are you sure you are not having problems with Debra because you are a male? and you have only worked with male attorneys." Mr. Utley said that Ms. Buckley said something to the effect of "maybe having

problems with Debra because she's a woman and I'm a man." He said this comment made him feel that "maybe that's why she's discounting my knowledge and complaints -- because of the negative connotation of 'white privileged male.' He said that he normally doesn't come to this type of conclusion because he is the type to "constantly second-guess" things.

Mr. Utley stated that in August: "I told David (Augustine) about it. I considered it dismissive because of my gender. I felt dismissed because I was a man." At that time a lot of people went on vacation. Later, Mr. Utley followed up with Mr. Augustine who said that he spoke to Ms. Buckley and to let him know if there are any other issues. Later, Ms. Buckley followed up with Mr. Utley and told him that it was appropriate to go to David Augustine. I recently found out nobody talked to Debra."

Mr. Utley stated: "I've in the past have worked with men who were very hard-nosed. I consider Debra [Lew] to be hard-nosed."

Mr. Utley stated that "the past three years have been fine; only the past year it's been difficult."

Separate incident – asked about his husband:

Mr. Utley informed us about another incident happening within the last 4 weeks --unrelated to Ms. Buckley- when he was in the lunch room at around 3:30 PM. Present were also Epifania Lardizabal, Koreda Tan and Roszena Iskandar. Mr. Utley stated that he is openly gay man who has shared that he is married to a Filipino man. Mr. Utley stated that Ms. Lardizabal asked him: "if you felt in love with a woman would you leave Ray?" Mr. Utley said that he later felt that it was an improper comment.

Other incidents overheard speaking about opposing counsels as "white privileged male"

Mr. Utley stated: "Theresa has also made decision how to react to opposite counsel if she feels that she is talking to a 'privileged white man.'" He stated that Ms. Buckley has done this when he, his coworker Dolores Ziegler, and his supervisor Ms. Lew were present.

Mr. Utley said that he witnessed Ms. Buckley talking about opposing counsel [REDACTED] and made negative comments about him being a "white privileged male." Mr. Utley stated: "of course attorneys are going to talk and belittle each other, coming from a high-end attorney firm like Jones Day where previously worked. It was obvious they never promoted women."

Mr. Utley stated: "I am used to that coming from an outside office." He said that generally legal field looks up attorney's license and also find name of the graduating school. Mr. Utley stated

that Ms. Buckley has said: "Horrible school." Mr. Utley believes that Ms. Buckley meant that it was obvious that the school did not promote women.

Mr. Utley stated: "Theresa discounts my knowledge" because of the white privileged male comments – because of gender and ethnicity.

Mr. Utley stated: "it definitely seems to have a trigger when it comes to encounters with an attorney who went to a better school or had a better life."

Mr. Utley stated that when referring to opposing counsel [REDACTED] Ms. Buckley said that he's a white privileged male so he probably he did not write the legal document, he must have an associate write it. He said he probably went to a better school or had a better white privileged life."

Mr. Utley stated that around August, around the time of the meet and confer: "Dolores (Ziegler) and Theresa started talking about him [REDACTED] being a bully. He said at first Ms. Ziegler passed him a note that said that Mr. [REDACTED] was a bully because he was trying to pin down Ms. Buckley. Mr. Utley did not think that Mr. [REDACTED] did was inappropriate, so he didn't comment on Ms. Ziegler and Ms. Buckley's conversation. He said that Ms. Buckley agreed with Ms. Ziegler and said: "yes, he is a bully. How dare he.?"

Mr. Utley stated that Ms. Buckley referred to [REDACTED] the attorney involved in the Presidio Terrace auction lawsuit, as a "white privileged male". It was close to 6 PM and no one else was in the office; Mr. Utley stated: "Theresa tried to bond with me. She said that because I was raised within the same white privileged environment 'you know what is like.'" Mr. Utley stated: "my general impression Theresa is telling me she is a republican." Mr. Utley stated that the white privileged comment was a "weird sort of comment" and he "immediately felt suspicious because it's not a label I'd like to identify with." He said it had a "negative connotation."

Mr. Utley said that Ms. Buckley has made him uncomfortable when she says: "white privileged male" comments both when she addresses him and when she is talking about opposing counsel.

Comment overheard about gender reassignment surgery

Mr. Utley stated that around the time Ms. Buckley was hired, she was exiting Ms. Lew's office and he overheard Ms. Buckley made disparaging remarks about San Francisco giving health coverage for gender reassignment surgery. Mr. Utley stated: "it rubbed me the wrong way. It didn't sound good." He said it was something to the effect of "the city government is giving

people those benefits, so people should shut up; like pointing out an entitlement and people shouldn't be attacking us. It was very specific. It was dismissive."

Comments overheard about Debra and Lynnette being "older"

Mr. Utley stated that during a one-on-one meeting with Ms. Buckley he "tried to have a meaningful dialogue with Theresa about Debra" and Ms. Buckley told him: "Eric, I heard you. I am trying to work with Debra, but it is hard to work with an older employee." Mr. Utley clarified: "I don't know if she said it because of her (Debra) age or that being an old-school employee set in her ways."

Mr. Utley said one time he or Ms. Buckley said: "Lynn (Gifford) is a good legal secretary because she is older" I mean she has years of experience. I corrected it immediately." When she (Ms. Buckley) made comment about Debra I thought she was referring to her experience."

Different working under Ms. Buckley vs. Ms. Proffitt.

Mr. Utley stated that when Ms. Buckley "came on board, she wanted to do things differently." Mr. Utley stated that very shortly after Ms. Buckley was hired, she would assign work to him and she would not tell Ms. Lew and the other way around. This created conflicting information and conflicting deadlines. He said this caused him to have difficulty with his relationship with Ms. Lew.

Mr. Utley stated that "Theresa decided from the beginning, she wanted to have one-on-ones" so at first she would have just one-on-one with just Mr. Utley, and would not include Debra. "I would have one-on-one with Theresa and would then come out and go to a one-on-one with Debra. At one-point Debra told me not to tell Theresa everything I was doing - she was basically instructing me not to be forthcoming with Theresa about work on my desk and on work I was doing for Debra. At first I accepted it. But then Theresa would ask what work Debra was doing. Later I convinced both to have meeting with both of them at the same time."

