

2012 IL App (1st) 112494-U

SECOND DIVISION  
July 17, 2012

No. 1-11-2494

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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GEORGE C. FOX,	)	Petition for Direct Review of
	)	of an Order of the Chief
Petitioner-Appellant,	)	Legal Counsel of the Illinois
	)	Department of Human Rights
v.	)	
	)	
ILLINOIS DEPARTMENT OF HUMAN RIGHTS;	)	
ROCCO CLAPS, DIRECTOR OF THE DEPARTMENT	)	
OF HUMAN RIGHTS; LON MELTESEN, CHIEF	)	Charge No. 2007 CN 2971
LEGAL COUNSEL OF THE ILLINOIS DEPARTMENT	)	
OF HUMAN RIGHTS; AND CONDELL MEDICAL	)	
CENTER,	)	
	)	
Respondents-Appellees.	)	

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* Where petitioner failed to file his employment discrimination charge alleging a hostile work environment within 180 days of the date the violation occurred, the chief legal counsel's decision dismissing the charge for lack of jurisdiction is affirmed.

¶ 2 Petitioner George Fox appeals from a final order entered by the chief legal counsel (CLC) of respondent, the Illinois Department of Human Rights (the Department), sustaining the Department's dismissal of his claims of employment discrimination against co-respondent, Condell Medical Center (Condell). The CLC determined there was a lack of substantial evidence to support one of petitioner's claims, and that his other claim was properly dismissed for lack of jurisdiction. On appeal, petitioner solely contends the CLC erred when he sustained the dismissal of Count C for lack of jurisdiction because petitioner's charge was timely filed within 180 days of the last date he was subjected to hostile conduct by his employer. We affirm.

¶ 3 Documents contained in the record indicate petitioner was employed by Condell as a hospice chaplain from January 15, 2001, through January 15, 2007, when he was discharged for falsifying his time records. On May 1, 2007, petitioner filed a charge of discrimination with the Department alleging Condell discriminated against him based upon his sexual orientation. Petitioner raised three allegations in his charge. In Count A, petitioner alleged he was terminated because he was homosexual and his position was later filled by a non-homosexual person. In Count B, he alleged he received disparate treatment based on his sexual orientation because other non-homosexual employees who engaged in the same conduct were not discharged. In Count C, petitioner alleged he was subjected to a hostile work environment. Petitioner stated that in 2003, he informed his supervisor, Nancy Herchenbach, that he was homosexual. He alleged that beginning in 2003, and continuing to January 15, 2007, Herchenbach ignored and ostracized him, refused to speak to him, removed privileges, made unwelcome and insulting statements, and created "in general an unwelcome, hostile and intimidating environment."

¶ 4 Condell filed a verified response to petitioner's charge denying his claims of discrimination and maintaining it discharged petitioner due to falsification of his time records.

Pursuant to petitioner's subsequent request, the Department administratively closed Count B of his charge, the disparate treatment claim.

¶ 5 The Department investigated petitioner's remaining allegations and found petitioner informed Herchenbach of his sexual orientation around July 2, 2004. Petitioner stated that after his disclosure to Herchenbach, he noticed a significant difference in the manner in which she dealt with him, and she began to ignore and ostracize him. Petitioner informed the Department that this behavior continued until January 15, 2007. The Department found that the evidence showed Condell counseled and disciplined petitioner regarding his poor time documentation on several occasions, and he was warned that his continued failure to maintain proper documentation would result in further discipline, including discharge. The investigation also revealed Condell discharged two other non-homosexual employees for falsifying their time records. Based on its findings, the Department concluded that petitioner was not discharged due to his sexual orientation, but instead, because he violated Condell's policy by falsifying his time records. Consequently, the Department dismissed Count A for lack of substantial evidence.

¶ 6 The Department's investigation further revealed that as to Count C, the hostile work environment, petitioner identified his last date of harm as June 29, 2005. Petitioner filed his charge against Condell on May 1, 2007, which was 671 days after the last date of harm. The Department concluded that petitioner's charge was filed beyond the 180-day limit in the Illinois Human Rights Act (the Act) (775 ILCS 5/7A-102(A)(1) (West 2006)), and therefore, it lacked jurisdiction to consider his claim. Accordingly, the Department dismissed Count C for lack of jurisdiction.

¶ 7 Petitioner subsequently filed a petition for review of the Department's decision by the CLC. Therein, petitioner argued that the Department's decision that it lacked jurisdiction to consider Count C was erroneous because it had no factual basis and ignored the facts presented

to the investigator. Petitioner argued that the Department's finding that the last date of harm was June 29, 2005, was not supported by the investigative report and was directly contradicted by his statement that the behavior continued until January 15, 2007.