Relationship with Ms. Lew deteriorated:

Mr. Utley stated that in January to June, his "relationship with Debra was hostile." Mr. Utley stated: "Theresa would come to me giving me instructions how to handle a case. Literally twenty-four hours later Debra would give me different instructions. Theresa tells me to do something. I'm to follow Theresa since Theresa is Debra's boss. Then things "exploded in July." Mr. Utley stated that it was a "high stress time." Theresa gave me an email at the end of July for being insubordinate with Debra in my response by me trying to clarify things. I said I don't think we should be doing this to Debra. Debra was going on vacation; everyone was

EXHIBIT B

January 29, 2019, Notes from Intake with Eric Utley



CONFIDENTIAL

DHR EEO INVESTIGATION OF EMPLOYMENT DISCRIMINATION COMPLAINT

INTAKE INTERVIEW NOTES

Complainant: Eric Utley	EEO File No./Dept.: 2854/TTX
EEO Investigator: Katie Limpach, 1233 EEO Programs Specialist	Date & Time: Tuesday January 29, 2019 9:30am-1:00pm
Others Present: Rebecca Cox, 1233 EEO Programs Specialist (Mentor)	
Location: DHR, 1 South Van Ness 4 th Floor.	Pages: 12

I. BACKGROUND INFORMATION

Since November 24, 2014, Eric Utley has been an 8173 Legal Assistant in the Legal Section of the Office of the Treasurer and Tax Collector (TTX). He works from 9:00AM to 6:00PM Monday through Friday on an alternate work schedule, while the rest of the TTX Legal section staff work from 8:00AM to 5:00PM.

Utley's duties include checking mail, updating case files, court filings, legal pleadings, drafting letters and legal research. From November 2014 to November 2018, Debra Lew, 8177 Attorney (Criminal/Civil), was his supervisor, and since December 2018, his supervisor has been Theresa Buckley, 8190 Attorney, Tax Collector. Utley and Lew are the only two people who work on medical liens. Utley is the only Legal Assistant in charge of medical liens, which, since he began working at TTX in 2014 has been his primary function. Utley works on tax collections the remainder of the time. Utley works most often with Lew because of their involvement in medical liens, but interacts with his coworkers daily. Utley stated that it would be an abnormal day if he did not speak to Buckley, Lew, Alex Del Valle, 8173, Legal Assistant, or Dolores Zeigler, 8173 Legal Assistant.

A. Debra Lew

In late August or early September 2014, Utley met Lew when she interviewed him for the 8173 Legal Assistant position. From November 2014 to November 2018, Lew supervised Utley. In 2014, Stephanie Profitt, then-8190 Attorney, Tax Collector, restructured the Department so that the Legal Assistant in charge of medical liens would report directly to Lew for everything up to approving timesheets.

Prior to 2017, Utley described his working relationship with Lew as really great, but after Buckley was hired in 2017, they began to have issues. Utley alleged that during a one-on-one meeting around September 1, 2017, Lew told him that “[She has] taught [him] everything that [she] could teach [him] and [he] should probably look for a new job.”

After Buckley was hired in July 2017, Lew became very cold, in that she pulled back from the chats they had previously and becoming very “closed off.” Utley explained that Lew seemed to be paranoid that employees would watch her. For example, Lew commented to Utley that she believed Lynette Gifford, then-1458 Legal Secretary, would watch Lew when she was at the copy machine. Lew also [told Utley] that she thought Profitt, who would occasionally walk out to the balcony, was watching what Lew was doing.

B. Buckley

In July 2017, Buckley was hired and Utley met her when David Augustine, Deputy Director, introduced her to the legal team. Utley described his relationship with Buckley as “strained since day one,” although he does not know exactly why. He stated that conversations about work in both individual and group meetings would inevitably lead to frustration for both.

Utley stated that he is used to working with attorneys in the private sector who are like Buckley, in that she constantly changed her mind and did not give clear instructions about what she wanted. For example, Buckley would stand by the cubicle next to Del Valle’s, look at him and Utley and, without providing instructions, ask who wanted to work on a new task, such as drafting a letter, looking at the database for information, or contacting vendors. If Utley or Del Valle asked questions, Buckley would become frustrated and hostile. Utley could not recall the specific date, but stated that during one meeting, Buckley said something that was incorrect and when Utley corrected her, she snapped and told him to “stop being so nitpicky.”

C. Lew and Buckley’s Working Relationship

Utley stated that Lew currently reports to Buckley, and described their working relationship as strained, and sometimes nonexistent. Utley believes that Buckley has a strained working relationship with everyone except Zeigler, but Buckley’s relationship with Lew is particularly strained. Utley suspects that Buckley feels that Lew is too old as Buckley has made comments that Lew is “an older employee” and that Buckley is “working on her.”

D. Typical Workflow at TTX

Pre-judgement cases are assigned prior to a court ordered judgment and are typically handled by Del Valle. He works on them up to the point of judgement, at which they would become post judgement cases which can include bank levies, order of examinations (OEXs), rid of attachments and collection of debt. During OEXs, a debtor is asked to produce documents, in front of a judge, regarding a business and to develop a plan on how to pay off the judgement.

Medical cases are debts owed to Zuckerberg San Francisco General Hospital, Laguna Honda Hospital, San Francisco Fire Department or San Francisco Public Health. Utley states that PRAs are typically the easiest as the Legal Assistant creates two to three drafts of a letter from a

template. Buckley will then determine which letter is produced and the Legal Assistant will fill in the necessary information and the mail the letter.

Pre-judgement cases are the most difficult as they require demand letters, also called notices of interest, to file a lawsuit. The lawsuits contain the party names, the debt owed and they are sent via certified mail. These letters can take up a lot of time as the Legal Assistant have to put together and mail the letters by hand. It takes Utley three hours to compile 22 envelopes, 11 of which are mailed by hand. On average, one case can take up to three days to complete.

A normal workload for Utley consists of three or four cases that would need serious attention; typically, two medical reimbursement liens and a third task such as e-filing. Utley currently has 230 active cases and receives documents for updates from Lew, which are then sent to the SCOs. On average, Utley will send out three or four pieces of mail per day but is able to send 50 on a busy day. Utley is unsure what a typical work day consists of for Zeigler, however, Del Valle usually has one or two pre-judgement cases per day. Del Valle is able to get through one or two cases a day depending on the workload and currently has a total of about 20 cases.

Buckley is implementing a new process of assigning new cases at the Legal Section meetings and a new procedure where the Legal Assistants are assigned cases to conclusion. Previously, the Legal Assistants were assigned two or three new tasks every two or three days totaling about six tasks per week. Utley is assigned a new case, via email, every week.

II. ALLEGATIONS OF HARASSMENT BASED ON RACE AND SEX

A. Buckley's Alleged Comments and Conduct Towards Utley

a. Working with Lew

Buckley has spoken to Utley about getting along with Lew about once every three months during their one-on-ones and sometimes at Utley's desk. If there is an incident between Utley and either Buckley or Lew, it takes about a month for everyone to get back on the same page. For example, in regards to Utley's current work flow, Lew has given him assignments that conflict with Buckley's assignments and visa-versa. This confusion in work flow has not stopped since Utley has started reporting directly to Buckley and as a result, his relationship with Lew is deteriorating. Buckley wanted Utley to work with her closely on matters, which has led Utley to be unsure about how to fix things with Lew.

Buckley says that it is difficult to work with Lew because she is older and Utley believes that this is an excuse for Lew's behavior towards Utley. Lew's "closed off-ness" began about one month after Buckley was hired and signified a broken working relationship between Utley and Lew.

As Buckley's working style became more prevalent, "I tell you to do XYZ, you do XYZ no questions asked," Lew would react when something would change as she did in August 2018 response to the insubordinate email (detailed in Section IV B-a).

b. “You Worked at Another Firm”

Buckley has referenced Utley’s previous employment at Jones Day in connection to Utley’s, once positive, working relationship with Lew by suggesting that he was having problems working with her because of his experience working with all-male attorneys. Utley interpreted this comment to mean that Buckley does not believe that his experience is relevant and that he should stop complaining insinuating that Utley is the problem and not Lew, despite his once positive relationship with Lew the three years prior. Utley believes that this is an example of Buckley making an excuse for Lew. Twenty-four hours after Buckley made this comment, Utley interpreted the comment to mean that Buckley sees him as a white privileged male who needs to be “put down” or “controlled” in addition to siding with Lew. Neither Buckley nor Lew have talked to Utley in an attempt to “go through the motions” and to fix the working relationship, aside from Buckley explaining to Utley that she had been “caught up” in Lew’s “fire tornado,” regarding Lew’s temper. Utley believes that Buckley’s comments, in reference to working with male attorneys at his previous employment, were very dismissive and felt that she was trying to shut the conversation down. Within ten days of Augustine and Utley’s August 6, 2018 meeting, Utley reported this incident to Augustine.

c. Buckley’s Comments Trying to “Bond”

On an Utley could not recall the specific date but stated that, in one instance, no one was in the office aside from Buckley and Utley who believed that Buckley was trying to bond with him by having them identify their white privilege together, “you’re white privileged... I am white privileged.” Utley had mentioned [REDACTED] legal argument and Buckley responded that “[a] white privileged male [who] doesn’t want to pay bills. You get that.” Utley does not believe that [REDACTED] was trying to make the argument that Buckley was reading into, but nonetheless, she was trying to make a connection by applying a label to both Utley and herself.

Utley also stated that he believes that Buckley was trying to tell him that she is a Republican. Utley was previously a Republican and although Buckley does not know that Utley was previously a Republican, he believes that she has been trying to “stroke the flame” in him to be more on the Republican side. Buckley has not mentioned her political affiliation before, but Utley has a gut feeling that she is a Republican.

In regards to former Mayor Ed Lee’s proposal to providing additional benefits to transgender employees, Buckley told Lew that “they get something, why do they need something more?” Utley believes that this is an argument that is made by Republicans, not Democrats, and understood it to mean that Buckley wanted to include that she is a Republican, but does not recall that she said anything else. Utley did not report this comment until November 2018 during a conversation with Guillermo Tapia, 1244 Senior Human Resources Analyst.

d. Buckley’s Assumption Regarding Working with Lew

Buckley has discussed the difficulties of working with Lew to Utley a few times in the past and, aside from the insubordinate email on July 27, 2018, has stayed clear from talking to Utley about his behavior with Lew “based on XYZ.” Utley could not recall the specific date but stated that, Buckley approached Utley’s workstation, after all of the other Legal Assistants had gone

home, and told him that she was having difficulty with Lew and does not know how to deal with it.

Although Buckley has never said so directly, Utley thinks that Buckley believes that he is having problems with Lew because he is a man and dismisses his complaints regarding Lew. Due to Buckley's comments about Utley working with male attorneys at his previous position, he believes that Buckley thinks that Utley is not used to working with women, thus contributing to his problem with Lew.

When Utley started working with Lew, in 2014, no one else would work with her and considered her to be difficult to work with. Utley knows how to work with "Type A" personalities, "get it done right then move on to the next." Utley feels that Buckley's comments regarding working with Lew are belittling and dismissive. He attributes these comments to a ruined relationship with Buckley and feels that she will not listen, making it hard to go to her with any issues.

Over the course of a year, Utley has heard Buckley make comments that she is "working on" Lew and it is "difficult working with an older employee." Utley believes Buckley meant that Lew is set in her ways with how she proceeds which developed from decades of habits. Utley is still unsure what Buckley means when she refers to Lew as "older," but does not think that Buckley is working to make Lew better, but instead telling her to placate Utley because he is the problem as a white privileged man. Otherwise, Buckley just does not want an "older" employee in her department. Utley has discussed these comments with Del Valle, who was not aware of all the statements that Buckley has made, but was aware that Buckley is "working on" Lew.

As of August 2018, when Utley complained to Augustine, he has not heard Buckley reference Lew as an "older" employee, however, Buckley still mentions "working on" Lew. Utley has not heard Buckley refer to any other employee as "older".

e. Buckley Discounts your Knowledge

Utley feels that, Buckley discounts his knowledge because he is a male by discounting his knowledge and his complaints about Lew. Utley believes that Buckley dismisses his knowledge as wrong and will implement a new protocol. Every time he brings something up, Buckley dismisses the idea because she believes that the idea is his. For example, the Bureau of Delinquent Revenue (BDR) in TTX often has a policy in place and employees will often reference BDR standards, but if the standards are referred to Buckley by Utley or Del Valle, she will dismiss them. If Lew or Zeigler mentioned BDR policy, Buckley would be more responsive. Utley could not recall the date, but stated that he reported to Augustine that Buckley discounts his knowledge.

In 2015, the One Ferry Plaza judgement was paid off and the post-judgement enforcement, at which Lew was the supervisor, was assigned so that the liens could be released. Lew trained Utley and told him that they would take the satisfaction of judgement and email the taxpayer whose responsibility it was to record with the court and the recorder's office. On January 18, 2019, while Lew was on vacation, Utley and Buckley were the only ones in the office when the taxpayer called to inform them that the liens were not released. Buckley asked Utley, in a tone

that was not accusatory, why the matter was not resolved in 2015. Utley informed her of the process and Buckley responded that it cannot be right because TTX would never do something that way. Utley shared this information with Buckley in 2017 and she has either forgotten about it or dismissed it.