¶ 8 The CLC issued a final order sustaining the Department's findings that there was a lack of substantial evidence as to Count A, and a lack of jurisdiction as to Count C, and dismissing petitioner's charges. In his order, the CLC analyzed the evidence from the Department's investigation in great detail and found the evidence showed that Condell discharged petitioner for falsifying or inaccurately recording his time, not due to his sexual orientation. As to Count C, the CLC noted that petitioner alleged he was subjected to a hostile work environment from 2003 through January 15, 2007. The CLC found, however, that during the Department's investigation, petitioner stated that the last date of harm was June 29, 2005. Consequently, the CLC found that petitioner's charge, filed on May 1, 2007, was untimely filed more than 180 days after the last date of harm. Therefore, the Department did not have jurisdiction to investigate the allegations in Count C. The CLC further noted that in his request for review, petitioner failed to provide any additional evidence to show that the Department had jurisdiction to investigate Count C. The CLC found that, although petitioner alleged in a concluding manner that the harassment continued until the date of his discharge, petitioner did not identify any specific incident that occurred within 180 days of the filing of his charge. The CLC found it significant that in his request for review, petitioner did not deny that he informed the Department's investigator that June 29, 2005, was the last date on which he was subjected to a hostile work environment. Based on these findings, the CLC concluded that petitioner failed to provide any evidence to support his claim that his charge was filed in a timely manner.

¶ 9 On appeal, petitioner solely contends the CLC erred when he sustained the dismissal of Count C for lack of jurisdiction because the record shows petitioner's charge was timely filed on

May 1, 2007, within 180 days of January 15, 2007, which was the last date he was subjected to hostile conduct at Condell. Petitioner argues that the Department's investigative report states that he presented evidence that Herchenbach's behavior of ignoring and ostracizing him continued until January 15, 2007. He argues that is the only date in the report indicating when Herchenbach's conduct ceased. Petitioner further argues that the date of June 29, 2005, is not listed in the report as evidence he presented. On that basis, petitioner claims the CLC did not consider that facts contained in the investigative report were inconsistent with the Department's conclusion that it lacked jurisdiction of his claim. Specifically, he asserts the CLC did not recognize that petitioner told the investigator that the conduct continued until January 15, 2007.

¶ 10 We review the final decision of the CLC, not the decision of the Department. *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 452 (2009). In so doing, the CLC's findings are given deference, and the reviewing court is prohibited from reweighing the evidence or substituting its judgment for that of the CLC. *In re C.R.M.*, 372 Ill. App. 3d 730, 733 (2007). The CLC's decision dismissing a charge will not be disturbed unless we find that it was arbitrary, capricious or an abuse of discretion. *Id.* The decision will be deemed arbitrary and capricious where it fails to consider a crucial aspect of the problem, contravenes the intent of the legislature, or offers an explanation that is implausible and contrary to agency expertise. *Hoffelt v. Department of Human Rights*, 367 Ill. App. 3d 628, 632 (2006).

¶ 11 Pursuant to section 7A-102(A)(1) of the Act, an aggrieved party must file a written charge with the Department within 180 days after the date on which the civil rights violation allegedly occurred. 775 ILCS 5/7A-102(A)(1) (West 2006); *Allen v. Lieberman*, 359 Ill. App. 3d 1170, 1177 (2005). Petitioner must present his charge in such detail as to substantially apprise the concerned parties of "the time, place and facts" surrounding the alleged violation. 775 ILCS 5/7A-102(A)(2) (West 2006); *Graves v. Chief Legal Counsel of the Department of Human*

*Rights*, 327 Ill. App. 3d 293, 296 (2002). Compliance with the 180-day filing requirement is necessary to vest the Department with subject matter jurisdiction of the charge and is a condition precedent to petitioner's right to seek a remedy. *Sangamon County Sheriff's Department v. Illinois Human Rights Comm'n*, 233 Ill. 2d 125, 141 (2009); *Allen*, 359 Ill. App. 3d at 1177.

¶ 12 Generally, a claim based on a hostile work environment is comprised of a series of events rather than a single act. *Sangamon County Sheriff's Department*, 233 Ill. 2d at 141-42. Such a charge is timely provided it is filed within 180 days of any single act that is part of the hostile work environment. *Id.* at 142.

¶ 13 Here, we find the CLC did not abuse his discretion when he sustained the Department's dismissal of Count C for lack of jurisdiction. The CLC expressly noted that petitioner alleged he was subjected to a hostile work environment from 2003 through January 15, 2007, the date he was discharged by Condell. However, the CLC further found that during the Department's investigation, petitioner stated that the last date he was subjected to harm was June 29, 2005. The CLC found it significant that in his request for review, petitioner did not deny that he informed the Department's investigator that June 29, 2005, was the last date of harm. Therefore, petitioner's charge filed on May 1, 2007, was filed more than 180 days after the date on which the alleged violation occurred. Due to petitioner's failure to file his claim within the 180-day statutory limit, the Department lacked jurisdiction to consider that claim.

¶ 14 Furthermore, we find that the record belies petitioner's claim that the CLC did not recognize that he told the investigator that the harassing conduct continued until January 15, 2007. In his order, the CLC expressly noted that although petitioner's charge alleged "in a concluding manner" that the harassment continued until the date he was discharged, "the charge does not identify any specific incident that occurred within 180 days of the filing of his charge." The only specific date of harassment identified in the Department's investigative report was June

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29, 2005. The record shows that nowhere in the charge, the Department's investigation, or the request for review did petitioner identify any other specific date or specific act subsequent to the June 29, 2005, incident he reported to the investigator. Accordingly, we find that the CLC's decision was not arbitrary or capricious, but was properly based upon his analysis of the evidence obtained during the Department's investigation.

¶ 15 For these reasons, we affirm the judgment of the chief legal counsel of the Illinois Department of Human Rights dismissing petitioner's charge.

¶ 16 Affirmed.