Del Valle has seniority over Zeigler, and Utley has watched Buckley be dismissive towards Del Valle and not Zeigler. Buckley will lose her patience quickly with Utley or Del Valle, but allow Zeigler to have “drawn out conversations.”

B. Buckley’s Alleged Comments About Other People

a. Alleged Comments Regarding Gender Reassignment Surgery

In Fall 2017, Utley overheard Buckley make a comment to Lew about how the city already provided benefits for transgendered individuals in the 90s. Buckley told Lew that “they get something; why do they need something more?”

b. “It’s a Boy” Comment

Utley could not recall overhearing a conversation that Buckley had with a male Caucasian lawyer at which she said “it’s a boy.” This information was provided with the complaint to DHR EEO in Tapia’s September 18, 2018 interview notes with Lew.

c. Horrible School Comments

Utley has heard Buckley, and probably Lew, make comments about particular law schools that opposing counsel has attended. His previous law firm, had a huge problem hiring and promoting women. During his time at the firm, Utley was exposed to lawyers who would make comments about other lawyers, the schools that they attended, and whether or not they went to an ivy league school. Utley believes that this is how lawyers typically talk. Buckley knows whether or not someone went to a better school or had a better life because attorneys are required to register with the State Bar publically, which lists what school they have attended to earn their law degree.

d. Alleged Conduct Towards Female Counsel

Buckley often refers to some schools as being horrible and Utley believes that she is referring to the fact that they do not promote women. When Buckley brings up where an individual went to law school, she bases her decision as to whether or not she considers a school to be good on whether or not women have come from there. For example, there is currently a female judge in small claims court who is not allowing TTX to file their small claims actions on medical debts and Buckley and Lew have looked up her work experience and the school that she earned her degree. Buckley acts differently towards attorneys based on the school(s) that they have attended.

Buckley acts differently towards female attorneys than male attorneys, and is often more forthcoming with female attorneys. If the opposing counsel is a female, Buckley will move

towards a payment plan faster than if it were a male attorney at which she would be harsher and would press to move to judgement to ask for more money. For example, there is a case, received within three weeks of January 29, 2018, regarding a male doctor who was running an unregistered practice. He did not register his practice as a business, and Buckley was in charge of the debt collection. She told Utley that "we are gonna get him" but changed her demeanor when she found out the opposing attorney was a female and was more willing to work with the attorney. No other employees have mentioned to Utley that they believe that Buckley acts differently towards attorneys, either male or female or based on the law school that they attended.

e. Buckley and Opposing Counsel

During the time that Buckley was on boarded in 2017, a lawsuit was filed for medical debt collections which lasted for about a year. The opposing counsel, [REDACTED], whom Buckley did not know prior to the case, would often argue. Throughout the duration of the lawsuit, Buckley would dismiss [REDACTED]'s arguments and make comments that he was an "off-base, typical white privileged male" and a "white entitled male." Buckley made these comments to Lew, Utley and Zeigler. During June or July of 2018, Buckley requested that Utley and Zeigler be present, as witnesses, during a phone call with [REDACTED]. During the phone call, Zeigler wrote down that [REDACTED] was a bully and showed it to Buckley. After the conference call, Buckley and Zeigler discussed how [REDACTED] was a bully. Utley felt awkward and did not want to be a part of Buckley and Zeigler's conversation.

Utley does not recall with certainty whether or not Buckley has made a comment regarding an associate writing a legal document for Bonzell¹ but recalls that there was a discussion as to whether or not [REDACTED] was a solo practitioner.

Buckley made comments that Lew did not pull her weight in the writing of the legal documents for this particular case.

[REDACTED] is the opposing counsel in the Presidio Terrace case. Utley does not recall whether or not Buckley has made comments about [REDACTED] being a white privileged man.

Buckley most often made comments regarding sex and race to Lew. Utley could not recall the specific date, but stated that similar comments were also made during a conference call, with Augustine, Owen Clements, 8181 Chief of Special Litigation at SF City Attorney, and Scott Rieber, 8182 Chief Tax Attorney at SF City Attorney. Utley cannot confirm the attorneys he has heard Buckley speak with have been Caucasian males.

¹ Tapia's intake interview notes with Utley, received with the complaint, mentions an associate writing legal documents for [REDACTED].

III. ALLEGATIONS OF HARASSMENT BASED ON SEXUAL ORIENTATION

A. September 18, 2018: Lunch Room Incident

On September 18, 2018, Utley was in the lunch room with Epifania Lardizabal, 4220 Tax Auditor-Appraiser, Koreda Tan, 1632 Senior Account Clerk and Roszena Iskandar, 4222 Senior Tax Auditor-Appraiser. Lardizabal asked him whether or not he would leave his husband for a woman. There was no context leading up to the question as no had asked him about his husband in that instance. Utley did not respond to the question and was unclear as to whether or not Lardizabal realized that the question could potentially be problematic. Lardizabal has not asked Utley about his husband before and has not said anything to Utley about being gay. To Utley's knowledge, Lardizabal has not made similar comments to anyone else at TTX. On September 19, 2018 Utley reported this incident during a surprise meeting with Tapia and Joni Kuroyama, 1244 Senior Human Resources Analyst.

IV. ALLEGATIONS OF DISCRIMINATION BASED ON RACE AND SEX

A. Increased Workload

a. July 2018: Questioned about workload

Around the end of July 2018, Utley received an email from Lew, his supervisor at the time, inquiring about his current workload before she left for a two-week vacation on July 30, 2018. Lew has not supervised any other employees and therefore does not ask anyone else about their workload, however, Lew does not inquire about Utley's workload often.

b. January 15, 2019: Assigned Additional Caseload

On January 15, 2019, Utley attended a Legal Section meeting with Buckley, Lew, Zeigler, Del Valle and Utley. At the meeting, Lew proceeded to assign various tasks to the Legal Assistants during the meeting. However, all but one of these tasks were being assigned to Utley while the other case was initially assigned to Del Valle. Overall, Utley received three or four new cases. Later, Lew re-assigned the case that was initially assigned to Del Valle for e-filing to Utley. It is Utley's personal belief that Lew assigned him the additional cases because Lew does not like to work with other people and does not get along with Del Valle.

Utley assumes that his direct reporting manager is responsible for case assignments, who at the time was Buckley although they have not discussed case assignments since Buckley officially became his supervisor in October of 2018. Shortly after Buckley became Utley's supervisor in October 2018, she informed him that he is to take instruction from Lew as if it were coming from Buckley. Utley believes that, by default, this also makes Lew his supervisor who also has the ability to assign additional casework.

Zeigler takes a lot of time off of work which may be a factor as to why she was not assigned any new cases. Utley believes that Del Valle was not assigned any new cases was because he had deadlines in February for all 20 of his cases.

No reason was provided as to why Del Valle was initially only assigned one case or why it was reassigned to Utley. After the meeting, Lew asked Utley how quickly he could complete a task and asked why it could not be completed sooner. Utley believes that the case was reassigned to Utley because Lew wanted it done promptly.

Utley believes that Lew has been influencing Buckley's decision to assign him as many cases as possible. During Utley's one-on-ones with Buckley, she mentions that she is working on Lew, does not know why she behaved a certain way and does not think it is appropriate for Lew to dump all of her workload before leaving for vacation, seemingly insinuating that Lew is the problem. However, when Lew is present, Buckley says that Lew can do whatever she wants.

B. Criticism

a. July 27, 2018 Told Insubordinate

On July 27, 2018, Buckley sent Utley an email stating that she felt he was being disrespectful and insubordinate in an email response that he had sent to Lew. Buckley did not follow up with Utley regarding the email and she did not provide any reasons as to why she believed his email response to be disrespectful or insubordinate. During a one-on-one, when Utley and Buckley discussed the email, she threw Lew under the bus by stating that it was Lew's fault that Buckley was caught up in Lew's "fire tornado." Utley got the impression that Buckley was apologizing for the email, although Buckley's behavior hasn't changed.

In August 2018, Lew brought up the insubordinate email and how she found it to be disrespectful also. Lew did not initially address Utley regarding the email because Buckley stepped in and Lew felt that she was not involved as it was between Utley and Buckley. Utley believes that Lew thinks that the email is a valid reflection of his work performance and she believes him to be disrespectful and insubordinate, even though Buckley wrote the email. Utley does not believe that Buckley feels the same way about his work performance.

Utley believes that Buckley sent the email to try to discipline him. Buckley was not Utley's supervisor at this time, but she was supervising Lew. Utley did not receive any counseling or disciplinary actions as a result of the email.

b. August 30, 2018: Interaction with Lew

Utley vaguely recalls a conversation with Lew on August 30, 2018 where she asked him to lower his voice² as outlined in Tapia's interview notes with Lew. Utley does not recall the context of the conversation, but recalls that Lew asked Utley to lower his voice because it was the only instance that she has ever asked him to lower his voice. This information was provided with the complaint to DHR EEO in Tapia's September 18, 2018 interview notes with Lew.

² This information was provided in the interview notes with Lew and submitted by Tapia with the complaint.

c. August/September 2018: PPAR “Not warm enough”

In August or September 2018, during a meeting with Lew and Buckley, Lew discussed a Performance Plan and Appraisal Report (PPAR) she wrote for Utley regarding issues that he was having with the Senior Collection Officers (SCO) at BDR. Lew had an issue with the way that Utley was communicating with the SCOs as she believed that Utley's emails were not warm enough and came across as mean. However, Utley was not disciplined for this and to his knowledge, he has never been put on a Performance Improvement Plan.

d. September 19, 2018: Disrespectful/Hostile Tone

On September 19, 2018, Utley vaguely recalls an email exchange with Lew at which he believed that she was speaking to him in a hostile and disrespectful tone,³ but could not recall the context of the email exchange. Utley could not recall why he believed Lew's tone to be hostile but believes that there may have been a phrase regarding why something was not done, at which Utley interpreted as an attack. Lew later responded to the email and apologized stating that it was not her intention. Utley is unsure if he told Tapia and does not believe that he has spoken to anyone regarding this incident.

e. October 5, 2018: Late Lunch

Utley typically takes a one-hour lunch everyday beginning at 2:00pm, is asked to adjust his lunch schedule about once a month, and never skips lunch.

On October 4, 2018, Utley recalled that Buckley has asked him to take lunch early⁴ the following day. On October 5, 2018, Utley took lunch early, per Buckley's instruction, and she was mad at him for not checking in. Lew was Utley's supervisor during this time.

Utley has never officially been removed from medical liens and reassigned to PRAs although he believes that this may have been discussed but was not a part of the discussion.⁵ He could not recall whether this incident was used as a reason to potentially move him from medical liens to PRAs.

f. October 19, 2018: Told Untrustworthy

On October 19, 2018 at around 2:30pm, Utley received a phone call from Tapia inquiring as to whether or not Utley has taken his lunch yet, which he had not. The phone call occurred after Utley had emailed Danilo Ampie, 122 Senior Payroll and Personnel Clerk at TTX, inquiring about the timesheet reporting process when an employee does not take a lunch.

There was a big filing and Buckley was “riding everyone hard.” She met with staff every ten minutes and was not allowing anyone to take a lunch until they checked in with her. When they did, she would assign them additional work. Utley heard Tapia call Buckley and heard Buckley arguing with Tapia regarding staff members taking a lunch. When Buckley hung up the phone,

³ See “email from Debra Lew 09192018 in L Share.

⁴ See “additional information 10.12.18” in L Share.

⁵ See “additional information 10.12.18” in L Share.

she immediately called Utley into her office, berated him for going behind her back to HR, and called Utley an untrustworthy employee. Utley assumed that Tapia informed Buckley that Utley had emailed Tapia about taking a lunch, but Tapia did not tell Buckley that Utley sent the email. This made Utley feel worse as he believes that Buckley assumed that he was the one to report the issue and immediately took it out on him.

Utley was offended that Buckley used the term untrustworthy. Utley has not heard Buckley refer to any other employee as untrustworthy and she has not told him that Buckley believes anyone else to be. As far as Utley knows, no other employees have spoken to HR and therefore have not experienced any repercussions for taking the time to meet with HR.

C. Utley's Understanding as to Animus

Utley believes that the above-mentioned conduct (Sections II and IV) show that Buckley holds an animus against Utley for being a "white privileged male." He has heard Buckley make comments about "white privileged males" on several occasions, and Utley understands such comments to apply to him, because Buckley has been dismissive of Utley's knowledge, his comments and complaints, and has labeled him as "untrustworthy." Utley further alleged that Buckley has told the male staff to be quiet and not ask questions regarding their work assignments.

V. REPORTING OF COMPLAINT

Utley could not recall the date he first reported his concerns about Lew to Buckley, but he complained that nothing was getting done and that he felt dismissed. In August 2018, after nothing resulted from his initial complaint to Buckley, Utley reported his complaint to Augustine. Utley stated that approximately once every three months since 2018, he has complained to Buckley, and two occasions, he complained to Human Resources.

VI. IMPACT

Utley stated that Lew and Buckley's conduct has created a lot of stress for him. He believes that he has had a serious loss in value in the work that he does with the City and senses that he is not wanted at TTX. Utley has not reached out to a health care provider yet, but acknowledged that the longer these issues go on, the more like he will need help. He has not taken time off as a result of the alleged conduct. On January 30, 2019, Utley was provided with Employee Assistance Program (EAP) information via email.

VII. REMEDIES

Utley would like his stress reduced when around Buckley and Lew by having them work out their differences, although he has no hope that this will happen because Buckley and Lew are "set in their ways." If the two cannot get on the same page, Utley would like the City to step in and create a written protocol regarding the assignment of cases.

Utley would like to be transferred to a different division within TTX or another department within the City. If things remain as they are at TTX, he would like the City to “buy him out” and he will walk away.

Utley is open to a dialogue with Lew and Buckley, with someone else in the room, and feels that mediation would possibly help but feels that it would need to be required.

Augustine has suggested the EAP sessions as a remedy. Utley believes that the EAP would be beneficial as the team needs to come together and he does not think that they are at a point that is beyond savable if the team does team building exercises to learn to work together. Utley will not be utilizing the EAP for himself but will be seeking assistance from his own provider.

VIII. MISCELLANEOUS

Utley filed a complaint with the EEOC in November 2018 and, as of January 29, 2019, has not filed a lawsuit or grievance.

On January 29, 2019, at the conclusion of the intake interview, Utley provided the investigator with a two-page detailed description of his allegations from August 2, 2018 to January 15, 2019.

IX. CONCLUSION

Utley identified Kato as a potential witness as he sits in an office next to Buckley and in front of Zeigler. Kato may have additional knowledge supporting Utley’s allegations as he may have heard Buckley make comments regarding white privileged men.

Mr. Utley was reminded of confidentiality and that retaliation is prohibited and should be reported to me, DHR EEO or the department personnel officer.

EXHIBIT C

June 28, 2019, Human Resources Director's Determination Letter to Appellant

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

June 28, 2019

Eric Utley
[REDACTED]

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 2854

Dear Mr. Utley:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my determination regarding your complaint, EEO File. No. 2854.

On August 31, 2018, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Guillermo Tapia, Departmental Personnel Officer at the Office of the Treasurer and Tax Collector (TTX). Mr. Guillermo reported your allegations that Theresa Buckley, 8190 Attorney, subjected you to harassment due to your race (Caucasian) and sex (male), Debra Lew, 8177 Attorney, subjected you to retaliation, and Epifania Lardizabal, 4220 Tax Auditor-Appraiser, subjected you to harassment based on your sexual orientation.

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and it may have been difficult for you to make your complaint. Some of the reported conduct, if true, violated the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy) and the City's Equal Employment Opportunity (EEO) Policy. Therefore, TTX will take appropriate action to address Ms. Buckley's and Ms. Lardizabal's alleged conduct, prevent any reoccurrence, and remind the appropriate individuals that retaliation is prohibited. As such, this matter is deemed resolved and DHR EEO will administratively close your complaint without further investigation. Nevertheless, should you be subjected to any such inappropriate conduct in the future, please contact Dianna Jou, Departmental Personnel Officer, TTX, at (415) 554-7877.

I. BACKGROUND AND ALLEGATIONS

Since November 24, 2014, you have been employed as an 8173 Legal Assistant at TTX. From December 29, 2015 until July 1, 2018, Ms. Lew was your supervisor. Since October 18, 2018, Ms. Buckley has been your supervisor. You stated that Ms. Buckley and Ms. Lew have a strained

working relationship that is rife with conflict, which you attribute to Ms. Buckley's belief that Ms. Lew is an "older employee" who is "set in her ways," which has caused conflict because Ms. Buckley has tried to implement new changes at TTX.

A. Allegations Regarding Ms. Buckley's Conduct

You alleged that beginning in fall 2017 and continuing to January 2019, Ms. Buckley subjected you to harassment and discrimination based on your race (Caucasian) and sex (male) when:

- (1) In fall 2017, in reference to transgender City employees and health benefits, she said, "they get something, why do they need more?";
- (2) Between fall 2017 and summer 2018, on multiple occasions, she made negative comments about a male opposing counsel, including that he was a "white entitled male" and an "off base, typical white privileged male." On one occasion, after you mentioned opposing counsel's legal argument, and in what you believed to be an attempt to bond with you, you understood Ms. Buckley to be implying that because you are both white, you have experienced white privilege. You also believed that she was trying to tell you that she is a Republican, although you acknowledged she had not mentioned her political affiliation before, and does not know yours;
- (3) During summer 2018, you, Ms. Buckley and Dolores Zeigler, 8173 Legal Assistant, were on a conference call with the above-mentioned opposing counsel. During the call, Ms. Ziegler wrote a note that opposing counsel was a bully and showed it to Ms. Buckley. After the call and in your presence, Ms. Buckley and Ms. Ziegler discussed how opposing counsel was a bully;
- (4) By email on July 27, 2018, she told you that she felt you were being disrespectful and insubordinate in an email response that you had sent to Ms. Lew;
- (5) In August 2018, she asked you if you were having problems with Ms. Lew because of your experience working with only male attorneys at your previous job;
- (6) On September 19, 2018, she sent you multiple emails regarding your lack of response and incomplete tasks while you were talking to Human Resources (HR);
- (7) On October 4, 2018, she asked you to take lunch early, which you did, and then the next day, she was mad at you and spoke to you about protocols when taking lunch early;
- (8) On October 10, 2018, she discussed removing you from medical liens;
- (9) On October 19, 2018, she berated you for reporting to HR that she was mad at you for taking an early lunch after she asked, and called you untrustworthy;
- (10) She often refers to certain law schools as horrible, which you believe means the school does not promote women, and will look up the law schools where opposing counsel earned their degree and act differently based on her opinion of the school;
- (11) She once referred to Ms. Lew as "old;" and
- (12) In general, she is more cooperative and friendly with female attorneys.

B. Allegations Regarding Ms. Lew's Conduct

You alleged that between September 2017 and January 2019, Ms. Lew subjected you to the following unwelcome conduct:

- (1) In September 2017, she told you that you should look for another job elsewhere;
- (2) On July 26, 2018, she questioned you about your workload;
- (3) In August 2018, she told you that she agreed with Ms. Buckley's statements that your email on July 27, 2018 to Ms. Lew was insubordinate;
- (4) On August 30, 2018, she told you that if you raise your voice at her again, she would write you up;
- (5) In August or September 2018, she told you that you were not "warm enough" with Senior Collection Officers (SCOs);
- (6) On September 19, 2018, she sent you an email that you found disrespectful and hostile in tone, but you did not recall the context, or what triggered the email;
- (7) On January 15, 2019, she assigned you more tasks than the other Legal Assistants, and subsequently reassigned a case from another Legal Assistant to you.

C. Allegation Regarding Ms. Lardizabal

You alleged that, around late September or early October 2018, Ms. Lardizabal subjected you to harassment based on your sexual orientation when she asked you whether you would leave your husband for a woman.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Harassment

1. Ms. Buckley

To warrant further investigation, a complaint of harassment must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the condition of your employment and create an abusive working environment.

You alleged that Ms. Buckley subjected you to unwelcome verbal conduct based on your race and sex as detailed in Section I.A, above. While her comment about transgender City employee's health benefits, her comments to you about white male privilege and your experience working with all male attorneys (Allegations (1), (2), and (5)) refer to race and sex, the comments were not about you, nor have you provided information to support your claim that they were directed at you because of your race or sex. Nonetheless, these comments, if true, were inappropriate and may violate the City's EEO Policy and TTX will be advised to take corrective action to ensure that the conduct does not continue.

Further, none of Ms. Buckley's remaining alleged conduct (Allegations (3), (4), and (6)-(12)) was based on your sex and race. While you attributed the remaining alleged conduct to some sort of animus by Ms. Buckley against Caucasian males because of her comments about opposing counsel and white privilege, you have not provided any information to suggest that she discussed opposing counsel being a bully in front of you, told you that she felt you were disrespectful to Ms. Lew in an email, questioned you about your incomplete tasks, counseled you for taking an

early lunch, berated you complaining about her to HR, discussed removing you from medical liens, called Ms. Lew "old," spoke negatively about various law schools and or generally is more cooperative with female attorneys than males, because you are Caucasian or male. Much of the conduct you reported was about, or directed at, people other than you. As such, the information you provided does not support your claim that you were subjected to unwelcome conduct because you are Caucasian and male.

Moreover, it is reasonable for a supervisor to ask their subordinates to take lunch at a different time than is normally scheduled on a busy day (Allegation (10), provide feedback – even when you do not agree – regarding your interactions with other employees, discuss your work assignments, and completion of assignments. (Allegations (4), (6)-(9)). Further, you alleged that Ms. Buckley engaged in much of this conduct because of her own tension with Ms. Lew, who was previously your supervisor and still assigns work to you. As explained above, your allegations do not support your harassment claim, and DHR EEO is closing your complaint without further investigation.

2. Ms. Lardizabal

You alleged that Ms. Lardizabal subjected you to unwelcome verbal conduct based on your sexual orientation when she asked you if you would leave your husband for a woman, as described in Section I.C, above. Ms. Lardizabal's comment, if true, was inappropriate and violated the City's EEO Policy and Respect Policy and TTX will take appropriate action to address the alleged conduct. As this was a one-time incident, and will be appropriately addressed, DHR EEO considers this matter resolved and no further investigation is required.

B. Retaliation by Ms. Lew

To warrant further investigation, a complaint of retaliation must sufficiently allege all of the following: (1) you engaged in a protected activity; (2) you suffered an adverse employment action; and (3) there is a causal link between the protected activity and the adverse employment action. An employee engages in a protected activity when he opposes conduct he reasonably and in good faith believes to be discriminatory, or when he files a charge, testifies, assists, or participates in an investigation of discrimination.

You alleged that Ms. Lew subjected you to unwelcome conduct as detailed in Section I.C, above, because you now report to Ms. Buckley and Ms. Lew feels that you relay the information that you discuss with her to Ms. Buckley, and give her too much information. However, reporting to a new supervisor, with whom you share or discuss information, is not a protected category within the City's EEO complaint jurisdiction. Moreover, none of the conduct that you have identified is an adverse employment action. As such, the information you provided does not support a retaliation claim and DHR EEO is closing your complaint without further investigation.

III. HUMAN RESOURCES DIRECTOR'S DETERMINATION

Based on the information you provided, it is my determination that your complaint, EEO File No. 2854, will not be investigated and is administratively closed. The decision of the Human

Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may also file a complaint of employment discrimination with the California Department of Fair Employment and Housing or the United States Equal Employment Opportunity Commission. Contact these agencies directly for filing instructions and deadlines.

Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4837, should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Micki Callahan', with a long horizontal flourish extending to the right.

Micki Callahan
Human Resources Director

c: Jose Cisneros, Treasurer, TTX
Tajel Shah, Deputy Director, TTX
Dianna Jou, Departmental Personnel Officer, TTX
Linda C. Simon, Director, EEO and Leave Programs, DHR

EXHIBIT D

August 1, 2019, Appeal by Eric Utley



CIVIL SERVICE COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

August 6, 2019

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dear Ms. Callahan:

I am forwarding for your review, additional information submitted by Eric Utley on his appeal of the Human Resources Director's decision to administratively close without further investigation his Discrimination Complaint, EEO File No. 2854. This matter was forwarded to the Department of Human Resources on August 5, 2019 with CSC Register No.0193-19-6.

MICHAEL L. BROWN
EXECUTIVE OFFICER

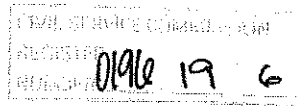
Sincerely,

CIVIL SERVICE COMMISSION

MICHAEL L. BROWN
Executive Officer

Attachment

Cc: Kate Howard, Department of Human Resources
Susan Gard, Department of Human Resources
Jeanne Buick, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Dianna Jou, Office of the Tax Collector and Treasurer



August 5, 2019

Civil Service Commission
25 Van Ness Avenue, Room 720
San Francisco, CA 94102

ADDITIONAL INFORMATION
RE: E. UTLEY APPEAL
M. CALLAHAN
K. HOWARD
S. GARD
L. SIMON
M. VALDEZ
D. JOH

2019 AUG 5 PM 1:12

CIVIL SERVICE COMMISSION
SAN FRANCISCO

Dear Civil Service Commission:

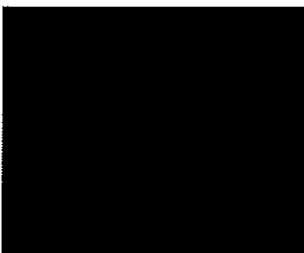
On July 25, 2019 I received the enclosed response for the City and County of San Francisco Department of Human Resources. Several facts in the City's response are inaccurate.

- 1) The City did not mail the response to my current address, which they have access to. This in and of itself invalidates the City's response.
- 2) The City states that they received a report on August 31, 2018 from Guillermo Tapia documenting my complaint. I meet with Mr. Tapia on or about September 19, 2018. I have never signed nor seen any complaint I filed with Mr. Tapia. I asked the City to provide a copy of my complaint and have never received one.
- 3) Allegation #9 against Ms. Buckley is misstated. Ms. Buckley berated me and called me untrustworthy for reporting to HR that she was preventing the staff from taking a lunch break. Reporting illegal activity to HR is a protected activity. Ms. Buckley's response to me creates a hostile work environment.
- 4) On or about July 27, 2018 Ms. Buckley put in writing that I was being insubordinate. This is adverse employment action.

I am requesting the Civil Service Commission overturn DHR's decision to not investigate. I am requesting a full investigation of Theresa Buckley's behavior and the City's response to my complaint and the complaints of others against Ms. Buckley.

Sincerely,

Eric Utley



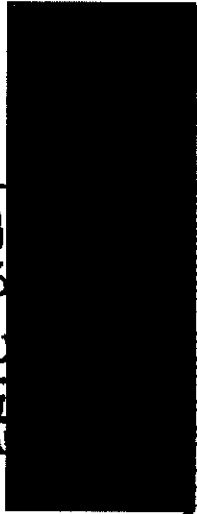
City and County of San Francisco
Department of Human Resources
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103-5413



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ERIC UTLEY

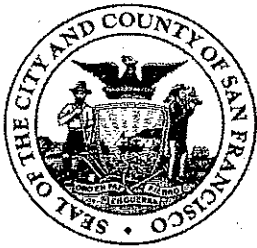


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Multiple copies of this document are being sent to the following:

EXHIBIT E

August 5, 2019, Notice of Receipt of Appeal and Letter to Eric Utley



CIVIL SERVICE COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

NOTICE OF RECEIPT OF APPEAL

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

DATE: August 5, 2019

REGISTER NO.: 0193-19-6

APPELLANT: ERIC UTLEY

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dear Ms. Callahan:

The Civil Service Commission has received the attached letter from Eric Utley, appealing the Human Resources Director's decision to administratively close without further investigation his discrimination complaint, EEO File No. 2854. Your review and action are required.

If this matter is not timely or appropriate, please submit CSC Form 13 "Action Request on Pending Appeal/Request," with supporting information and documentation to my attention at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. CSC Form 13 is available on the Civil Service Commission's website at www.sfgov.org/CivilService under "Forms."

In the event that Eric Utley's appeal is timely and appropriate, the department is required to submit a staff report in response to the appeal within sixty (60) days so that the matter may be resolved in a timely manner. Accordingly, **the staff report is due no later than 11 a.m. on October 24, 2019** so that it may be heard by the Civil Service Commission at its meeting tentatively scheduled on November 4, 2019. If you will be unable to transmit the staff report by the October 24th deadline, or if required departmental representatives will not be available to attend the November 4th meeting, please notify me by use of CSC Form 13 as soon as possible, with information regarding the reason for the postponement and a proposed alternate submission and/or hearing date.

You may contact me at Michael.Brown@sfgov.org or (415) 252-3250 if you have any questions. For more information regarding staff report requirements,

Appellant: Eric Utley
August 5, 2019
Page 2 of 2

meeting procedures or future meeting dates, please visit the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

A handwritten signature in black ink, reading "Michael L. Brown". The signature is written in a cursive style with a large, stylized "M" and "B".

MICHAEL L. BROWN
Executive Officer

Attachment

Cc: Susan Gard, Department of Human Resources
Kate Howard, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Jeanne Buick, Department of Human Resources
Dianna Jou, Office of the Treasurer and Tax Collector



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via U.S. Mail and Email

August 5, 2019

Eric Utley



ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

MICHAEL L. BROWN
EXECUTIVE OFFICER

Subject: **Register No. 0193-19-6: Appealing the Human Resources Director's decision to Administratively Close Without Further Investigation your Discrimination Complaint, EEO File No. 2854.**

Dear Eric Utley:

This is in response to your appeal submitted to the Civil Service Commission on August 1, 2019 appealing the Human Resources Director's decision to administratively close without further investigation your discrimination complaint, EEO File No. 2854. Your appeal has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If your appeal is timely and appropriate, the department will submit its staff report on this matter to the Civil Service Commission in the near future to request that it be scheduled for hearing. The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. You will receive notice of the meeting and the department's staff report on your appeal two Fridays before the hearing date via email, as you have requested on your appeal form. A hard copy of the report will also be available for your review at the Commission's offices located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.

In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date (note that the Commission requires an original and nine copies of any supplemental/rebuttal materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email at Michael.Brown@sfgov.org or by phone at (415) 252-3247 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

MICHAEL L. BROWN
Executive Officer

Cc: Micki Callahan, Department of Human Resources
Kate Howard, Department of Human Resources
Susan Gard, Department of Human Resources
Jeanne Buick, Department of Human Resources
Linda Simon, Department of Human Resources
Matthew Valdez, Department of Human Resources
Dianna Jou, Office of the Treasurer and Tax Collector

Civil Service Commission

25 Van Ness Avenue, Room 720

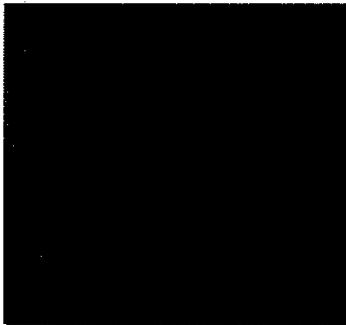
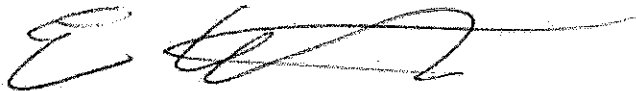
San Francisco, CA 94102

0193196
X' M. Callahan
K. Howard
S. Gard
J. Bruck
L. Simon
M. Valdez
D. Lou

Dear Civil Service Commission:

Let this letter serve as notice of my appeal of the DHR EEOs decision regarding my complaint, File No. 2854. Please contact me to set up a meeting to continue the appeal process.

Sincerely,



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CIVIL SERVICE COMMISSION
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